



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 15, 2020

TIME: 2:00 PM

WSR 20-21-065

Agency: Washington Department of Fish and Wildlife

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-16-150 ; 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) WDFW Managed Nonlethal pursuit training program

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 3- 5, 2020	8a.m.	Webinar	This meeting will take place by webinar. The public may participate in the meeting. Visit our website at http://wdfw.wa.gov/about/commission/meetings or contact the Commission office at (360) 902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of intended adoption: December 18, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Becky Bennett

Address: PO Box 43200 Olympia WA 98504

Email: becky.bennett@dfw.wa.gov

Fax: 360-902-2155

Other:

By (date) December 7, 2020, at 5:00 p.m.

Assistance for persons with disabilities:

Contact Dolores Noyes

Phone: (360) 902-2346

Fax:

TTY: (360) 902-2207

Email: dolores.noyes@dfw.wa.gov

Other:

By (date) December 7, 2020, at 5:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This purpose of this proposal is to establish a nonlethal program within the department of fish and wildlife enforcement program for the purpose of training dogs. With the passage of Initiative 655 in 1996, voters approved a prohibition on the hunting of bear, cougar, bobcat, and lynx with dogs, with certain exceptions. The Fish and Wildlife Commission is authorized to allow the use of dogs to hunt or pursue black bear, cougar, or bobcat if there is a public safety need; to protect livestock, domestic animals, and private property; for scientific purposes; or to protect endangered species.

As the primary authority on dangerous wildlife incidents, WDFW Police frequently call upon dog handlers to assist in locating offending animals. In these cases, the handlers may be seen as acting as agents of the State and should be well trained and experienced. However, there does not exist a mechanism in Washington for handlers to keep dogs trained in between calls for service.

In order to effectively manage and train hound handlers and their dogs used for conflict response, the State Legislature in 2019 established a non-lethal pursuit training pass program. The proposed Commission rule emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goals of the non-lethal pursuit training pass program include improving dog handler/Department relations, effective detection of target species when requested by the Department, and the ethical treatment of working dogs and wildlife.

This rule outlines the requirements an applicant must meet in order to qualify to join this nonlethal training program, as well as procedures for participation. A limited number of individuals will be selected and approved through an extensive application process, which includes a background check of every applicant. This program will be monitored and administered through the enforcement program.

Reasons supporting proposal: Both WDFW Police and the Wildlife Conflict specialists are often called upon to address dangerous wildlife conflict situations involving a variety of species. The issues span both the public safety and property protection spectrum. As Washington’s human population continues to expand and interact with wildlife habitats, it is expected that calls for service will continue.

Officers work with the dog handlers during these dangerous wildlife incidents, but due to the earlier established laws surrounding hound hunting in Washington, handlers have had to train their dogs outside the State to keep their dogs in fit and prime condition. As the Department relies on these handlers as necessary tools during public safety incidents Agency staff worked alongside NGOs, counties, livestock producers, and working dog handlers to draft and present RCW language during the 2019 legislative session as well as work collaboratively on the currently proposed Commission rulemaking language. This rulemaking will help to ensure that working dogs are trained for quick and skilled action when called upon by WDFW Enforcement Officers in response to public safety.

Statutory authority for adoption: RCW 77.15.245, [77.04.012](#), [77.04.013](#), [77.04.020](#), [77.04.055](#), [77.12.077](#) and [77.12.047](#).

Statute being implemented: RCW 77.15.245.2d, 77.12.077

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: This collaborative process has been developed and reviewed through a robust multi-stakeholder group consisting of WDFW Commission Members, Agriculture Organizations, Conservation Groups, County Officials, Working Dog Members, WDFW Enforcement Officers and Staff, and WDFW Wildlife Program Staff. This proposed Commission rule is the product of collective problem solving, partnership, and shared values.

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:	Becky Bennett	Olympia, WA	360-701-7026
Implementation:	Becky Bennett	Olympia, WA	360-701-7026
Enforcement:	Jeff Wickersham	Ridgefield, WA	509-254-1829

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:

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 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. n/a no cost for businesses
- 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 15, 2020	Signature: 
Name: Benjamin Power	
Title: WDFW Rules Coordinator	

NEW SECTION

WAC 220-412-130 Nonlethal pursuit training pass program. (1) In order to effectively manage and train hound handlers and their dogs to be agents of the state used for cougar conflict response, the department establishes the nonlethal pursuit training pass program.

(2) The nonlethal pursuit training pass program emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goal of the nonlethal pursuit training pass program includes improving dog handler/department relations, effective detection of target species when requested by the department, and the ethical treatment of working dogs and wildlife. The yearly application cost to be considered for placement on the list of screened nonlethal pursuit handlers shall be twenty-five dollars and will cover the cost of an application review and a background check. This cost will occur annually when renewing an application to be on the list of screened nonlethal pursuit handlers. The WDFW enforcement program shall determine the nonlethal pursuit program's requirements and curriculum in consultation with stakeholders including, but not limited to, working dog handlers and wildlife conservation organizations in Washington state.

(3) Working dog handlers are held to the highest ethical standards as these individuals may be asked to perform as agents of the state under RCW 77.12.077. As such, they may be ambassadors for the department and the working dog community. Criteria to be considered include the following:

- (a) Currently own and train working dogs on scent detection and tracking;
- (b) Maintain health records of working dogs;
- (c) An active working knowledge of predator detection and pursuit training techniques;
- (d) Hold a current driver's license;
- (e) Up-to-date vehicle registration and vehicle insurance for any vehicle used to transport working dogs;
- (f) Understanding of best practices in dog handling equipment and proper usage; and
- (g) Working knowledge of terrain navigation and digital mapping equipment.

Initial approved applicants on the list of screened nonlethal pursuit handlers and individuals reapplying to be approved on the list of screened nonlethal pursuit handlers must annually submit to a criminal background check, and the department shall deny entry into the nonlethal pursuit training pass program to those applicants who have:

- Been convicted within the last ten years of any criminal offense under chapter 77.15 RCW (WDFW enforcement), 76.48 (specialized forest products), or 16.52 (animal cruelty) RCW;
- Been found to have committed, or to have paid, any infraction for a violation of chapter 77.15 RCW except recreational fishing under RCW 77.15.160, in the last ten years;
- Been convicted within the last ten years of any crime of dishonesty;
- Been convicted of any felony, or released from custody pursuant to any felony conviction, within the last ten years;
- Been convicted of, or been found to have committed, any criminal or civil violation where the department obtains a report from the citing authority that alleges the applicant was deceptive, untruthful,

or obstructed a law enforcement officer in the course of the officer's duties, other than violations of RCW 46.61.050 and 46.61.400, within the last ten years;

- Been convicted of unlawful possession of a firearm under RCW 9.41.040, or has been convicted of any felony offense and the applicant has not successfully petitioned to have the applicant's firearm rights restored, or is otherwise ineligible to possess a firearm for any reason provided in RCW 9.41.040;

- A current hunting or fishing license revocation or a current suspension of hunting or fishing license privileges in Washington or in another state.

An applicant must disclose to WDFW at the time of application whether the applicant is aware of any pending criminal charges in any municipal, state, or federal court. The department may defer approval or denial on an application until such criminal charges have been adjudicated.

The department may, based on the results of a criminal background check or based on information it has received involving active investigations or pending charges, deny an application, at its discretion, if it believes the applicant does not meet the high ethical standards of the program, or would not be a suitable state agent or ambassador for the department and the working dog community.

(4) An individual who holds a current nonlethal pursuit training pass and is found to have any of the invalidating circumstances addressed in subsection (3) of this section, shall be removed from the program and the training pass revoked. If the department learns of a new pending criminal charge or incident involving a current training pass applicant which could lead to an invalidating circumstance addressed in subsection (3) of this section, the department may suspend the training pass applicant's participation in the program until resolution of the charge or incident.

(5) Nonlethal pursuit training pass applicants will be required to complete an agency affidavit which specifies that the applicant has read, understands, and will comply with the program rules and ethical standards required of the program. This affidavit must be signed, dated, and returned along with a copy of the applicant's driver's license, current proof of vehicle liability insurance, and a copy of a valid hunting license. Submission of false or fraudulent information is grounds for removal from the program.

(6) The enforcement program nonlethal pursuit training pass program coordinator will maintain open communications with landowners and the community. The department will investigate written accusations about nonlethal pursuit program participants and determine whether such complaints have merit and/or warrant enforcement or administrative action.

(7) Any person who has been denied initial admission into the nonlethal pursuit training pass program, or renewal of his or her application to be placed on the list of screened nonlethal pursuit handlers, has the right to an administrative hearing to contest the agency action pursuant to chapter 34.05 RCW. An applicant denied a training pass may request an informal review within thirty days of receipt of the application denial. The request for an informal review shall be served on the chief of the enforcement program in writing. The chief may ask the applicant and department for additional information before ruling on the informal appeal, and shall respond to the informal appeal in writing. The applicant shall have initiated the formal appeal no later than thirty days from receipt of the notice of denial of the

training pass, or thirty days from receipt of the decision on the informal review, whichever is later. Date of receipt shall be five days after any written notice or decision is mailed to the applicant. Initial nonlethal pursuit training pass applicants who fail to submit the application fee or who submit an incomplete application will have their application returned. Denial of admission on these grounds does not trigger the right to an administrative hearing.

(8) Training program enrollment - The department will authorize no more than fifty valid training pass holders to participate in the program annually on a statewide basis.

(9) Prior to engaging in any nonlethal pursuit training activity, a member of the nonlethal pursuit training pass program shall obtain from the department captain with oversight responsibility for the area proposed to be used for training a nonlethal pursuit training pass, which will be in via paper or electronic format. A nonlethal pursuit training pass, issued at the captain's discretion, will be issued for a period of up to thirty days, with an option for a thirty-day renewal at the request of the training pass holder. This training pass will detail the time frame and geographic scope of the training area that is acceptable to the captain and the training pass holder. Prior to engaging in a training exercise within the limitations of the training pass, the training pass holder will communicate with a department sergeant with oversight of the training area. The training pass holder shall keep the department sergeant apprised of regular training activities, and the sergeant shall keep the training pass holder apprised of any operational or logistical concerns or restrictions. A department captain may, at any time, change the geographic scope or time frame of the training pass to address management or emergent needs, and retains the discretion to terminate a training pass.

(10) Training pass holders will be allowed to have up to four immediate family members present while participating in a training exercise with a nonlethal pursuit training pass. "Immediate family member" shall be limited to spouses and domestic partners, children and step-children, siblings, parents, and step-parents. Additionally, the owner of real property who has granted permission to the training pass holder to use said lands for a training exercise with a nonlethal pursuit training pass may be present with the training pass holder or may designate a representative in writing. Corporate landowners may designate security personnel or contractors to accompany a training pass holder participating in a training exercise with a nonlethal pursuit training pass. A department sergeant with oversight of the training area may authorize, in advance, additional observers of a training pass holder participating in a training exercise with a nonlethal pursuit training pass.

(11) Training pass holders shall maintain a logbook of training activities under the nonlethal pursuit training program. Logbooks shall be made using a template made by the department to be uploaded online or downloaded and printed. Entries in the logbook shall include:

(a) Training pass holder's name, names of those accompanying or observing the training exercise, and number of dogs trained or participating;

(b) Date and location of the training, including the names of any roads traveled, trails traveled, or routes taken. The entry shall specify the owners of any land traversed;

(c) If any cougars were detected, the logbook must contain the corresponding GPS coordinates; and

(d) The discharge of any firearms, identification of the firearms, and the person responsible for the discharge.

Logbooks are required to be completed for each training trip before leaving the field. Logbook pages must be provided to the department through an online reporting system or postmarked within ten days following any calendar month in which the training pass activity took place.