

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish and Wildlife (ODFW)	635
Agency and Division	Administrative Rules Chapter Number
Teri Kucera	(503) 947-6033
Rules Coordinator	Telephone

3406 Cherry Ave NE Salem, OR 97303

Address

RULE CAPTION

Adopt rule regarding the requirement of hunters to wear fluorescent orange exterior garment

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

*September 30, 2010	10:00 AM	1300 NW Wall Street, Ste 200 Bend OR 97701	Oregon Fish and Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

*The Commission will proceed through its agenda in order, but reserves the right to continue or postpone item until Friday October 1, 2010

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: 635-065

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 496.012, 496.138, 496.162

Other Auth.:

Stats. Implemented: ORS 496.012, 496.138, 496.162

RULE SUMMARY

The rule would require hunters to wear an exterior garment of fluorescent orange.

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

September 30, 2010

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*The Commission will proceed through its agenda in order, but reserves the right to continue or postpone item until Friday October 1, 2010



Heather Thomas

August 13, 2010

Signature

Printed name

Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Fish and Wildlife (ODFW)

635

Agency and Division

Administrative Rules Chapter Number

Adopt rule regarding the requirement of hunters to wear fluorescent orange exterior garment

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

In the Matter of Amendment of Rules)	Statutory Authority,
Relating to the Requirement of Hunters)	Statutes Implemented,
to Wear Fluorescent Orange Exterior)	Statement of Need,
Garment)	Principal Documents Relied Upon,
)	Statement of Fiscal Impact

Statutory Authority: ORS 496.012, 496.138, 496.162

Other Authority:

Stats. Implemented: ORS 496.012, 496.138, 496.162

Need for the Rule(s):

This rule is needed to establish requirements for hunters to wear exterior garment of fluorescent orange.

Documents Relied Upon, and where they are available:

Ahnelt, P. K., C. Schubert, A. Kuebber-Heiss and E. M. Anger. 2005. Adaptive Design in Felid Retinal Cone Topographies. *Invest. Ophthalmol. Vis. Sci.*, 46:E-Abstract 4540.

Bacon, E. S. and G. M. Burghardt. 1976. Learning and color discrimination in the American black bear. *International Conference on Bear Research and Management*, 3:27-36.

Barber, C. L., N. B. Prescott, J. R. Jarivs, C. Le Sueur, G. C. Perry, and C. M. Wathes. 2006. Comparative study of the photopic spectral sensitivity of domestic ducks (*Anas platyrhynchos domesticus*), turkeys (*Meleagris gallopavo gallopavo*) and humans. *British Poultry Science*, 47:365-374.

Blackwell, B. F. 2002. Understanding avian vision: the key to using light in bird management. *Proceedings of 20th Vertebrate Pest Conference*, Pg146-152.

Chen, D. and T. H. Goldsmith. 1986. Four spectral classes of cone in the retinas of birds. *Journal of Comparative Physiology*, 159:473-479.

Cina, S.J. and C.D. Lariscy. 1996. Firearm-related hunting fatalities in North Carolina: impact of the 'hunter orange' law. *Southern Medical Journal*, 89:395-396.

D'Angelo, G. J. , A. Glasser, M. Wendt, G. A. Williams, D. A. Osborn, G. R. Gallagher, R. J. Warren, K. V. Miller, and M. T. Pardue. 2008. Visual specialization of an herbivore prey species, the white-tailed deer. *Can. J. Zool.* 86: 735-743.

Eriksen, R. E., J. V. Gwynn, and K. H. Pollock. 1985. Influence of blaze orange on spring wild turkey hunter success. *Wildlife Society Bulletin*, 13:518-521.

Jacobs, G. H., J. F. Deegan II, J. Neitz, B. P. Murphy, K.V. Miller and R. L. Marchinton. 1994. Electrophysical measurements of spectral mechanisms in the retinas of two cervids: white-tailed deer (*Odocoileus virginianus*) and fallow deer (*Dama dama*). *J. Comp. Physiol. Anatomy*, 174: 551-557.

Jacobs, G. H., J. F. Deegan II, and J. Neitz. 1998. Photopigment basis for dichromatic color vision in cows, goats, and sheep. *Visual Neuroscience*, 15: 581-584

Jane, S. D., and J. K. Bowmaker. 1988. Tetrachromatic colour vision in the duck (*Anas platyrhynchos* L.) microspectrophotometry of visual pigments and oil droplets. *Journal of Comparative Physiology*. 161 A:225-235.

Jones, W. 2003. Hunter orange: proving the obvious. *Hunter & Shooting Sports Education Journal*. V3, No. 2.

Kelber, A., M. Vorobyev, and D. Osorio. 2003. Animal colour vision—behavioural tests and physiological concepts. *Biological Reviews*, 78:81–118

Loop, S, and L L Bruce. 1978. Cat color vision: the effect of stimulus size. *Science (New York, N.Y.)*, 199:1221-2

Miller, P.E. DVM, and C. J. Murphy, DVM . 1995. Vision in dogs. *Journal of American Veterinary Medicine Association* 207:1623-1634

Neitz, J., T. Geist, and J. H. Jacobs. 1989. Color vision in the dog. *Vision Neuroscience*, 3:119–25

North Carolina Wildlife Resources Commission. www.ncwildlife.org
http://www.ncwildlife.org/Wildlife_Species_Con/WSC_White_Tail_Deer_Harvest.htm Accessed 18 March 2010.

Parrish, J., R. Benjamin, and R. Smith. 1981. Near-ultraviolet light reception in the mallard. *Auk* 98:627-628,

Saunders, J. E., J. R. Jarvis, and C. M. Wathes. 2008. Calculating luminous flux and lighting levels for domesticated mammals and birds. *Animal*, 2:921-932.

Schneider H, and F. K. Beller. 1993. The spectral sensitivity of dark- and light-adapted cat retinal ganglion cells. *Journal of Neuroscience*. 13:1543–1550

Scott, M. D. 1981. Fluorescent orange discrimination by wapiti. *Wildlife Society Bulletin*, 9:256-260

VerCauteren, K. C. and M. J. Pipas. 2003. A review of color vision in white-tailed deer. *Wildlife Society Bulletin*, 31: 684-691

Washington Department of Fish and Wildlife. www.wdfw.wa.gov 1999 Game Status and Trend Report.
<http://wdfw.wa.gov/wlm/game/status/99trend.pdf> Accessed 19 March

Fiscal and Economic Impact: see attached

Statement of Cost of Compliance: see attached

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
2. Cost of compliance effect on small business (ORS 183.336):
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
 - c. Equipment, supplies, labor and increased administration required for compliance:

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

Administrative Rule Advisory Committee consulted?:

If not, why?: The Draft administrative rules were developed without a Rule Advisory Committee. These draft rules were presented at 22 public meetings held throughout the state in May 2010. Staff also consulted with the Oregon State Police and various Sport Group Leaders. Correspondence from interested and affected persons and testimony received at town hall meetings as well as the hearing are accepted into the record and considered as part of the rulemaking process.

Heather Thomas

Signature

Heather Thomas

Printed name

August 13, 2010

Date

Fiscal and Economic Impact Statement for the September 30, 2010 Hearing In the Matter of Rules Relating to Hunter Orange Requirements

Fiscal and economic impact: Rule changes are being proposed to require that some hunters wear hunter orange clothing as a requirement to hunt. There are two main sets of options: the first is only to apply the requirement to youth under 18, the second is to require all adults and youth to wear hunter orange. The rules would not apply to turkey hunting, because orange is visible to birds and would interfere with a successful hunt. The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The only state agencies that would be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP.) No significant changes to these agencies' operations or expenditures are expected as a result of this rule change.

B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public could be affected by the adoption of these rules. Members of the public who hunt will be required to purchase orange hats, vests, shirts, jackets, or other items of clothing. Businesses that sell clothing to hunters will see increased sales as a result of this rule change. The magnitude of costs to hunters or business activity is not known because it will depend on the types of clothing choices hunters make to comply with any rule changes.

There are approximately 275,000 hunters in Oregon each year that would be affected if rules apply to adults and youth under 18. Approximately 20,000 of these hunters are youth under 18.

Most businesses affected by these rules are believed to be "small business."

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.