



PROPOSED RULE MAKING

CR-102 (August 2017) (Implements RCW 34.05.320) Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 18, 2017
TIME: 8:00 AM

WSR 17-21-094

Agency: Washington Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-12-115 on June 7, 2017 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

WAC 220-440-170 Payment for livestock damage and other domestic animals-Limitations.

WAC 220-440-180 Application for cash compensation for livestock damage or domestic animal-Procedure.

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

December 8-9, 2017	8:00 a.m.	Natural Resources Building Room 172 1111 Washington Street SE Olympia, WA 98501	
--------------------	-----------	--	--

Date of intended adoption: January 19-20, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Wildlife Program

Address: PO Box 43200, Olympia, WA 98504

Email: wildthing@dfw.wa.gov

Fax: (360)902-2162

Other: <https://www.surveymonkey.com/r/29ZPM7V>

By (date) November 8, 2017

Assistance for persons with disabilities:

Contact Tami Lininger

Phone: (360) 902-2267

Fax:

TTY: (800) 833-6388

Email: tami.lininger@dfw.wa.gov

Other:

By (date) December 1, 2017

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

220-440-170 Payment for livestock damage and other domestic animals

The purpose of the proposal is to align WAC 220-440-170 with RCW 77.36.110, so that a livestock producer must exhaust all available compensation from non-profit organizations before receiving payment from WDFW. The anticipated effect is to improve consistency in the language between law and rule, and to provide a more streamlined process for assessing submitted claims.

220-440-180 Application for cash compensation for livestock damage or domestic animal

The purpose of the proposal is to clarify that a livestock producer can use an independent assessor, or market sales receipts from their last sale or their next upcoming sale to estimate the value of their damaged livestock, and to align WAC 220-440-180 with the payment schedule in the wolf plan for confirmed/probable wolf depredations on grazing areas greater than/less than 100 acres.

Reasons supporting proposal:
220-440-170 Payment for livestock damage and other domestic animals
Makes rule consistent with state law and produces a more streamlined process for assessing submitted claims.
220-440-180 Application for cash compensation for livestock damage or domestic animal
Makes rule consistent with WDFW's Wolf Conservation and Management Plan and produce a more streamlined process for assessing submitted claims.

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.36.170, and 77.36.180

Statute being implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.36.170, and 77.36.180

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife Private Public Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Eric Gardner	600 Capitol Way North Olympia, WA 98501	(360) 902-2515
Implementation:	Eric Gardner	600 Capitol Way North Olympia, WA 98501	(360) 902-2515
Enforcement:	Steve Bear	600 Capitol Way North Olympia, WA 98501	(360) 902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No
If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?
 Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: The rule proposal does not require a cost-benefit analysis.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:


COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: October 18, 2017	Signature: 
Name: Scott Bird	
Title: Rules Coordinator	

WAC 220-440-170 Payment for livestock damage and other domestic animals—Limitations. Commercial livestock owners who have worked with the department to prevent depredation but continue to experience losses, or who experience unforeseen losses, may be eligible to file a damage claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when specifically appropriated by the legislature or other funding entity. Damages payable under this section are limited to the lost or diminished value of livestock caused by wild bears, cougars, or wolves and shall be paid only to the owner of the livestock, without assignment. Cash compensation for livestock losses from bears, cougars, and wolves shall not include damage to other real or personal property, including other vegetation or animals, consequential damages, or any other damages except veterinarian services may be eligible. However, livestock owners under written agreement with the department will be compensated consistent with their agreement which may extend beyond the limitations in this section. The department is authorized to pay the market value for the eligible livestock or guard dog lost((~~τ~~)) or the market value of indirect livestock losses as a result of harassment by wolves, including reduced weight gains for livestock, and no more than ten thousand dollars to the livestock owner per claim.

Claims for cash compensation will be denied when:

(1) Funds for livestock compensation have not been specifically appropriated by the legislature or other funding entity;

(2) The claim is for livestock other than sheep, cattle, or horses, when only state funds are available; or any domestic animals not allowed by the funding entity;

(3) The owner fails to provide the department with an approved checklist of the preventative and nonlethal means that have been employed, or the owner failed to comply with the terms and conditions of his or her agreement(s) with the department;

(4) The owner has accepted noncash compensation to offset livestock losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for livestock losses within a fiscal year;

(5) Damages to the livestock or other domestic animals claimed are covered by insurance or are eligible for payment from ((~~other entities~~)) nonprofit organizations. However, any portion of the damage not covered by ((~~others~~)) nonprofit organizations is eligible for filing a claim with the department;

(6) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;

(7) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;

(8) No claim will be processed if the owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge; or

(9) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed under the direction of the department.

WAC 220-440-180 Application for cash compensation for livestock damage or domestic animal—Procedure. Pursuant to this section, the department may distribute money specifically appropriated by the legislature or other funding entity to pay commercial livestock or guard dog losses caused by wild bear, cougar, or wolves in the amount of up to ten thousand dollars per claim unless, following an appeal, the department is ordered to pay more (see RCW 77.36.130(2)). The department will develop claim procedures and application forms consistent with this section for cash compensation of commercial livestock or guard dog losses. Partnerships with other public and private organizations to assist with completion of applications, assessment of losses, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Claimant must notify the department within twenty-four hours of discovery of livestock or other domestic animal attack or as soon as feasible.

(2) Damage claim assessment of amount and value of (~~domestic animal~~) eligible livestock or guard dog loss is the primary responsibility of the claimant.

(3) Investigation of the loss and review and approval of the assessment will be conducted by the department:

(a) The claimant must provide access to department staff or designees to investigate the cause of death or injury to (~~domestic animals~~) eligible livestock or guard dogs and use reasonable measures to protect evidence at the depredation site.

(b) Federal officials may be responsible for the investigation when it is suspected that the attack was by a federally listed species.

(4) To be eligible a claimant must submit a written statement, electronic or hard copy, within thirty days of discovery of a loss to indicate his or her intent to file a claim.

(5) A complete(~~, written~~) claim package must be submitted to the department within ninety days of a discovery of an attack on (~~domestic animals or~~) livestock or guard dogs to be eligible for compensation.

(6) A claim form declaration must be signed, affirming that the information provided is factual and truthful, per the certification set out in RCW 9A.72.085 before the department will process the claim.

(7) In addition to a completed claim form, a claimant must provide:

(a) Proof of legal ownership or contractual lease of claimed livestock.

(b) Records documenting the value of the (~~domestic animal based on either market price or value at the time of loss~~) livestock or guard dog depending upon the determination for cause of loss.

(c) Declaration signed under penalty of perjury indicating that the claimant is eligible for the claim, meets eligibility requirements listed under this chapter and in RCW 77.36.100, 77.36.110, and 77.36.120, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(d) A copy of any insurance policy covering loss claimed.

(e) Copies of applications for other sources of loss compensation and any payment or denial documentation.

(f) The department approved checklist of preventative measures that have been deployed, or documented compliance with the terms and conditions of the claimant's agreement with the department, or the director approved waiver.

Settlement of claims:

(8) Subject to funds appropriated to pay for ~~((domestic animal))~~ livestock or guard dog losses, undisputed claims will be paid up to ten thousand dollars.

(9) Valuation of the lost livestock;

(a) ~~((For losses caused by wolves, livestock))~~ The department may utilize the services of an independent certified appraiser to assist in the evaluation of livestock or guard dog claims.

(b) For losses caused by wolves, the compensation value for livestock or guard dogs will be based on the value at the time the animal would normally be sold at market or the cost to replace the animal, and based on comparable types and/or weight of livestock or guard dogs, such as comparable calves, steers, cows, ewes, and lambs; except bulls will be replaced based on the actual purchase price prorated on a four-year depreciation cycle minus salvage value. The market or replacement value will be determined by ((the market at the time the animals would normally be sold. Livestock will be valued based on the average weight of herd mates at the time of sale multiplied by the cash market price received and depredated cows or ewes will be replaced based on the value of a bred animal of the same age and type as the one lost. Bulls will be replaced using actual purchase price prorated based on a four year depreciation cycle minus salvage value.

(b)) an independent certified appraiser, the sales receipts from the most recent sale of comparable animals by the owner, or the sales receipts from the next sale of comparable animals by the owner.

(c) The payment amount for wolf depredations to livestock will be based on the following criteria:

(i) Where the livestock grazing site was greater than or equal to one hundred acres, there is a rebuttable presumption that the number of commercial livestock wolf depredations that are eligible for compensation is twice the number of wolf livestock depredations documented by the department, unless all remaining livestock are accounted for. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for two commercial livestock. The payment for each probable wolf depredation will be half the full market value for two commercial livestock. Payments will be reduced by half if all the remaining livestock are accounted for.

(ii) Where the livestock grazing site was less than one hundred acres, there is a rebuttable presumption that all the commercial livestock wolf depredations are discovered by the livestock owner. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for one commercial livestock. The payment for each probable wolf depredation will be half the full market value for one commercial livestock.

(d) For losses caused by bear or cougar, livestock value will be determined by the market value((s)) for an animal of the same breed, sex, and average weight at the time the animal((s-are)) is lost.

((c) The department may utilize the services of a certified livestock appraiser to assist in the evaluation of livestock claims.))

(10) Claims for higher than normal livestock losses, reduced weight gains, or reduced pregnancy rates due to harassment of livestock caused by wolves must include:

(a) At least three consecutive years of records (~~(prior to)~~) preceding the year of the claim. Claims will be assessed for losses in excess of the (~~previous~~) preceding three-year running average;

(b) The losses must occur on large pastures or range land used for grazing, lambing, or calving where regular monitoring of livestock is impractical (and therefore discovery of carcasses infeasible) as determined by the department;

(c) Verification by the department that wolves are occupying the area;

(d) The losses cannot be reasonably explained by other causes;

(e) Compliance with the department's preventative measures checklist, or damage prevention cooperative agreement, or a waiver signed by the director.

(11) Compensation paid by the department combined with any other compensation may not exceed the total assessed value of the (~~assessed~~) loss.

(12) Upon completion of an evaluation, the department will notify the claimant of its decision to either deny the claim or make a settlement offer (order). The claimant has sixty days from the date received to accept (~~the department's~~), sign, and mail to the department the original offer for settlement of the claim. If the claimant wishes to appeal the offer, they must request an informal resolution or adjudicative proceeding as described in WAC 220-440-230. (~~The acceptance must be in writing and the signed originals must be mailed in to the department.~~) The appeal must be in writing and may be mailed or submitted by email. If no written acceptance or request for appeal is received within sixty days of receipt of the settlement offer, the offer is considered rejected and not subject to appeal.

(13) If the claimant accepts the department's offer, the department will (~~send~~) provide payment to the claimant within thirty days from receipt of the written acceptance document(s).

(14) The department will prioritize payment for livestock losses in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for livestock losses during the current fiscal year, the claim shall be held over until the following fiscal year when funds become available. As funding becomes available to the department under this section, RCW 77.36.170, or any other source, the department must pay claims in (~~the chronologic~~) chronological order. Claims that are carried over will take first priority and receive payment before any new claims are paid. The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement.