

WSR 25-08-092
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-10—Filed April 2, 2025, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-048 on July 30, 2024.

Title of Rule and Other Identifying Information: WAC 220-440-140 Payment for commercial crop damage—Limitations, 220-440-150 Application for cash compensation for commercial crop damage—Procedure, and 220-440-160 Valuation methods for crop damage assessment.

Hearing Location(s): On May 16-17, 2025, at 8:00 a.m., at 1441 East Washington [Street], Sequim, WA 98382. Information on how to register to testify at the public hearing is available at <https://wdfw.wa.gov/about/commission/meetings/2025> or contact the commission office at 360-902-2267.

Date of Intended Adoption: On or after June 27, 2025.

Submit Written Comments to: Rules Coordinator, P.O. Box 43200, Olympia, WA 98504, email cropdamagecr102@publicinput.com, fax 360-902-2162, <https://publicinput.com/cropdamagecr102>, phone 855-925-2801, project code 11174, beginning April 2, 2025, by May 19, 2025.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, <http://wdfw.wa.gov/accessibility/requests-accommodation>, by May 19, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule making, if adopted, seeks to clarify the following:

(1) Allowing the Washington department of fish and wildlife (department) to continue to use contracted crop damage claim adjusters. To do so, the department must establish updated certification and experience standards for department-contracted crop adjusters. Since there was a change in the availability of federal crop insurance continuing education training for crop adjusters, there has been a decline in available crop adjusters resulting in the department being unable to comply with existing rule. Consequently, the department has been unable to carry out this statutory obligation to assess crop damage claims by current department contracted adjusters. This change will allow for the substitution of experience for the federal license and allow claims to continue to be processed by contracted crop adjusters with at least a Washington state license.

(2) The handling of shared adjustor fees and clarify shared costs apply for multiple site visits and for shared repayment where no claim is paid.

(3) Removal of redundant or irrelevant language unrelated to claims that appears in multiple rules.

(4) The department may suspend timelines to allow for further investigation of a claim and require submission of additional information to complete the processing of a claim.

(5) How causes of damage other than crop damage by deer or elk are considered in the claim process.

(6) The assessment processes acceptable for how the value of crop damage in a claim is assessed and is considered and that the processes are not needed to be in any order of preference.

(7) That assessor reports are not automatically accepted and that the department may require additional steps or reports in order to verify that the assessment is accurate and complete.

(8) That WAC 220-440-230 contains the process of appeal that is used for claim decision appeals filed under chapter 34.05 RCW.

Reasons Supporting Proposal: The department is required to adopt rules and processes for the implementation of commercial crop damage payments for wild deer or elk. These rule changes are necessary to provide clarity to the claim process and ensure that the necessary adjudicator resources are available to comply with the requirements of chapter 77.36 RCW.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.36.120.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.08.030, 77.12.047, 77.36.100, 77.36.110, and 77.36.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mick Cope, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

April 2, 2025
Scott Bird
Rules Coordinator

RDS-6214.2

AMENDATORY SECTION (Amending WSR 24-22-007, filed 10/23/24, effective 11/23/24)

WAC 220-440-140 Payment for deer and elk commercial crop damage
—**Eligibility and limitations.** Owners, who have worked with the department to prevent deer and elk damage, but continue to experience commercial crop losses, may be eligible to file a damage claim and receive cash compensation from money appropriated by the legislature.

Eligibility:

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 related damages.

The department is authorized to pay up to the amount provided in RCW 77.36.130.

Limitations:

Claims for cash compensation will be denied when:

- (1) The claim is for a noncommercial or an ineligible 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 \$1,000;
 - (4) The owner does not have a valid damage prevention cooperative agreement signed by the owner and the department(~~(7)~~) or a waiver signed by the director(~~(7-07)~~) and 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 cost-share 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 deer or elk damage not covered by others that exceeds \$1,000 is eligible for compensation from the department;
- The department may delay completion of processing the claim until the insurance claim or other third-party entities' claim process has either been paid or denied. After the third party claim has been paid or denied, the department's claim processing will continue;
- (10) The property where the damage occurred was not open to public hunting consistent with WAC 220-440-190 for the species, deer or elk, 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 72 hour notice to the department;
 - (16) The department will prioritize payment for commercial crop damage as set forth in RCW 77.36.100. The claimant must provide re-

ords in support of the prioritization method as proscribed therein. Before payment, claims in the current fiscal year will be prioritized after all crop damage claims have been received and approved, and any claim appeals have been resolved.

AMENDATORY SECTION (Amending WSR 24-22-007, filed 10/23/24, effective 11/23/24)

WAC 220-440-150 Application for cash compensation for deer or elk commercial crop damage—Procedure. (~~(Pursuant to this section, the department may distribute funds appropriated by the legislature to pay commercial crop damage caused by wild deer or elk in the amount of up to the amount provided in RCW 77.36.130 per claim.)~~) The department shall develop claim procedures and application forms consistent with this section for cash compensation (~~(of)~~) for commercial crop damage. (~~(Partnerships with other public and private organizations to assist with completion of applications, assessment of damage, and to provide funding for compensation are encouraged.)~~)

Filing a claim:

(1) Claimants who have (~~(cooperated with the department and have a valid damage prevention cooperative agreement or a department approved checklist to prevent deer or elk damage and)~~) met the requirements of WAC 220-440-140, (~~(or a waiver from the director,)~~) yet still experience commercial crop loss (~~(and meet eligibility requirements)~~), may file a claim for cash compensation.

(2) The claimant must notify the department within 72 hours of discovery of crop damage and at least 72 hours prior to harvest of the claimed crop.

(3) A complete written claim and completed crop assessment must be submitted to the department within 60 days of harvest.

(4) Claimants may only file one claim per year. Multiple partners in a farming operation are considered one claimant. Operations involving multiple partners must designate a "primary grower" to receive payment from the department.

(5) The 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.

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

(a) A copy of claimant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service or other documentation indicating the claimant's gross sales or harvested value of commercial crops for the previous tax year.

(b) The assessment method used is consistent with WAC 220-440-160, valuation of property damage.

(c) Proof of ownership of claimed commercial crops or contractual lease of claimed commercial crops consistent with department procedural requirements for submission of documents.

(d) Written documentation of approved methodology used to assess and determine final crop loss and value.

(e) Records documenting average yield on claimed crop and parcel, certified yield reports, production reports and weight certificates completed at the time weighed for claimed year, and other applicable documents that support yield loss and current market price. Current

market price will be determined less transportation and cleaning costs when applicable.

(f) A declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the claimant is eligible for the claim, meets eligibility requirements listed under this section, and that all claim evaluation and assessment information in the claim application is true and accurate to the best knowledge of the claimant.

(g) A copy of the insurance policy, completed claim forms, and payment records on the commercial crop where loss is claimed.

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

Damage claim assessment:

(7) Completion of a damage claim assessment for the amount and value of commercial crop loss is the responsibility of the claimant. A crop damage evaluation and assessment must be conducted by a licensed crop insurance adjustor in cooperation with the claimant:

(a) The claimant must submit a damage claim assessment prepared by a qualified crop insurance adjustor. A qualified adjustor means a crop adjustor licensed by the state of Washington and certified by the federal crop insurance service.

An adjustor who is under contract with the department that has a current state of Washington insurance adjuster license with at least four years of verifiable deer and elk caused crop damage investigation experience may substitute that experience for the federal crop insurance certification.

(b) The department will provide the claimant with a list of approved contracted department adjustors. The claimant may select an adjustor from the approved list and work with the department and the adjustor to arrange for the completion of a crop damage assessment or select a (~~state licensed~~) qualified adjustor of their own choosing.

(i) If the claimant selects an adjustor from the approved list, the department will provide the adjustor written authorization to proceed with an assessment (~~and~~). Adjustor fees, including for multiple site visits, will be the shared responsibility of the owner and the department. The claimant portion of (~~the~~) each assessment visit fee(~~s~~) may not exceed one half or a maximum of \$600, whichever is smaller, and will be deducted from the final payment.

(ii) If, at the end of the claim evaluation process, no payment for the claim is made, the claimant's portion of a contracted adjustor's assessment fees shall be billed to the claimant for prompt reimbursement to the department and funds returned to the appropriate claim fund source.

(iii) If the claimant selects a (~~state licensed~~) qualified adjustor of their own choosing, then the claimant accepts full responsibility for the assessment fees.

(c) The department or the claimant may accept the damage claim assessment provided by the (~~licensed adjuster~~) qualified adjustor or may hire a (~~state licensed~~) qualified adjustor of their choosing and conduct a separate assessment or evaluation of the crop loss amount and value. The party hiring an adjustor to conduct a separate assessment or evaluation is responsible for payment of all related fees.

(8) Disagreement between the claimant and the department over the crop loss value may be settled through an adjudicative proceeding pursuant to chapter 34.05 RCW and WAC 220-440-230, subject to the limit provided in RCW 77.36.130.

Settlement of claims:

(9) Compensation paid by the department, in addition to any other compensation received by the claimant, may not exceed the total value of the assessed crop loss.

(10) The claimant will be notified by the department upon completion of the evaluation and has 60 days to accept or appeal the department's offer for settlement or denial of the claim, or the claim offer or denial is considered accepted and not subject to appeal.

(11) The department will prioritize payment for commercial crop damage as set forth in RCW 77.36.100.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-160 Valuation methods for commercial crop damage assessment. Several methods may be used to determine the extent of a crop damaged by deer and elk and the lost value of the commercial crop resulting from the damage. Assessment methods used by qualified crop adjustors (~~(licensed by the state and certified by the federal crop insurance service)~~) under WAC 220-440-150 will be ((accepted)) considered by the department. Evaluation of crop losses must consider other impacts to crop production(~~(r)~~) including, but not limited to, fertilization, irrigation, precipitation, weather, timing of planting or harvest, and weed control and shall deduct those impacts from the loss value calculation. At least one of the following methods ((are)) listed ((in preferred order based on reliability)) must be used to assess the crop damage:

(1) Amount consumed - Relies on wildlife-proof exclosures in the field; clipping similar sized plots inside and outside of exclosures; then comparing yields.

(2) Amount of stored crops consumed or damaged - Determine the bales or pounds of stored crops consumed or destroyed; then determine replacement value.

(3) Replacement value of horticultural trees lost as a result of damage; partial loss due to damage can be estimated per tree based on the percentage destroyed.

(4) Damage vs. undamaged areas - Using random sampling methods to compare the yields of damaged to undamaged portions of a field or two similar fields can provide an estimate of loss. Comparing similar fields assumes the fields are truly "similar" (soil type, aspect, slope, irrigation, fertilization, stand age, etc.).

(5) Animal use - Count the number of animals causing damage and the number of days they were present; then estimate the percentage of daily intake provided by the crop (generally less than ((fifty)) 50 percent), and the amount of waste, trampling, or trailing; the result should also consider the timing of the damage and potential recovery of the vegetation prior to crop harvest.

(6) Decrease from average yield - Historic yields can be used for comparison; the difference between average yield and current yield may shed light on the extent of damage; changing weather or crop growing conditions from one year to the next make this technique less reliable.

(7) The department may require additional information about the assessment process used and may request additional assessment be undertaken, or may request additional documentation in order to consider the assessment accurate and complete.