



PROPOSED RULE MAKING

CR-102 (July 2022) (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: July 03, 2024

TIME: 11:25 AM

WSR 24-14-149

Agency: Washington Department of Fish and Wildlife (WDFW) P2023-14

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 23-16-092 ; 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) 220-500-041 Construction, creation and maintenance of roads, trails, and structures.

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|-----------------|------------|--|---|
| August 15, 2024 | 10:00 a.m. | <p>Zoom You are invited to a Zoom webinar.</p> <p>Please click the link above to join the webinar or copy this address below: https://us06web.zoom.us/j/88387520816 Or One tap mobile :</p> <p>+12532050468,,88387520816#US</p> <p>+12532158782,,88387520816#US (Tacoma)</p> | <p>The public can provide comments during webinars by phone or electronic device. Attendees that provide verbal comments are audio only. To testify, you must register by 8 a.m., August 14, 2024 https://forms.office.com/pages/responsepage.aspx?id=F-LQEU4mCkCLOfCwSfXLSrgNExZzOBBrIzn0zLRUfZURDBVT1ZIUUVVWNk9NWURVN1pHODNYWjZTVy4u&web=1&wdLOR=cC663E017-9806-4FEB-8D43-2CACC029A5FA. At the appropriate time to speak, you will be recognized by your partial phone number, or your Zoom username and staff will unmute your connection. You will be asked to state your name and residence for the record, just as if you were attending the meeting in-person. Please also state whether you are representing yourself, or a group or organization.</p> |

Date of intended adoption: On or after August 16, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Wildlife Program
 Address: PO Box 43200, Olympia, WA 98504
 Email: Constructionrule2024@publicinput.com
 Fax: (360) 902-2162
 Other: <https://publicinput.com/constructionrule2024>
 To Comment by Phone: 855-925-2801 Project Code 8413
 SEPA Comments
<https://publicinput.com/2024constructionsepa> or email
2024constructionsepa@publicinput.com
 By (date) August 15, 2024

Assistance for persons with disabilities:

Contact Title VI/ADA Compliance Coordinator
 Phone: (360) 902-2349
 Fax:
 TTY: 1-800-833-6388 or 711
 Email: Title6@dfw.wa.gov

Other: <http://wdfw.wa.gov/accessibility/requests-accommodation>

By (date) August 15, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposed rule will help WDFW better manage its wildlife areas and the public use that is occurring on them. It will give WDFW law enforcement

remedies to discourage the construction, creation and maintenance of roads, trails and structures without department approval, which can otherwise pose a threat to natural or cultural resources and create safety hazards for public users.

Reasons supporting proposal: The construction, creation and maintenance of roads, trails, and structures that have been user-created without approval or authorization from WDFW staff are often in locations or conditions that are environmentally, culturally, or financially unsustainable. A proliferation of unauthorized roads and trails has appeared in recent years on lands managed by the agency. These roads and trails often cut through sensitive habitat, interrupt habitat connectivity, and cause direct damage to vegetation, wildlife, and tribal resources. User-created roads and trails lack the deliberate planning, design and evaluation of impacts on the land that are necessary to place or build them appropriately. Currently, without the legal remedies or statutory authority to prevent or cite individuals for the creation of roads, trails and structures without approval, there is a risk that these activities will continue to proliferate and degrade sensitive resources.

Statutory authority for adoption: RCWs 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210 and 77.15.040.

Statute being implemented: RCWs 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210 and 77.15.040.

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: None.

Type of proponent: Private Public Governmental

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

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|--------------|--|----------------|
| Drafting: | Eric Gardner | 1111 Washington St. SE Olympia, WA. 98501 | (360) 902-2515 |
| Implementation: | Eric Gardner | 1111 Washington St. SE Olympia, WA. 98501 | (360) 902-2515 |
| Enforcement: | Steve Bear | 1111 Washington St. SE 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: This proposal does not require a cost benefit analysis under RCW 34.05.328

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

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

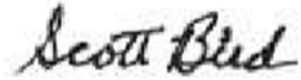
- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: July 3, 2024

Name: Scott Bird

Title: WDFW Agency Rules Coordinator

Signature:

A handwritten signature in black ink that reads "Scott Bird". The signature is written in a cursive, slightly slanted style.

NEW SECTION

WAC 220-500-041 Construction, creation and maintenance of roads, trails, and structures. (1) A person must obtain the express written permission of the department in order to construct, create, modify, repair, relocate, or maintain a new or existing road, trail, sign, structure, or other facility or improvement. A copy of the written permission must be kept on site during any work.

(2) Violating this section is a misdemeanor pursuant to RCW 77.15.230.

(3) This section does not apply to erecting and using temporary camp and blind structures pursuant to WAC 220-500-130.