



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

Preproposal Statement of Inquiry was filed as WSR 10-01-034 on 12-7-09;
or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
Wildlife Interaction Rules, WAC chapter 323-36.

Hearing location(s):
Best Western Icicle Inn
505 Highway 2
Leavenworth, WA 98826
509-548-7000

Date: April 9-10, 2010 Time: 8:00 am

Submit written comments to:
Name: Wildlife Program Commission Meeting Public Comments
Address: 600 Capitol Way North, Olympia WA 98501-1091
e-mail Wildthing@dfw.wa.gov
fax (360) 902-2162

By: Wednesday, March 24, 2010

Assistance for persons with disabilities:

Contact: Susan Yeager by April 5, 2010

TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: May 7, 2010
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The purpose of this new chapter is to implement legislation passed in 2009 establishing by rule the conditions and criteria for compensation for property damage from wildlife.

Reasons supporting proposal:
The new chapter establishes the criteria for landowners to get compensation and services from the state for wildlife damage, increases property owner flexibility, encourages the use of preventative measures, and clarifies priorities and assistance available to address property damage.

Statutory authority for adoption: 77.04.012; 77.04.020; 77.04.055;

Statute being implemented: 77.04.012; 77.04.020; 77.04.055

Is rule necessary because of a:
Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No
If yes, CITATION:

DATE
March 3, 2010

NAME
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 03, 2010
TIME: 12:00 PM

WSR 10-06-123

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

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..... Dave Brittell	Natural Resources Building, Olympia	(306) 902-2504
Implementation.... Dave Brittell	Natural Resources Building, Olympia	(360) 902-2504
Enforcement..... Bruce Bjork	Natural Resources Building, Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Lori Preuss

Address: WDFW Enforcement, 600 Capitol Way, N., Olympia, WA 98501-1091

phone (360) 902-2930

fax (360) 902-2155

e-mail lori.preuss@dfw.wa.gov

No. Explain why no statement was prepared.

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 () _____

e-mail _____

No: Please explain: Not hydraulics rules.

Small Business Economic Impact Statement

Wildlife Interaction

1. Description of the reporting, record keeping, and other compliance requirements of the proposed rule.

Anyone filing a claim with the Washington Department of Fish and Wildlife (WDFW) for cash compensation for commercial crop damage caused by wild deer or elk must:

- Notify the department within seventy-two hours of discovery of crop damage and at least seventy-two hours prior to harvest of the claimed crop;
- Submit a complete, written claim within sixty days of when the damage stops;
- File one claim per year. Operations involving multiple partners must designate a "primary grower" to receive payment from the department;
- Sign the claim form declaration, affirming that the information provided is factual and truthful per the certification set out in RCW 9A.72.085; and
- Provide:
 - ✓ A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service indicating the applicant's gross sales or harvested value of commercial crops for the previous tax year;
 - ✓ The assessment method used consistent with WAC 232-36-120, valuation of property damage;
 - ✓ Proof of ownership of claimed commercial crops or contractual lease of claimed commercial crops consistent with department procedural requirements for submission of documents;
 - ✓ Written documentation of approved methodology used to assess and determine final crop loss and value;
 - ✓ Records documenting average yield on claimed crop and parcel, certified yield reports, production reports and certified third-party 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;
 - ✓ A declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the applicant 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 to the best knowledge of the claimant true and accurate;

- ✓ A copy of the insurance policy and payment on the commercial crop where loss is claimed; and
- ✓ A copy of application for other sources of loss compensation and any payment or denial documentation.

Anyone filing a claim with the Washington Department of Fish and Wildlife (WDFW) for cash compensation for livestock losses caused by wild bear, cougar, or wolves must:

- Notify the department within twelve hours of discovery of livestock attack;
- Provide access to department staff or designees to investigate the cause of death or injury to livestock;
- Request a damage claim application from the department's Olympia office within ten days of a loss;
- Submit a complete, written claim to the department within sixty days of an attack on commercial livestock;
- Sign the claim form declaration, affirming that the information provided is factual and truthful; and
- Provide:
 - ✓ A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service indicating the applicant's gross sales or value of commercial livestock for the previous tax year;
 - ✓ Proof of legal ownership or contractual lease of claimed livestock;
 - ✓ Records documenting livestock value based on current market price;
 - ✓ A declaration signed under penalty of perjury indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this section, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate;
 - ✓ A copy of any insurance policy covering livestock loss claimed; and
 - ✓ A copy of applications for other sources of loss compensation and any payment or denial documentation.

Wildlife control operators (WCOs) must:

- Complete the WCO certification course;
- Pay \$50 per certification;
- Be at least 18 years old;
- Have the equipment, knowledge, and ability to control the wildlife species causing the conflict;
- Be legally eligible to possess a firearm and be without a felony or domestic-violence conviction;
- Not have a gross-misdemeanor fish and wildlife conviction within the past 5 years; and

- Submit a complete annual report of all control activity on or before the 15th day of January each year.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements.

Applicants for claims of commercial crop damage are responsible for hiring assessors to establish the amount (quantity) of the damage and the value of the damage. Applicants for claims of livestock losses must pay WDFW and/or federal officials to assess the amount and value of commercial livestock loss.

Owners of commercial crops and commercial livestock may need to hire wildlife control operators (WCOs) to try to employ preventive nonlethal and lethal means to prevent damage. Owners of commercial crops and commercial livestock may need to hire professional fence installers to help install fencing materials provided by WDFW to keep wildlife out of crops and away from commercial livestock. Some small businesses may need to hire bookkeepers or accountants to assist with required paperwork.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs.

This is hard to estimate because some businesses may not have to hire bookkeepers, accountants, WCOs, or fence installers because they can do this work themselves. Some small businesses may have friends or family who are qualified crop adjusters licensed by both the state and federal government, so these businesses won't have to pay for crop assessment or may get a discount.

Assuming, however, that a small business must pay for all of these things, costs may average the following:

- Crop assessment: \$70/hr. for 3-4 hours
- Bookkeepers/Accountants: \$70-\$100/hr. for 3-4 hours
- WCOs: These range from \$50-\$100 hr., to \$50-\$500 per job.
- Fencing: \$14/ft. for installation; average fence is 10-ft. tall and $\frac{3}{4}$ -1 mile long.

4. Will compliance with the rule cause businesses to lose sales or revenue?

No. The intent of these rules is to help businesses avoid crop and livestock losses in the first place, and compensate them if they take appropriate steps but experience losses anyway. If businesses follow the procedures in these rules, they should not lose sales or revenue.

5. Cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules, using one or more of the following as a basis for comparing costs:

- 1. Cost per employee;**
- 2. Cost per hour of labor; or**
- 3. Cost per one hundred dollars of sales**

Larger commercial growers will experience more costs than smaller growers for things like fence installation, crop assessment, WCOs, and bookkeeping/accounting, but the reason for this is that they have a larger land mass, more trees or plants, or more livestock. Their cost per hour of labor or per one hundred dollar of sales has little correlation to the costs of complying with these rules, especially since these rules are designed to help businesses avoid crop and livestock losses.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so.

The Department works closely with commercial crop and livestock growers to deter wildlife that cause damage so that the growers experience fewer losses. Costs that growers incur as a result of these rules are reasonable, considering the benefits. For example, WDFW provides fencing to commercial growers who request it, which is very costly. Therefore, it is reasonable to require the grower to install the fence himself/herself, or pay to have someone else do it, if the fencing will keep wildlife out of the crops and prevent damage.

7. A description of how the agency will involve small businesses in the development of the rule.

The Department has collaborated on an ongoing basis with commercial growers and livestock owners to develop rules that are fair to everyone but that also help to deter abuses. WDFW will notify commercial growers and livestock owners of the opportunity to comment on these rules and to continue collaborating on changes.

8. A list of industries that will be required to comply with the rule.

Growers of commercial crops and livestock; and wildlife control operators.

Chapter 232-36 WAC

WILDLIFE INTERACTION REGULATIONS

NEW SECTION

WAC 232-36-010 Introduction. The Washington department of fish and wildlife's (department) primary responsibility is to preserve, protect, perpetuate, and manage the fish and wildlife species of the state (RCW 77.04.012). The department promotes conservation of fish and wildlife, while providing fishing, hunting, fish and wildlife viewing, and other outdoor recreational opportunities compatible with healthy, diverse, and sustainable fish and wildlife populations. (RCW 77.04.012, 77.04.020, and 77.04.055.)

NEW SECTION

WAC 232-36-020 Purpose. Public support for the recovery and management of healthy wildlife populations is an important aspect of wildlife conservation. Support for wildlife can diminish with negative interactions and damage to private property. The intent of the department is to provide technical advice and assist property owners to prevent and mitigate damages caused by wildlife. Compensation may be necessary in situations where preventative measures are not successful or when circumstances, outside the control of the private property owner, impede resolution of negative wildlife interactions.

NEW SECTION

WAC 232-36-030 Definitions. Definitions used in rules of the fish and wildlife commission are defined in RCW 77.08.010 and the definitions for wildlife interactions are defined in RCW 77.36.010. In addition, unless otherwise provided, the following definitions are applicable to this chapter:

"Act of damaging" means that private property is in the process of being damaged by wildlife and the wildlife are on the private property containing commercial crops, pasture, or livestock.

"Big game" means those animals listed in RCW 77.08.030.

"Claim" means an application to the department for compensation under this chapter.

"Claimant" means owner of commercial crop or livestock who has filed a wildlife damage claim for cash compensation.

"Commercial crop" means a commercially raised horticultural and/or agricultural product and includes the growing or harvested product, but does not include livestock, forest land, or rangeland. For the purposes of this chapter, Christmas trees and managed pasture grown using agricultural methods (e.g., planted, fertilized, irrigated), and all parts of horticultural trees shall be considered a commercial crop and shall be eligible for cash compensation.

"Commercial livestock" means cattle, sheep, and horses held or raised by a person for sale.

"Compensation" means a cash payment, materials, or service.

"Completed written claim" means all information required on department crop or livestock damage claim form is supplied and complete to include all supplemental information and certifications required to process the claim.

"Damage" means economic losses caused by wildlife interactions.

"Damage claim assessment" means department approved methods to evaluate crop loss and value caused by deer or elk damage to commercial crop or livestock losses and value caused by bear, cougar, or wolves.

"Eligible farmer" means owner satisfies the definition of eligible farmer pursuant to RCW 82.08.855 (4) (b) (i) through (iv).

"Emergent" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, or fowl.

"Game animal" means wild animals that shall not be hunted except as authorized by the commission.

"Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

"Immediate threat of physical harm" means animal to human bodily contact is imminent; the game animal is in close proximity to the human; and the animal is in attack posture/mode.

"Owner" means a person who has a legal right to commercial crops, commercial livestock, or other private property that was damaged during a wildlife interaction.

"Physical act of attacking" means actual or imminent animal to human physical contact.

"Public hunting" means owner satisfies public hunting defined in WAC 232-36-300.

"Wild animal" means those species of the class Mammalia whose members exist in Washington in a wild state.

"Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, commercial livestock, or other property.

NEW SECTION

WAC 232-36-040 Wildlife/human interaction and conflict resolution for private property damage other than commercial crop and livestock. The department is the primary source for property owners seeking to determine legal and effective remedies for addressing wildlife interactions. Protection of property using nonlethal techniques is the primary response encouraged by the department. Harassment and/or lethal removal may also be important techniques to protect human safety or to protect property. The following criteria describe the compensation available to protect property that does not qualify under commercial crop or livestock damage:

(1) Unless specifically appropriated by the legislature, cash compensation will not be provided to property owners by the department.

(2) Compensation will be prioritized in the following order:

(a) Property prioritization:

(i) Private property that is primarily designed for public use, where there is a human safety risk not addressed by other entities.

(ii) Private property that directly contributes to commercial crop or livestock production.

(iii) Private property used for other business purposes.

(iv) Public property.

(v) Residential property.

(vi) Recreational property.

(b) Species prioritization:

(i) Damages caused by wildlife listed as endangered, threatened, sensitive, or categories of concern by the state or federal government.

(ii) Damages caused by big game animals.

(iii) Other federal and state protected species.

(iv) Other wildlife species except unclassified species and predatory birds.

(3) The department may make agreements with private landowners to prevent property damage which may include the use of:

(a) Best management practices to reduce risk of private property damage;

(b) Scare or hazing materials;

(c) Fencing materials;

(d) Volunteers referred by the department for hazing, fence repair, etc; and

(e) Lethal removal options.

(4) Private property owners must utilize nonlethal abatement techniques prior to requesting other compensation from the department or before utilizing lethal techniques as required in WAC

232-36-050.

(a) Use of nonlethal techniques must be documented consistent with procedures and requirements established by the department.

(b) Evidence of damage (e.g., photographs) must be provided by the property owner.

(c) Property owner must comply with reporting requirements of the department.

(5) Wildlife may not be captured and transported or relocated off the owner's property (parcel where damage occurred) unless:

(a) Authorized by rule of the commission; or

(b) By written permit from the department and the owner of the damaged private property.

(c) Property is in compliance with department rules, permits, and reporting requirements.

(6) The department will establish written procedures for assisting private property owners using the criteria and priorities provided in this rule. The procedures will include enlistment of partners and volunteers through agreements, permits, and incentives to help mitigate wildlife interactions.

NEW SECTION

WAC 232-36-050 Killing wildlife for personal safety or for causing private property damage. The fish and wildlife commission is authorized to classify wildlife as game, endangered, protected, or as a predatory bird consistent with RCW 77.08.010 and 77.12.020. The commission is also authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is threatening human safety or causing property damage.

The conditions for killing wildlife vary, based primarily on the classification of the wildlife species, the imminent nature of the threat to personal safety or damage to private property, the type of private property damage, and the preventive and nonlethal methods employed by the person prior to the safety or damage event. Additional conditions defined by the department may also be important depending on individual situations. Killing wildlife for personal safety or to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) Killing wildlife for personal safety.

(a) It is permissible to kill wild animals engaged in the physical act of attacking a person.

(b) It is permissible to kill game animals posing an immediate threat of physical harm to a person.

(2) Killing wildlife causing damage to a commercial crop or commercial livestock.

(a) It is permissible to kill unclassified wildlife, predatory birds, and big game animals that are in the act of damaging commercial crops or livestock, under the following conditions:

(i) Unclassified wildlife and predatory birds (defined in RCW 77.12.020) that are in the act of damaging commercial crops or livestock may be killed with the express permission of the owner at any time on private property, to protect commercial crops or livestock.

(ii) An individual (one) big game animal may be killed while it is in the act of damaging commercial crops or livestock if the owner has a valid, written damage prevention agreement with the department.

(iii) Multiple big game animals may be killed while they are in the act of damaging commercial crops or livestock if the owner is issued a kill permit by the department.

(iv) A damage prevention agreement or kill permit must include: An approved checklist of the reasonable preventative and nonlethal means that must be employed; a description of the properties where lethal removal is allowed; the species and sex of the animal that may be killed; the terms of the agreement/permit;

the dates when lethal removal is authorized; who may kill the animal(s) and other conditions developed within department procedural documents.

(b) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department with the following additional requirements:

(i) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.

(ii) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.

(3) Killing wildlife causing damage or killing wildlife to prevent private property damage.

(a) Unclassified wildlife, predatory birds (as defined in RCW 77.12.020), and eastern gray squirrels may be killed with the express permission of the property owner at any time, to prevent private property damage on private real property.

(b) Subject to subsection (7) of this section, the following list of wildlife species may be killed with the express permission of the owner, when causing damage to private property: Raccoon, fox, bobcat, beaver, muskrat, mink, river otter, weasel, hare, and cottontail rabbits.

(c) The department may make agreements with landowners to prevent private property damage by wildlife. The agreements may include special hunting season permits such as: Landowner damage prevention permits, spring black bear hunting permits, permits issued through the landowner hunting permit program, kill permits, and Master Hunter permits.

(d) Landowners are encouraged to allow general season hunters during established hunting seasons on their property to help minimize damage potential and concerns.

(4) Wildlife control operators may assist property owners under the conditions of their permit, as established in WAC 232-36-060.

(5) Tribal members may assist property owners under the conditions of valid comanagement agreements between tribes with off-reservation hunting rights and the department. Tribes must be in compliance with the agreements including, but not limited to, adhering to reporting requirements and harvest restrictions.

(6) Hunting licenses and tags are not required to kill wildlife under this section, except for subsection (3)(c) and (d) of this section; and tribal members operating under subsection (5) of this section are required to meet tribal hunting license, tag, and permit requirements.

(7) Except as specifically provided in a permit from the department or rule of the commission, people taking wildlife under this rule are subject to the laws and rules of the state including, but not limited to, those found in Title 77 RCW and Titles 220 and 232 WAC. Wildlife taken under this rule remains the property of the state and may be disposed of in the manner and under the

conditions that follow:

(a) Wildlife taken under subsections (1) and (2)(b) of this section must be reported to the department within twenty-four hours, and the animal and all parts must be provided to the department or its designees.

(b) Wildlife taken under subsection (2)(a)(i) and (ii) of this section becomes the property of the private landowner and may be lawfully disposed consistent with state laws and rules including, but not limited to, Titles 77 RCW and 232 WAC.

(c) Wildlife taken under subsection (2)(a)(iii) of this section must be disposed of consistent with the conditions identified under the permit.

(d) Wildlife taken under subsection (3) of this section may be lawfully possessed by the owner, licensee, and/or permit holder. Possession of wildlife taken by tribal members is subject to the laws of their tribe and must be consistent with their agreement with the state.

NEW SECTION

WAC 232-36-060 Director or his/her designee is empowered to issue wildlife control operator permits to address wildlife interactions. When the department determines that a wildlife interaction can be controlled by persons, political subdivisions of this state, or the United States, the director or his/her designee may issue wildlife control operator (WCO) permits for control of said wildlife.

(1) Wildlife control operators shall:

(a) Be at least eighteen years of age;

(b) Have completed the WCO certification course;

(c) Have the equipment, knowledge, and ability to control the wildlife species causing conflict or property damage;

(d) Be legally eligible to possess a firearm and without a felony or domestic violence conviction including, but not limited to, chapter 9.41 RCW unless firearm possession rights have been restored; and

(e) Not have a gross misdemeanor fish and wildlife conviction within the last five years.

(2) The enrollment fee for certification training/education provided by the department after July 1, 2010, shall be fifty dollars (RCW 77.12.184). This enrollment fee is waived for participants seeking certification, but do not charge a fee for their services.

(3) Depending on certifications authorized by the department, wildlife control operators may use live traps to capture any animal causing an animal problem as that term is defined in chapter 77.15 RCW.

(4) Depending on certification, wildlife control operators may only use body gripping traps in compliance with RCW 77.15.194.

(5) Wildlife trapped under the authority of a wildlife control operator permit may not be released or disposed of without written consent of the property owner where the wildlife is to be released.

(6) Wildlife control operators must submit a complete annual report of all control activity on the form supplied by the department. The report must be received or postmarked on or before the fifteenth day of January. Failure to submit a report may result in certification permit being revoked and future certifications suspended.

(7) Wildlife control operator permits shall be revoked and future permits denied by the director or issuing authority when, in the judgment of the department:

(a) Information contained in the application was inaccurate or false;

(b) The permittee or person controlling wildlife fails to comply with department statutes or rules; or

(c) The person violates a trapping or other wildlife law.

(8) If the certification permit is denied or revoked, the department shall provide the applicant, in writing, a statement of the specific reason(s) for the denial or revocation. The applicant may request an appeal in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days from the mailing date of the denial and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

(9) Wildlife control certification permits are valid for three years.

(10) It is unlawful to trap, harass, or otherwise control wildlife on the property of another for a fee or other consideration without a wildlife control certification permit.

(11) The department may develop additional conditions and procedures to include training requirements from wildlife control operators consistent with this rule.

NEW SECTION

WAC 232-36-100 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 shall be paid only to the owner of the crop at the time of damage, without assignment. Cash compensation for claims from deer and elk damage shall 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) No claim will be processed unless the owner provides the department with an approved checklist of the preventative and nonlethal means that have been employed, and the owner has complied with the terms and conditions of his or her agreement(s) with the department;
- (5) An owner or lessee has accepted noncash compensation to offset crop damage in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for crop damages within the growing season of the damaged crop;
- (6) 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 is eligible for compensation from the department;
- (7) The property where the damage occurred was not open to public hunting consistent with WAC 232-36-300 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;
- (8) The crop is grown or stored on public property;
- (9) 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;
- (10) The owner has not provided a completed written claim form and all other required information, or met required timelines

prescribed within WAC 232-36-110;

(11) The owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge;

(12) The owner or designee has harvested commercial crops without an investigation completed under the direction of the department; or

(13) The department has expended all funds appropriated for payment of such claims for the current fiscal year.

NEW SECTION

WAC 232-36-110 Application for cash compensation for commercial crop damage--Procedure. Pursuant to this section, the department may distribute money appropriated by the legislature to pay commercial crop damage caused by wild deer or elk in the amount of up to ten thousand dollars per claim, unless following an appeal the department is ordered to pay more (see RCW 77.36.130(2)). The department shall develop claim procedures and application forms consistent with this section for cash compensation of 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) Owners who have worked with the department to prevent deer or elk damage, yet who still experience loss and meet eligibility requirements, may file a claim for cash compensation.

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

(3) A complete, written claim must be submitted to the department within sixty days of when the damage stops.

(4) Owners may only file one claim per year. Multiple partners in a farming operation are considered one owner. 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, an applicant must provide:

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

(b) The assessment method used consistent with WAC 232-36-120, valuation of property damage.

(c) Applicant must provide 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) Applicant must provide records documenting average yield on claimed crop and parcel, certified yield reports, production reports and certified third-party 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) Declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the applicant 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 to the best knowledge of the claimant true and accurate.

(g) Copy of the insurance policy and payment on the commercial crop where loss is claimed.

(h) Copy of application for other sources of loss compensation and any payment or denial documentation.

Damage claim assessment:

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

(a) The owner must submit a damage claim assessment prepared by a crop insurance adjustor licensed by both the state of Washington and the federal government.

(b) If requested, the department will provide the claimant with a list of known adjustors. Adjustor fees will be the sole responsibility of the owner.

(c) The department or its designee may evaluate the damage claim assessment provided by the owner of a damaged crop or may conduct a separate assessment to verify crop loss and value.

(8) Disagreement between the claimant and the department over the crop loss value may be settled through an adjudicative proceeding.

Settlement of claims:

(9) Subject to money appropriated to pay commercial crop damage, undisputed claims will be paid, less a five hundred dollar deductible. The deductible will only be applied once in three consecutive years per owner if the damage is on the same type of commercial crop or on the same parcel of land.

(10) 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.

(11) The owner will be notified by the department upon completion of the evaluation and has sixty days to accept or appeal the department's offer for settlement of the claim, or the claim is considered satisfied and not subject to appeal.

(12) The department shall 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 first fiscal year of a biennium, the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take first priority and receive payment before any new claims are paid. Claims will not be carried from one biennium to the

next.

NEW SECTION

WAC 232-36-120 Valuation methods for 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 crop resulting from the damage. Assessment methods used by qualified crop adjustors licensed by both the state and federal government will be accepted by the department. Evaluation of crop losses must consider other impacts to crop production, including fertilization, irrigation, precipitation, weather, timing of planting or harvest, and weed control. The following methods are listed in preferred order based on reliability:

(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 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.

The department or its designee will review and evaluate the damage claim assessment and valuation method submitted by the owner of a damaged crop and may conduct a separate assessment to verify crop loss and value.

NEW SECTION

WAC 232-36-200 Payment for commercial livestock damage--
Limitations. Owners, who have worked with the department to prevent depredation, but continue to experience losses, or experience unforeseen losses may be eligible to file a damage claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when specifically appropriated by the legislature. Damages payable under this section are limited to the lost or diminished value of commercial livestock caused by wild bears, cougars, or wolves and shall be paid only to the owner of the livestock at the time of damage, without assignment. Cash compensation for livestock losses from bears, cougars, and wolves shall not include damage to other real or personal property including other vegetation or animals, lost profits, consequential damages, or any other damages including veterinarian services. The department is authorized to pay up to two hundred dollars per sheep and one thousand five hundred dollars per head of cattle or per horse and no more than ten thousand dollars to the commercial livestock owner per claim.

Claims for cash compensation will be denied when:

- (1) Funds for livestock compensation have not been specifically appropriated by the legislature;
- (2) The claim is for livestock other than sheep, cattle, or horses;
- (3) The owner of the commercial livestock does not meet the definition of "eligible farmer" in RCW 82.08.855 (4) (b) (i) through (iv);
- (4) The loss estimate is less than five hundred dollars;
- (5) The owner fails to provide the department with an approved checklist of the preventative and nonlethal means that have been employed or the owner failed to comply with the terms and conditions of their agreement(s) with the department;
- (6) The owner has accepted noncash compensation to offset livestock losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for livestock losses within a fiscal year;
- (7) Damages to the commercial livestock claimed are covered by insurance or are eligible for payment from other entities. Except, any portion of the damage not covered by others is eligible for filing a claim with the department;
- (8) The property where the damage occurred is not open to public hunting as defined in WAC 232-36-300, unless, as determined by the department the property is inconsistent with hunting or where public hunting would not help mitigate the damage. This includes all properties owned or leased by owner adjacent to or contiguous with the property where livestock damage occurred;

(9) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;

(10) The owner has not provided a completed written claim form and provided all required information or met required timelines prescribed within this chapter;

(11) No claim will be processed if the owner fails to sign a statement affirming facts and supporting documents are truthful to the best of the owner's knowledge;

(12) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed under the direction of the department; or

(13) The department has expended all funds appropriated for payment of such claims for the current fiscal year.

NEW SECTION

WAC 232-36-210 Application for cash compensation for commercial livestock damage--Procedure. Pursuant to this section, the department may distribute money specifically appropriated by the legislature to pay commercial livestock losses caused by wild bear, cougar, or wolves in the amount of up to ten thousand dollars per claim unless, following an appeal, the department is ordered to pay more (see RCW 77.36.130(2)). The department shall develop claim procedures and application forms consistent with this section for cash compensation of commercial livestock losses. Partnerships with other public and private organizations to assist with completion of applications and assessment of losses and to provide funding for compensation are encouraged.

Filing a claim:

(1) Owners who have worked with the department to prevent livestock depredation, yet still experience loss or losses that occur under emergent situations may file a claim for cash compensation if they meet eligibility requirements.

(2) Claimant must notify the department within twelve hours of discovery of livestock attack.

(3) Damage claim assessment of amount and value of commercial livestock loss is the primary responsibility of the claimant.

(4) Assessment of loss will be conducted by the department:

(a) The owner must provide access to department staff or designees to investigate the cause of death or injury to livestock.

(b) Federal officials may be responsible for the investigation when it is suspected that the attack was by federally listed species.

(5) Claimant must request a damage claim application from the department's Olympia office within ten days of a loss.

(6) A complete, written claim must be submitted to the department within sixty days of an attack on commercial livestock.

(7) The claim form declaration must be signed affirming that the information provided is factual and truthful before the department will process a claim.

(8) In addition to a completed claim form, applicant must provide:

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

(b) Claimant must provide proof of legal ownership or contractual lease of claimed livestock.

(c) Claimant must provide records documenting livestock value based on current market price.

(d) Declaration signed under penalty of perjury that applicant

is eligible for claim, meets eligibility requirements listed under this section and all claim evaluation and assessment information in claim application is to the best knowledge of claimant true and accurate.

(e) Copy of any insurance policy covering livestock loss claimed.

(f) Copy of application for other sources of loss compensation and any payment or denial documentation.

Settlement of claims:

(9) Subject to money appropriated to pay for commercial livestock losses, undisputed claims will be paid less a five hundred dollars deductible. The deductible will only be applied once in three consecutive years per livestock owner.

(10) Compensation paid by the department, in addition to any other compensation, may not exceed the total value of the assessed livestock loss.

(11) Upon completion of the evaluation, the department will notify the owner of its decision to either deny the claim or make a settlement offer (order). The owner has sixty days from the date received to accept the department's offer for settlement of the claim or to submit an appeal of the order. The response must be in writing and the signed document may be mailed or submitted by fax or e-mail. If no written acceptance or request for appeal is received, the offer is considered rejected and not subject to appeal.

(12) The department shall prioritize payment for commercial livestock losses 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 livestock losses during the first fiscal year of a biennium, the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take first priority and receive payment before any new claims are paid. Claims will not be carried from one biennium to the next.

NEW SECTION

WAC 232-36-300 Public hunting requirements. "Public hunting" generally means that land is open for licensed hunters. The intent of the provision in this chapter is to allow hunting at an appropriate time, manner, and level to help prevent damage.

As specified in WAC 232-36-100 and 232-36-200, cash compensation will only be paid when the property where the damage occurred is open to public hunting. Public hunting is defined as:

(1) The landowner opens the property on which the damage or loss is claimed for general access to all licensed hunters; or

(2) The landowner has entered into and complied with any agreement with the department covering the land(s) on which the damage is claimed. Access agreements shall require that:

(a) The land is open to general access to licensed hunters; or

(b) The landowner allows the department to select a limited number of hunters who are authorized to access the land; or

(c) The landowner and the department determine how hunters will be selected and authorized to hunt on the landowner's property in order to effectively prevent damage.

NEW SECTION

**WAC 232-36-400 Commercial crop or livestock damage claim--
Dispute resolution.** Claims where the owner has met all claim eligibility criteria and procedures, but ultimately rejects the written settlement offer (order) for crop or livestock loss and/or value assessment, the provisions of this section shall apply:

Informal resolution:

(1) If the owner rejects the property loss or value assessment and would like to discuss a negotiated settlement, they can request a meeting by notifying the department in writing within ten days of receiving the settlement offer or claim denial (order).

(2) A department representative and the owner or designee(s) will meet and attempt to come to mutual resolution.

(3) Monetary compensation or noncash compensation, mutually agreed upon by both the department and owner, shall be binding and constitute full and final payment for claim.

(4) If parties cannot agree upon damages, the owner may elect to apply for an adjudicative proceeding pursuant to chapter 34.05 RCW.

Adjudicative proceeding:

(5) If the owner wishes to appeal the claim denial or the department settlement offer (order), the owner may request an adjudicative proceeding consistent with chapter 34.05 RCW within sixty days of receiving the original order.

(6) The request must comply with the following:

(a) The request must be in writing and the signed document may be mailed or submitted by fax or e-mail;

(b) It must clearly identify the order being contested (or attach a copy of the order);

(c) It must state the grounds on which the order is being contested and include the specific facts of the order that are relevant to the appeal; and

(d) The request must identify the relief being requested from the proceeding (e.g., modifying specific provisions of the order).

(7) The proceeding may only result in the reversal or modification of an order when the preponderance of evidence shows:

(a) The order was not authorized by law or rule;

(b) A fact stated in the order is materially incorrect;

(c) The award amount offered is inconsistent with applicable and accepted procedures, rule, and/or law; or

(d) Material information or evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

(8) The burden of proof is on the appellant (owner) to show that they are eligible for a claim and that the damage assessment is reliable (see RCW 77.36.130(4)).

(9) Findings of the hearings officer are subject to the annual funding limits appropriated by the legislature and payment rules (WAC 232-36-110(12) and 232-36-210(9)) of the commission.

NEW SECTION

WAC 232-36-500 Unlawful taking or possession of wildlife for personal safety or causing property damage--Penalties. (1) Except as authorized by WAC 232-36-050(7), the unlawful trapping, killing, or possession of wildlife is punishable under Title 77 RCW including, but not limited to, the following:

- (a) RCW 77.15.120 for endangered wildlife;
- (b) RCW 77.15.130 for protected wildlife;
- (c) RCW 77.15.140 for unclassified wildlife;
- (d) RCW 77.15.170 for wildlife wastage;
- (e) RCW 77.15.290 for transportation of wildlife;
- (f) RCW 77.15.400 for wild birds;
- (g) RCW 77.15.410 for big game;
- (h) RCW 77.15.420 for illegally taken or possessed wildlife;

and

- (i) RCW 77.15.430 for wild animals.

(2) A person trapping or killing wildlife who fails to notify the department pursuant to WAC 232-36-050 may be in violation of an infraction pursuant to RCW 77.15.160.

NEW SECTION

WAC 232-36-510 Failure to provide completed forms or submit required documents or reports. (1) Failure to provide reports or abide by the conditions of agreements or permits stipulated in this chapter is an infraction pursuant to RCW 77.15.160.

(2) A person who provides false or misleading information required by this chapter may be in violation of RCW 9A.76.175 or 40.16.030.