

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
 A Statement of Need and Fiscal Impact accompanies this form

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| Attachment 2 |
| FILED |
| 4-14-16 9:38 AM |
| ARCHIVES DIVISION |
| SECRETARY OF STATE |

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|---|-------------------------------------|
| Department of Fish and Wildlife | 635 |
| Agency and Division | Administrative Rules Chapter Number |
| Michelle Tate | (503) 947-6044 |
| Rules Coordinator | Telephone |
| Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302 | |
| Address | |

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 |
|--------------|-----------|---|------------------|
| 6-9-16 | 1:00 p.m. | ODFW, 4034 Fairview Industrial Dr SE, Salem, OR 97302 | ODFW Commission |
| 6-10-16 | 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:

OAR Chapter 635, Division 044

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.

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.

NOTE: Commission hearing dates for June are June 9 and June 10, 2016. (On June 9th the meeting will begin at 1:00 p.m. On June 10, the meeting will begin at 8:00 a.m.) Exhibits for the Wildlife Division are expected to be completed on June 9, 2016. However, should additional time be needed, the Commission reserves the right to carry over Wildlife Division exhibits on June 10, 2016.

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.

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|--|------------------------|-----------------------------|
| 06-09-2016 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.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE

Department of Fish and Wildlife

635

Agency and Division

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 wildlife holding permit is to increase in price from the current \$17 per year to \$25 per year. A permit will be required for each species held (e.g., black bear, raccoon). 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, cougars, bobcats, and raccoons acquired by transfer or new holding application may only be held in facilities that are accredited by the Association of Zoos and Aquariums or approved by the Department. Currently 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. The facilities holding the animals that are grandfathered in do not have to meet the American Zoo Association, 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. 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 mean an increase of \$8 per permit and may result in greater numbers of permits sold than the current 46 permits issued in 2014. 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 if the proposed rules are adopted and then the number of permits should gradually decline and move toward zero since the grandfathered animals will 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 facility standards. Currently there are 3. Given the fee increase and likely rise in permits issued, the Department would most likely see an increase in revenues (less than \$1,000 in 2014), but that amount cannot be estimated with any precision and is 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 sheriff and police departments would have less need to respond to occasional animal escapes in communities involving large carnivores (e.g., bears, cougars, bobcats) that are currently held. Similarly, if raccoons are not held, there should be fewer complaints to local municipality law enforcement. 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-in black bears, cougars, bobcats, and raccoons, squirrels, and other legally held non-game species. This could represent new costs for legally holding wildlife for members of the public, 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 they hold few animals.

Also, under the proposed rules, a number of animal species acquired by transfer or new holding application may only be held in facilities that are accredited by the Association of Zoos and Aquariums (AZA) 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 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. Depending on the caging/enclosures currently at those facilities, meeting those standards may require additional investment in equipment and supplies for those facilities. The magnitude of additional costs, if any, faced by grandfathered facilities will vary by facility and cannot be determined precisely.

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 76 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 accredited by the Association of Zoos and Aquariums (AZA) or approved by the Department. The accreditation process would cost in excess of \$1,000. No significant changes in costs expected for facilities only holding grandfathered animals.

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 Association of Zoos and Aquariums 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.

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?:**

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| <u>06-09-2016 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 |