

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

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ARCHIVES DIVISION

SECRETARY OF STATE

Department of Fish and Wildlife

Agency and Division

635

Administrative Rules Chapter Number

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Rules Coordinator

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RULE CAPTION

Amend Rules for Protected Wildlife, Holding and Propagating

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
1-20-17	8:00 a.m.	ODFW, 4034 Fairview Industrial Dr SE, Salem, OR 97302	ODFW Commission

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:**AMEND:****REPEAL:****RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR Chapter 635, Division 044

Statutory Authority:

ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Other Authority:**Statutes Implemented:**

ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

RULE SUMMARY

The proposed rule amendments are needed to change or update various aspects of agency management of protected wildlife, holding, and propagating.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

01-20-2017 Close of Hearing	Michelle Tate	michelle.l.tate@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

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STATEMENT OF NEED AND FISCAL IMPACT
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Administrative Rules Chapter Number

Amend Rules for Protected Wildlife, Holding and Propagating

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Rules relating to OAR Chapter 635, Division 044, Protected Wildlife, Holding, and Propagating

Statutory Authority:

ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Other Authority:

Statutes Implemented:

ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Need for the Rule(s):

These rules are needed to enhance the protection and management of wildlife species.

Documents Relied Upon, and where they are available:

Draft rules are available from the division's rules coordinator, located at 4034 Fairview Industrial Drive, SE; Salem, Or 97302. Rules are also on the ODFW website at <http://www.dfw.state.or.us/OARs/index.asp>.

Fiscal and Economic Impact:

The proposed rules are to change or to update various aspects of agency management of wildlife holding and propagation. Fiscal and economic impacts discussed below pertain to the proposed rules at the time of the writing of this FIS.

Under proposed rules, all wildlife in Oregon are protected and may not be captured or held unless authorized by rule. The proposed rules define and regulate grandfathered and pet wildlife holding separately from wildlife holders who engage in commercial and non-profit activities. Two new classes of wildlife holding permits for commercial and non-profit entities will be established; one for Wildlife Sanctuaries and one for the Wildlife Exhibitor/Animal Entertainment Industry, each with an annual fee of \$102. All captive bred or wild-caught wildlife imported into the state for holding by an Exhibitor/Animal Entertainment Industry or Sanctuary permit holder must be approved by the Department.

The fee of the "standard" wildlife holding permit is increasing in price from the current \$17 per year to \$25 per year per species held on the permit (e.g., black bear, raccoon). An annual permit is specifically associated with the individual permittee, their approved permitted facility, and the animals identified and species held on the permit. A limited list of non-game wildlife may be held; up to 2 individuals of each listed species may be held without a permit, but a permit is required for each species listed for which 3 or more individuals are held. Black bears, bobcats, and cougars, may not be added to a new or existing Wildlife Holding permits. However, Bears, bobcats, and cougar acquired by transfer or new holding application may only be held in facilities that are accredited by the Association of Zoos and Aquariums (AZA), Zoological Association of America (ZAA), or on an Exhibitor/Animal Entertainment Industry or Wildlife Sanctuary Permit or approved by the Department. Legally held black bears, cougars, bobcats, and raccoons, squirrels, and defined legally held non-game species are grandfathered in and may be held legally for the life of the individual animal provided that holder secures a wildlife holding permit within one year following the adoption of the proposed rules. No new animals shall be added to the grandfathered collections. The facilities holding the animals that are grandfathered do not have to obtain the AZA or ZAA accreditation, but must meet Department caging and enclosure standards within one year of adoption of the revised rules.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. State agencies that could be affected by these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). No significant changes from the current levels of these agencies' staffing, expenditures, or revenues are expected as a result of these particular rules.

The proposed rules would mean a minimum increase of \$8 per standard wildlife holding permit but also an increase of \$25 per species held for permittees holding multiple species and may result in greater numbers of permits sold than the 48 permits issued in 2015. It cannot be predicted how many additional permits will be sold because the Department does not know how many animals state-wide will be grandfathered in and thus required to be permitted. The expectation is that the number of permits will initially increase as those holding grandfathered species and pet bears, bobcats, and cougars, raccoons and skunks and non-game wildlife purchase permits. Then the number of permits holding only bears, bobcats, and cougars may gradually decline and move toward zero as the grandfathered pet bears, bobcats, and cougars die over time and it is likely that there would be few new permits issued since only a few facilities in Oregon will be able to meet the new, more rigorous accredited facility standards. It is expected that only a few Wildlife Sanctuary and Wildlife Exhibitor/Animal Entertainment Industry permits will be issued each year. Given the overall fee increase and the new permit types, the Department will likely see an increase in revenues (less than \$1,000 in 2015), but the magnitude cannot be estimated with any precision and is very unlikely to be significant. Since the total number of permits is expected to increase initially under the proposed rule, additional staff time would be needed to process them, though this work would be absorbed with existing staff and expenditures.

B. Units of local government may be affected by the proposed rules.

For proposed Holding rules and the attrition of grandfathered animals, it is possible that over time, local law enforcement would have less need to respond to the occasional animal escapes in communities involving large carnivores (e.g., bears, cougars, bobcats) that are currently held. This effect would result in less police staff time allocated to wildlife complaints, which could be reallocated to other police work.

C. The public is affected by the proposed rules.

Under proposed rules, a wildlife holding permit will now be required for holding more than 2 individuals on the non-game species list and for grandfathered holding of black bears, cougars, bobcats, and raccoons, squirrels, and other legally held non-game species. This will represent new costs for legally holding wildlife for members of the public holding skunks, nongame wildlife and multiple species, though with the permit fee at \$25 per species per year, the imposed cost will be low for the vast majority of the affected public since most are believed to hold few animals or species. The \$102 fee for Wildlife Sanctuary and the Wildlife Exhibitor/Animal Entertainment Industry permits represents a small increase in permitting costs for those few entities likely to obtain those types of permits for commercial and/or non-profit business activities.

Also, under the proposed rules, a number of animal species acquired by transfer or new holding application from a member of the general public but not for commercial or non-profit business activity, may only be held in facilities that are accredited by the AZA, ZAA or approved by the Department. Becoming accredited by the AZA is not free-for example, the non-refundable certification filing fee is \$1,000-and would raise costs for facilities with new wildlife holding applications or transfers. Consequently, facilities with limited budgets may not pursue accreditation and therefore not be able to take on "new" animals.

Facilities holding the animals that are grandfathered do not have to meet the American Zoo Association standards, but must meet Department caging and enclosure standards within one year of adoption of the revised rules. Depending on the caging/enclosures currently at these

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

The main types of small business subject to the rule are businesses or not-for-profits engaged in wildlife holding. ODFW issued 48 wildlife holding permits in 2015.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

For small businesses with new wildlife holding applications or transfers, their facilities are required to be either accredited by the AZA, the Zoological Association of America (ZAA), or meet specifications for Wildlife Sanctuary or approved by the Department. The AZA accreditation process would cost in excess of \$1,000. The Wildlife Sanctuary and Wildlife Exhibitor/Animal Entertainment Industry permits require a USDA permit, adequate caging standards, and insurance coverage. There are currently 3 AZA accredited facilities in Oregon with 2 non-accredited facilities planning to gain accredited status by the year 2021. No significant changes in costs expected for facilities only holding grandfathered animals.

Under these rules, Wildlife Exhibitor/Animal Entertainment Industry permittees will be required to carry liability insurance policies. Communication with some potential Wildlife Exhibitor/Animal Entertainment Industry permittees indicates that they already have such insurance policies required. There may be other potential permittees who would need to pay for a new insurance policy under the amended rules.

c. Equipment, supplies, labor and increased administration required for compliance:

A number of animal species acquired by transfer or new holding application may only be held in facilities that are accredited by the AZA, ZAA, Wildlife Sanctuaries, or approved by the Department. For some of those animal species, caging standards did not exist previously in rule and so meeting those newly applied standards may represent additional equipment and supply costs for some facilities. Facilities holding the animals that are grandfathered in do not have to meet the American Zoo Association standards, but must meet Department caging and enclosure standards within one year of adoption of the revised rules. Meeting those standards may require additional investment in

equipment and supplies for those facilities. All permits require annual renewal and animal inventory records.

How were small businesses involved in the development of this rule?

Small business and other interested parties were involved in this process.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

<u>01-20-2017 Close of Hearing</u>	<u>Michelle Tate</u>	<u>michelle.l.tate@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address