

WAC 220-440-140 Payment for commercial crop damage—Limitations.

Owners, who have worked with the department to prevent deer and elk damage, but continue to experience losses, may be eligible to file a damage claim and receive cash compensation from money appropriated by the legislature. Damages payable under this section are limited to the lost or diminished value of a commercial crop, whether growing or harvested, and will only be paid to the owner of the crop at the time of damage, without assignment. Cash compensation for claims from deer and elk damage does not include damage to other real or personal property, including other vegetation or animals, lost profits, consequential damages, or any other damages. The department is authorized to pay up to ten thousand dollars to the owner per claim.

Claims for cash compensation will be denied when:

- (1) The claim is for a noncommercial crop;
- (2) The owner of the commercial crop does not meet the definition of "eligible farmer" in RCW 82.08.855 (4) (b) (i) through (iv);
- (3) The loss estimate is less than one thousand dollars;
- (4) The owner does not have a valid damage prevention cooperative agreement signed by the owner and the department, or a waiver signed by the director, or does not provide a department approved checklist of the preventative and nonlethal means that have been employed to prevent damage;
- (5) The owner has not complied with the terms and conditions of his or her agreement(s) with the department;
- (6) An owner or lessee has accepted noncash compensation to offset crop damage in lieu of cash consistent with conditions of the damage prevention cooperative agreement with the department. Acceptance of noncash compensation will constitute full and final payment for crop damages within the growing season of the damaged crop or for the time period specified by the department in writing to the owner;
- (7) An owner or lessee has denied the department's offer of fencing as a long-term preventative measure;
- (8) The owner or lessee has denied prevention measures offered by the department. The prevention measures offered shall be applicable, legal, practical, and industry recognized;
- (9) Damages to the commercial crops claimed are covered by insurance or are eligible for payment from other entities. Any portion of the actual damage not covered by others that exceeds one thousand dollars is eligible for compensation from the department;
- (10) The property where the damage occurred was not open to public hunting consistent with WAC 220-440-190 for the species causing the damage, unless, as determined by the department, the property is inconsistent with hunting or hunting would not address the damage problem. This includes all properties owned or leased by the owner adjacent to, contiguous to, or in the vicinity of the property where crop damage occurred;
- (11) The crop is grown or stored on public property;
- (12) The owner or lessee fails to provide on-site access to the department or designee for inspection and investigation of alleged damage or to verify eligibility for a claim;
- (13) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within WAC 220-440-150;
- (14) The owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge;

(15) The owner or designee harvested commercial crops prior to providing a seventy-two hour notice to the department;

(16) The department will prioritize payment for commercial crop damage in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial crop damage during the current fiscal year, the claim will 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 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.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-440-140, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.12.320, 77.12.150, 77.15.245, and chapter 77.36 RCW. WSR 16-04-066 (Order 16-18), § 232-36-100, filed 1/28/16, effective 2/28/16. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, and 77.36.120. WSR 13-05-003 (Order 13-19), § 232-36-100, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.055. WSR 10-13-182 (Order 10-156), § 232-36-100, filed 6/23/10, effective 7/24/10.]