

To: Oregon Board of Forestry  
From: Justin Butteris, State Forests Policy Analyst  
Date: March 9, 2016  
Subject: Report on Rulemaking Hearings and Comments regarding proposed Recreation and Commercial use rules

---

---

**Hearing Date: December 17<sup>th</sup>, 2015**

**Location: Department of Forestry, Salem OR**

The rulemaking hearing commenced at 6:00 pm. Two attendees were present but did not provide public comment.

**Hearing Date: January 15<sup>th</sup>, 2016**

**Location: Department of Forestry, Astoria OR**

The rulemaking hearing commenced at 6:00 pm. Four attendees were present and three provided comments.

**Hearing Date: January 20<sup>th</sup>, 2016**

**Location: World Forestry Center, Portland OR**

The rulemaking hearing commenced at 6:00 pm. Five attendees were present and two provided comments.

---

#### **Summary of Oral Comments**

**Jennifer Bunch**, Oregon Equestrian Trails. Ms. Bunch testified in opposition to the proposed requirement for weed free forage. Ms. Bunch stated that, while equines have been blamed for the spread of noxious weeds, there is “little evidence that this fact is true and numerous studies have debunked this myth.” Ms. Bunch provided two documents<sup>1</sup> as examples of the research that support her position. Ms. Bunch also expressed concern over the insufficient supply of weed-free forage, which could result in reductions in use of the equestrian facilities on state forest lands.

**Dianne Berry**, Oregon Equestrian Trails, member of Astoria District Recreation Advisory Committee. Ms. Berry also testified in opposition to the requirement for weed-free forage. Ms. Berry pointed out that

---

<sup>1</sup> Gower, Stith T. April 2013. *Horse and Invasive Plants: The Western USA Study*. Endurance News. American Endurance Ride Conference.

Gower, Stith T. 2008. Are horses responsible for introducing non-native plants along forest trails in the eastern United States? *Forest Ecology and Management* v. 256 pp. 997-1003.

most, if not all, of the ODF horse camps are located near to fields where hay is grown, so weeds are found in the fields surrounding the forest lands. She also stated that clear-cuts often have weeds as well. She shared the opinion of Ms. Bunch that horses are not the issue and that use of the campgrounds will decrease.

**Don Hall**, Pacific Trail Rider Club, member of Astoria District Recreation Advisory Committee. Mr. Hall testified in support of the increase in fees, recognizing a need for funds to provide recreation resources. He expressed concern over the burden of collecting fees during the off-season.

**Sharon McLeod**, Vice President, American Association for Nude Recreation. Ms. McLeod stated that many Oregonians enjoy nature *au naturel* and these people are not a threat, but rather one of the recreating publics ODF serves. She feels the changes are unnecessary and inappropriate, and should be removed. Ms. McLeod stated that most Oregonians do not find simple nudity to be a problem, and that our definition mixes obscenity and nudity and treats women and men differently.

**Mike Parker**, American Association for Nude Recreation. Mr. Parker objected to the definition, stating it is not needed and would make breast-feeding mothers subject to the rule. He also stated that simple nudity is not prohibited in Oregon, based on the Oregon Constitution, Article 1. Mr. Parker stated the existing prohibition on obscenity in statute and rule is sufficient to handle inappropriate behavior.

### **Summary of Written Comments**

Written comments have been submitted on a variety of topics related to the Division 25 rulemaking, including: weed-free forage, nudity, firearms, pack animals, road closures, the proposed leash requirement for dogs, target shooting, and access for ODFW to deal with problem animals. Comments are summarized by topic below. The final rules proposed reflect the staff recommendations based on public comment, as well as, other minor house-keeping changes (e.g. spelling, clarity, correcting errors in syntax).

*Table 1. Numbers of written comments addressing topics found in Division 25.*

<b>Topic</b>	<b>Comments in Support</b>	<b>Comments in Opposition</b>
Prohibition on nudity	0	175
Allowing loaded firearms in DRA	0	5
Weed-free forage	3	2
Ability of Forester to close roads	0	1
Restrictions on pack animals	0	2
Target shooting – debris clean-up	0	1
Animals on leashes	0	1
Waste disposal requirement	0	1
Event fees	0	2

### **Weed-Free forage**

Opponents to the proposed requirement are concerned about a lack of supply of certified weed-free forage. There is concern this will lead to decreased use of state forest resources and that the requirement is unnecessary.

Proponents spoke of the pervasiveness of weeds that are spread through contaminated forage, and the challenges in implementing and enforcing the requirement on federal lands. A recent report from the Department of Agriculture was cited, and discussed the impacts of noxious weeds. This report indicated that 25 of the 121 noxious weeds in Oregon cause nearly \$83.5 million in personal income losses to Oregonians annually. Many of the noxious weeds are also harmful to people, pets, and livestock.

Staff Recommendation: *Staff recommends the requirement to use weed-free forage is adopted in final rule (629-025-0040(12)).* Extensive resources are expended on weed eradication from State and private forest lands each year. Preventing the establishment of noxious weeds to the maximum extent will decrease management costs in the future. Establishing a requirement for weed-free forage should result in an increase in the supply of weed-free forage as well. Staff will use the 2016 recreation season to conduct education and outreach, and will not cite visitors found to not comply with the new rule. Citations will be used as appropriate starting in 2017.

### **Nudity**

Opponents to the proposed restriction on nudity in designated recreation areas are concerned that the definition being used is sexist and confuses nudity and obscenity, and would lead to unintended consequences such as making it illegal to breast-feed. Most commenters felt strongly that bad behavior associated with nudity is addressed and simple nudity is not objectionable by most Oregonians.

There were no comments in support of the proposed prohibition.

Staff Recommendation: *Staff recommends the prohibition and definition are not adopted in final rule (629-025-0050(9); 629-025-0005(17)).* Staff feel that existing rules and laws, educational outreach, and voluntary measures can be used to curtail the negative behavior that was targeted by this change. This change was proposed, in part, to help to ensure the safety of visitors engaging in nudity; however, staff is fine with this continuing to be done at the visitors own risk as many of the comments submitted indicate there is no threat or risk to safety.

### **Firearms**

Opponents to the proposed removal of the restriction on firearms in designated recreation areas were concerned about the appropriateness of loaded firearms in those areas from a safety standpoint.

There were no comments in support of the removal.

Staff Recommendation: *Staff recommends the proposed removal of the restriction is adopted in final rule (629-025-0050(5)(c)). This is a house-keeping measure aimed at aligning OAR with statute.*

### **Pack Animals**

Comments were received from the Pack Llama Trail Association expressing concern over equity of treatment of llama and alpacas compared to other stock animals in having access to facilities on state forests, the costs associated with event permitting, the lack of designated recreation area maps, and the ability for a pack llama enthusiast to lead a llama off-trail. Another commenter expressed concern that llamas would not be allowed in equine campgrounds and that equine users would oppose allowing llama users to share facilities.

Staff Recommendation: *Adopt into final rule, the proposed rules addressing stock animals, including llamas (629-025-0060(2)(b)(B) and (D)). ODF has several campgrounds designed and designated for large animals and these campgrounds (typically referred to as *equestrian sites or campgrounds*) are open for visitors with horses, mules, llamas, and alpacas. Other campgrounds are evaluated for their capability in accommodating large animals on a case-by-case basis. If a site can accommodate llamas, they will be posted as such.*

### **Leash Requirement**

The Oregon Hunters Association expressed concern over the requirement for leashes being added to the *general rules* section rather than being required only in designated recreation areas, campgrounds and day-use areas.

Staff Recommendation: *Staff recommends adoption of a modified rule in final rule, which requires dogs be kept on a leash in campgrounds, day-use areas, and designated recreation areas, as well as, at the request of staff in other areas (629-025-0040(4)(b), 629-025-0050(8)(a)). This will allow the public to exercise their dogs off-leash in the forest and allow equestrians to have dogs following but not on-leash on trails.*

### **Road Closures**

Comments were received from Baker County expressing concern over ODF closing roads without consulting with the County.

Staff Recommendation: *Retain the rule allowing the Forester to close roads as needed (629-025-0070(4)). Roads may need to be closed for safety purposes, to maintain the integrity of the road, and to maintain environmental quality. Roads are typically closed only short-term on an as-needed basis or seasonally.*

### **Target Shooting**

Comments on the topic of target shooting included a suggestion that bullet traps be allowed for target shooting in addition to the use of an earthen backstop when target shooting, and concern that a person engaging in target shooting would have to collect spent bullets in addition to the spent casings.

Staff Recommendation: *Adopt the modified rule allowing for commercially manufactured bullet traps be allowed as an acceptable backstop for target shooting (629-025-0040(9)(f)).* These devices will allow for the prevention of wildfires and ensuring public safety, and have the added benefit of reducing lead exposure.

*Staff recommends the Board retain the requirement that target shooters clean-up after themselves (629-025-0040(9)(d)).* There is no expectation that hunters or target shooters attempt to recover bullets or shot in the normal course of lawful hunting or target-shooting activities; however, some target shooters have been asked to recover bullets shot into live trees (shooting live trees is prohibited by 629-025-0040(9)(a)). The casings and targets from shooting represent a very substantial issue and it is important to continue to have shooters be responsible for clean-up.

#### **Oregon Department of Fish and Wildlife Access**

Staff from ODFW expressed concern that they would not be able to address problem wildlife in designated recreation areas since there is currently in rule a prohibition on hunting, trapping, pursuing, or disturbing any bird or animal.

Staff Recommendation: *Adopt the modified rule that allows those activities with permission from the Forester (629-025-0050(5)(a)).* This will allow ODFW to address problem animals but continue to restrict hunting activities in campgrounds.

#### **Waste Disposal**

A comment on this topic expressed concern that requiring feces disposal in the OAR would be difficult to enforce and potentially create a privacy issue. The author suggested a better way to deal with the issue would be to better educate users in multiple languages and use more monitoring at peak times for recreation sites.

Staff Recommendation: *Staff recommends the adoption of the proposed rules addressing waste disposal as proposed in November 2015 (629-025-0040(1)(c)).* Field staff use citations as a final step in addressing problems on state forest lands, instead using education and outreach efforts first. The waste disposal issue is extensive and pervasive and represents a public health issue and environmental issue and warrants a stronger approach in addressing it.

#### **Event Fees**

Comments were received regarding the application fees and the enforcement and monitoring fees. Concern was expressed regarding the ability of a participants to pay these fees. Many of the

organizations arranging and sponsoring these events are non-profits and provide in-kind trail work as an off-set rather than paying fees.

Staff Recommendation: *Adopt the modified rule that allows the Forester discretion in waiving fees for sponsored events (629-025-0020(10)(a)) and the proposed rule for monitoring and enforcement fees for large commercial events (629-025-0021(10)(b)).* A policy has been drafted and will be adopted to establish the standards that apply in when to require an application fee, and monitoring and enforcement fees.