



# PROPOSED RULE MAKING

## CR-102 (December 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: August 31, 2020

TIME: 10:30 AM

WSR 20-18-060

**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 20-08-099** filed on March 30, 2020 ; 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);** or

**Proposal is exempt under RCW** \_\_\_\_\_.

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

WAC 220-500-200 Livestock grazing on department lands.

**Hearing location(s):**

| Date:               | Time:     | Location: (be specific)         | Comment:   |
|---------------------|-----------|---------------------------------|--|
| October 23-24, 2020 | 8:00 a.m. | Webinar and/or conference call. | This meeting will take place by webinar. The public may participate in the meeting. Visit our website at <a href="http://wdfw.wa.gov/about/commission/meetings">http://wdfw.wa.gov/about/commission/meetings</a> or contact the Commission office at (360) 902-2267 or <a href="mailto:commission@dfw.wa.gov">commission@dfw.wa.gov</a> for instructions on how to join the meeting. |

**Date of intended adoption:** November 20, 2020 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Wildlife Program

Address: PO Box 43200, Olympia, WA. 98504

Email: [Rules.Coordinator@dfw.wa.gov](mailto:Rules.Coordinator@dfw.wa.gov)

Fax:

Other: Rule Comment: <https://www.surveymonkey.com/r/DFWGRAZING20>

SEPA Comment: <https://wdfw.wa.gov/licenses/environmental/sepa/open-comments>

By (date) September 24, 2020

**Assistance for persons with disabilities:**

Contact Dolores Noyes

Phone: (360) 902-2346

Fax:

TTY: (360) 902-2207

Email: [dolores.noyes@dfw.wa.gov](mailto:dolores.noyes@dfw.wa.gov)

Other:

By (date) October 14, 2020

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

The purpose of the proposed rule is to clarify how the Washington Department of Fish and Wildlife (WDFW) manages and implements grazing on lands owned or managed by WDFW. Specifically, grazing must be consistent with WDFW's mission, management objectives, and strategic plan. This language would replace existing language that says that grazing must be consistent with desired ecological conditions.

The Commission currently does not review grazing permits being renewed. This amendment clarifies that permits up for renewal include permits where grazing has occurred within the last ten years, and that grazing permit renewals are not issued where only temporary permits have previously occurred. Existing rule states that temporary permits are those permits that have been issued for a period of not more than one year.

The proposed rule also requires that the Commission must approve, rather than just review, all non-temporary grazing activity on lands that have not been grazed within the past ten years.

The rule also adds that Commission review is not required for permits for land acquired within the previous 12 months, but specifies that such permits are limited to a duration of three years after which time a grazing permit must be approved by the Commission before it can be renewed.

The proposed rule clarifies that grazing plans are not required for permits where livestock grazing will last for fewer than 14 days, whereas the current language refers to permits lasting less than two weeks. Through this change, the 14 days need not necessarily be consecutive. The amendment also allows WDFW to discontinue a grazing permit upon expiration of a permit.

**Reasons supporting proposal:**  
 The proposed rule clarifies and strengthens WDFW's grazing rule, and promotes consistency with WDFW's mission, objectives, and strategic plan. It adds the requirement for Commission approval of new grazing permits where grazing has not occurred within the previous ten years.

The Commission approval exception for land acquired in the previous 12 months allows WDFW to acquire land and maintain grazing activity ongoing prior to and during the acquisitions process while the department measures ecological integrity and plans future management.

Clarifications and other proposed amendments will result in more comprehensive statewide implementation of WDFW's grazing program consistent with WDFW's mission, management objectives and strategic plan.

**Statutory authority for adoption:** RCWs 77.04.012, 77.04.055, 77.12.047, and 77.12.240

**Statute being implemented:** RCWs 77.04.012, 77.04.055, 77.12.047, and 77.12.240

**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:**

**Name of proponent:** (person or organization) Washington Department of Fish and Wildlife

|  |
|--|
| <input type="checkbox"/> Private                 |
| <input type="checkbox"/> Public                  |
| <input checked="" type="checkbox"/> Governmental |

**Name of agency personnel responsible for:**

|                 | Name         | Office Location                              | Phone          |
|-----------------|--------------|--|----------------|
| Drafting:       | Eric Gardner | 1111 Washington St. SE<br>Olympia, WA. 98501 | (360) 902-2515 |
| Implementation: | Eric Gardner | 1111 Washington St. SE<br>Olympia, WA. 98501 | (360) 902-2515 |
| Enforcement:    | Steve Bear   | 1111 Washington St. SE<br>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: A cost-benefit analysis is not required for this rulemaking under RCW 34.05.328.

**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)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((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 19.85.025(4).

Explanation of exemptions, if necessary: The proposed rule does not affect small businesses. The proposed rule describes how grazing activities are to occur on lands owned or managed by WDFW. The development and submission of a grazing plan is already in existing regulations and such plans are typically done by WDFW staff.

**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:** August 31, 2020

**Signature:**

**Name:** Michele K Culver



**Title:** Agency Rules Coordinator

**WAC 220-500-200 Livestock grazing on department of fish and wildlife lands.** All persons wishing to apply for a grazing permit for acreage managed by the Washington department of fish and wildlife should contact the ((Washington Department of Fish and Wildlife, 600 North Capitol Way)) department at P.O. Box 43200, Olympia, Washington ((98501-1091)) 98504-3200.

(1) The director is authorized to ((enter into)) issue grazing permits when the director determines that ((a)) the grazing permits will be consistent with the ((desired ecological condition for those lands or the)) department's mission, management objectives, and strategic plan. ((Except for temporary permits, or permits that are being renewed or renegotiated with existing permittees, grazing permits shall first be submitted to the commission, which may review the permit to ensure it conforms with commission policy. If, within thirty days, the commission has not disapproved the permit, the director shall be deemed authorized to enter into that permit.

~~(2) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. The director may advertise and sell a permit to use department lands for grazing at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so.~~

~~(3) The term of each grazing permit shall be no greater than five years. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee, negotiate a new permit with a new grazing operator, or sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. The director may grant a term longer than five years only with the prior approval of the commission.~~

~~(4) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a temporary permit shall not exceed one year and no fee need be charged.~~

~~(5) Except for temporary permits lasting less than two weeks, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological condition, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.~~

~~(6) The director may cancel a permit (a) for noncompliance with the terms and conditions of the permit, or (b) if the area described in the permit is included in a land use plan determined by the agency to be a higher and better use, or (c) if the property is sold or conveyed, or (d) if damage to wildlife or wildlife habitat occurs.~~

~~(7)) (2) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a tem-~~

porary permit shall not exceed one year and no fee need necessarily be charged.

(3) With the following three exceptions, the commission must approve grazing permits prior to issuance to ensure that they conform to commission policy:

(a) Temporary permits;

(b) Permits that are being renewed or renegotiated for acreage where the department has permitted nontemporary grazing during the previous ten years; and

(c) Permits that are being issued for acreage acquired by the department within the previous twelve months.

(4) A permit issued without commission review on acreage acquired by the department within the previous twelve months must not exceed an initial duration of three years, and may not be subsequently reissued before being submitted to the commission for review and approval.

(5) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee or with a new grazing operator, decline to reissue the permit and provide notice of and rationale for nonrenewal by the end of the calendar year of the most recent permitted grazing season, or advertise and sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. No grazing permit shall have a term exceeding five years unless the commission grants prior approval for a longer term.

(6) Except for temporary permits where grazing on department managed lands is allowed for the equivalent of fewer than fourteen total days, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological conditions, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. Grazing management lands will address ecosystem standards referenced in RCW 77.12.204. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.

(7) The director may cancel a permit:

(a) For noncompliance with the terms and conditions of the permit;

(b) If the area described in the permit is included in a land use plan determined by the agency to be a higher and better use;

(c) If the property is sold or conveyed; or

(d) If damage to wildlife or wildlife habitat occurs.

Notice of and rationale for cancellation will be provided to the permittee as far in advance as possible.

(8) All lands covered by any grazing permit agreement shall at all times be open to public hunting, fishing and other wildlife recreational uses, consistent with applicable seasons and rules, unless such lands have been closed by action of the commission or emergency order ((of)) by the director.

**WAC 220-500-200 Livestock grazing on department of fish and wildlife lands.** All persons wishing to apply for a grazing permit for acreage managed by the Washington department of fish and wildlife should contact the ((Washington Department of Fish and Wildlife, 600 North Capitol Way)) department at P.O. Box 43200, Olympia, Washington ((98501-1091)) 98504-3200.

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