

Deer and Elk Commercial Crop Damage Claim Rule Amendments

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**RCW 77.36: Washington appropriates
\$420,000 per fiscal year
for deer and elk
commercial crop damage**

Department authority to pay claims

RCW 77.36.100

Payment of claims for damage to commercial crops or livestock—Noncash compensation—Offer of materials or services to offset or prevent wildlife interactions—Appeal of decisions—Adoption of rules.

*(Excerpted (1)(a)):

*(1)(a) Except as limited by **RCW 77.36.070, 77.36.080**, 77.36.170, and 77.36.180, the department shall offer to distribute money appropriated to pay claims to the owner of **commercial crops** for damage caused by wild deer or elk or to the owners of livestock that has been killed by bears, wolves, or cougars, or injured by bears, wolves, or cougars to such a degree that the market value of the livestock has been diminished.



RCW 77.36.070 LIMIT ON TOTAL CLAIMS FROM THE FISH, WILDLIFE, AND CONSERVATION ACCOUNT PER FISCAL YEAR.

The department may pay no more than **one hundred twenty thousand dollars** per fiscal year from the fish, wildlife, and conservation account created in RCW 77.12.170(3) for claims and assessment costs for damage to commercial crops caused by wild deer or elk submitted under RCW 77.36.100.

RCW 77.36.080

LIMIT ON TOTAL CLAIMS FROM GENERAL
FUND PER FISCAL YEAR—EMERGENCY
EXCEPTIONS. *(EXCERPT)

*(1) Unless the legislature declares an emergency under this section, the department may pay no more than **\$300,000** per fiscal year from the general fund for claims and assessment costs for damage to commercial crops caused by wild deer or elk submitted under RCW 77.36.100.

WAC 220-440-020 DEFINITIONS. *(EXCERPTED)

*"**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 including one or more of the following: Seeding, planting, fertilizing, irrigating, and all parts of horticultural trees, are considered a commercial crop and are eligible for cash compensation.

Department duties in RCW

RCW 77.36.120

Department's duties. The department shall establish:

- (1)** The form of affidavits or proof required to accompany all claims under this chapter;
- (2)** The process, time, and methods used to identify and assess damage, including the anticipated timeline for the initiation and conclusion of department action;
- (3)** How claims will be prioritized when available funds for reimbursement are limited;
- (4)** Timelines after the discovery of damage by which an owner must file a claim or notify the department;
- (5)** Protocols for an owner to follow if the owner wishes to undertake activities that would complicate the determination of damages, such as harvesting damaged crops;
- (6)** The process for determining damage assessments, including the role and selection of professional damage assessors and the responsibility for reimbursing third-party assessors for their services;
- (7)** Timelines for a claimant to accept, reject, or appeal a determination made by the department;
- (8)** The identification of instances when an owner would be ineligible for compensation;
- (9)** An appeals process for an owner eligible for compensation under RCW 77.36.100 who is denied a claim or feels the compensation is insufficient; and
- (10)** Other policies necessary for administering this chapter.

[2009 c 333 s 57.]



Duties found within this proposal

RCW 77.36.120

Department's duties. The department shall establish:

*(excerpts below)

*(1) The form of affidavits or proof required to accompany all claims under this chapter;

(2) The process, time, and methods used to identify and assess damage, including the anticipated timeline for the initiation and conclusion of department action;

...

*(6) The process for determining damage assessments, including the role and selection of professional damage assessors and the responsibility for reimbursing third-party assessors for their services;

...

*(9) An appeals process for an owner eligible for compensation under RCW 77.36.100 who is denied a claim or feels the compensation is insufficient; and

*(10) Other policies necessary for administering this chapter.



CR102 Proposal and Effects

1. Allow the 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
 - Relevant deer and elk damage experience will be determined when an RFQ respondent is evaluated before contracting



CR102 Proposal and Effects

2. Clarifies that the handling of shared adjustor fees and shared costs apply for multiple site visits and for shared repayment where no claim is paid
 - Some crops require repeat visits, which add costs
 - Rule implies all fees are shared but needed added clarity
3. Removes redundant or irrelevant language unrelated to claims that appear in multiple rules
 - Some language is duplicative between rules, or with RCW
 - If RCW language changes, it can needlessly trigger rulemaking



CR102 Proposal and Effects

4. Clarifies that 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
 - Timelines are in rule - No exceptions to “suspend” process
 - Some crop types require more time to investigate or determine value (product not possibly sold at harvest time)
 - Crop insurance claims can delay determining state portion of the loss liability
 - Information on damage assessment or report can be incomplete or unclear and we need something more



CR102 Proposal and Effects

5. Clarifies how causes of damage other than crop damage by deer or elk are considered in the claim process

- Ensure that the assessor report reflects what other damage was observed on the visit
- State does not pay for other wildlife causes, such as birds in fruit, beavers cutting trees down, etc.
- Ensures the damage claimed is not caused by environmental, poor farming practices, disease, or soil problems, among other possibilities



CR102 Proposal and Effects

6. Clarifies 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 used in any order of preference
 - Rule requires a methods list are used in order of “reliability”
 - Crop type, situation, and several other variables often make that preference impractical—others on the list may be preferred!
 - Any listed method shown is acceptable to the department
 - Having a list in order really doesn’t mean anything to our process



CR102 Proposal and Effects

7. Clarifies that assessor reports are not automatically “accepted” and the department may require additional steps or reports to verify that the assessment is accurate and complete
 - Current rule says department will “accept” the report
 - Those are not always clear, or complete
 - Current rule does not provide for us to require more information even when we see a problem in the report or assessment process used
 - Change allows us to ensure the claim is properly investigated, is complete, and can be paid



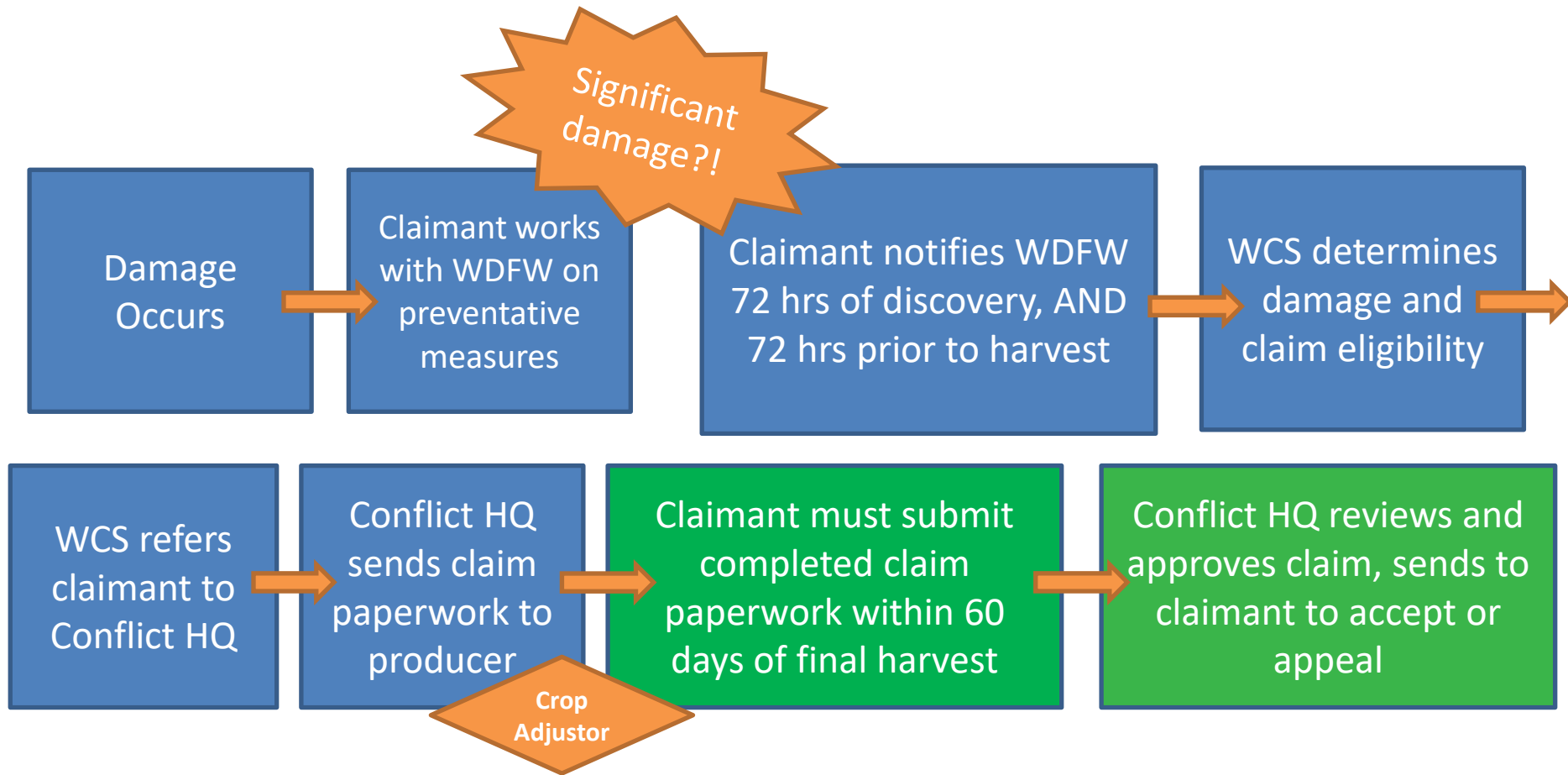
CR102 Proposal and Effects

8. Clarifies that WAC 220-440-230 contains the process of appeal that is used for claim decision appeals filed under chapter 34.05 RCW
 - Aligns claim processing rule of WAC 220-440-150 to clarify that WAC 220-440-230 contains the claim appeals process (currently only refers to RCW)
 - Consistent with required process under chapter 34.05 RCW
 - Process rule already exists and is used by the department



Crop Damage Claims - Process

Process flowchart



Public Comments

12 comments received through the online portal:

Most were of a rhetorical basis and not within the scope of the proposal. Some were repeats of the same comment in each section.

Some comment examples summarized:

- WDFW should provide “high” fences only and not pay damage
- Damage should never be paid
- Require access contracts for permit hunting or general season hunting access before allowing a claim
- Complaints about damage permits, not related to this proposal
- Claimants should have insurance if they have losses not have the state pay
- One explicitly supported the crop adjuster proposal



Timeline

April 2, 2025: CR102 filed

- Public commenting is open now!

May 16, 2025: Full Commission by web meeting

May 19, 2025: Public commenting closes

June 26-27, 2025: Commission decision in Olympia



Questions?



Historical Crop Claims with Assessor fees payments

YEAR	PAYMENTS	NOTES
2023	\$109,730	Legislature paid most excess claims in 2021-2023-- some were not covered in 2023 (SB5784)
2022	\$405,751	
2021	\$189,867	
2020	\$190,515	
2019	\$114,115	
2018	\$129,777	

