

Via email

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From: Richard E. Potter and John M. Gray

To: Jilene Siegel, Office of the State Treasurer

CC: Susan Dumph, Chair, Administrative Law Section, W.S.B.A.

Subj.: WSR 25-12-109 and -110

On behalf of the Administrative Law Section of the Washington State Bar Association, we submit the following comments on the proposed rules that concern the records index required by section RCW [42.56.070](#) (5) of the Public Records Act (PRA), which are also affected by RCW [34.05.220](#) in the Administrative Procedure Act (APA).

Our main points are as follows:

1. Record retention schedules are not the records indexes required by the PRA, because they do not identify specific records.
2. State agencies must have index rules for any of the four types of records covered by RCW 42.56.070(5) that the agency has already issued.
3. State agencies should have index rules in place for any of the four types of records covered by RCW 42.56.070(5) that the agency may issue in the future.
4. Based on our research –
 - a. The Office of the Treasurer must have an index rule for policy statements and should have an index rule that covers interpretive statements;
 - b. The Finance Committee should at least have an index rule that covers declaratory orders, policy statements and interpretive statements;
 - c. The Public Deposit Protection Commission should at least have an index rule that covers declaratory orders, policy statements and interpretive statements.
5. The agencies' indexes should be posted on their websites with a clear link on the homepage and the records listed in the indexes should have hotlinks to copies of the documents.
6. Under the PRA and APA the lack of a records index can limit the uses state agencies can make of their orders and statements, e.g., as precedent or enforceable regulatory standards. Online indexes with hotlinks to documents can avoid these restrictions.

Lay persons and representatives who do not usually practice before you may not be able to find the final orders, declaratory orders, interpretive statements, and policy orders issued by an agency. We know from experience that the documents required to be indexed in RCW 42.56.070(5) are

often hard to find. Appellate and Supreme Court cases may be found in several different locations, but not agency orders and statements. The PRA-required indexes fill this information gap.

The PRA's indexes and index rule requirements

At the end of our comments we set forth the entire text of RCW 42.56.070(5) and (6).

In addition to maintaining any pre-July 1, 1990, indexes for any type of record that state agencies might have, RCW 42.56.070(5) requires state agency indexes for these types of post-June 30, 1990, records (as defined in the Administrative Procedure Act) –

- Final orders in adjudicatory cases “that contain an analysis or decision of substantial importance to the agency in carrying out its duties” [often called “significant decisions”];
- Declaratory orders “that contain an analysis or decision of substantial importance to the agency in carrying out its duties;”
- Interpretive statements;
- Policy statements.

The indexes must allow an inquirer to identify and locate specific documents, such as an order in case XYZ, an order addressing topic A, a policy statement on topic B, or an interpretive statement on issue C. The rule must specify a schedule for reviewing and updating the indexes.

RCW 42.56.070(6) limits the uses agencies may make of public records of any type that are not included in indexes available to the public.

Obviously, an agency would be handicapped in the performance of its enforcement and compliance obligations if it could not use its orders and statements as binding precedents and enforceable standards.

Note that there is no date limit on this agency use restriction. While RCW 42.56.070(5)(b) and (c) require indexing only of final orders and declaratory orders entered after June 30, 1990, there is no such limitation in subsection (6). Therefore, no matter when an order or statement was issued, to be invoked by the agency it must have been included in a publicly available index.

Administrative Procedure Act provisions relating to records indexes

The Administrative Procedure Act also has a provision concerning records indexes: RCW [34.05.220](#), which we set forth in its entirety at the end of our comments. Subsection (2) of that provision reads:

. . . each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

Subsection (3) begins: “No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection.”

An index of agency orders, decisions and opinions that is posted on the agency’s website with hotlinks to the documents would, we think, fulfil the obligation to make them “available for public inspection” and thereby readily allow the agency to “invoke [them] for any purpose.”

Record retention schedules are not the required indexes

The subject rulemakings propose to create new “Records index” rules for three agencies, all with essentially the same operative verbiage.

Proposed Office of the Treasurer rule WAC 474-01-075 Records Index reads as follows:

(1) The state general records retention schedule and the office of the state treasurer's specific records retention schedule, as established and approved by the state records committee, serve as the index for the identification and location of the office's records, including those described in RCW [42.56.070\(5\)](#).

(2) The office of the state treasurer maintains an index, as described in subsection (1) of this section, and other records available to the public, on its website at <https://tre.wa.gov/public-records-index>.

Proposed State Finance Committee rule WAC 210-06-075 and Public Deposit Protection Commission rule WAC 389-06-060 adopt the “records index for the office of the state treasurer” – i.e., the records retention schedule -- as their records index.

The “index” required by the PRA is a list that identifies individual documents. This is made clear by [42.56.070\(6\)](#) (emphasis added):

(6) **A public record** may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) **It** has been indexed in an index

It is a specific record – e.g., an order or statement – that must be shown in the index before an agency make use of that specific document.

Because the records retention schedule for the Office of the Treasurer¹ does not identify individual records and instead just lists types of records, it cannot be the index of the records required by RCW 42.56.070(5)(b) – (e).

The Office’s current records index webpage recognizes that the record retention schedule is not the PRA-required index.

<https://tre.wa.gov/public-records-index> [Emphasis added.]

“We maintain an **index of declaratory orders, final orders, interpretive statements, and policy statements as required in RCW 42.56.070(5).**

“**For other records**, state agency records retention schedules provide a master list of the types of records we create and receive, their retention period, and disposition. Please see the [Washington State General Records Retention Schedule](#) and the [Office of the State Treasurer Records Retention Schedule](#).”

Correctly, the records retention schedule is not called an “index.” Rather, it is called a master list of types of records that are “other” than the individual documents that are listed in the “an index . . . required in RCW 42.56.070(5).”

The “index” hotlink in the first paragraph leads to a .pdf document, which (correctly) is not a mere statement of types of records but a list of over three dozen specific policy statements. Here is a screen shot of the beginning of that list:

Policy Statements

- Use of Agency Bank Cards
- Ethics in Public Service
- Hours of Work
- Public Records
- Whistleblower – Improper Governmental Action

Moreover, we have reviewed the Office’s records retention schedule and did not see any reference to declaratory orders, final orders, interpretive statements, or policy statements.

“Must have” and “should have” records index rules

Clearly, RCW 42.56.070(5)(b)-(e) requires state agencies to have a records index rule of covered records that the agency has already issued.

As a best practice, agencies should have index rules for records they have not yet issued but might issue in the future. This is because the moment they issued that other type of document they would

¹ The webpage at <https://tre.wa.gov/public-records-index> has this hotlink: [Office of the State Treasurer Records Retention Schedule](#) .

be obligated to make available an index including it and a to enact a rule for that index. Best to have the rule in place already.

Some state agencies have statutory authority to conduct “adjudicative proceedings as defined in RCW [34.05.010](#),” subsection (1)² in which **final orders** are issued. Some do not.

Some state agencies have statutory authority to enforce rules, orders, or statutes and, therefore, might issue “**declaratory orders** . . . pursuant to RCW [34.05.240](#).”³ Some do not.

Even agencies that do not have such enforcement authority may issue “**interpretive statements** as defined in RCW [34.05.010](#),” subsection (8): “a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.”

Similarly, virtually every state agency may issue “**policy statements** as defined in RCW [34.05.010](#),” subsection (15): “a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.”

- Office of the Treasurer

The top of the index linked in the webpage of the Office of the Treasurer referenced above is:

Public Records Index

Office of the State Treasurer Public Records Index pursuant to RCW 42.56.070(5)

Records issued before July 1, 1990, for which OST has maintained an index

- None

Final Orders, Declaratory Orders, and Interpretive Statements

- None

Policy Statements

- Use of Agency Bank Cards
[etc.]

² RCW [34.05.010](#)(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW [66.08.150](#), or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

³ RCW [34.05.240](#) (1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency.

Therefore, under the PRA at present the Office only needs an index rule for its policy statements. The current index does not state whether no final orders, declaratory orders or interpretive statements have been issued because the Office simply has not yet had an occasion to issue such documents or the Office has not issued any because for some reason it cannot and will never be able to issue them.

Based on our research it does not appear that the Office of the Treasurer has enforcement authority, in which case it will not issue final or declaratory orders and, therefore, does not need an index or index rule for them. If the Office has a contrary opinion on this point, it should act accordingly with regard to the PRA indexes requirement.

On the other hand, because the Office implements laws it might have occasion to issue interpretive statements expressing the Office's opinion "as to the meaning of a statute or other provision of law."

The Office must have an index rule for policy statements and should have an index rule that covers interpretive statements.

- Finance Committee

In our research of statutes we did not find specific authorization for the Committee to conduct "adjudicative proceedings as defined in RCW 34.05.010." However, in RCW [43.33.040](#) and RCW [39.58.040](#)(1) and (9) we found authority for the Committee to "make and enforce" rules, including by "sanctions." This enforcement power might be deemed to imply the authority or the obligation to conduct adjudicatory proceedings with regard a party's compliance with rules, in which case the Committee would issue final orders that would need to be included in a PRA-compliant index.

In any event, it appears that the Committee might issue declaratory orders under RCW 34.05.240 "with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency." And we think it is clear the Committee might issue interpretive and policy statements. Therefore, the Committee should at least put into place a PRA-compliant index rule for these three types of documents.

- Public Deposit Protection Commission

The Commission also has rulemaking and enforcement powers under RCW [39.58.040](#)(1) and (9), so it is in the same position as the Finance Committee.

If its enforcement power is deemed to imply the authority or the obligation to conduct adjudicatory proceedings, the Commission should have in place a PRA-compliant final orders index rule.

In any event, the Commission should at least have in place PRA-compliant rules for indexes of declaratory orders and interpretive and policy statements.

PRA-compliant index rules verbiage.

The PRA requires index rules to contain at least the following:

- requirements for the form and content of the index,
- its location and availability to the public, and
- the schedule for revising or updating the index.

The form and content of an index will vary depending on the type of documents being indexed. The other required provisions could be the same for all four types of documents.

In the discussion immediately below we cite some state agency index rules we think do a good job of complying with RCW [42.56.070](#).

At the very end of this document we provide an indexes rule template we developed for another agency.

- Final and declaratory orders

The PRA's state agency indexes requirements for final and declaratory orders only apply to orders "that contain an analysis or decision of substantial importance to the agency in carrying out its duties." These orders are sometimes referred to as "significant decisions."

The original 1973 PRA did not contain this limitation. It was added in 1989. We surmise it may have been in response to agency concerns with the workload of an increasing volume of final orders at a time when agencies were likely producing the orders and indexes "by hand" - on typewriters rather than computers. Today's documents in electronic form can more readily be inserted into digital indexes, which can be posted on agency websites.

Some state agencies post indexes (lists) of all of their final orders, not just the "significant decisions." Other agencies just post indexes of significant decisions.

Strictly speaking, these all-orders indexes do not comply with the PRA. Some of them include the ability to search the listed documents, which somewhat mitigates the impact of noncompliance – at least for attorneys, who should know the best search terms for the issues of concern to them and their clients.

Indexes limited to significant decisions still have distinct benefits to attorneys and to the members of the general public, which the PRA was primarily intended to serve. As we stated in our article in the Fall 2018 Administrative Law Section newsletter:

Are you new to practicing before a particular state regulatory agency? Would you like ready access to agency documents that describe key precedents and agency policies? Even if you are not new to practice at a given state agency, would you like to double check your knowledge of precedents and policies against the agency's listing of them? Indexes required by the Public Records Act (PRA) are a potential resource for you – especially the ones that are posted online.

This view of the usefulness of agency significant decisions indexes was echoed by a panelist for a 1/12/22 CLE - Pathways to a Career as an ALJ. In the context of recommending ways in which aspiring ALJs could get to know the work of a possible agency employer, the panelist recommended consulting the agency's significant decisions index (if it has one).

These benefits of significant decisions indexes apply to the members of the general public, as well.

An index rule for final orders that are significant decisions should have criteria that includes at least the precedent preconditions of subsection (6) of the statute, so that –

- If Order X has been cited as precedent in any subsequent agency order, then Order X should be included in the agency's significant decisions index.
- Whenever the index is updated, it should be double checked against recent orders to make certain that all cited precedents are in the index.
- For each new order, the agency must make a judgment as to whether it is likely to be cited in the future as precedent. If so, it should be included in the index.

In addition, an order can be of “substantial importance” if it is instructive on important legal issues and/or factual situations within the agency's purview. Examples of how this criterion might be stated in an agency's rule include:

The order clarifies an unsettled interpretation of statute or modifies or clarifies an earlier interpretation. – Based on RCW [82.32.410](#) (1)(a) concerning the Department of Revenue; see also WAC [263-12-195](#).

Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the board. – From WAC [263-12-195](#) (2) of the Board of Industrial Insurance Appeals; see also WAC [246-08-480](#) (2) of the Department of Health.

An order should be removed from the index or appropriately annotated when a published decision entered by the court of appeals or the supreme court reverses the order or the

agency determines that the order is no longer precedential due to changes in statute, rule, or policy. – Based on WAC [182-16-130](#) of the Health Care Authority.

An agency's significant declaratory orders index rule should specifically address this type of document in the same way we have described for final orders. There may be one practical difference for an agency, however. In our experience APA declaratory orders are rare. Therefore, as a matter of quantity it may be simpler – and more useful – for an agency to include all of its declaratory orders in its index, without the need to do a “substantial importance” analysis of each such order. If an agency takes this approach, its rule and its index should say so.

Other state agency rules for indexes of significant final and declaratory orders that we think do a good job of complying with RCW [42.56.070](#) are:

WAC [110-03-0585](#) of the Department of Children, Youth, and Families
WAC [308-101-260](#) of the Department of Licensing

- Interpretive and policy statements

The form and contents of the indexes for these types of documents are fairly straightforward. The most important element is a clear statement of the subject matter.⁴ This is most easily accomplished by an informative document title, but the index listing for lengthy or multi-faceted documents might require additional information.

PRA-required indexes should be posted on agencies' websites with hotlinks to the individual records.

The legislature encourages state agencies to post records on their websites. For the same reasons, the PRA-required indexes should be posted. Posting the indexes with hotlinks to the individual records benefits the agencies and the public.

RCW [42.56.520](#) Prompt responses required.

(1) Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond in one of the ways provided in this subsection (1):

* * *

(b) Providing an internet address and link on the agency's website to the specific records requested, except that if the requester notifies the agency that he or she cannot access the

⁴ See RCW [34.05.230](#) (4).

records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;

NOTE

Finding—2010 c 69: "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency websites. When an agency has made records available on its website, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [[2010 c 69 s 1.](#)]

RCW [42.56.120](#) Charges for copying.

(2) (e) An agency shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet website prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means.

* * * * *

STATUTORY TEXTS

Public Records Act

RCW [42.56.070](#) Documents and indexes to be made public—Statement of costs.

Subsection (1) of this provision requires each state agency to “make available for public inspection and copying all public records . . .”⁵

Subsections (5)(b) – (e) require agencies to have indexes of four types of public records.

[Part of the final paragraph is reformatted using bullet points and line breaks, for ease of reading.]

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

⁵ Subject to some redaction requirements and to the conditions in subsection (8) concerning “access to lists of individuals requested for commercial purposes.”

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to,

- requirements for the form and content of the index,
- its location and availability to the public, and
- the schedule for revising or updating the index.

State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection.

State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations.

State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

Subsection (6) limits the uses agencies may make of public records of any type that are not included in indexes available to the public.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

- (a) It has been indexed in an index available to the public; or
- (b) Parties affected have timely notice (actual or constructive) of the terms thereof.

Administrative Procedure Act

A provision in this law has an impact similar to RCW 42.56.070(6) with regard to uses that an agency might make of records that have not been included in indexes available to the public.

RCW 34.05.220 Rules for agency procedure—Indexes of opinions and statements.

(1) In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

(5) To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply.

(6) The departments of employment security, labor and industries, ecology, and revenue shall develop and use a notification process to communicate information to the public regarding the postadoption notice required by RCW 34.05.362.

This template is for a state agency that provides indexes for all the types of records listed in RCW 42.56.070(5). It also addresses the indexing of precedents in compliance with RCW 42.56.070(6) and in consideration of RCW 34.05.220(2) and (3) of the APA.

RULE TEXT examples	COMMENTS
WAC xxx-xx-xxx Records indexes.	
(1) Purpose. This rule implements RCW 42.56.070(5) and (6) and RCW 34.05.220(2) and (3). It also describes indexes maintained by the agency that are not covered by those provisions.	The citations are to the PRA and the APA. They let the public know why the agency has this rule.
(2) Indexes of pre-July 1, 1990 records. Indexes that were discontinued before July 1, 1990 are available as-is. Such indexes that were continued beyond that date have been – at least as to post-June 30, 1990 issuances -- maintained as described in this rule.	The text here would reflect the agency’s specific situation as to such older indexes. If the agency had no such indexes, this subsection could say “The agency maintained no indexes for documents issued before July 1, 1990.”
(a) Index of [type of record X], covering records issued from [date to date]. Records can be identified by [describe, e.g., topic, date, etc.].	If there are no pre-July 1, 1990 indexes, there would be no additional parts of subsection (2) of the rule.
(b) Index of [type of record X], covering records issued from [date to date]. It has been merged with the post- June 30, 1990 [type of record X] index described below.	
(3) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties.	If the agency maintained an index for final orders issued before July 1, 1990, the best practice would be to identify orders “of substantial importance” and orders that have been cited as precedent and merge them into the post-June 30, 1990 final orders index. If that is done, it should be explained at the beginning of this part of the rule.
(a) Criteria for determining which final orders are included in the index include, at a minimum, the following:	
It illustrates the application of law and/or agency rules and/or policies to common factual situations,	
(ii) It clarifies an unsettled interpretation of statute or modifies or clarifies an earlier interpretation,	
) It provides a legal analysis or interpretation not found in existing court case law,	
(iv) It applies settled law to an unusual factual situation,	

(v) It reflects the further development of, or continued adherence to, a legal principle previously recognized by the agency,	
(vi) It has previously been cited by the agency in a final order as precedent. Or is likely to be so cited in the future.	
(b) A newly issued order will be included in the index if the agency determines that it meets the criteria set forth in (3)(a) of this rule and any other pertinent considerations.	
(c) At a minimum, the index will enable users to identify documents by: <ul style="list-style-type: none"> (i) Topics (e.g., statute, rule, agency policy, legal issue, factual situation that are part of the order’s “substantial importance”), (ii) Case name, (iii) Parties, (iv) Order number, (v) Date ranges of order issuance. 	The subject matters would be those covered by the order that are “of substantial importance.” For example, a perfunctory citation of a procedural “rule X” would not result in an order being listed under the topic “Rule X” in the index.
(4) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties. Declaratory orders shall be selected for inclusion in the index using the same criteria employed for final orders.	<p>If the agency maintained an index for declaratory orders issued before July 1, 1990, the best practice would be to identify orders “of substantial importance” and orders that have been cited as precedent and merge them into the post-June 30, 1990 final orders index. If that is done, it should be explained here.</p> <p>If the number of declaratory orders of substantial importance issued by the agency is small, for efficiency’s sake the agency could include them in the final orders index, which it would explain here.</p>
(a) Declaratory orders shall be selected for inclusion in the index using the same criteria employed for final orders.	
(b) At a minimum, the index will enable users to identify documents by: <ul style="list-style-type: none"> (i) Topics (e.g., statute, rule, agency policy, legal issue, factual situation that are part of the order’s “substantial importance”), (ii) Case name, (iii) Parties, (iv) Order number, (v) Date ranges of order issuance. 	

<p>(5) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990. At a minimum, the index will enable users to identify documents by topic, adoption order number, and date ranges of order issuance.</p>	<p>Ditto re merging a pre-July 1, 1990 index with the post-June 30, 1990 index.</p>
<p>(6) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990. At a minimum, the index will enable users to identify documents by topic, adoption order number, date ranges of order issuance, and by major agency program (if applicable).</p>	<p>Ditto re merging a pre-July 1, 1990 index with the post-June 30, 1990 index.</p>
<p>(7) Revising and updating indexes of orders. (a) Promptly upon the issuance of any new final order or declaratory order (as defined above), the agency will determine whether it is an order “of substantial importance.” If it is, the order will promptly be added to the appropriate index.</p>	<p>This is our recommended approach. The sooner an agency includes an order in its index, the sooner it may rely on the document as precedent.</p>
<p>(b) When an order is no longer one “of substantial importance” because, for example, a published decision entered by the court of appeals or the supreme court reverses the order or the agency determines that the order is no longer precedential due to changes in statute, rule, or policy, the order will be removed from the index, unless it remains “of substantial importance” for other reasons.</p>	
<p>(c) No less frequently than every [time period], the agency will review the indexes to ensure that they are current and contain all orders “of substantial importance.”</p>	<p>If the agency does not use our recommended approach of making the determination when each order is issued, At a minimum, the index should be reviewed and updated at specified intervals. The more orders the agency issues, the more frequent the updates should be.</p>
<p>(8) Revising and updating indexes of statements. (a) Promptly on the issuance of any new interpretive or policy statement (as defined above), the statement will be added to the appropriate index.</p>	<p>This is our recommended approach. The sooner an agency includes a statement in its index, the sooner it may rely on the document as precedent.</p>

(b) Statements will be removed from an index when they no longer represent the agency's current position.	
(c) No less frequently than every [time period], the agency will review the indexes to ensure that they are current and complete.	If the agency does not use our recommended approach of making the determination when each statement is issued, At a minimum, the index should be reviewed and updated at specified intervals.
(9) Other indexes. The agency also maintains indexes of other types of records, which may change from time to time. As of the last update of this rule, the agency maintained indexes of the following types of records:	The PRA's indexing prerequisite to relying on a document as precedent ⁶ applies to all types of public records, not just the orders and statements listed in RCW 42.56.070(5). Therefore, if an agency has other types of documents it may wish to use as precedents, they should be covered by an index available to the public and described in this part of the rule.
(a) [Type of record B], covering records issued after [date]. Records are indexed by [describe, e.g., subject matter, date, etc.]	
(b) [Type of record C], covering records issued after [date]. Records are indexed by [describe, e.g., subject matter, date, etc.]	
(c) Other orders issued after [date]. Orders are indexed by [describe, e.g., subject matter, date, etc.]	If an agency's final and/or declaratory orders are subject to APA exclusions ⁷ so that, arguably, they are not covered by RCW 42.56.070, the best practice would be for the agency to nevertheless index them, so they would meet the precedential use prerequisites.
(d) [Type of record X], issued after [date]. Records are indexed by [describe, e.g., subject matter, date, etc.]	This is an illustrative placeholder for a type of pre-July 1, 1990 index that has been merged into a new index that includes post June 30, 1990 records. That would be explained in this rule subsection.
(10) Location and availability of indexes and records.	
All indexes and the records listed in them are available for inspection and copying at the agency's office[s] during normal business hours, which are [state]. The process for obtaining such access is the same as for other public records, which is described in the agency's rule WAC xx-xx-yyy .	
OR	Best practice: cite to the specific indexes webpage, not just to the homepage. If only the home page is given, the agency should

⁶ RCW 42.56.070(6); see above.

⁷ Three state agencies are exempted from the APA in total, and specified adjudicative proceedings of several agencies are exempted from the APA's Parts III and IV (Adjudicative Proceedings; Judicial Review and Civil Enforcement). RCW [34.05.030](#) See also RCW [34.05.010](#)(1).

<p>All indexes and the records listed in them are posted on the agency’s website at www.xxx.xxx/indexes. In the indexes, each record listed has a hotlink that leads to the full record.</p>	<p>ensure that an obvious link to “Records indexes” is always on the homepage.</p> <p>Bear in mind the caveat in RCW 42.56.520 (b) that ““if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer.” The “belt and suspenders” approach would be to include it in the rule.</p>
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