

**Petition to Amend a Rule**

---

State of Oregon Department of Fish and Wildlife

In the Matter of Amendment or Repeal of  
Specified Provisions of OAR Chapter 635,  
Division 49, Regarding Transferability of  
Type 1 Cervid Propagation Licenses, Lottery for  
Type 1 Cervid Propagation Licenses, and  
Fencing Standards for Type 1 Cervid Propagation  
Licenses

Petition to Amend  
OAR 635-049-0020,  
OAR 635-049-0190, and  
OAR 635-049-0250

Petition to Repeal  
OAR 635-049-0171

1. Petitioner, MAD-Elk Coalition, is an unincorporated association of hunting, wildlife, and wildlands advocates and organizations. Correspondence regarding this petition should be sent to MAD-Elk steering committee member Jan Wilson, 1260 President St., Eugene, OR 97401. MAD-Elk steering committee members will present this petition and related documentation and testimony at the commission meeting. Other persons and organizations known to be interested include the following:

Oregon Hunters Association, PO Box 1706, Medford, OR 97501

Humane Society US, Kelly Peterson, 1414 Se 36th Ave., Portland, OR 97214

Rocky Mountain Elk Foundation, Northwest Region, 2909 S. Molter Rd., Liberty Lake, WA 99019

Backcountry Hunters & Anglers, PO Box 655, Eagle Point, OR 97524

Oregon Wild (formerly Oregon Natural Resources Council), Steve Pedery, 5825 N. Greeley, Portland, OR 97217

Oregon Natural Desert Association, 16 NW Kansas Ave., Bend, OR 97701

Hells Canyon Preservation Council, PO Box 2768, LaGrande, OR 97850

Izaak Walton League, Oregon Division, 15056 Quall Rd. NE, Silverton, OR 97381.

Mary O'Brien, PO Box 12056, Eugene, OR 97440

Tom Pringle, 3295 Kincaid, Eugene, OR 97405

Michael Hanson, Consumers Union, 101 Truman Ave., Yonkers, NY 10713

Scott Stouder and Holly Endersby, PO Box 201, Pollock, ID 83547

Petitioner assumes that Type 1 licensees would also be interested in the rule, but Petitioner does not have the names and addresses of those licensees.

2. Petitioner's members are persons and entities concerned with the detrimental effects of captive cervid operations threatening wildlife of the state, as well as the captive cervids themselves.

3. Petitioner proposes to phase out commercial captive cervid operations for Roosevelt elk and Rocky Mountain elk, pursuant to Type 1 Cervid Propagation Licenses, by prohibiting transfer of existing licenses.

4. Further, Petitioner proposes to decrease the likelihood of contact between captive cervids and wildlife by amending the fencing standards for Type 1 facilities, to require double fences with adequate separation and metal construction to withstand seasonal wildfires.

5. Specifically, Petitioner proposes the following amendments to the existing regulations (with proposed deletions crossed out, proposed additions underlined):

OAR 635-049-0020(9): Cervid Propagation Licenses – Type 1 may be issued to individuals or organizations to hold Roosevelt elk (*Cervus elaphus roosevelti*) or Rocky Mountain elk (*Cervus elaphus nelsoni*) other than those belonging to the state of Oregon or those held under provisions of OAR Chapter 635, Division 049-0020(7) (science, education, conservation). However, the number of Type 1 licenses in effect shall not exceed 16. All those holding elk under these licenses must comply with all rules in Chapter 635, Division 049. ~~On or about March, 2004, the commission shall re-examine the issues concerning elk licenses and determine whether to increase the number of licenses that may be in effect at one time.~~

OAR 635-049-0190(2): Beginning [whenever the next license renewal period starts – January 1, 2008?], secondary fences, meeting the same design and construction standards as the perimeter fence under these rules, shall be located 30 feet inside the perimeter fence, such that the captive wildlife is completely separated from the perimeter by no less than two fence lines, 30 feet apart. Electric fencing materials may be used on perimeter fences only to supplement conventional fencing materials.

OAR 635-049-0190(4): Beginning [same date as above], posts Posts used in the perimeter fence must be: (a) Of material Metal of sufficient size and strength to keep captive wildlife securely contained and prevent native cervids from entering. ~~Wooden corner posts shall be a minimum of 5 inches in diameter at the small~~

~~end and line posts must be a wooden post with a minimum of 4 inches in diameter on the small end, or a metal "T" post weighing at least 1.25 pounds per foot; . . . .~~

~~OAR 635-049-0250: Changes in Facility Operations and Transfer of a Cervid Propagation License – Type 1. This rule describes the requirements for notification or requests for approval of changes in the operation of a cervid holding facility or transfer of a Cervid Propagation License – Type 1. . . .~~

~~(1) The licensee shall advise the department in writing within two weeks of a change of address. Under OAR 635-049-0070(2), licenses are specific to the individual owning or possessing the cervids and to the approved facility at which the animals are held. Type 1 licenses shall not be transferred to other owners or operators or to any facility at a different location, regardless of the common ownership of the facilities. The licensee shall also notify the department within two weeks in the event of a change in any of the following persons or entities, and provide the names and addresses of . . . .~~

~~(2) Persons holding a Cervid Propagation License – Type 1 shall notify the department of any proposed change in ownership of the cervid facility to another individual or entity. The current licensee shall, in writing, request department approval for any proposed transfer of the Cervid Propagation License – type 1, and provide the following information . . . . [Petitioner proposes deletion of the remainder of OAR 635-049-0250.]~~

6. Specifically, Petitioner proposes repeal or deletion of OAR 635-049-0171 in its entirety.

7. Petitioner will submit additional testimony documenting the significant risks posed by commercial captive elk operations in the state.

8. With regard to the factors listed in OAR 137-001-0070(2), Petitioner submits the following comments:

OAR 137-001-0070(2)(a) and (b) - Petitioner believes that the existing rules do not achieve the substantive goals (as detailed in OAR 635-049-0010) because they elevate the economic status of captive cervid operations over the protections and enhancement of Oregon's wildlife populations and their habitats. Petitioner believes and asserts that the commercial operations do not contribute to the state's economy nearly enough to justify the extraordinary public expense and potentially irreplaceable loss of value, as recent events in neighboring states clearly illustrate. Petitioner believes that, on balance, the significant risks outweigh the benefits of allowing captive cervid operations to continue in this state. Petitioner proposes this phase-out of such operations by natural attrition, in conjunction with the proposal for enhanced fencing to decrease some of the risk during the natural phase-out period, and thus there is no continued need for existing rules allowing for transfer or lottery of unused or unrenewed licenses.

OAR 137-001-0070(2)(c) – Petitioner does not believe the complexity (or lack of complexity) of the existing rule is relevant to the threat posed by captive cervid operations.

OAR 137-001-0070(2)(d) – Petitioner believes that neither the existing rules nor the proposed rules overlap, duplicate, or conflict with other state, federal, or local regulations, except, as stated above, to the extent that the existing rules allowing for captive cervid operations in the state conflict with the state policies on protection of wildlife and their habitats.

OAR 137-001-0070(2)(e) – Petitioner believes that changes in economic factors, disease outbreaks, and other circumstances since the agency adopted rules allowing captive cervid operations have rendered Oregon's permitting of captive cervid operations unwise. Petitioner believes changes in technology have rendered the threats more measurable, but no less dire. Petitioner thus proposes this phase-out of commercial captive cervid operations by natural attrition, in conjunction with the proposal for enhanced fencing to decrease some of the risk during the natural phase-out period.

Dated: October 12, 2006.



---

Jan Wilson, on behalf of MAD-Elk Coalition