

Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

DIVISION 1

PROCEDURAL RULES

629-001-0000	Administrative Rule Notification
629-001-0005	Model Rules of Procedure
629-001-0010	Agency Representation by Officer or Employee

DIVISION 10

ADMINISTRATION

**Conduct of Board Meetings and
Compensation of Board
Members**

629-010-0005	Definitions
629-010-0010	Rules of Order
629-010-0020	Chairperson
629-010-0030	Agendas
629-010-0040	Order of Business
629-010-0050	Quorum
629-010-0060	Meetings and Notice
629-010-0080	Committees
629-010-0090	Attendance
629-010-0100	Compensation of Board Members
629-010-0200	Charges for Copying and Purchasing Public Records

Parking at Department-Owned Facilities

629-010-0210	Purpose of Rule
629-010-0220	Definition
629-010-0230	Procedures

DIVISION 20

**STATE AGENCY COORDINATION
PROGRAM**

629-020-0000	Purpose
629-020-0010	Applicability
629-020-0020	Compliance with the Statewide Planning Goals and Compatibility With Acknowledged Comprehensive Plans and Land Use Regulations
629-020-0030	Compliance with the Statewide Planning Goals
629-020-0040	Compliance with Acknowledged Comprehensive Plans and Land Use Regulations
629-020-0050	Dispute Resolution
629-020-0060	Compliance and Compatibility of New or Amended Land Use Programs
629-020-0070	Coordination with Affected State and Federal Agencies and Special Districts
629-020-0080	Cooperation and Technical Assistance to Local Governments

FOREST LAND MANAGEMENT

DIVISION 22

Forest Resource Trust

629-022-0030	Purpose
629-022-0040	Definitions

Securing Forest Resource Trust Funds

629-022-0100	Trust Responsibilities and Financing
629-022-0110	Eligible Landowners and Land
629-022-0120	Applying for Trust Funds
629-022-0130	Project Plan
629-022-0140	Approval of a Proposed Project
629-022-0150	The Trust Contract
629-022-0160	Trust Security Instrument

Establishing a Forest Stand

629-022-0200	Implementing the Project Plan; Payments
629-022-0210	Landowner Obligations
629-022-0220	Project Rates and Costs
629-022-0230	Resource Management Professional Fees
629-022-0250	Life of the Contract
629-022-0300	Repaying Trust Funds
629-022-0310	Buyout Option
629-022-0320	Interest Rate
629-022-0330	Growout Option
629-022-0340	Growout Option: Payback Percentage Rate Calculations
629-022-0350	Growout Option: Landowner Payment Calculations
629-022-0360	Growout Option: Expected Volume
629-022-0370	Adjusting the Expected Volume
629-022-0380	Catastrophe; Salvage Adjustments to the Expected Volume
629-022-0390	Adequately Stocked Forest Stand

Forest Resource Trust Administration

629-022-0400	Landowner Breach of Contract
629-022-0410	Remedies for Breach of Contract
629-022-0500	Project Criteria
629-022-0600	Donations to the Trust Fund
629-022-0700	Carbon Offsets

DIVISION 23

FOREST TAXATION

Western Oregon Small Tract Optional Tax

629-023-0110	Management Standards
629-023-0120	Owner
629-023-0130	Waiver of Relationship Limitation
629-023-0140	Ownership Plat Requirement
629-023-0145	Adequate Legal Description
629-023-0150	Processing of Applications
629-023-0160	Determination of Land Eligibility
629-023-0165	Oversize Timber
629-023-0170	Minimum Area for Site Class Determination
629-023-0180	Calculation of True Cash Values

Western Oregon Forest Land Tax

629-023-0310	Management Standards
629-023-0320	Reporting Underproductive or Unmanaged Forest Land

**Tax Credit 30% Underproductive Forestland
Conversion Tax
Credit**

Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

629-023-0410	Purpose of the Rules
629-023-0420	Definitions
629-023-0430	Eligible Costs
629-023-0440	Standards and Specifications
629-023-0450	Preliminary Certificate Issuance
629-023-0460	Final Certificate Issuance
629-023-0490	Appeal Rights

DIVISION 25

**FOREST PARK AND RECREATION
AREAS**

629-025-0000	Purpose of the Rules
629-025-0005	Definitions
629-025-0011	Permits - General Regulations
629-025-0020	Permits - Organized Events
629-025-0030	Fees
629-025-0040	General Forest Recreation Rules
629-025-0050	Designated Recreation Areas
629-025-0060	Campground & Day Use Areas
629-025-0070	Motorized Off-Road Vehicle Use

DIVISION 28

PERSONAL USE FUELWOOD PERMITS

629-028-0005	Definitions
629-028-0010	Purpose
629-028-0015	Permit Fee
629-028-0020	Criteria for Fee Charge
629-028-0025	Requirements of Permittees

DIVISION 31

LOG EXPORT RULES

629-031-0005	Definitions
629-031-0010	Criteria for Eligibility to Bid on State Timber Sale Contracts
629-031-0015	Prohibition Against Indirect Substitution
629-031-0020	Applicable State Timber
629-031-0025	Surplus Timber
629-031-0030	Reporting Requirements
629-031-0035	Purchaser Disqualification and Termination of Contracts
629-031-0040	Log Branding and Marking Requirements
629-031-0045	Enforcement

DIVISION 32

**PROCEDURES GOVERNING DEFAULTS
ON BOARD OF
FORESTRY TIMBER SALE CONTRACTS**

629-032-0000	Purpose
629-032-0005	Definitions
629-032-0010	Default — Future Bidding
629-032-0030	Notice of Default to Purchaser
629-032-0040	Request to Bid by Purchaser
629-032-0050	Contested Case Hearing
629-032-0060	Settlement of Default
629-032-0070	Provisions

DIVISION 34

**LOG SCALING AGREEMENTS AND
SCALING FACILITY
REQUIREMENTS**

629-034-0005	Definitions
629-034-0010	Purpose
629-034-0015	Third Party Scaling Agreement and Scaling Facility Requirements

PROTECTION

DIVISION 41

ADMINISTRATION

629-041-0005	Definitions
629-041-0010	Actual Cost Formulas
629-041-0015	Actual Cost
629-041-0020	Cost Limitations
629-041-0030	Files and Records

DIVISION 42

FIRE CONTROL

629-042-0005	Fire Plan
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DIVISION 43

FIRE PREVENTION

629-043-0005	Snag Falling
629-043-0010	Additional Equipment for Logging Operation
629-043-0015	Spark Arresters
629-043-0020	Water Supply and Equipment for Stationary Engines
629-043-0025	Fire Tools and Fire Extinguishers
629-043-0026	Fire Prevention; Cable Logging Operations
629-043-0030	Watchman Service
629-043-0036	Portable Power Saws
629-043-0040	Burning Permits
629-043-0041	Burning Permits within Restricted Areas
629-043-0043	Smoke Management Plan
629-043-0045	Slash Burning Plans
629-043-0050	Slash Hazard Release
629-043-0055	Inflammable Debris
629-043-0060	Humidity; High Wind; Weather Instruments
629-043-0065	Payment for Slashing
629-043-0070	Operation; Closedown
629-043-0075	Notification of Operation on Forest Land
629-043-0080	Additional Fire Hazard

DIVISION 44

**CRITERIA FOR DETERMINATION OF WILDFIRE
HAZARD ZONES**

629-044-0200	Definitions
629-044-0210	Purpose
629-044-0220	Wildfire Hazard Zones
629-044-0230	Fire Weather Hazard Factor
629-044-0240	Topography Hazard Factor
629-044-0250	Natural Vegetative Fuel Hazard Factor
629-044-0260	Natural Vegetative Fuel Distribution Hazard Factor

DIVISION 45

LAND CLASSIFICATION

629-045-0005	Class 1 or 2 Lands
629-045-0010	Class 3 Lands
629-045-0015	Right of Way

DIVISION 46

LOG BRANDS

629-046-0005	Definitions	
629-046-0010	Special	Definition
629-046-0015	Forest	Products;
629-046-0020	Forest Products; Branding	
629-046-0025	Forest Products; Shingle	
629-046-0030	Branding; Conspicuous	

DIVISION 47

ENFORCEMENT POLICY

629-047-0010	Definitions	
629-047-0020	General Policy	
629-047-0030	Purpose	
629-047-0040	Basic Enforcement Action	
629-047-0050	Fire Prevention Citation	
629-047-0060	Fire	Prevention
629-047-0070	Records	
629-047-0080	Enforcement Policy for	
629-047-0090	Enforcement Policy for	
629-047-0100	Enforcement Policy for	
629-047-0110	Enforcement Policy for	
629-047-0120	Enforcement Policy for	
629-047-0130	Enforcement Policy for	
629-047-0140	Enforcement Policy for	
629-047-0150	Enforcement Policy for	
629-047-0160	Enforcement Policy for	
629-047-0170	Enforcement Policy for	
629-047-0180	Enforcement Policy for	
629-047-0190	Enforcement Policy for	

629-047-0200	Enforcement Policy for	
629-047-0210	Enforcement Policy for	
629-047-0220	Enforcement Policy for	
629-047-0230	Enforcement Policy for	
629-047-0240	Enforcement Policy for	
629-047-0250	Enforcement Policy for	
629-047-0260	Enforcement Policy for	
629-047-0270	Enforcement Policy for	
629-047-0280	Enforcement Policy for	

DIVISION 51

**FOREST INSECT AND DISEASE
MANAGEMENT**

629-051-0210	Management and Control	
629-051-0220	Costs of Control	
629-051-0230	Introduced Pests	

EMERGENCY FIRE COST COMMITTEE

DIVISION 60

PROCEDURAL RULES

629-060-0000	Administrative	Rule
629-060-0005	Model Rules of Procedure	

DIVISION 61

OREGON FOREST LAND

PROTECTION FUND

629-061-0000	Definitions	
629-061-0005	Deductible Amount Per	
629-061-0015	Evidence of Necessity	
629-061-0020	Qualifications	For
629-061-0025	Claim Forms	
629-061-0035	Payments	
629-061-0040	Percentage Payment	
629-061-0045	Payments Conditional	
629-061-0050	Proceedings	Recovery
629-061-0060	Collection	Approval
629-061-0065	Reimbursement	to
629-061-0075	Transfer of Funds From	

DIVISION 65

STATE FORESTER'S RULES

Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

Establishing an Election Process For The Oregon Forest Resources Institute		629-0615-0250	Protection of Soil Productivity During Mechanical Site Preparation
		629-0615-0300	Prescribed Burning
629-065-0005	Definitions	DIVISION 620	
629-065-0100	Voter Classification	CHEMICAL AND OTHER PETROLEUM PRODUCT RULES	
629-065-0200	Voter Registration	629-0620-0000	Purpose
629-065-0400	Nomination Requirements for OFRI Board Member	629-0620-0100	Preventing, Controlling, and Reporting Leaks and Spills of Chemicals and Other Petroleum Products
629-065-0500	Elections Generally	629-0620-0200	Protection of Water Quality During Mixing of Chemicals
DIVISION 600		629-0620-0300	Locations of Mixing, Transfer, and Staging Areas for Chemicals and Other Petroleum Products
DEFINITIONS		629-0620-0400	Protection of the Waters of the State and Other Resources When Applying Chemicals
629-0600-0100	Definitions	629-0620-0500	Disposal of Chemical Containers
DIVISION 605		629-0620-0600	Daily Records of Chemical Applications
PLANNING FOREST OPERATIONS		629-0620-0700	Chemical and Other Petroleum Product Rules: Effectiveness Monitoring and Evaluation
629-0605-0100	Compliance	629-0620-0800	Notification of Community Water System Managers When Applying Chemicals
629-0605-0110	Annual Review	DIVISION 625	
629-0605-0120	Consultation	FOREST ROADS	
629-0605-0130	Compliance with the Rules and Regulations of the Department of Environmental Quality	Road Construction and Maintenance	
629-0605-0140	Notifications to the State Forester -Types of Operations	629-0625-0000	Purpose
629-0605-0150	Notifications to the State Forester -When, Where and How	629-0625-0100	Prior Approval
629-0605-0160	Forest Practices Regions	629-0625-0200	Road Location
629-0605-0170	Written Plans	629-0625-0300	Road Design
629-0605-0180	Interim Process for Protecting Sensitive Resource Sites Requiring Written Plans	629-0625-0310	Road Prism
629-0605-0190	Prior Approval for Operations Near Critical, Threatened, or Endangered Wildlife Habitat Sites	629-0625-0320	Stream Crossing Structures
629-0605-0200	Compliance with Statutory Requirements	629-0625-0330	Drainage
629-0605-0210	Harvest Type 3 Units within Single Ownerships	629-0625-0340	Waste Disposal Areas
629-0605-0220	Judicial Determinations of Rule Validity	629-0625-0400	Road Construction
629-0605-0400	Forest Activity Safety	629-0625-0410	Disposal of Waste Materials
629-0605-0500	Modification of Requirements for Forest Health and Public Safety	629-0625-0420	Drainage
DIVISION 610		629-0625-0430	Stream Protection
FOREST PRACTICES REFORESTATION RULES		629-0625-0440	Stabilization
629-0610-0000	Purpose	629-0625-0500	Rock Pits and Quarries
629-0610-0010	Forestlands Suitable for Reforestation	629-0625-0600	Road Maintenance
629-0610-0020	Reforestation Stocking Standards	629-0625-0650	Vacating Forest Roads
629-0610-0030	Written Plans for Natural Reforestation Methods	DIVISION 630	
629-0610-0040	Time Allowed for Reforestation	HARVESTING	
629-0610-0050	Acceptable Species for Reforestation and Residual Stand Stocking	629-0630-0000	Purpose
629-0610-0060	Written Plans for the Use of Non-native Tree Species	629-0630-0100	Skidding and Yarding Practices
629-0610-0070	Suspension of Reforestation Rules	629-0630-0200	Landings
629-0610-0080	Revegetation When Reforestation is Not Required	629-0630-0300	Drainage Systems
629-0610-0090	Exemption from Reforestation for Land Uses not Compatible with Forest Tree Cover	629-0630-0400	Treatment of Waste Materials
DIVISION 615		629-0630-0500	Harvesting on High Risk Sites in Western Oregon
TREATMENT OF SLASH		629-0630-0600	Felling; Removal of Slash
629-0615-0000	Purpose	629-0630-0700	Yarding; Cable Equipment Near Waters of the State
629-0615-0100	Maintenance of Productivity and Related Values	629-0630-0800	Yarding; Ground - based Equipment Near Waters of the State
629-0615-0200	Mechanical Site Preparation Near Waters of the State	DIVISION 635	
		WATER PROTECTION RULES: PURPOSE, GOALS, CLASSIFICATION AND RIPARIAN MANAGEMENT AREAS	

Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

629-0635-0000	Purpose, Goals, Classification and Riparian Management Goals
629-0635-0100	Purpose and Goals
629-0635-0110	Applicability and Monitoring
629-0635-0120	Watershed Specific Practices for Water Quality Limited Watersheds and Threatened or Endangered Aquatic Species
629-0635-0130	Written Plans for Streams, Lakes, Wetlands and Riparian Management Areas
629-0635-0200	Water Classification
629-0635-0210	Designation of Waters; Notice to Landowners; Reconsideration
629-0635-0220	Geographic Regions
629-0635-0300	Riparian Management Areas and Water Quality Protection Measures
629-0635-0310	Riparian Management Area Widths for Streams

DIVISION 640

WATER PROTECTION RULES: VEGETATION RETENTION ALONG STREAMS

629-0640-0000	Vegetation Retention Goals for Streams; Desired Future Conditions
629-0640-0100	General Vegetation Retention Prescription for Type F Streams
629-0640-0110	Live Tree Retention Credit for Improvement of Type F Streams
629-0640-0200	General Vegetation Retention Prescription for Type D and Type N Streams
629-0640-0300	Alternative Vegetation Retention Prescriptions
629-0640-0400	Site Specific Vegetation Retention Prescriptions for Streams and Riparian Management Areas
629-0640-0500	Reforestation Within Stream Riparian Management Areas

DIVISION 645

WATER PROTECTION RULES: RIPARIAN MANAGEMENT AREAS AND PROTECTION MEASURES FOR SIGNIFICANT WETLANDS

629-0645-0000	Riparian Management Areas and Protection Measures for Significant Wetlands
629-0645-0010	Live Tree Retention for Significant Wetlands
629-0645-0020	Site Specific Vegetation Retention Prescriptions for Significant Wetlands
629-0645-0030	Soil and Hydrologic Function Protection for Significant Wetlands
629-0645-0040	Understory Vegetation Retention for Significant Wetlands
629-0645-0050	Snag and Downed Wood Retention for Significant Wetlands

DIVISION 650

WATER PROTECTION RULES: RIPARIAN MANAGEMENT AREAS AND PROTECTION MEASURES FOR LAKES

629-0650-0000	Riparian Management Areas and Protection Measures for Lakes
629-0650-0010	Live Tree Retention for Lakes
629-0650-0020	Soil and Hydrologic Function Protection for Lakes
629-0650-0030	Understory Vegetation Retention for Lakes
629-0650-0040	Snag Retention and Downed Wood Retention for Lakes

DIVISION 655

WATER PROTECTION RULES: PROTECTION MEASURES FOR "OTHER WETLANDS", SEEPS AND SPRINGS

629-0655-0000	Protection Measures for "Other Wetlands," Seeps and Springs
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DIVISION 660

WATER PROTECTION RULES: SPECIFIC RULES FOR OPERATIONS NEAR WATERS OF THE STATE

629-0660-0040	Stream Channel Changes
629-0660-0050	Beaver Dams or Other Natural Obstructions
629-0660-0060	Headwater Amphibian Species

DIVISION 665

SPECIFIED RESOURCE SITE PROTECTION RULES

629-0665-0000	Purpose
629-0665-0010	Protection Goal for a Resource Site
629-0665-0020	Application of Protection and Exception Rules; State Forester Duties; Landowner, Timber Owner and Operator Duties
629-0665-0100	Species Using Sensitive Bird Nesting, Roosting and Watering Sites
629-0665-0110	Osprey Resource Sites; Key Components; Protection Requirements; and Exceptions
629-0665-0120	Great Blue Heron Resource Sites; Key Components; Protection Requirements; and Exceptions
629-0665-0200	Resource Sites Used By Threatened and Endangered Species
629-0665-0210	Interim Requirements for Northern Spotted Owl Nesting Sites
629-0665-0220	Bald Eagle Nesting Sites; Key Components; Protection Requirements; and Exceptions
629-0665-0230	Bald Eagle Roosting Sites; Key Components; Protection Requirements; and Exceptions
629-0665-0240	Bald Eagle Foraging Perches; Key Components; Protection Requirements; and Exceptions

DIVISION 670

FOREST PRACTICES ADMINISTRATION

Civil Penalties

629-0670-0000	Applicability
629-0670-0010	Definitions
629-0670-0100	Inspections, Compliance Determination
629-0670-0110	Enforcement Action, Criminal Prosecution
629-0670-0200	Assessment of Civil Penalties; Notice of Penalty
629-0670-0210	Amount of Civil Penalties
629-0670-0220	Amount of Penalties; Special Circumstances
629-0670-0300	Civil Penalties Contested Case Hearings Procedures
629-0670-0310	Requesting Hearings
629-0670-0320	Conduct of Hearings
629-0670-0330	Orders
629-0670-0340	Delegation of Authority to State Forester; Mitigation of Penalties

DIVISION 672

FOREST PRACTICES ADMINISTRATION

629-0672-0100	Orders of the State Forester
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Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

- 629-0672-0200** Hearings for Operators, Land-owners or Timber Owners
629-0672-0210 Hearings for Persons Adversely Affected by an Operation for Which a Written Plan is Required Under ORS 527.670(3)
629-0672-0220 Hearings Generally; Final Orders
629-0672-0300 Stay of Operation
629-0672-0310 Actual Damages Resulting from a Stay; Attorney's Fees

DIVISION 674

FOREST PRACTICES ADMINISTRATION

Access to Notifications and Written Plans

- 629-0674-0100** Procedures for Requesting Copies of Notifications and Written Plans; Fees
629-0674-0110 Exemption from Sending Written Plans to Department of Revenue or County Assessors

DIVISION 676

FOREST PRACTICES ADMINISTRATION

Regional Forest Practice Committees

- 629-0676-0100** Regional Forest Practice Committee Responsibilities
629-0676-0200 Member Qualifications, Appointments, Organization
629-0676-0300 Conduct of Meetings

DIVISION 680

**RESOURCE SITE INVENTORY AND PROTECTION
PROCESS RULES**

- 629-0680-0000** Purpose
629-0680-0010 Definitions
629-0680-0020 Resource Site Defined for the Purpose of a Hearing
629-0680-0030 Reporting
629-0680-0100 Process for Board Evaluation of Threatened and Endangered Fish and Wildlife Species that use Resource Sites that are Sensitive to Forest Practices
629-0680-0200 Process for Board Listing and Delisting Species that use Sensitive Bird Nesting, Roosting and Watering Sites
629-0680-0210 Criteria To Identify Sensitive Bird Nesting, Roosting and Watering Sites
629-0680-0220 Process for Determining Forest Practices Conflicts and Consequences; Protection Requirements for the Resource Site
629-0680-0300 Purpose
629-0680-0310 Significant Wetland Types
629-0680-0400 Definition
629-0680-0410 Protection Goal for Biological Sites
629-0680-0420 Process To Inventory a Biological Site
629-0680-0430 Biological Sites Criteria

DIVISION 1

PROCEDURAL RULES

629-001-0000

Administrative Rule Notification

Prior to the adoption, amendment, or repeal of any rule, the State Forester shall give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.

(2) By mailing a copy of the notice to persons on the Forester's mailing list established pursuant to ORS 183.355(6), at least 30 days prior to the effective date.

(3) By mailing a copy of the notice to the following persons, organizations, and publications at least 30 days prior to the effective date:

- (a) State Agencies:
(A) Agriculture, Oregon Department of;
(B) Environmental Quality, Oregon Department of;
(C) Fire Marshal Division, Oregon Department of Commerce;
(D) Fish and Wildlife, Oregon Department of;
(E) Geology and Mineral Industries, Oregon Department of;
(F) Governor's Office, Assistant for Natural Resources;
(G) Health Division, Oregon Department of Human Resources;
(H) Land Conservation and Development, Oregon Department of;

- (I) Lands, Division of State;
(J) Parks and Recreation Department;
(K) Revenue, Oregon Department of;
(L) Water Resources, Oregon Department of.

- (b) News Media:
(A) Associated Press, Salem;
(B) United Press International, Salem;
(C) Albany — Democrat-Herald;
(D) Astoria — Daily Astorian;
(E) Bend — The Bulletin;
(F) Coos Bay — The World;
(G) Corvallis — Gazette-Times;
(H) Eugene — Register-Guard;
(I) Forest Grove — The News-Times;
(J) John Day — Blue Mountain Eagle;
(K) Klamath Falls — Herald and News;
(L) La Grande — Observer;
(M) Medford — Mail Tribune;
(N) Newport — News-Times;
(O) Pendleton — East Oregonian;
(P) Portland — The Oregonian;
(Q) Prineville — Central Oregonian;
(R) Roseburg — News-Review;
(S) Salem — Statesman-Journal;
(T) The Dalles — Chronicle;
(U) Tillamook — Headlight-Herald;
(V) Oregon Administrative Law News, Tigard.

- (c) Each Regional Forest Practices Committee member.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Stats. Implemented: ORS 183.550, 192.610-192.710 & 526.016

Hist.: FB 45, f. & ef. 3-26-76; FB 10-1986, f. & ef. 9-25-86; FB 3-1992, f. & cert. ef. 3-10-92

629-001-0005

Model Rules of Procedure

The Model Rules of Procedure under the Administrative Procedure Act, promulgated by the Attorney General effective September 9, 1995 are hereby adopted as the rules of procedure of the Board of Forestry and the State Forester.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Forestry.]

Stat. Auth.: ORS 183.341; 526.014 & 526.041

Stats. Implemented: ORS 183.341

Hist.: FB 27, f. 11-12-71, ef. 12-1-71; FB 34, f. 10-19-73, ef. 11-11-73; FB 46, f. & ef. 4-19-76; FB 4-1978, f. & ef. 3-13-78; FB 1-1980, f. & ef. 1-9-80; FB 8-1980, f. & ef. 3-20-80; FB 1-1982(Temp), f. & ef. 2-8-82; FB 2-1982, f. & ef. 3-3-82; FB 1-1984, f. & ef. 1-6-84; FB 5-1986, f. & ef. 6-17-86; FB 6-1988, f. & cert. ef. 9-9-88; FB 3-1992, f. & cert. ef. 3-10-92; FB 1-1994, f. & cert. ef. 3-11-94; FB 1-1996, f. & cert. ef. 3-13-96

629-001-0010

Agency Representation by Officer or Employee

- (1) Department of Forestry officer or employee is authorized

to appear (but not make legal argument) on behalf of the department in a hearing or in a class of contested hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General has given consent is maintained by the Department of Forestry and the Department of Justice.

(2) "Legal argument" as used in ORS 183.450(8) and this rule shall include arguments on:

(a) The jurisdiction of the agency to hear the contested case;
(b) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(c) The application of court precedent to the facts of the particular contested case proceeding.

(3) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(a) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(b) Comparison of prior actions of the agency in handling similar situations;

(c) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(d) The admissibility of evidence or the correctness of procedures being followed.

(4) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS Ch. 183 & 526

Stats. Implemented: OPS Ch. 183 & 526

Hist.: FB 1-1990, f. & cert. ef. 3-15-90

DIVISION 10

ADMINISTRATION

Conduct of Board Meetings and Compensation of Board Members

629-010-0005

Definitions

The following words and phrases, when used in this division shall mean the following unless the context otherwise requires:

(1) "Board" means the Board of Forestry of the State of Oregon.

(2) "Chairperson or Chairman" means the Chairperson of the Board.

(3) "Committee" means a committee of the Board.

(4) "Secretary" means the State Forester.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0010

Rules of Order

Roberts Rules of Order are adopted for the conduct of meetings of the Board and committees of the Board; however, Oregon statutes, specific rules of order adopted by the Board, or actions of the Board will take precedence over Roberts Rules of Order. Rules of order adopted by a committee shall not be effective until approved by the Board.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0020

Chairperson

Under the provisions of ORS 526.009(1), the Chairperson has the following powers and duties:

(1) The duties of a presiding officer as prescribed by Roberts Rules of Order.

(2) The duty to appoint standing and ad hoc committees.

(3) Pursuant to ORS 526.016(3), in cooperation with the State Forester, the duty to determine where Board meetings are to be held.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0030

Agendas

The Secretary shall send an agenda together with the minutes of previously held committee meetings and the minutes of the last Board meeting to all members of the Board prior to each Board meeting.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0040

Order of Business

The order of business of Board meetings shall be determined by the Chairperson in cooperation with the State Forester. At the request of any two Board members, the Chairperson shall include a specific item on the agenda.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0050

Quorum

A majority of the members of the Board or a committee constitutes a quorum to do business.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0060

Meetings and Notice

The Secretary shall follow the procedures established by the Attorney General for giving notices of Board and committee meetings. Unless a meeting is called exclusively for the purpose of holding an executive session pursuant to ORS 192.660, copies of the meeting notices shall be sent to organizations and individuals that the Board may designate. In addition, a copy of the notice shall be sent to any organization or individual that has indicated to the Chairperson or to the Secretary an interest in the subject matter to be considered at a meeting.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0080

Committees

The Chairperson may appoint standing committees or ad hoc committees to consider matters of Board responsibility which are not feasible to be handled by the Board as a whole.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0090

Attendance

In accordance with ORS 182.020, the Secretary shall submit a copy of the minutes of each Board meeting to the Governor or the Governor's Assistant including members present and absent with an attachment indicating the members' reason for absence.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) &

526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0100

Compensation of Board Members

If a Board member should elect to decline payment for compensation as set forth by ORS 292.495, the Board member shall submit a signed statement to that effect on forms available from the Administrative Secretary of the Forestry Department. After declining payment, a member may at any subsequent date choose to accept payment by submitting a written statement indicating this change.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 38, f. 6-10-74, ef. 7-11-74; FB 3-1992, f. & cert. ef. 3-10-92

629-010-0200

Charges for Copying and Purchasing Public Records

Pursuant to ORS 192.430 and 192.440, the Department of Forestry establishes the following fees and section:

(1) Copy Charges:

(a) Fees will not be charged for copies of public records, which the State Forester has determined to be appropriate for dissemination without charge, under Department statutes and policies. Fees for other copies will be charged as provided in this rule;

(b) A fee of 25¢ an image will be charged for copies made on standard office copy machines. This fee may be waived if fees total less than \$2;

(c) The charge for certifying copies of public records shall be \$5 for the first ten pages and 25¢ for each additional page. This is in addition to other fees charged;

(d) Office service labor will be charged for any service requiring excessive time beyond what is usually offered by the Department as free public service for research, compilation, and supervision of public records use. This shall be at the hourly rate of the employee or employees selected to do the job, plus the current percentage for other personnel expenses. Employees will be selected based on the needed skills and availability. An average hourly rate may be used if more than one employee is required.

(2) Computer Processing Charges:

(a) Actual computer time will be charged for the specific job;

(b) Programmer, analyst, and clerical support time will be charged at rates noted in subsection (1)(d) of this rule;

(c) A fee of 15¢ a page for computer printout will be charged;

(d) Other supplies will be charged at actual cost;

(e) A minimum fee of \$5 will be charged for computer processing.

(3) Other Charges:

(a) Established costs will be charged for documents published by the Department, including booklets, maps, law books, and other materials;

(b) Actual costs will be charged for tape recordings, photographs, and other materials;

(c) Actual costs will be charged for mailing and shipping.

Stat. Auth.: ORS 183.310(1), 192.610 - 192.710, 526.016(4) & 526.041(1)

Hist.: FB 1-1986, f. & ef. 1-10-86; FB 3-1992, f. & cert. ef. 3-10-92

Parking at Department-Owned Facilities

629-010-0210

Purpose of Rule

The Department of Forestry has developed OAR 629-010-0210 through 629-010-0230 to describe the Department's policy regarding parking at facilities owned or controlled by the Department in compliance with ORS 276.595.

Stat. Auth.: 526.016(4)

Stats. Implemented: 276.595

Hist.: FB 8-1996, f. & cert. ef. 11-7-96

629-010-0220

Definition

"Department" means State of Oregon, Department of Forestry.

Stat. Auth.: 526.016(4)

Stats. Implemented: 276.595

Hist.: FB 8-1996, f. & cert. ef. 11-7-96

629-010-0230

Procedures

The following procedures shall apply:

(1) The Department under the authority granted by ORS 276.595, shall maintain a policy of not charging parking fees for vehicles or other equipment at all facilities owned or controlled by the Department.

(2) This policy will apply to all Department employees, Department visitors, members of boards, commissions, or committees, or any governmental entities.

Stat. Auth.: 526.016(4)

Stats. Implemented: 276.595

Hist.: FB 8-1996, f. & cert. ef. 11-7-96

DIVISION 20

STATE AGENCY COORDINATION PROGRAM

629-020-0000

Purpose

The purpose of these rules is to establish the procedures used by the Department of Forestry in implementing the provisions of its State Agency Coordination Program, as required by ORS 197.180 and OAR Chapter 660, Divisions 30 and 31. The State Agency Coordination program will assure that the Department's land use programs comply with statewide land use planning goals and are compatible with acknowledged city and county comprehensive plans and land use regulations. It is not the intent of these rules to prevent either the Board of Forestry or the Department of Forestry from carrying out their statutory responsibilities.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0010

Applicability

This division is applicable to the following Department "land use" programs:

(1) Administrative Services; and

(2) State Forest Management; and

(3) Any other Department program subsequently determined to affect land use pursuant to ORS 197.180 and OAR 660-030-0075.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0020

Compliance with the Statewide Planning Goals and Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations

Prior to undertaking any action or program listed in OAR 629-020-0010, the Department shall find that the program or action complies with the statewide planning goals and is compatible with acknowledged comprehensive plans and land use regulations. The Department shall make its goal compliance and plan compatibility findings in accordance with OAR 629-020-0000 through 629-020-0080.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0030

Compliance with the Statewide Planning Goals

(1) The Department shall attempt to achieve goal compliance

whenever possible by taking actions that are compatible with the acknowledged comprehensive plans of the applicable local governing body.

(2) Except where it is necessary for the Department to adopt findings for compliance with the statewide planning goals, the Department shall achieve goal compliance by acting compatibly with acknowledged comprehensive plans and land use regulations.

(3) An action within a land use program of the Department is considered by the Department to be in compliance with the statewide planning goals when such action is compatible with the acknowledged comprehensive plan and land use regulations of the applicable local governing body.

(4) In the event that the Department is required to adopt compliance findings against any of the statewide goals, the Department shall adhere to the following procedures:

(a) Confirm that a situation exists pursuant to OAR 660-030-0065(3) which requires the Department to adopt findings of compliance with one or more of the statewide planning goals;

(b) Identify the specific statewide planning goal(s) or goal requirements the Department must address;

(c) Consult directly with the affected jurisdiction(s);

(d) Request interpretive guidance from DLCDC and the Attorney General's office;

(e) Rely on any relevant goal interpretations for state agencies adopted by LCDC under OAR Chapter 660;

(f) Adopt any necessary findings to assure compliance with the statewide planning goals.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0040

Compliance with Acknowledged Comprehensive Plans and Land Use Regulations

(1) In order to approve or undertake a capital construction project, capital improvement project, property development project or land acquisition project under the Administrative Services Program, the Department shall find that the project complies with and is compatible with acknowledged city and county comprehensive plans and land use regulations. To make its compatibility findings, the Department shall comply with the following procedures:

(a) The Department shall make application for local government approval of a Department project where necessary. A Department decision to proceed with a project or action shall not be made until either of the following two procedures are completed:

(A) A copy of the local land use permit or equivalent documentation is acquired from the applicable local governing body or its designee that the proposed project or action has received land use approval is attached to the preliminary plan; or

(B) A letter or some other form of verification is acquired from the applicable local governing body or its designee stating that the proposed project or action is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval.

(b) Final project plans will be developed after the local government approval required above has been obtained. The final project plans shall incorporate the conditions established by the local governing body for final approval.

(2) The Department shall satisfy its plan compatibility findings for a capital construction project, capital improvement project, property development project or land acquisition project approved under the Administrative Services Program in the Salem metropolitan area and subject to the jurisdiction of the Capitol Planning Commission (CPC) by adhering to the CPC's land use coordination rules in OAR Chapter 110, Division 10, and the procedure contained in the CPC's certified State Agency Coordination Program.

(3) An applicant seeking approval to locate non-forest uses or facilities such as radio towers, microwave sites, radio repeater buildings on state-owned forest land (under the management of the Department) shall provide information to the Department assuring the proposed project is in compliance with the statewide

planning goals and is compatible with any applicable comprehensive plans and land use regulations. Such documentation shall be submitted to the Department prior to Department approval and shall include:

(a) A copy of the local land use permit or equivalent documentation from the applicable local governing body or its designee stating that the proposed project or action has received land use approval; or

(b) A letter or some other form of verification from the applicable local governing body or its designee stating that the proposed project or action is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval.

(4) The Department will assure that the State Forest Management Program is compatible with acknowledged city and county comprehensive plans and land use regulations. The elements of the State Forest Land Management Program that affect land use include:

(a) Land use designations;

(b) Plans (long range plans, block plans, annual operation plans and transportation plans);

(c) Land acquisition, sale or exchange;

(d) Other forest uses (forest uses not regulated by the Forest Practices Act, such as recreation, wildlife uses, etc.) and non-forest uses (sale of rock, sand, gravel, pumice and other such material from the lands, powerlines, reservoirs, etc.);

(e) State lands within urban growth boundaries (subject to local government regulation of forest practices).

(5) In order to achieve compatibility with acknowledged comprehensive plans and land use regulations for county trust lands and other forest lands managed pursuant to ORS 530.010 to 530.290 by the Board of Forestry through the State Forest Management Program, and Common School Forest Lands managed by the Board of Forestry through the Department's State Forest Management Program pursuant to ORS 530.450 et seq., the Department shall adhere to the following procedures:

(a) Land Use Designations:

(A) When land use classifications are updated, the District Forester will review state forest land use designations with affected local government and request their comment on the compatibility of the land use designations with the comprehensive plan;

(B) If a conflict or issue is raised by local government with regard to the compatibility of the land use designations, the dispute resolution process described under OAR 629-20-050 will be followed.

(b) Plans:

(A) The District Forester will notify local government that a state forest plan is being developed and request their review and comment on the compatibility of the draft plan with the comprehensive plan;

(B) If a conflict or issue is raised by local government with regard to the compatibility of the state forest plan, the dispute resolution process described under OAR 629-20-050 will be followed.

(c) Land Acquisition, Sale and Exchange:

(A) Prior to completing land acquisitions, sales or exchanges, the appropriate District Forester will provide copies of the proposal to the appropriate local government for their review, comment and input;

(B) Requirements for the acquisition of land in ORS 530.010 (Board of Forestry Lands), procedures for the exchange of land in ORS 530.040 (Board of Forestry Lands), and procedures for the exchange of land in ORS 530.510 (Common School Forest Lands) will be followed. ORS 530.010 requires that the Board shall not acquire land without prior approval, duly made and entered, of the county court or board of county commissioners of the county in which the lands are situated. ORS 530.040 requires that land exchanges between counties be similarly approved as the acquisition of land in ORS 539.010. Additionally, before making any exchanges, the Board of Forestry shall hold a hearing at the courthouse of the county in which the lands are situated and provide notice of the hearings in an appropriate newspaper. ORS

530.510 requires that the county court or board of county commissioners of the county, or counties, in which such land is situated, shall approve such exchanges, and only after their approval shall the exchange be consummated;

(C) If a conflict or issue is raised by local government with regard to the compatibility of the acquisition, sale or exchange, the dispute resolution process described under OAR 629-20-050 will be followed.

(d) Other Forest Uses and Non-Forest Uses:

(A) Procedures outlined in subsections (5)(a) and (b) of this rule for assuring the compatibility of land use designations and plans will be followed to assure the compatibility of other forest uses with acknowledged comprehensive plans;

(B) Prior to approving non-forest uses on state forest lands, the District Forester will provide copies of the proposal to the appropriate local government for their review, comment and input on the compatibility of the proposed use with the comprehensive plan;

(C) If a conflict or issue is raised by local government with regard to the compatibility of the other forest use or non-forest use, the dispute resolution process described under OAR 629-20-050 will be followed.

(e) State forest lands within urban growth boundaries (subject to local government regulation of forest practices):

(A) If state forest lands are currently within an urban growth boundary, the Department, through the local District Forester, will encourage the local government to appropriately adjust their urban growth boundary to place the state forest lands outside the urban growth boundary. Failing that, the District Forester will encourage the local government to adopt and enforce regulations on forest operations that are consistent with the Oregon Forest Practices Act;

(B) If a local government decides to amend their urban growth boundary to encompass state forest land, the local District Forester will consult with the local government to determine their reasons for the urban growth boundary amendment. The Department will not support such amendments, unless the local government provides substantial convincing evidence consistent with Goal 14 and Goal 2 that is supportive of the amendment;

(C) Prior to commencing any forest operations within a urban growth boundary, the District Forester will consult with the appropriate local government to determine if forest operations are regulated by the local government. If forest operations are regulated, then the District Forester will ensure that a copy of the local land use permit or equivalent documentation is acquired from the applicable local governing body or its designee that the proposed forest operation has received land use approval.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0050

Dispute Resolution

It is the intent of the Department to achieve compatibility between Department land use programs and acknowledged comprehensive plans and land use regulations whenever possible. However, a situation may occur where the Department believes its statutory mandates, including but not limited to ORS Chapter 530 (Acquisition and Management of State Forests), may prevent the Department from meeting its land use compatibility responsibility under ORS 197.180. The Department shall attempt to resolve all disputes regarding land use issues, including conflicting statutory obligations, by direct contact with the affected cities and counties. However, if no agreement can be reached, the following procedures will be followed to resolve land use disputes concerning approval of a Department program or action:

(1) Hold direct discussions with the affected local government(s), DLCD, and any other appropriate or affected persons or agencies in accordance with applicable informal dispute resolution procedures.

(2) If the Department's statutory obligation remains in conflict after exhausting the appropriate procedures under section (1) of this rule, and the Department determines that it must act, the Board of Forestry (or its designated representative) shall adopt

findings in writing explaining why it cannot act compatibly with applicable city or county comprehensive plans and land use regulations and then, adopt goal findings to assure compliance with the statewide goals in accord with OAR 660-30-065(3).

(3) The Department shall provide a copy of the findings referenced in section (2) of this rule to applicable city or county governments and upon request, to other interested persons explaining the rationale for its decision.

(4) If the dispute is not resolved through sections (1) - (3) of this rule, the Department may request informal mediation or a compatibility determination from the LCDC in accordance with OAR 660-30-070.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0060

Compliance and Compatibility of New or Amended Land Use Programs

The Department will use the following procedures to assure that new or amended agency rules and programs affecting land use will comply with the statewide goals and be compatible with acknowledged comprehensive plans and land use regulations:

(1) The Department shall submit notice of any amendment to any Department program affecting land use or any new Department rule or program, except for amendments or new rules and programs related to the Oregon Forest Practices Act (which is expressly exempt from these requirements), to the Department of Land Conservation and Development as required by OAR 660-030-0075.

(2) Such notice shall be provided to DLCD in writing not less than 45 days before adoption of any amendment to a program affecting land use or adoption of any new rule or program.

(3) The notice provided to DLCD shall demonstrate that the proposed new adoption or amendment:

(a) Does not affect land use and therefore is not a land use program; or

(b) Affects land use and that goal compliance and comprehensive plan compatibility can be assured through the existing SAC Program procedures; or

(c) Affects land use and procedures in the certified SAC Program are not adequate to ensure compatibility and compliance. In this case, the notice shall include an explanation of how compliance and compatibility will be achieved in accordance with the applicable provisions of OAR 660-030-0075.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0070

Coordination with Affected State and Federal Agencies and Special Districts

The Department shall coordinate with state and federal agencies and special districts on Department projects or actions affecting land use when necessary. Additionally, the Department may coordinate with state agencies, federal agencies, and others on land use issues of concern to the Department. Generally, this type of coordination is to provide to state agencies, federal agencies and others, the Department's perspective on the compatibility of programs or actions that others have proposed with the policies and programs of the Board of Forestry. Department contacts for interagency coordination will be determined by the type of program or action, and may include the Department Land Use Coordinator, a representative from the affected Department program, or local (field) land use planning coordinator (as designated by the District Forester).

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

629-020-0080

Cooperation and Technical Assistance to Local Governments

(1) Subject to statutory and budgetary limitations, the Department:

(a) May provide technical assistance and information to local government;

(b) May participate in local land use planning and regulations, including review of applications for forest dwellings, periodic review, plan amendments and plan updates; and

(c) May promote the adoption of state land use policies and local land use ordinances that consider the land use policies and programs of the Board of Forestry.

(2) Participation and coordination with local government with regard to the programs herein determined to affect land use will be accomplished

by the Department working directly with the responsible local government. This involvement will include coordination and participation among the Department, project sponsors, lessors, other affected parties as appropriate and the local jurisdiction to help assure that local land use and building requirements are addressed. In the Salem Metropolitan Area, this will be accomplished principally through the Department's involvement with the Capitol Planning Commission.

Stat. Auth.: ORS Ch. 197

Hist.: FB 7-1990, f. 9-21-90, cert. ef. 10-1-90

FOREST LAND MANAGEMENT

DIVISION 22

629-022-0030

Purpose

The Forest Resource Trust provides financial, technical and related assistance to nonindustrial private forestland owners to establish forest stands and improve management of forestlands for timber production, wildlife, water quality and other environmental purposes.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0040

Definitions

As used in the Forest Resource Trust rules, unless the context requires otherwise:

(1) "Adequately stocked" means the number and size of the trees growing within a forest stand meet the standards determined by the State Forester in OAR 629-022-0390.

(2) "Contract" means the Forest Resource Trust Contract that is signed by the State Forester and the landowner.

(3) "Conversion" means an operation conducted on underproducing forestland with the objective of removing undesirable competing vegetation, including the incidental harvest of forest products and establishing an adequately stocked, free to grow forest stand.

(4) "Environmental restoration" means a practice that protects, restores or improves natural resources. For example, an environmental restoration practice may enhance wildlife habitat for a sensitive species such as the osprey or a threatened species such as the bald eagle; improve water quality, reduce water temperature, or provide large woody debris to a stream in a watershed enhancement area; improve the health of an insect damaged or diseased forest; or protect soils from erosion or degradation.

(5) "Expected volume" means the net volume of forest products that a forest stand is projected to produce as determined by the Board of Forestry in OAR 629-022-0360.

(6) "Forestland" means land zoned in a county comprehensive plan for forest or farm use that is capable of producing commercial hardwood or softwood timber, regardless of the vegetation currently on the land.

(7) "Forest products" include, but are not limited to, logs, poles and pilings, lumber, chips, and pulp.

(8) "Forest stand" means the aggregation of all trees within the project boundary described in the contract.

(9) "Free to grow" means the State Forester has determined that a forest stand has well distributed trees, of acceptable species and of good form and has a high probability of remaining or becoming vigorous, healthy and dominant over undesired

competing vegetation.

(10) "Harvest" means the forest products in a forest stand are cut, severed, removed or sold.

(11) "Landowner" means the person or persons who are eligible to apply for or receive trust funds, or are subject to a Forest Resource Trust Contract.

(12) "Nonindustrial private forestland owner" means:

(a) Any forest landowner who has not owned a forest product manufacturing facility within the past 6 months that employed more than 6 people; and

(b) Is not owned or partially owned, or controlled, by any person who has owned a forest products manufacturing facility within the past 6 months, that employed more than 6 people.

(13) "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.

(14) "Person" means an individual, partnership, corporation, limited liability company, trustee, business or other entity.

(15) "Practice" means the operational activity identified in the project plan, such as site preparation or tree planting.

(16) "Project" means the practices required to establish an adequately stocked, free to grow forest stand, described in the project plan in OAR 629-22-130.

(17) "Resource management professional" means a person who the State Forester recognizes as having the ability to develop landowner plans for managing the biological, economic, and environmental relationships of forest resources, and to identify appropriate activities to manage, protect, or enhance forest resources, and who has:

(a) A degree in forestry, biology or related sciences, plus at least a year of forestry consulting or employment experience; or

(b) An associate degree in forestry, biology or related sciences, plus at least 5 years of forestry consulting or employment experience.

(18) "Salvage" means harvest of trees that are dead, dying or damaged and deteriorating.

(19) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(20) "Timber" means all logs which can be measured in board feet and other forest products.

(21) "Trust" means the Forest Resource Trust as authorized in ORS 526.700 through 526.730.

(22) "Underproducing forestland" means any forestland that is capable of producing at least 20 cubic feet of wood fiber per acre per year at culmination of mean annual increment, but does not currently support the minimum number of free to grow trees required in the reforestation rules under the Forest Practices Act.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

Securing Forest Resource Trust Funds

629-022-0100

Trust Responsibilities and Financing

(1) The Board of Forestry is responsible for the management of the Forest Resource Trust program. The State Forester is responsible for implementing the trust program and policies adopted by the Board of Forestry.

(2) The trust shall provide financing to establish healthy forest stands on underproducing forestland.

(3) The trust may provide financing to eligible landowners with existing contracts to ensure that their forest stands remain adequately stocked and reach a free to grow condition.

(4) No person shall receive more than \$100,000 from the trust during any two year period.

(a) In determining how much a person has received from the trust during any two year period, the person shall be deemed to have received all trust funds received by any entity in which the person has a personal, family, partnership, limited liability company, corporate or business interest. For example, a husband and wife who are tenants in common of forestland receiving trust funds during a two year period each shall be considered to have received the full amount of the funds attributed to that ownership. Similarly, each partner in a partnership receiving trust funds shall

be considered to have received the full amount of the funds attributable to forestland owned by the partnership.

(b) For purposes of this rule, a person has a corporate interest if at any time during the prior 24 months, the person was a shareholder or officer in a privately held corporation, or was a majority shareholder in a publicly held corporation.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0110

Eligible Landowners and Land

(1) Only nonindustrial private forestland owners with less than 5,000 acres of forestland in Oregon are eligible to receive funds.

(2) Eligible forestland must be underproducing forestland that is:

- (a) At least 10 contiguous acres in size;
- (b) Zoned for forest or farm use;
- (c) Located outside urban growth boundaries or residential zones, as identified in the county comprehensive plan;
- (d) Free from all reforestation requirements under the Forest Practices Act;
- (e) Free of any "no tree cutting" covenants or encumbrances;
- (f) Under no current petition before a county requesting a land use change to avoid reforestation under ORS 527.760; and
- (g) Under no active operation to convert underproducing forestland.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0120

Applying for Trust Funds

(1) Any person may apply for trust funds, certifying on an application provided by the State Forester that:

- (a) Both the lands and the person meet the requirements of OARs 629-022-0100 and 629-022-0110; and
- (b) The person requests a suspension of the reforestation requirements under OAR 629-057-5170 when a proposed project includes the harvest of forest products.

(2) If the person is a corporation, partnership or limited liability company, the application shall provide the names and addresses of the stockholders, partners, members or any other person having an ownership interest in the entity.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0130

Project Plan

(1) A landowner meeting the requirements of OAR 629-022-0100, 629-022-0110 and 629-022-0120 shall submit a project plan, subject to the State Forester granting a reforestation suspension described in OAR 629-057-5170 if forest products are harvested during the conversion project.

(2) A landowner may receive technical assistance to develop the project plan from the State Forester, other cooperating state or federal agencies, or a resource management professional.

(3) The project plan shall include a:

- (a) Current aerial photograph showing project boundaries;
- (b) Project map or maps at 4" = 1 mile or larger scale showing a legend, scale, north arrow, property boundary, the project boundary, location of practices, acres, vegetative cover types, soil types within the project boundary, existing or proposed roads, and sensitive resource sites or streams that are protected by the Forest Practices Act; and

(c) Description of environmental restoration practices planned within the project boundary and the source of funding for the practices.

(4) The project plan shall include a description of the following required practices in the project:

- (a) Site preparation to remove grass, brush or trees by mechanical, manual, prescribed fire, or chemical methods to prepare a seedling planting site;
- (b) Acceptable tree seedlings, specifying appropriate seed

zone, elevation, quality control standards, nursery source, availability dates, reservation, transportation, and handling and storage;

(c) Planting or interplanting, including the number of seedlings per acre by site class and species, the soil and air temperature limitations during planting, and seedling planting depth and root replacement;

(d) Fertilizer application that may be required to enhance seedling growth on low productivity lands;

(e) Seedling protection to reduce animal damage to seedlings; and

(f) Application of moisture conservation measures by either mechanical, manual or chemical methods.

(5) The project plan shall also include for each practice described in section (4) of this rule:

- (a) Specifications for the practice;
- (b) A time schedule for completion;
- (c) Estimated costs; and
- (d) A description of any Forest Practices Act rules that need to be followed.

(6) When the landowner retains a resource management professional to implement a project, the project plan shall include the resource management professional fees described in OAR 629-22-230.

(7) The project plan shall include a description of the recommended management practices that ensure the forest stand remains adequately stocked and reaches the free to grow condition.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0140

Approval of a Proposed Project

(1) The State Forester shall use the information in the landowner's project plan, described in OAR 629-022-0130, in a point rating system based on the project criteria in OAR 629-022-0500, to select projects for funding, subject to the requirements of OAR 629-022-0150.

(2) When a project is selected for funding, the State Forester shall approve all practices, costs and fees described in the project plan in OAR 629-022-0130(3), (4), (5) and (6). Costs and fees shall be subject to the limitations in OAR 629-022-0220 and OAR 629-022-0230.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0150

The Trust Contract

(1) A landowner receiving project approval for trust funding under OAR 629-022-0140 shall execute a Forest Resource Trust Contract with the State Forester.

(2) The contract shall include:

- (a) The approved project plan;
- (b) Financial agreements for repayment of trust funds under OAR 629-022-0300 through 629-022-0410; and
- (c) A security instrument described in OAR 629-022-0160.

(3) No work shall begin on the practices described in the project plan until the contract is signed by all parties.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0160

Trust Security Instrument

(1) The landowner shall provide good and sufficient collateral to secure repayment of all funds paid to the landowner from the trust.

(2) Collateral shall be in the form of a first mortgage or trust deed on the property within the project boundaries and all improvements, fixtures, crops, trees and timber on the property and shall not exceed 75% of the sum of the fair market value of the land, trees and timber, plus the actual trust funds advanced under the contract.

(3) If legislation is passed that provides a new security instrument specifically for the trust, the landowner shall be provided the opportunity to substitute the collateral provided under section (2) of this rule with the new security instrument.

(4) Costs and fees related to the collateral and the security instrument, such as title policy premiums and escrow fees, shall be paid from trust funds but shall not be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0350. These costs and fees shall be subject to repayment following a breach of contract.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

Establishing a Forest Stand

629-022-0200

Implementing the Project Plan; Payments

(1) The landowner shall implement the practices in the project plan and notify the State Forester when a practice, or a part of a practice, described in the project plan is complete.

(2) The landowner shall submit written invoices for all services and supplies used to complete the practices described in the project plan.

(3) The State Forester shall disburse trust funds to the landowner, payable to both the landowner and the provider of the services or supplies, when the State Forester certifies that a practice is complete to the specifications and within the costs approved in the approved project plan in OAR 629-022-0140.

(4) Actual costs paid from the trust fund shall be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0350.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0210

Landowner Obligations

(1) The landowner shall:

(a) Complete all project practices described in the project plan;

(b) Manage the forest stand in an adequately stocked and free to grow condition, as defined in OAR 629-022-0390;

(c) Comply with forest practices standards required by state and federal law except for planting standards, which may be more than the required state minimums;

(d) Report any adverse changes in the condition of the forest stand to the State Forester; and

(e) Notify the State Forester before commencing any forest operations.

(2) The State Forester may periodically perform compliance inspections on all practices described in the project plan. The State Forester shall have access to all lands described in the project plan to monitor, evaluate or certify as complete the practices described in the project plan.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0220

Project Rates and Costs

(1) Project costs described in the project plan in OAR 629-022-0130 shall be within written rates determined by the State Forester, based on the prevailing rates and wages in Oregon.

(2) Project costs paid from the trust fund may not exceed the project costs approved in OAR 629-022-0140(2), unless the landowner requests additional trust funds, and provides evidence justifying additional trust funds, prior to the completion of the practice.

(3) The State Forester may approve additional trust funds when:

(a) The requirements of section (2) of this rule are met; and

(b) The landowner agrees to amend the contract and the payback amounts, described in OAR 629-022-0300 through 629-022-0350, to reflect the higher trust fund expenditures.

(4) The trust fund shall not pay for:

(a) The cost of environmental restoration practices described in the project plan;

(b) Purchase of capital or expendable items, such as vehicles, road surfacing, culverts, sprayers, shovels, planting hoes, saws or safety equipment; or

(c) Landowner labor, materials or equipment.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0230

Resource Management Professional Fees

(1) Resource management professional fees may be paid from trust funds for field and office work required to write a project plan described in OAR 629-022-0130 and to supervise the implementation and completion of all practices in the project plan described in OAR 629-022-0130(4) and (5).

(2) The fees in section (1) of this rule shall be subject to:

(a) The landowner executing the contract under OAR 629-022-0150 and 629-022-0160; and

(b) The landowner submitting invoices for the professional fees charged.

(3) Trust funds disbursed under this rule shall be payable to both the landowner and the resource management professional.

(4) Fees shall be within rate determined by the State Forester, based on the prevailing resource management professional fees in Oregon.

(5) All resource management professional fees paid from the trust fund shall be included in the actual costs to determine final payback amounts described in OAR 629-022-0300 through 629-022-0350.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0250

Life of the Contract

The contract between the landowner and the trust shall be terminated when:

(1) The landowner exercises the buyout option and makes full payment described in OAR 629-022-0310; or

(2) The expected volume stated in the contract is harvested from the forest stand, and the payback percentage is paid under OAR 629-022-0330, Growout Option; or

(3) A catastrophe destroys the entire forest stand, leaving no salvage value; or

(4) Two hundred years elapse since the execution of the original contract.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0300

Repaying Trust Funds

Except as provided in OAR 629-022-0210 Landowner Obligations, OAR 629-022-0250 Life of the Contract, OAR 629-022-0310 Buyout Option, and OAR 629-022-0400 Landowner Breach of Contract, the landowner is under no obligation to repay trust funds until forest products are harvested from the forest stand described in the contract.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193

Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0310

Buyout Option

(1) The landowner may terminate the contract at anytime during the first 25 years following the execution of the original contract by repaying all trust funds, with interest. This is called the buyout option.

(2) The State Forester shall calculate the amount due under the buyout option by using the actual costs paid to the landowner to establish the forest stand described in the contract, with annual interest at the rate determined in OAR 629-022-0320. Interest is compounded annually, prorated to the nearest full month, and

begins on the date that payment or payments are made to the landowner.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0320
Interest Rate

(1) With the advice of the Resource Trust Advisory Committee and the State Forester, the Board of Forestry shall set the interest rate periodically, based on projected interest rates paid on 30 year U.S. government bonds.

(2) The Board of Forestry may adjust the interest rate for:

(a) Measurable public benefits that result from projects funded by the trust, such as job creation, tax revenue, increased timber supply and environmental restoration; or

(b) Demand for trust funds.

(3) The interest rate is 6.8%.

(4) The interest rate shall be fixed when the contract is executed and shall not change during the life of the contract.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0330
Growout Option

(1) The landowner may terminate the contract at any time by harvesting the expected volume from the forest stand and paying the State Forester a percent of all net harvest receipts. This is called the growout option.

(2) Under the growout option:

(a) the payback percentage rate is calculated for each contract, described in OAR 629-022-0340.

(b) The landowner makes payments on all net receipts generated from the harvest of all forest products from the forest stand at any time during the life of the contract. These payments are calculated in OAR 629-022-0350.

(c) Payments are made on all harvests until the expected volume, described in OAR 629-022-0360, is harvested from the forest stand.

(d) Net volumes from all thinning harvests shall be subtracted from the expected volume, until the balance of the expected volume is harvested. Adjusting the expected volume is described in OAR 629-022-0370.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0340
Growout Option: Payback Percentage Rate Calculations

(1) For each contract, the State Forester shall calculate the payback percentage rate using the formula $\text{PAYBACK \%} = (\text{COST} \div \text{STUMPAGE}) \times 110$, where:

(a) PAYBACK % means the fixed payback percentage rate applied to all net revenues generated from the harvest of forest products;

(b) COST means the future value of the actual costs (AC) paid by the trust fund to complete the project, and is calculated using the interest rate (I) set by the Board of Forestry under OAR 629-22-320, compounded annually by the number of years in the economic rotation (Y) as determined in OAR 629-022-0360(2). The mathematical formula to be used is: $\text{COST} = \text{AC} \times (1 + I)^Y$; and

(c) STUMPAGE means the future value of the expected volume of forest products at the economic rotation age determined in OAR 629-022-0360, stated in dollars per acre, projected by the State Forester.

(2) The payback percentage rate is estimated on the date the original contract is executed using the approved costs in the project plan described in OAR 629-022-0140. A final payback percentage rate shall be calculated by the State Forester, and the contract amended, using actual costs paid by the trust fund.

(3) The payback percentage rate determined with the actual costs shall not change, and shall be applied to all harvests, during the life of the contract.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0350
Growout Option: Landowner Payment Calculations

(1) The State Forester shall calculate the payment due from the landowner when a harvest is complete.

(2) To verify the net volumes and net receipts from any harvest, the State Forest may require the landowner to provide:

(a) Contracts executed to sell and harvest forest products, including but not limited to, all gross receipts and logging, hauling and administrative costs. If forest products are not sold for their fair value, the fair value shall be determined by the State Forester.

(b) All forest products scaling summaries showing gross and net volumes, by species;

(c) Tax forms, reports or records submitted by the landowner that detail the gross and net volumes of forest products harvested, by species, plus the logging and management costs used to determine harvest and severance taxes; or

(d) Any documentation related to the harvest operation.

(3) The State Forester shall use the information in section (2) of this rule to determine the net receipts by subtracting all normal logging, hauling and related administrative costs and all harvest and severance taxes, but before deductions are made by the landowner for state and federal taxes, from the gross revenues generated from the harvest of all forest products from the forest stand.

(4) The State Forester shall calculate the landowner payment by applying the payback percentage rate to the net receipts calculated in section (3) of this rule.

(5) The landowner shall make payments to the State Forester, to be deposited in the trust fund, within 60 days of receiving notice of payment due from the State Forester.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0360
Growout Option: Expected Volume

(1) Until the conditions in OAR 629-022-0250 Life of the Contract are met, a forest stand is expected to produce a net volume of forest products. This is the expected volume.

(2) The Board of Forestry shall direct the State Forester to establish the expected volume as a net volume of forest products, measured using appropriate Scribner log rules, for forestland site classes, considering:

(a) An economic analysis by the State Forester of future stumpage values and the economic rotation age at which the forest investment is maximized;

(b) The interest rate used in OAR 629-022-0320; and

(c) Growth and yield tables developed by the State Forester.

(3) For each contract, the expected volume shall be stated as a total net volume for the forest stand by multiplying the expected volume per acre by site class, times the number of acres in the forest stand.

(4) The expected volume shall be stated in the contract and adjusted only as provided under OAR 629-022-0370 or OAR 629-022-0380.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0370
Adjusting the Expected Volume

(1) The State Forester may adjust the expected volume when the State Forester determines, based on information provided by the landowner that, through no fault of the landowner the expected volume cannot be produced due to:

(a) Environmental conditions or site productivity; or

(b) State or federal laws that reduce the harvest potential of the forest stand.

(2) The State Forester may subtract any net harvest volumes, provided by the landowner under OAR 629-022-0350(2), from the expected volume stated in the contract.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0380

Catastrophe; Salvage Adjustments to the Expected Volume

(1) A catastrophe means an event or circumstance beyond the landowner's control, resulting in all or part of a forest stand being incapable of producing the expected volume described in OAR 629-022-0360.

(2) A catastrophe may be caused by:

(a) Insects, diseases, fire or other casualties and accidents; or
(b) Storms, floods, droughts and other unusual environmental conditions.

(3) When a catastrophe damages individual trees or groups of trees within the forest stand:

(a) The landowner shall pay the appropriate fixed payback percentage rate on all salvaged forest products, as described in OAR 629-022-0340 and 629-022-0350; and

(b) The State Forester may adjust either the expected volume or the forest stand boundaries to reflect the growth potential of the forest stand. Unharvested merchantable salvage shall not be deducted from the expected volume, nor shall the forest stand boundaries be adjusted to exclude land with unharvested merchantable forest products.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0390

Adequately Stocked Forest Stand

The landowner shall manage forest stands established with trust funds above the reforestation stocking standards in the Forest Practices Act and in OAR 629-057-5120 until the conditions in OAR 629-022-0250, Life of the Contract, are met.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

Forest Resource Trust Administration

629-022-0400

Landowner Breach of Contract

A contract breach occurs when the landowner fails to perform any term of the contract.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0410

Remedies for Breach of Contract

(1) The landowner shall pay liquidated damages for a breach of contract during the first 25 years following the execution of the original contract, by repaying all trust funds, with interest as calculated in the Buyout Option in OAR 629-022-0310(2).

(2) At any time forest products are harvested in breach of contract, the landowner shall pay liquidated damages in the form of a breach penalty.

(3) The breach penalty in section (2) of this rule shall be calculated by adding 20 percentage points to the final payback percentage rate calculated in OAR 629-022-0340 and stated in the contract. The breach penalty shall be applied to the gross receipts generated from the sale of all forest products from the forest stand, as reported to the State Forester under OAR 629-022-0350.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0500

Project Criteria

(1) The State Forester shall use criteria to evaluate proposed projects under OAR 629-022-0140.

(2) The State Forester shall give high priority to projects by favoring:

- (a) Lands with higher site productivity;
- (b) Larger acreages; and
- (c) Lower estimated forest stand establishment costs.

(3) The State Forester shall give medium priority to projects in which:

(a) A forest management plan that encompasses the eligible land is certified by the State Forester within the last 5 years;

(b) Funding sources are approved from other forestry incentive or loan programs;

(c) The landowner contributes funds, labor, equipment and material to the project;

(d) Environmental restoration practices are planned by the landowner to be completed concurrently with the project, such as restoring fish and wildlife habitat, forest health, soil productivity or enhancing the watershed; and

(e) Forest products are harvested during the conversion.

(4) The State Forester shall give low priority to projects where the landowner does not reinvest revenues generated under section (3)(e) of this rule.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0600

Donations to the Trust Fund

(1) Any individual, partnership, corporation, organization or government agency may contribute funds to the trust fund.

(2) At the request of the donor, contributed funds may be targeted by the State Forester for projects or specific forest management practices in specific watershed, counties or regions of Oregon.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

629-022-0700

Carbon Offsets

(1) As used in this section of the rules, carbon offsets are used to comply with air quality objectives or regulations, and compensate for emissions of carbon dioxide from other sources. Such offsets can include sequestering atmospheric carbon in wood fiber.

(2) In consideration of the benefits received under the contract, the landowner acknowledges that the Board of Forestry retains ownership of and is the exclusive agent for marketing carbon offsets that result from trust fund payments, provided such marketing does not interfere with or affect the harvest and sale of forest products by the landowner.

Stat. Auth.: ORS 526.700 to 730, 526.745 & SB 81 & 193
Hist.: FB 4-1994, f. & cert. ef. 8-3-94

DIVISION 23

FOREST TAXATION

Western Oregon Small Tract Optional Tax

629-023-0110

Management Standards

(1) Purpose. ORS 321.725(1)(d) requires the State Forester to determine if a landowner who is applying to have lands classified under the Western Oregon Small Tract Optional Tax meets minimum forest management standards. ORS 321.732 requires the State Forester to review all classified lands at least every five years to insure that classified lands are managed in accordance with the minimum management standards. The following management standards will apply in making these determinations and reviews:

(2) Schedule for Meeting Standards. Forest owners under the Western Oregon Small Tract Optional Tax Program shall proceed to bring their lands into a stocked and not over mature condition within a reasonable time period as determined by the State Forester. Conversion of nonstocked lands and evidence of acceptable management planning on remaining lands will be monitored by the State Forester. At any time the State Forester has reason to believe lands are not being converted to a stocked

condition or are not being managed as forest land, the State Forester may require a plan detailing the owner's intention for complying with these management standards. The plan must show that within five years the forest land will meet the stocking standards in accordance with section (3) of this rule.

(3) Stocking. Stocked lands are lands which:

(a) Support established and maintained forest trees in accordance with standards of land productivity, minimum density, acceptable species, variance, and prior approval procedures found in the appropriate Regional Administrative Rules of the Forest Practices Act (ORS Chapter 527) OAR 629-024-0401, 629-024-0402, 629-024-0403, 629-024-0501, 629-024-0502, 629-024-0503, 629-024-0601, 629-024-0602, 629-024-0603. An alternate plan for meeting these standards may be approved by the State Forester; or

(b) Are occupied by a marketable hardwood stand at or above the trees per acre or basal area per acre standards for the applicable region of the Oregon Forest Practices Act (OAR 629-024-0402, 629-024-0502, and 629-024-0602) and have an average diameter breast height of six inches or more. Harvest of marketable hardwoods on other than hardwood sites is required when the average age of the stand, when measured at 4-1/2 feet above ground, reaches 40 years of age. The State Forester may approve a delayed harvest schedule in order to meet merchantability standards or market conditions consistent with the landowners' objectives; or

(c) Are occupied by a marketable hardwood stand on hardwood sites such as stream bottoms and stringers, areas that have not previously supported a conifer stand, and red alder in areas of high *Phellinus Weirii* incidence; or

(d) If trees are being grown for Christmas trees or ornamental purposes, at least 1,000 trees of a marketable species per acre upon initial planting or 500 trees per acre in wild land culture.

(e) Marketable Hardwoods are:

(A) In Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties: Alder, ash, cottonwood, maple, and oak.

(B) In Hood River County: Alder, cottonwood, and maple.

(C) In Coos and Curry Counties: Alder, maple, and tanbark oak.

(D) In Douglas County: Alder and maple north of Township 25, South, Ranges 1, 2, 3, 7, 8, 9 West; in Township 26 South, Ranges 8 and 9 West; and in Township 27 South, Range 8 West.

(4) Over Mature Stands. Over mature stands are:

(a) Even age stands at 90 years of age;

(b) Uneven age stands where trees 90 years and older constitute 10,000 board feet per acre or more.

(5) Maintenance Practices. The landowner must conduct all necessary maintenance practices including site preparation, planting, animal damage control and release to satisfy the above standards. The landowner must provide protection from fire, insect, and disease damage as required in ORS Chapters 477, 478, and 527.

Stat. Auth.: ORS Ch. 321 & 526

Hist.: FB 51(Temp), f. & ef. 10-13-77; FB 3-1978, f. & ef. 1-6-78; FB 7-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82

629-023-0120 Owner

For purposes of subsection (5) of ORS 321.705, "owner" means legal owner of record, or purchaser under contract, of both the forest land and timber.

Stat. Auth.: ORS Ch. 526

Hist.: FB 3-1978, f. & ef. 1-6-78

629-023-0130 Waiver of Relationship Limitation

Exceptions under subsection (4) of ORS 321.725 will be granted on the basis of evidence submitted to the State Forester at the time of application for classification stating the reason for which the combination of ownership exists.

Stat. Auth.: ORS Ch. 526

Hist.: FB 3-1978, f. & ef. 1-6-78

629-023-0140 Ownership Plat Requirement

Applicants for classification under ORS 321.730 or partial declassification under ORS 321.760 shall submit a copy of the assessor's plat map showing the applicant's forest land ownership by tax lots and the area that is to be classified or declassified.

Stat. Auth.: ORS Ch. 526

Hist.: FB 3-1978, f. & ef. 1-6-78; FB 7-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82; FB 6-1986, f. & ef. 9-25-86

629-023-0145 Adequate Legal Description

Under ORS 321.725 and 321.760 "adequate legal description" will be based on the United States Public Land Survey, metes and bounds, readily identifiable natural features such as creeks, roads, sharp ridge tops, etc. or a combination of these descriptions. The minimum area that will be considered when an owner requests classification of a portion of the eligible lands within a tax lot will be 10 acres. A landowner requesting classification or declassification of forest land will be responsible for providing to the Department a copy of the legal description and the respective county's tax lot map, showing the boundaries of the forest land to be considered for classification or declassification.

Stat. Auth.: ORS Ch. 321

Hist.: FB 2-1980, f. & ef. 1-9-80; FB 8-1982, f. & ef. 9-10-82

629-023-0150 Processing of Applications

Under ORS 321.730, applications will be processed in the order received by the State Forester. In the event an applicant may become ineligible upon classification of the forest land of another owner, the State Forester may require each owner to furnish evidence that the combination of ownership exists for purposes other than to circumvent the 2,000 acre limitation set forth in ORS 321.725.

Stat. Auth.: ORS Ch. 526

Hist.: FB 3-1978, f. & ef. 1-6-78

629-023-0160 Determination of Land Eligibility

Eligibility under paragraphs (a), (b), and (c) of subsection (1) of ORS 321.725 will be determined as of the time of field examination. Land used for homesites and other nonforest uses must be excluded from forest land certification. Homesites and other nonforest uses are:

(1) Homesite. A homesite occupies at least one acre except when a one-acre homesite would result in an ineligible ownership due to ownership size; then a homesite occupies that land upon which dwellings and other buildings not related to forest management are constructed and the surrounding land that is not in compliance with the minimum management standards as established by the State Forester.

(2) Nonforest use. Any forest land that is used for other than forest use is ineligible when the other use interferes with, and prevents, the forest land from being in compliance with the minimum forest management standards established by the State Forester.

Stat. Auth.: ORS Ch. 526

Hist.: FB 3-1978, f. & ef. 1-6-78; FB 2-1980, f. & ef. 1-9-80; FB 8-1982, f. & ef. 9-10-82; FB 4-1984, f. & ef. 9-6-84

629-023-0165 Oversize Timber

(1) Under ORS 321.725(1)(b) owners of forest land in western Oregon may elect to classify forest land when the size of the timber on the forest land that predominates is not in excess of eight inches in diameter breast high outside bark or the average age of the timber is not in excess of 40 years of age.

(2) For the purpose of this rule the following definitions will apply.

(a) "Main cover" is the major part of a type island that is used by the landowner in making timber management decisions;

(b) "Other cover" is the minor parts of a type island that does not influence timber management decisions;

(c) "Overstory cover" is the small groups and the scattered trees that are substantially larger than the main cover;

(d) "The main cover type island" is made up of primarily main cover but may contain small areas of other cover and overstory cover that cannot be managed as a unit.

(3) The State Forester will certify main cover type islands when the field examination indicates that:

(a) The main cover is made up of trees that are predominately less than eight inches diameter breast high outside bark or the average age of the trees is not in excess of 40 years of age;

(b) The area of the main cover type island is of a size that can be managed as a unit based on topography, the size of the adjacent stands, and the location of the type island in relation to property lines;

(c) The overstory cover cannot be harvested without causing undue damage to the main cover;

(d) The main cover type island does not contain areas of other cover of a size that can be managed as a unit.

Stat. Auth.: ORS Ch. 321 & 526

Hist.: FB 7-1980, f. & ef. 3-5-80; FB 4-1984, f. & ef. 9-6-84

629-023-0170

Minimum Area For Site Class Determination

Under the provisions of ORS 321.745:

(1) Areas smaller than ten acres will not be split into smaller areas for determination of different site classes except that areas of less than 5 contiguous acres within an area of eligible forest land that will not support the minimum stocking requirements will be assigned the site class of the surrounding forest land. Areas of five or more contiguous acres that will not support the minimum stocking requirements of the management standards, including power line right of ways, will be assigned site Class V.

(2) Areas larger than ten acres will be split into smaller areas for the application of different site classes only if areas of different site classes larger than ten acres exist.

Stat. Auth.: ORS Ch. 321 & 526

Hist.: FB 3-1978, f. & ef. 1-6-78; FB 7-1980, f. & ef. 3-5-80

629-023-0180

Calculation of True Cash Values

(1) ORS 321.720 requires the State Forester to determine the true cash values per acre for each site class as defined in ORS 321.745. In determining the true cash values, the State Forester is required by ORS 321.720, subsection (1), to use an income approach that capitalizes the average annual net income over a rotation age including periodic and final harvest. The average annual income will be calculated by the forest rent technique using a normal forest model.

(2) The following definitions and procedures will apply in calculating the true cash values:

(a) "Forest rent" means capitalizing the annual net income from a normal forest model;

(b) "Normal forest model" means a forest with one acre in each age class from one to, and including, rotation age;

(c) "Capitalization" means the process of determining the value, at one point in time, of a series of values arising at subsequent points in time. ORS 321.720 requires that the capitalization rate used in this calculation will be 20 percent for assessment years beginning on or after January 1, 1982 and ending prior to January 1, 1985. This is derived from:

(A) 16.00 % for pure interest and risk;

(B) 1.43 % for property tax;

(C) 2.57 % for other taxes;

(D) 20.00 % TOTAL RATE.

(d) For tax years beginning January 1, 1985, the capitalization rate used will be:

(A) 13.00 % for pure interest and risk;

(B) 1.43 % for property tax;

(C) 2.57 % for other taxes;

(D) 17.00 % for total rate.

(e) The normal forest model rotation age for each site class will be:

(A) Site I — 60 years;

(B) Site II — 60 years;

(C) Site III — 70 years;

(D) Site IV — 80 years;

(E) Site V — 90 years.

(f) The volume of timber that the normal forest model is capable of producing under full, reasonable, and current forest management shall be 60 percent of the volume as defined in Table 1d, page 8 of George R. Staebler's "Gross Yield and Mortality Tables for Fully Stocked Stands of Douglas-fir", U.S.D.A. Forest Service, Pacific Northwest Forest and Range Experiment Station Research Paper No. 14, published in 1955. The volume as defined in Table 1d is based on an ideally, fully stocked stand. This administrative rule assumes an 80 percent stocking level. This adjusted volume is further reduced 15 percent for scale, to convert 16' log table volume to 32' log market volumes, and ten percent for defect and breakage. The total reduction is equal to 40 percent;

(g) The immediate harvest value for timber harvested in the normal forest model will be an average of the Douglas-fir Class 2 values from the Department of Revenue's Value Areas that represent nonindustrial private forest land ownerships using log grades determined by the State Forester to be consistent with the size of timber harvested from the normal forest model. For the purpose of this rule, the State Forester may reduce this calculated immediate harvest value to a value that more closely represents the stumpage value that the nonindustrial private landowner may expect to receive. The State Forester will consider the following items:

(A) The consumer price index, all items, Portland, Oregon area.

(B) The average length of the contracts that are analyzed by the Department of Revenue.

(C) The value table adjustments that represent the small nonindustrial owners.

(D) The values in thinnings, small isolated tracts, and low volumes per acre that are owned by small nonindustrial owners.

(E) Any other information the State Forester deems pertinent.

(h) The cost of growing timber will include the following activities: site preparation, planting, release, animal control, precommercial thinning, road construction, road maintenance, fire protection, and administration and harvest. According to **Table 1**, these activities occur annually in managing the normal forest model. The establishment of the representative costs for each item is within the discretion of the State Forester. It will be assumed that these activities will occur according to the schedule set out in **Table 1** at the end of this Division.

[ED NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the Board of Forestry.]

Stat. Auth.: ORS Ch. 321 & 526

Hist.: FB 1-1979, f. & ef. 3-12-79; FB 7-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82

Western Oregon Forest Land Tax

629-023-0310

Management Standards

(1) Purpose. Under ORS 321.367, the State Forester must report to the appropriate county assessors all lands designated as forest land under ORS 321.358 which were logged prior to 1973 and fail to meet minimum stocking standards, excluded from the report are lands which are under an acceptable management plan for achieving the stocking requirements. Also the State Forester is required to determine if lands under the Western Oregon Severance Tax system are being managed as forest land. The following management standards will apply in making the determination and review:

(2) Stocking. Stocked lands are lands which support established and maintained forest trees in accordance with standards of land productivity, minimum density, acceptable species, variances, and prior approval procedures found in the appropriate Regional Administrative Rules of ORS Chapter 527.

(3) Over Mature Stands. Over mature stands are:

(a) Even aged conifer stands at culmination of mean annual increment in board feet Scribner, or 90 years of age, whichever occurs later;

(b) Uneven aged conifer stands, if these stands contain 10,000 board feet or more per acre in mature trees; mature trees are those which have reached culmination of mean annual increment in board feet Scribner or are 90 years old or older, whichever occurs later;

(c) Stands will not be considered over mature if they are being held for purposes of sustained yield or for other management reasons acceptable to the State Forester.

(4) Schedule for Meeting Standards. Forest owners under the Western Oregon Severance Tax program shall proceed to bring their lands into stocked, not over mature condition, within a reasonable time period. Conversion activities of nonstocked lands logged prior to 1973 and evidence of acceptable management planning or remaining lands will be monitored by the State Forester. At any time the State Forester has reason to believe lands are not being converted to a stocked condition or are not being managed as forest land, he may require a plan detailing the owner's intentions for complying with the requirements of ORS 321.367.

(5) Maintenance Practices. Maintenance practices including site preparation, planting, animal damage control, and release may be needed to meet the above standards. Protection from fire, insect, and disease is also needed as required in ORS Chapters 477, 478, and 527.

Stat. Auth.: ORS Ch. 321 & 526

Hist.: FB 51(Temp), f. & ef. 10-13-77; FB 3-1978, f. & ef. 1-6-78; FB 6-1980, f. 3-5-80

629-023-0320

Reporting Underproductive or Unmanaged Forest Land

(1) Under ORS 321.367, the State Forester must report to the appropriate county assessor the location of all designated forest lands that were logged prior to 1973 and are suitable for growing and harvesting timber and fail to meet the minimum stocking requirements under ORS Chapter 527. The State Forester must also report other unmanaged forest lands.

(2) For the purpose of this rule the following definitions and procedures will apply:

(a) "Just Cause for Inadequate Stocking". The State Forester will consider all evidence presented by the landowner in determining "just cause" for areas of low stocking or non-management. "Just cause" may include recent acquisitions, severe sites, environmental problems or other conditions beyond the control of the owner;

(b) "Acceptable Management Plan". The State Forester will accept all management plans that contain sufficient information to insure that the required stocking or management will be achieved within a reasonable time period. The plan must have:

(A) A legal description of the underproductive or unmanaged lands;

(B) A map showing the location of underproductive or unmanaged lands;

(C) A description of the method(s) for meeting the management standards prescribed by OAR 629-023-0310;

(D) A time schedule for completion.

(c) "Reasonable Time". The reasonable time that will be allowed in the owners management plan for achieving the required stocking levels will be based on total ownership. The plan must show that the following percentages of suitable acres of forest land will be in a stocked or managed condition by: 50 percent within five years, 60 percent within six years, 70% within seven years, and 80 percent thereafter;

(d) "Unmanaged Forest Land". Forest lands that are not in compliance with the management standards as defined in OAR 629-023-0310 will be considered as unmanaged;

(e) "Reportable Units". The State Forester will report units of underproductive forest land and non-managed forest land when:

(A) The underproductive or unmanaged acreage is more than half the tax lot acreage or 20 acres, whichever is less; and

(B) The units are of a size that can be managed as a unit based on topography, the size of the adjacent stands, and the location of the unit in relation to property lines.

(C) There is no acceptable plan that would lead to compliance with OAR 629-023-0310.

Stat. Auth.: ORS Ch. 321 & 526

Hist.: FB 6-1980, f. & ef. 3-5-80

Tax Credit

30% Underproductive Forestland Conversion Tax Credit

629-023-0410

Purpose of the Rules

Under ORS 315.104 certain taxpayers may claim a tax credit for 30 percent of the costs of forestation of underproductive commercial forestland. The purpose of administrative rules 629-23-410 to 629-023-0490 is to clarify administration of the tax credit by the State Forester and to define an applicant's appeal rights under this credit.

Stat. Auth.: ORS Ch. 315 & 526

Stats. Implemented: 315.104

Hist.: FB 5-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82; FB 2-1986, f. & ef. 1-10-86; FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96

629-023-0420

Definitions

(1) "Appropriate sites" means those sites capable of producing a commercial hardwood or softwood stand which meet the definition of commercial forestland and are planted with suitable forest tree species.

(2) "Commercial forestland" means land for which a primary use is the growing and harvesting of forest tree species.

(3) "Forest tree species" means those species that are ecologically suited to the planting site, capable of producing commercial forest products, and marketable in the future as determined by the State Forester.

(4) "Hardwood harvests conducted for the purpose of converting underproductive forestland" means the harvest of an area occupied by a low volume and low value stand in which significant commercial harvest of forest tree species is not possible as defined in OAR 629-023-0440(2), or the landowner can demonstrate that the stand is or was unmerchantable by showing a negative economic return. A negative economic return means the costs that result from the harvest, such as logging, taxation and reforestation costs, exceed the market value received or to be received.

(5) "Reasons beyond the control of the taxpayer" means:

(a) Natural disaster including fire, flood, landslides, unusual weather conditions, and other natural incidents as determined by the State Forester; or,

(b) Failure that occurs though the project was completed in accordance with the specifications of OAR 629-023-0440 as determined by the State Forester.

(6) "Reasons under the control of the taxpayer" means the reforestation project was not completed in accordance with the specifications of OAR 629-023-0440 as determined by the State Forester.

Stat. Auth.: ORS Ch. 526

Stats. Implemented: 315.104

Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96

629-023-0430

Eligible Costs

Forestation project and plantation establishment costs incurred by the taxpayer to forest underproductive forestland may include labor, supervision, material, and equipment operating costs for the following:

(1) Site preparation;

(2) Planting, or with State Forester approval, seeding;

(3) Release;

- (4) Moisture conservation;
- (5) Erosion control;
- (6) Animal damage control.

Stat. Auth.: ORS Ch. 526

Stats. Implemented: 315.104

Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96

629-023-0440

Standards and Specifications

To qualify for a credit, the State Forester must determine that the forestland, prior harvest, and project comply with the following standards and specifications:

(1) Forestland must be capable of producing at least 20 cubic feet of wood fiber per acre at culmination of mean annual increment. Site productivity can be determined directly by tree growth and stocking measurements within the operation area, or determined indirectly using applicable USDA Natural Resources Conservation Service soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other sources.

(2) Prior to harvest the area contains no more than an allowable average of 80 square feet of basal area per acre. Measurable trees are those softwood species, 6 inches dbh and larger, and hardwood species, 11 inches and larger. Conifers may amount to no more than 50 percent of the allowable basal area.

(3) Site Preparation. The planting spot for each tree must be free from competing vegetation and slash. This may be accomplished by:

- (a) Bulldozing, plowing, discing, mulching, or scalping;
- (b) Hand slashing;
- (c) Aerial or ground application of various chemicals;
- (d) Controlled burning;
- (e) Any combination of above.

(4) Planting Stock. Seedlings must be from a seed source and elevation compatible with the planting area. The seedling size, stem caliper, and root to top ratio must be suited to the project site.

(5) Planting Operations. Planting operations shall be conducted as follows:

- (a) Seedlings must be planted at the same depth as they were in the nursery seed bed with roots straight in the soil;
- (b) The planting may be with any forest tree species as defined in OAR 629-023-0420(3), or as approved in an alternate plan with the State Forester;
- (c) The planting may occur any time the trees are dormant and the ground is not frozen, snow covered, or extremely dry.
- (6) Release. The landowner shall use all measures necessary to control competing vegetation to insure survival of the seedlings.

(7) Moisture Conservation. The landowner shall use all measures necessary to control loss of moisture and increase the chance of survival of the seedlings. This may include a combination of cultivation, mulching, or the use of chemicals.

(8) Erosion Control. When necessary the landowner shall use water barring, contour cultivation practices, or other methods to prevent erosion.

(9) Animal Damage Control. When necessary the landowner shall use treated planting stock, grass control, repellents, protective casings or other approved methods to control animal damage.

Stat. Auth.: ORS Ch. 526

Stats. Implemented: 315.104

Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96

629-023-0450

Preliminary Certificate Issuance

(1) The project is completed when the minimum number of well-distributed seedlings have been satisfactorily planted. The minimum number required under this section is that same as required under the reforestation rules of the Oregon Forest Practices Act.

(2) The preliminary credit application submitted to the State Forester by the taxpayer shall include the tax year for which the credit is claimed; whether claimant status is as an individual, partnership, or corporation; applicant's name, address, social security number or employer identification number; legal description of the property; county; number of acres eligible for tax credit; approximate date the project was completed; the amount of federal cost share received; and the taxpayer's costs for the following items:

- (a) Site preparation;
- (b) Planting, or direct seeding;
- (c) Release;
- (d) Moisture conservation;
- (e) Erosion control;
- (f) Animal damage control.

(3) The tax credit claimed on the preliminary certificate may be retained by the taxpayer in the event that a new forest is not established when all of the following conditions exist:

(a) The taxpayer made a reasonable effort to meet the project specifications of OAR 629-023-0440;

(b) The project failed because of reasons beyond the control of the taxpayer;

(c) The measures performed by the taxpayer would normally have resulted in establishing the minimum number of trees per acre.

Stat. Auth.: ORS Ch. 526

Stats. Implemented: 315.104

Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96

629-023-0460

Final Certificate Issuance

The State Forester shall issue a final certificate when the new forest is established.

(1) The forest is established when at least the minimum number of seedlings as required in OAR 629-023-0450 have survived two growing seasons and are free to grow without severe competition from other vegetation.

(2) The final credit application submitted to the State Forester by the taxpayer shall include the tax year for which the credit is claimed; number of acres where additional treatment was needed to establish the new forest, date the additional treatment was completed, the amount of federal cost share received, and the taxpayer's costs for each of the following items:

- (a) Additional trees & planting;
- (b) Release;
- (c) Moisture conservation;
- (d) Erosion control;
- (e) Animal damage control.

(3) A final certificate shall not be issued when the new forest is not established due to reasons beyond the control of the taxpayer. In such a situation, the taxpayer may requalify for a tax credit in the same manner as a new applicant.

Stat. Auth.: ORS Ch. 526

Stats. Implemented: 315.104

Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96

629-023-0490

Appeal Rights

A person who wishes to appeal a decision made by the State Forester regarding this credit shall use the following procedure:

(1) Person must notify the Department of Forestry field representative in writing that they disagree with the decision and explain why they disagree.

(2) If an impasse exists with the field representative, the person may write the department's Forest Tax Programs Manager in Salem, within 90 days of the field representative's determination, requesting an appeal to the Board of Forestry stating the basis for the appeal. The appeal is filed when it is received in the Forest Tax Programs Manager's office. Nothing in this rule precludes the manager from disposing of a controversy by informal conference. Appeals are made to the Board of

Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

Forestry using the Model Rules of Procedure under the Administrative Procedure Act. Under these rules the person shall be provided a contested case hearing by a hearings officer, whose findings are forwarded to the Board of Forestry for review and action.

(3) If the person wishes to appeal the decision of the Board of Forestry, an appeal must be taken to the Oregon Tax Court within 60 days of the Board's action.

Stat. Auth.: ORS Ch. 526

Stats. Implemented: 315.104

Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96

DIVISION 24

FOREST PRACTICES

All Regions

General

629-024-0101 [Renumbered to 629-600-0100]

629-024-0102 [Renumbered to 629-605-0100]

629-024-0104 [Renumbered to 629-605-0110]

629-024-0105 [Renumbered to 629-605-0120]

629-024-0106 [Renumbered to 629-605-0130]

629-024-0107 [Renumbered to 629-605-0140]

629-024-0108 [Renumbered to 629-605-0150]

629-024-0111 [Renumbered to 629-625-0500]

629-024-0112 [Renumbered to 629-605-0160]

629-024-0113 [Renumbered to 629-605-0170]

629-024-0118 [Renumbered to 629-605-0180]

629-024-0120 [Renumbered to 629-605-0200]

629-024-0121 [Renumbered to 629-605-0210]

Application of Chemicals

629-024-0211 [Renumbered to 629-620-0800]

Disposal of Slashing

629-024-0300 [Renumbered to 629-615-0000]

629-024-0301 [Renumbered to 629-615-0100]

629-024-0302 [Renumbered to 629-615-0300]

Specified Resource Sites on Forest Lands

629-024-0690 [Renumbered to 629-665-0000]

629-024-0695 [Renumbered to 629-665-0010]

629-024-0699 [Renumbered to 629-665-0020]

629-024-0700 [Renumbered to 629-665-0100]

629-024-0705 [Renumbered to 629-024-0699]

629-024-0710 [Renumbered to 629-665-0110]

629-024-0711 [Renumbered to 629-665-0120]

629-024-0800 [Renumbered to 629-665-0200]

629-024-0809 [Renumbered to 629-665-0210]

629-024-0811 [Renumbered to 629-665-0220]

629-024-0812 [Renumbered to 629-665-0230]

629-024-0813 [Renumbered to 629-665-0240]

DIVISION 25

FOREST PARK AND RECREATION AREAS

629-025-0000

Purpose of the Rules

These rules establish standards for recreational use of state forest lands managed by the Forester. The objectives of these rules are to protect the resources of state forest lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands. These rules are adopted pursuant to ORS 530.050 which gives the Forester the authority to adopt rules necessary for the management, protection, utilization and conservation of state forest lands acquired pursuant to ORS 530.010 to 530.040.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

629-025-0005

Definitions

As used in rules 629-025-0000 through 629-025-0070:

(1) "Campground" means an area designated by the Forester.

(2) "Camping" means occupying state forest lands overnight.

(3) "Camping Area" means an area designated by the Forester for overnight camping, without designated campsites.

(4) "Commercial Use" means recreational use of state forest lands for business, or financial gain.

(5) "Day Use Area" means an area designated by the Forester for recreational use during specified hours, and where overnight camping is prohibited.

(6) "Department" means Oregon Department of Forestry.

(7) "Designated Recreation Area" means an area designated by the Forester, including but not limited to, campgrounds, camping areas, day use areas, trailheads, staging areas, and boat launch sites.

(8) "Designated Trail" means any route on state forest land, other than a road, designated for a specific use by the Forester, which has been cleared of debris so that it is suitable for travel by motorized or non-motorized means.

(9) "Forester" means the State Forester, or the Forester's authorized representative.

(10) "Motorized Off-Road Zone" means an area on state forest land designated by the Forester where off-road use of motorized vehicles is permitted only on designated trails.

(11) "Non-Motorized Zone" means an area on state forest land designated by the Forester where use of motorized vehicles is restricted to roads.

(12) "Off Road Vehicle" means any vehicle capable of cross-country travel on other than roads, including but not limited to automobiles, trucks, 4-wheel drive vehicle, motorcycles, snowmobiles, and bicycles.

(13) "Organized Event" means any planned recreational activity, which is advertised or otherwise promoted, or sponsored by any person, and conducted at a predetermined time and place.

(14) "Person" means an individual, corporation, company, partnership, trust, firm, or association of persons.

(15) "Recreational Use" means any public use of state forest land which is not for business or financial gain.

(16) "Road" means any facility on state forest land which meets the definition of "highway" contained in ORS 801.305, and which is constructed for vehicular traffic and suitable for use by conventional two-wheel drive vehicles.

(17) "State Forest Lands" means lands owned by the State of Oregon, and managed by the Forester.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 23, f. 6-5-70, ef. 6-25-70; FB 36, f. 1-22-74, ef. 2-25-74; FB 3-1995, f. & cert. ef. 9-15-95; Renumbered from 629-26-005

629-025-0011

Permits - General Regulations

(1) The Forester may require permits for the following recreational uses:

(a) Organized events;

(b) Camping in campgrounds or in camping areas on state forest land;

(c) Parking at designated sites on state forest land;

(d) Use of Day Use Areas.

(2) Permit Duration; Suspension: Permits for recreational use on state forests lands may be issued for a day, season, or such other time period considered appropriate by the Forester for the use involved. The Forester may revoke a permit if necessary to protect public health, public safety, forest resources, or to obtain compliance with these rules.

(3) Bonds: For commercial use or organized events, the Forester may require the posting of a cash or surety bond or other guarantee in such form and in such amount as determined by the Forester to be sufficient by the Forester to defray the costs of restoration and rehabilitation of the lands affected by the permitted use. Bonds and guarantees will be returned to the permittee upon satisfactory compliance with all permit stipulations, including restoration and rehabilitation requirements.

(4) Insurance: For commercial use or organized events, the Forester may require a permittee to obtain and submit a property damage, personal injury, and public liability certificate of insurance, written by an insurance company authorized to sell insurance in the State of Oregon, in an amount determined by the Forester to be sufficient to protect the public and the State of Oregon. The policy shall name the Forester as a named insured and stipulate that the Forester shall be notified 30 days in advance of the termination or modification of the policy.

(5) Liability: For commercial use or organized events, the permittee shall defend, indemnify, and hold harmless the State of Oregon against any responsibility or liability for damage, injury, or loss to persons and property which may occur during the permitted use period or as a result of such use.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

629-025-0020

Permits - Organized Events

(1) No person, corporation, or other entity shall sponsor, promote or conduct any organized event within the boundaries of state forest land without first having obtained a permit from the Forester.

(2) Organized events may be permitted when the following requirements are satisfied:

(a) Adequate sanitation, policing, medical facilities, traffic control and other necessary services are provided;

(b) Conflict with traditional forest recreation activities is minimized;

(c) All expenses, risks, and liabilities are borne by the sponsors rather than the general public;

(d) The health, well-being and property of forest users, persons, neighboring landowners and of the general public are protected.

(e) Damage to forest resources or improvements is negligible or can be reasonably mitigated.

(3) Permit Application Procedure: Any person requesting a permit for an organized event shall provide the following

information to the Forester at least 60 days prior to the date of the proposed event:

(a) Date of the event;

(b) A map of the proposed event area;

(c) Number of participants;

(d) Name, address, date of birth and phone number of the sponsor;

(e) Description of the planned activities.

(f) A plan for timely clean-up and restoration of the areas used.

(g) The foregoing is not an exclusive list of the elements required for a permit.

(4) Compliance With Other Rules: All activities shall comply with applicable state and local codes, rules and ordinances. Additional state and local permits required shall be obtained prior to the beginning of the activity.

(5) Approval or Denial of Permits: The Forester may approve, with conditions, or deny the permit application consistent with the policies set forth in these rules. The following shall be considered in evaluating the permit applications:

(a) The ability of the applicant to finance, plan and manage the activity in accordance with sanitation, safety, medical care, fire control, security, crowd, noise, and traffic control requirements, and consistent with the protection of forest resources;

(b) The extent to which the proposed activity, in both nature and timing, threatens interference with customary usage of the forest by members of the public or interferes with the convenience of neighboring landowners and the general public;

(c) The experience of the applicant in performing similar activities in the past;

(d) Measures undertaken to mitigate any changes in customary forest usage or damage to forest resources or improvements caused by the activity.

(6) Cancellation: The Forester may cancel the permit effective immediately on notice to the applicant in the event of any emergency, significant law enforcement problem, or substantial threat to public welfare, safety or property arising from or affecting the activity, and may cancel the permit immediately upon any breach of other permit conditions. The applicant shall terminate the activity immediately upon receipt of notice from the Forester that the permit has been canceled.

(7) Miscellaneous Provisions: No application or proposal for an organized event will be considered by the Forester unless;

(a) The sponsor or its principal representative is at least 21 years of age; and

(b) The sponsor or sponsor-organization has satisfied all outstanding liabilities and requirements running to the Forester and arising out of any prior activity involving property under the jurisdiction of the Forester.

(8) Permits Non-transferable: No permit shall be transferable or assignable to any other sponsor, party or entity without prior written approval of the Forester.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

629-025-0030

Fees

(1) Established fees or charges shall be paid for use of overnight camping areas and other selected facilities and services.

(2) Payment of Fees: Unless posted otherwise, payment of fees and charges shall be made prior to receipt of the permit or use of the facilities and services. Permit fees will be non-refundable. Overnight camping fees are for the use of facilities until 1:00 p.m. of the following day.

(3) Established Fees: Specific fees for permits, facilities and services are as follows:

(a) Overnight camping in a designated camp-ground - Vehicle site: \$10 per night;

(b) Overnight camping in a designated camp-ground - Walk-in site: \$5 per night;

(c) Overnight camping in a designated camp-ground - Group site: \$25 per night;

(d) Extra vehicle in a designated campground campsite: \$2 per night per vehicle;

An additional fee is charged when an additional vehicle is allowed overnight and is driven into the campground. Two motorcycles are allowed before an extra vehicle fee will be charged;

(e) Overnight camping in a designated camping area: \$3 per night per vehicle;

(f) Firewood - where conditions permit, firewood will be sold.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

629-025-0040

General Forest Recreation Rules

(1) Sanitation:

(a) On all state forest lands, no person shall, unless otherwise authorized:

(A) Dispose of any cans, bottles and other non-flammable trash and garbage except in designated places or receptacles;

(B) Dispose of flammable trash or garbage except by burning in authorized fires, or disposal in designated places or receptacles;

(C) Drain sewage or petroleum products or dump refuse or waste other than wash water except in places or receptacles provided for that purpose;

(D) Dispose of any household, commercial or industrial refuse or waste brought as such from private or municipal property, including but not limited to automobiles, household appliances and furnishings;

(E) Pollute or contaminate water supplies or water used for human consumption; or

(F) Use a refuse container or disposal facility for any purpose other than for which it is supplied.

(b) No person shall wash any clothing, dish-ware, cookware, or other materials in any lake, stream, river, or other body of water on state forest land.

(c) No person shall deposit human waste within 100 feet of any campsite, trail, or body of water. Human waste shall be disposed of by burying to a depth of at least 6 inches.

(d) Where toilet or sewage facilities are provided, no person shall dispose of human waste except in those facilities.

(2) Occupancy and Use: On state forest lands, no person shall:

(a) Camp longer than 21 days out of any 28 day period, or the period of time permitted by the Forester;

(b) Camp within 25 feet of any body of water; or

(c) Leave personal property unattended longer than 4 days. Personal property left unattended longer than 4 days, without permission of the Forester, shall be removed by the Department and shall be disposed of by the Forester as provided by law.

(d) Leaving personal property unattended will be considered camping for the purposes of determining the length of stay at a given site.

(3) Property and Resources: On all state forest lands, unless otherwise authorized by the Forester, no person shall:

(a) Deface, disturb, remove or destroy any public property, structures, or any scientific, cultural, archaeological or historic resource, natural object or area;

(b) Deface, remove or destroy plants or their parts, soil, rocks, or minerals, or cave resources, unless advance authorization is obtained in writing from the Forester.

(4) Animals:

(a) Any dog, cat, horse or other animal brought into or kept on state forest lands shall be kept under control at all times.

(b) No horse or other animal shall be hitched or confined in a manner that may cause damage to any tree, shrub, improvement, or structure.

(c) The Forester has the authority to undertake any measures deemed necessary (including removal of the animal from state forest lands) to protect state forest resources and to prevent interference by the animal with the safety, comfort, and well-being of others.

(5) Construction of Trails and Shelters: On state forest land, no person shall modify, construct, or cause to be constructed any trail, shelter, building, or other facility or improvement without written permission of the Forester.

(6) Firewood Collection:

(a) Persons engaged in lawful camping activity may collect sufficient firewood for their personal use while camped on state forest land, except where otherwise prohibited in these rules.

(b) No person shall be permitted to remove from state forest land firewood which has been collected for use while camping on state forest land, without a valid firewood permit.

(c) Firewood shall be collected only from dead and down material that is 12 inches or less in diameter at its largest point. No standing trees, living or dead, may be felled for conversion into firewood without a valid firewood permit.

(7) Campfires:

(a) Fires shall be confined to campstoves or fire rings or other fireproof structures constructed for such purposes. Such structures shall not exceed four feet in diameter.

(b) All flammable material shall be cleared for a distance of 5 feet around and 10 feet above any fire ring or other structure used to contain a campfire.

(c) No fire shall be left unattended and every fire shall be extinguished before its user leaves the site.

(8) Traffic Rules:

(a) When operating a vehicle on state forest lands, no person shall violate the basic speed rule or exceed posted speed limits, willfully endanger persons or property, or act in a reckless, careless, or negligent manner.

(b) No person shall obstruct or hinder the flow of traffic on any road.

(c) No person shall operate a vehicle on any state forest road in violation of Oregon traffic laws.

(9) Target Shooting:

(a) No person shall place targets on live trees or shoot live trees for any purpose.

(b) No person shall shoot across or along any road.

(c) No person shall shoot carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person or property.

(d) Persons engaged in target shooting shall remove from state forest land all shell casings, targets, and other debris resulting from their use.

(10) Concessions: No person shall:

(a) Operate a concession on state forest land, either fixed or mobile, solicit, sell or offer for sale, peddle, hawk, or vend any goods, wares, merchandise, food, liquids, or services without written permission of the Forester;

(b) Advertise any goods or services by any means whatsoever.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

629-025-0050

Designated Recreation Areas.

(1) State forest lands designated by the Forester as "Designated Recreation Areas" may include, but are not limited to campgrounds, camping areas, day use areas, trailheads, staging areas, and boat launch sites. Maps showing the Designated Recreation Areas shall be kept on file at the State Forester's office and the applicable District office, and shall be available for public inspection during normal business hours.

(2) General Forest Recreation Rules as outlined in OAR 629-025-0040 shall be applicable to Designated Recreation Areas. In addition to those rules, the following rules shall apply:

(3) Occupancy and Use:

(a) At areas where camping is permitted no person shall camp longer than 14 days out of any 28 day period at a designated recreation area.

(b) Leaving personal property unattended will be considered camping for the purposes of determining the length of stay at a given site.

(4) Firewood: No person shall collect firewood within the boundaries of any designated recreation area.

(5) Firearms, Weapons, Explosives: Within a designated recreation area no person shall:

(a) Hunt, pursue, trap, kill, injure, molest, or disturb the habitat of any bird or animal;

(b) Discharge any firearm, pellet gun, bow and arrow, slingshot or other weapon capable of injuring any person, bird, or animal;

(c) Possess any loaded firearms; or

(d) Discharge or cause to be discharged any firecrackers, explosives, torpedoes, rockets, fireworks, or other substances which could be harmful to visitors or resources without written permission of the Forester.

(6) Property and Resources: No person shall mutilate, deface, damage, or remove any table, bench, building, sign, marker, monument, fence, barrier, fountain, faucet, traffic recorder, or other structure or facility of any kind in a designated recreation area.

(7) Parking: Automobiles, trailers, or other vehicles shall be parked only in designated parking areas.

(8) Animals: The owner is responsible for the disposal of the animal's waste within designated recreation areas.

(9) Offensive Behavior: No person shall use abusive, threatening, boisterous, vile, obscene, or indecent language or gestures, or engage in demonstrations, disturbances, or riotous behavior in any designated recreation area.

(10) Excessive Noise: No person shall operate or use any noise-producing machine, vehicle device, or instrument in such a manner that is disturbing to other visitors.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

629-025-0060

Campground & Day Use Areas

(1) Maps showing the Campground and Day Use Areas designated by the Forester shall be kept on file at the State Forester's office and the applicable District office, and available for public inspection during normal business hours.

(2) The General Forest Recreation Rules as outlined in OAR 629-025-0040 and the Designated Recreation Area rules as outlined in OAR 629-025-0050 shall be applicable to Campground and Day Use Areas. In addition to those rules, the following rules shall apply to Campgrounds and Day Use Areas:

(a) Sanitation: In Campground and Day Use Areas no person shall, unless otherwise authorized:

(A) Clean fish, game, other food, clothing or household articles at any outdoor hydrant, pump, faucet or fountain, or restroom water faucet;

(B) Deposit human waste except in toilet or sewage facilities provided for that purpose.

(C) Leave bottles, cans, ashes, waste, paper, garbage, sewage, or other rubbish or refuse, except in receptacles designated for that purpose.

(b) Animals:

(A) No person shall bring an animal into a campground or day use area unless the animal is on a leash not longer than 6 feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times. No animals, other than seeing-eye dogs, shall be allowed in any building.

(B) No person shall ride, drive, lead, or keep a saddle horse or other animal in any campground, except on such roads, trails, or other areas designated for that purpose. No horse or other animal shall be hitched or confined in a manner that may cause damage to any tree, shrub, improvement or structure.

(C) The Forester has the authority to undertake any measures deemed necessary (including removal of the animal from the Campground or Day Use Area) to protect Campground or Day Use Area resources and to prevent interference by the animal with the safety, comfort, and well-being of Camp-ground or Day Use Area visitors.

(c) Campfires:.

(A) Fires in Campgrounds or Day Use Areas shall be confined to:

(i) Designated receptacles that are designed and provided for such use.

(ii) Portable stoves in established campsites.

(B) No fire shall be left unattended and every fire shall be extinguished before its user leaves the Campground or Day Use Area.

(d) Signs and Markers: No person shall erect signs, markers, or inscriptions of any type except on boards or structures provided for that purpose.

(e) Camping: The Forester may:

(A) Designate and post certain portions of campgrounds for use by specified types of camping equipment, such as tents, trailers, pickup campers, or other recreational vehicles.

(B) Require that all campers maintain reason-able quiet between the hours of 10 p.m. to 7 a.m.

(C) Prohibit the use of any noise-producing machine, vehicle device, or instrument between the hours of 10 p.m. to 7 a.m.

(D) Limit the occupancy of each individual campsite to one family unit, if, in the opinion of the Forester, occupancy by more than one family unit will impair the health and safety of any camp-ground users or damage the campground.

(f) Traffic Rules: Posted speed limits in Camp-grounds and Day Use Areas shall be observed at all times.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

629-025-0070

Motorized Off-Road Vehicle Use

(1) No person shall:

(a) Operate a motor vehicle off-road, except on a trail designated for that purpose;

(b) Operate a motor vehicle off-road without an approved spark arrestor, as specified in OAR 629-043-0015;

(c) Operate a motor vehicle off-road without an adequate noise muffler as defined in ORS 821.220.

(d) Operate a motor vehicle off-road without a valid ATV or snowmobile registration.

(e) Operate a motor vehicle, except snow-mobiles, on road cut banks or fill slopes, or in ditches along roads.

(f) Operate an off-road motor vehicle in a manner that damages trails, boardwalks, bridges, water bars, cement blocking, drainage pipes or any other improvement designed to maintain the integrity of the trail.

(g) Operate any motor vehicle off-road from one half hour after sunset to one half hour before sunrise unless equipped with working head and tail lights.

(h) Operate on any road in a Non-Motorized zone, a motor vehicle that is not licensed for use on public roads or highways.

(i) Operate an off-road motor vehicle or snowmobile in violation of ORS 821.010 through ORS 821.320.

(2) Road and Trail Closures: The Forester may, at any time, close all or portions of roads or designated trails, or establish one-way traffic flow on any road or trail.

Stat. Auth.: ORS Ch. 530.050

Stats. Implemented: ORS 530.010 to 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95

DIVISION 26

MOTORIZED RECREATION VEHICLE USE

[ED. NOTE: Administrative Order FB 36 repealed Administrative Order FB 30.]

Definitions

629-026-0005 [Renumbered to 629-025-0005]

DIVISION 28

PERSONAL USE FUELWOOD PERMITS

629-028-0005

Definitions

The following words and phrases, when used in this division, shall mean the following unless the context otherwise requires:

(1) "Forester" means the State Forester or an authorized representative.

(2) "Board" means the Oregon State Board of Forestry.

(3) "Fuelwood Permit" means a permit issued by the Forester to an individual authorizing permittee to gather, salvage, cut, and remove not over two cords of wood fibre from State forest lands for personal use as domestic fuel.

(4) "Permittee" means a person who has in possession a valid fuelwood permit.

(5) "Permit Fee" means a charge made by the Forester to recover costs of administering the fuelwood permit program.

(6) "State Forest Lands" means those lands managed by the Forester under authority of ORS 530.010 to ORS 530.520.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 9-1980, f. & ef. 10-14-80

629-028-0010

Purpose

As set forth in ORS 530.050 the Forester in exercising legal authority for the management of State forest lands shall manage the land to secure the greatest permanent value to the State. The Forester, in the management, protection, utilization, and conservation of the lands may, in addition to selling forest products from the lands, permit the use of the lands for other purposes not detrimental to the State. The Board and the Forester have determined that it is in the interest of the State to permit the people of the State to utilize for fuelwood wood fibre that has a marginal economic or commercial value.

Stat. Auth.: ORS Ch. 530

Hist.: FB 9-1980, f. & ef. 10-14-80

629-028-0015

Permit Fee

The Forester intends to issue fuelwood permits, and when necessary, to charge a permit fee. Such fee does not constitute a price for sale of forest products, but may be made in an amount sufficient to enable the Forester to recover costs of developing woodcutting areas, issuing permits, and supervising and administering the fuelwood permit program. If a fee is necessary, it shall be a standard rate, used Statewide, and established annually by the Forester.

Stat. Auth.: ORS Ch. 530

Hist.: FB 9-1980, f. & ef. 10-14-80

629-028-0020

Criteria for Fee Charge

(1) In determining when to charge a permit fee, and the amount of such fee, the Forester shall consider the following:

(a) The amount of demand for fuelwood permits in local areas or districts;

(b) The amount of fuelwood available and any costs incurred in making it accessible for permit use; such as yarding, bunching, posting, marking, and road improvement or maintenance;

(c) The possible impact of administration of the fuelwood permit program upon the accomplishment of other activities necessary to the management of the lands.

(2) If any of the above criteria or combination of criteria under the free permit system cause significant impact in the administration of general State forest land programs, the Forester may implement the fee permit system in a district or area.

Stat. Auth.: ORS Ch. 530

Hist.: FB 9-1980, f. & ef. 10-14-80

629-028-0025

Requirements of Permittees

Each permittee shall observe the following requirements:

(1) Permittee shall have the permit in possession when cutting or removing fuelwood.

(2) The fuelwood is for personal use and permittee shall not sell, bargain, or otherwise obtain monetary or material profit from the fuelwood obtained through a permit

(3) Permittee shall perform the cutting and removal of fuelwood in compliance with the laws of the State of Oregon, and requirements of the Forester for the protection and conservation of the lands.

Stat. Auth.: ORS Ch. 530

Hist.: FB 9-1980, f. & ef. 10-14-80

DIVISION 31

LOG EXPORT RULES

629-031-0005

Definitions

(1) "Export" means that unprocessed timber is loaded on a vessel or other conveyance with a foreign destination or is present at a facility such as a port or dock with intent to load it on a vessel or other conveyance with a foreign destination.

(2) "Performance Bond" means the security required by a state timber sale contract which ensures satisfactory performance of contract requirements by the timber sale purchaser. A performance bond may be in the form of a surety bond, cash, negotiable securities, irrevocable letter of credit, or an assignment of surety.

(3) "Person" means an individual, a partnership, a public or private corporation, an unincorporated association, or any other legal entity. The term includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(4) "Private Lands" means lands within the State of Oregon owned by a person. The term does not include federal lands or non-federal public lands, or any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(c) Held by any Native Corporation as defined in Section 3 of the Alaska Native Claims Settlement Act (**43 U.S.C. 1602**).

(5) "Purchaser" means person who has entered into a state timber sale contract with the State Forester.

(6) "State Lands" means lands owned by the Board of Forestry under ORS Chapter 530 or any lands managed by the State Forester by agreement with the State Land Board.

(7) "State Timber" means any timber owned by the Board of Forestry under ORS Chapter 530 or any timber managed by the State Forester by agreement with the State Land Board.

(8) "State Timber Sales Contract" means any timber under contract with the State Forester which is owned by the Board of Forestry under ORS Chapter 530 or any timber under contract with the State Forester and managed or sold by agreement with the State Land Board.

(9) "Unprocessed Timber" or "Unprocessed State Timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term does not include timber processed into any one of the following:

(a) Lumber or construction timbers, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on four sides, not intended for remanufacture;

(b) Lumber, construction timbers, or cants for remanufacture, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (nominal) in thickness;

(c) Lumber, construction timbers, or cants for remanufacture, that do not meet the grades referred to in clause (b) and are sawn

on four sides, with wane less than 1/4 of any face, not exceeding 8-3/4 inches in thickness;

(d) Chips, pulp, or pulp products;

(e) Veneer or plywood;

(f) Poles, posts, or piling cut or treated with preservatives for use as such;

(g) Shakes or shingles;

(h) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;

(i) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

(j) Firewood cut in pieces 48 inches or less in length.

Stat. Auth.: ORS 530

Hist.: FB 8-1990(Temp), f. 10-19-90, cert. ef. 11-1-90; FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0010

Criteria for Eligibility to Bid on State Timber Sale Contracts

(1) In addition to all other requirements of law, any person submitting a bid for the purchase of state timber between the time this rule takes effect and June 10, 1991 must certify, in a form and manner specified by the state Forester, that:

(a) The person will not export directly or indirectly unprocessed state timber; and

(b) The person:

(A) Has not exported directly or indirectly unprocessed timber originating from private lands in Oregon since September 10, 1990 except to meet contractual obligations made prior to September 10, 1990; and

(B) Will not export directly or indirectly unprocessed timber originating from private lands in Oregon other than as permitted pursuant to paragraph (A) of this subsection; and

(C) Will complete on or before June 10, 1991, any pre-September 10, 1990 contractual obligations to export unprocessed timber originating from private lands in Oregon; and

(c) The person will not sell, transfer, exchange or otherwise convey unprocessed state timber to any other person without obtaining a certification from the person that meets the requirements of OAR 629-031-0030.

(2) In addition to all other requirements of law, after June 10, 1991 a person previously not eligible to bid for state timber under section (1) of this rule may bid for state timber if the person certifies in a form and manner specified by the State Forester that:

(a) The person will not directly or indirectly export unprocessed state timber; and

(b) Unless exempted by section (3) of this rule, the person has not exported unprocessed timber from private lands in Oregon for a period of not less than 24 months prior to the date of submission of the bid; and

(c) The person will not sell, transfer, exchange or otherwise convey unprocessed state timber to any other person without obtaining a certification from the person that meets the requirements of OAR 629-031-0030.

(3) The State Forester may waive the 24 month requirement contained in subsection (2)(b) of this rule if:

(a) Prior to June 10, 1991 the person certifies to the State Forester they will cease exporting unprocessed timber originating from private lands in Oregon no later than one year from the date of said certification; and

(b) They cease all exporting of unprocessed timber originating from private lands in Oregon within the one-year period stated in the certification.

(c) If the person ceases exporting activities as stated in their certification, the person will then become eligible to submit a bid for the purchase of state timber provided they complete the certification required by section (2) of this rule.

Stat. Auth.: ORS Ch. 530

Hist.: FB 8-1990(Temp), f. 10-19-90, cert. ef. 11-1-90; FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0015

Prohibition Against Indirect Substitution

In addition to all other requirements of law, no person who is prohibited from purchasing timber directly from the State Forester may purchase state timber from any other person. Acquisitions of Western Red Cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this rule.

Stat. Auth.: ORS Ch. 530

Hist.: FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0020

Applicable State Timber

All unprocessed timber, as defined in OAR 629-031-0005, which originates from state lands is prohibited from export.

Stat. Auth.: ORS Ch. 530

Hist.: FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0025

Surplus Timber

The prohibitions against export contained in OAR 629-031-0005 to 629-031-0045 shall not apply to specific quantities of grades and species of unprocessed timber originating from state land which the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States.

Stat. Auth.: ORS Ch. 530

Hist.: FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0030

Reporting Requirements

(1) Before the State Forester will issue final acceptance of timber sale contract requirements, a purchaser of state timber must:

(a) Notify the State Forester of the delivery destination of all timber purchased under that contract. Notification will be made in a form and manner prescribed by the State Forester;

(b) Prior to selling, trading, exchanging, or otherwise conveying state timber to any other person, the purchaser of state timber shall obtain a certification of the person's eligibility to purchase state timber, and their intent to comply with the terms and conditions contained in this section. Certification will be made in a form and manner as prescribed by the State Forester and shall be forwarded to the State Forester upon completion of the transaction. Obtaining certification shall not relieve the purchaser's responsibility to provide the State Forester with an accounting of the delivery destination of that timber.

(2) Any performance bond required by a state timber sale contract may be retained by the State Forester, until satisfactory notification of state timber delivery destination has been received by the State Forester.

(3) Failure to provide the State Forester with a final accounting of the delivery destination of state timber will be considered a violation of these export regulations. Violators will be subject to the penalties contained in OAR 629-031-0035.

Stat. Auth.: ORS Ch. 530

Hist.: FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0035

Purchaser Disqualification and Termination of Contracts

(1) The State Forester shall keep a record of any person who violates the requirements of OAR's 629-031-0005 to 629-031-0040.

(2) A person whose name appears on the record for violations as stated in section (1) of this rule, and who again violates the requirements of OAR 629-031-0005 to 629-031-0040 shall be disqualified from bidding on or purchasing state timber for a period of five years following the date of the violation. Any appeals of disqualification shall be handled as provided in ORS 279.045.

(3) The State Forester may cease operations on and/or terminate any state timber sale contract entered into with a person who has violated the requirements of OAR 629-031-0005 to 629-031-0040, and assess damages according to the following formula:

(a) $D = (OSV + AC) - (PR + RSV)$, where:

(A) D = Damages and Expenses;

(B) OSV = Original Sale Value (timber only - does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales;

(C) AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law;

(D) PR = Payments Received;

(E) RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the State Forester's estimate of remaining volume, multiplied by the dollar values stated in the contract.

Stat. Auth.: ORS Ch. 530

Hist.: FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0040

Log Branding and Marking Requirements

(1) All state timber originating from state timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of the wood, both ends of all logs originating from state timber sales shall be hammer branded and both ends shall be painted with a paint type and color determined by the State Forester.

(2) If properly marked state timber is subdivided into smaller pieces for any other purpose than immediate processing, each piece must be branded with a state brand specifically used for this purpose and signifying the unprocessed timber is state timber ineligible for export. The State Forester's export restriction branding hammers can be obtained from the State Forester, at cost, upon request.

Stat. Auth.: ORS Ch. 530

Hist.: FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

629-031-0045

Enforcement

Investigation of suspected violations of these rules and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the State Forester, or contracted by the State Forester to other state or federal agencies. Any alleged violations of the export prohibition provisions of this section will be referred by the State Forester to the appropriate federal or state agency for prosecution or other legal action.

Stat. Auth.: ORS Ch. 530

Hist.: FB 10-1990, f. 12-18-90, cert. ef. 12-20-90

DIVISION 32

PROCEDURES GOVERNING DEFAULTS ON BOARD OF FORESTRY TIMBER SALE CONTRACTS

629-032-0000

Purpose

The purpose of these rules is to provide a uniform procedure governing defaults on Board of Forestry timber sale contracts involving Board of Forestry lands or contracts in which the timber on the Board of Forestry lands predominates in value.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87

629-032-0005

Definitions

(1) "Cash Sale" means a sale in which the purchase price is based on a total price to be paid for all specified products in the sale area.

(2) "Contract" means a contract for the sale of timber made under the provisions of ORS 530.050 and 530.059.

(3) "Damages and Expenses" means costs, damages, losses and expenses incurred by the State of Oregon as a result of a default including but not limited to any unpaid balances owing the

State as determined by either a calculation of the State Forester or as the result of the difference in values between the original sale and the resale of the defaulted parcel; calculated or actual costs for preparing the defaulted parcel for resale; rehabilitation or regeneration delay costs; any expense incurred by the State Forester for legal services resulting from the default; any interest charge as provided for in these rules or any other damages allowed by law.

(4) "Default" means the purchaser's failure to correct a violation as directed by the forester within a specified period of time, or the purchaser's injury to or severance of timber not included in the sale.

(5) "Forester" means the State Forester or designee.

(6) "Market Value" means the value of timber as determined by the forester, using relevant transaction evidence. Relevant transaction evidence may include, but not be limited to, recent timber sale bid data, log prices, or appraisals.

(7) "Overrun" means the volume of timber that exceeds the estimated cruised volume.

(8) "Purchaser" means individual or organization purchasing timber from Board of Forestry lands or from lands on which Board of Forestry timber predominates in value.

(9) "Recovery Sale" means a sale in which the purchase price is based on the unit price of specified products to be removed.

(10) "Underrun" means the volume of timber that is less than the estimated cruised volume.

(11) "Violation" means failure to comply with the terms and conditions of the contract.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87; FB 3-1990, f. 6-26-90, cert. ef. 6-19-

90

629-032-0010

Default — Future Bidding

(1) The provisions of OAR 629-032-0000 to 629-032-0070 are in addition to, not in lieu of, any other remedies the Board of Forestry may have against a defaulting purchaser.

(2) Except where the purchaser posts security as provided in OAR 629-032-0040, or except as may be otherwise provided in these rules, any purchaser of timber from Board of Forestry lands who defaults on a contract with the forester shall not thereafter be allowed to bid on any Board of Forestry timber sale including the resale of the defaulted contract, until purchaser reimburses State for all damages and expenses incurred as a result of the default. This prohibition shall apply to the purchaser's assignee, agent or anyone else acting in the purchaser's behalf.

(3) In the case of a contract for the sale of timber which includes both Board of Forestry lands and other state lands managed by the forester, this rule shall apply only if the timber on the Board of Forestry lands predominates in value.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87

629-032-0030

Notice of Default to Purchaser

(1) Whenever the forester finds there is a violation of the contract, the forester may suspend operations in accordance with the provisions of the contract. If the violation is not corrected within the time specified by the forester, the forester may notify the purchaser that the contract is in default and terminate the contract.

(2) If the purchaser has failed to complete the requirements of the contract prior to the expiration date, or if the purchaser injures or severs timber not included in the sale, the forester may notify the purchaser that the contract is in default without allowing the purchaser to take corrective action.

(3) All notices of default to the purchaser by the forester shall be sent by certified mail with return receipt requested.

(4) The notice of default shall inform the purchaser that if purchaser wishes to bid on the resale of the defaulted contract or any future contracts, the purchaser must notify the forester within 30 days of the date the notice of default was received by purchaser. The notice shall also inform the purchaser that upon

receiving such notification from the purchaser, the forester will estimate the damages and expenses that will be incurred by the State as a result of the default according to the method set out in OAR 629-032-0060.

(5) The notice shall also inform the purchaser of the reasons for default and the effective date of the default.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87; FB 3-1990, f. 6-26-90, cert. ef. 6-19-

90

629-032-0040

Request to Bid by Purchaser

(1) If a purchaser in default wishes to bid on the resale of the defaulted contract and future contracts, the purchaser shall so notify the forester in writing within 30 days of receiving the notice of default. The forester shall, within 30 days of the receipt of the notice, notify the purchaser of the estimated damages and expenses incurred by the State as a result of the default, using the method set out in OAR 629-032-0060.

(2) The forester shall notify the purchaser of the estimated amount of damages and expenses by certified mail. The notice of estimated damages and expenses shall inform the purchaser of the right to request a contested case hearing pursuant to OAR 629-032-0050 and the time within which such request must be made.

(3) If purchaser makes payment of the estimated damages and expenses prior to the resale of the defaulted contract, the forester shall grant permission to the purchaser to bid on the resale and future sales.

(4) The forester shall not give permission to bid on the resale of the defaulted sale or future sales if other defaults by the purchaser are outstanding.

(5) If the purchaser is in the process of settling the defaulted contract with the forester under the provisions of OAR 629-032-0060, the purchaser may bid on contracts other than the defaulted contract if the purchaser posts a bond in the amount sufficient to cover the estimated damages and expenses determined by the forester, or places in an escrow account cash or marketable securities acceptable to the forester that are readily convertible into cash in an amount sufficient to cover the estimated damages and expenses of the defaulted contract, or a combination of such bond, cash and securities in the required amount. The terms of the escrow agreement shall be satisfactory to the forester. The forester shall grant permission to bid on other contracts under this provision only if no other defaults by purchaser are outstanding.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87

629-032-0050

Contested Case Hearing

(1) Within 30 days of the date of the certified letter from the forester stating the damages and expenses, the purchaser may request a contested case hearing before the forester concerning any of the following issues:

(a) Whether a default was committed by the purchaser;

(b) Whether the corrective action which the forester ordered to be taken prior to default by the purchaser is appropriate;

(c) Whether the forester calculated damages and expenses using the methods specified in OAR 629-032-0060.

(2) The hearing shall be governed by ORS 183.413 to 183.497. A hearings officer may be appointed by the forester to hear the case. However, the hearings officer shall not have authority to issue a final order. Any final order issued under this rule shall be signed by the forester and may be appealed as provided in ORS 183.482

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87

629-032-0060

Settlement of Default

(1) In the event of default, the forester may terminate the contract and assess damages and expenses using the formula; $D = (OSV + AC) - (PR + RSV)$, where:

(a) D = Damages and Expenses;

(b) OSV = Original Sale Value (timber value only — does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales;

(c) AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law;

(d) PR = Payments Received;

(e) RSV = Remaining Sale Value. Dependent upon when settlement is made, the value of the remaining timber shall be determined by the forester using the Department of Forestry's log prices and logging costs in effect at the time of default or immediately prior to resale; or shall be based upon the price bid for the timber in the resale; or shall be based on the actual value of timber removed in the resale.

(2) The purchaser shall have the following options for settlement of the default:

(a) Settlement prior to resale:

(A) A purchaser may settle a default prior to the resale of the defaulted parcel by paying balances owing the state plus any other damages and expenses incurred by the state as a result of the default;

(B) Damages and expenses shall include, but not be limited to, any estimated costs and losses resulting from resale of the parcel and any estimated rehabilitation or regeneration delay costs and losses in areas which have been harvested.

(b) Settlement after resale:

(A) Cash Resale. The purchaser shall be responsible for any monies due the state if the balance of payments owing and other damages and expenses incurred as a result of the default are not offset by the values of the resale on a cash basis. Such balances shall be due 30 days after the date of billing by State. If payment is not made within 30 days, it shall be subject to an interest charge starting from the date of billing until full payment is received;

(B) Recovery Resale. The purchaser shall be responsible for any monies due the State if the balance of payments owing and other damages and expenses incurred as a result of the default are not offset by the values in the new sale on a recovery basis. The purchaser shall have the option of settling with the state based upon the resale bid and the state's estimate of volume and value to be recovered. If this option is not exercised within 30 days of the date of billing by state, then payment shall be subject to an interest charge starting from the date of billing until full payment is received, or from the date of original billing if non-payment is the cause of default;

(C) Settlement after completion of recovery resale. The purchaser has the option of waiting until the actual volume and value has been determined upon completion of a recovery resale before making a settlement. However, the purchaser shall be required to pay an interest charge on the actual value of the completed sale from the date of the original billing until full payment is received, or from the date of original billing if non-payment is the cause of default.

(c) Without Resale. In the event a defaulted sale is offered for resale but does not sell, or if the forester determines a defaulted sale is not resaleable, the difference between the appraised price (including estimated bid-up) of the sale at time of default and the original bid price, plus any damages and expenses and interest due, shall become the basis for settlement of the defaulted contract. Payments shall be due within 30 days after the billing by State. If payment is not made within 30 days, it shall be subject to an interest charge from the date of billing. Examples of situations in which sales may not be resaleable would include, but not be limited to the following:

(A) The resale of remaining timber must be added to another sale to make it resaleable so that the original sale loses its identity;

(B) Anticipated revenue from the resale would be less than the cost of making the sale;

(C) There is no market for the remaining timber;

(D) The resale would not be scheduled within two years from date of default;

- (E) Environmental restrictions prohibit resale;
(F) The defaulted sale area is included in exchange plans.
(3) In the event of default because of the purchaser's injury to or severance of timber not included in the sale, the forester may terminate the contract and/or assess damages and expenses in the amount of:
(a) Treble the market value of the severed or injured timber if the purchaser's action is wilful or intentional; or
(b) Double the market value of the severed or injured timber if the purchaser's action is not wilful or intentional.
(4) Any damages assessed for injury or severance are in addition to and not in lieu of any damages to which the forester may be entitled under section (1) of this rule.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87; FB 3-1990, f. 6-26-90, cert. ef. 6-19-

90

629-032-0070

Provisions

The following provisions apply to all options provided in OAR 629-032-0000 through 629-032-0060:

- (1) The interest rate used shall be nine percent, or the prime rate of the First Interstate Bank of Oregon at the time interest commences to run, whichever is greater.
(2) Initial down payments or advance payments may be retained by State and surety bonds and payment bonds shall be maintained in effect until the State has been reimbursed for all damages and expenses incurred as a result of the default.
(3) The Department of Forestry may retain any resale revenues in excess of damages and expenses.

Stat. Auth.: ORS Ch. 526 & 530

Hist.: FB 4-1987, f. & ef. 9-8-87

DIVISION 34

LOG SCALING AGREEMENTS AND SCALING FACILITY REQUIREMENTS

629-034-0005

Definitions

As used in OAR 629-034-0005 to 629-034-0015, unless the context requires otherwise:

- (1) "Agreement" means a memorandum of understanding, signed by the Forester and TPSO which describes the terms and conditions for TPSO scaling of state log loads.
(2) "Forester" means the State Forester or an authorized representative.
(3) "Log Load" means a group of logs that is transported as a unit. When multiple log loads are transported simultaneously, each will maintain its integrity for accountability.
(4) "Scaling" means the process of measuring and assigning net and gross volumes and grades to logs.
(5) "Scaling Facility" means an area and related improvements that are designed and constructed to allow easy access to log loads for scaling.
(6) "State" means the Oregon State Department of Forestry.
(7) "Third Party Scaling Organization" (TPSO) means an independent business that measures net and gross log volume and assigns grade by the rules adopted by the Northwest Log Rules Advisory Group.

Stat. Auth.: ORS Ch. 530

Hist.: FB 7-1988, f. & cert. ef. 9-9-88

629-034-0010

Purpose

The purpose of this rule is to:

- (1) Require a TPSO to enter into an agreement with the State before the TPSO is authorized to scale log loads sold under state timber sale contracts;
(2) Outline scaling facility requirements which will promote consistent, accurate scaling of state log loads; and
(3) Protect the interest of the people of Oregon.

Stat. Auth.: ORS Ch. 530

Hist.: FB 7-1988, f. & cert. ef. 9-9-88

629-034-0015

Third Party Scaling Agreement and Scaling Facility Requirements

- (1) All state logs sold on a scale recovery basis shall be scaled only at approved locations by an authorized TPSO.
(2) In order to be authorized, a TPSO must enter into an agreement, on a form provided by the state, which specifies the manner and conditions under which state logs sold on a scale recovery basis shall be scaled.
(3) The TPSO must scale the logs at a facility which, in the Forester's opinion, meets the following requirements:
(a) The facility has a separate office space for the exclusive use of TPSO scalers and which provides adequate storage and security for state log load information;
(b) The facility provides safe and unobstructed access to the loads being scaled;
(c) The facility has a communication link which provides scalers immediate contact to the local state forestry office; and
(d) The facility provides protection of log and load accountability system.

Stat. Auth.: ORS Ch. 530

Hist.: FB 7-1988, f. & cert. ef. 9-9-88

PROTECTION

DIVISION 41

ADMINISTRATION

629-041-0005

Definitions

(1) The definitions as set forth in ORS 477.001 shall apply to OAR Chapter 629, Divisions 41 through 46, unless the context otherwise requires.

(2) The following words and phrases, when used in OAR Chapter 629, Divisions 41 through 46, shall mean the following unless the context otherwise requires:

- (a) "Budget" means the budgeted cost of the Forester for a forest protection district, which cost has been determined under the authority and procedures of ORS 477.205 to 477.291;
(b) "Completed Operation" means an operation area in which the operation has been completed and the forest products which were felled or severed have been removed;
(c) "Mobile Equipment" means any power driven equipment operated at one location for a period of two days or less;
(d) "Stationary Equipment" means any power driven equipment operated at any one location for a period of more than two days;
(e) "Truck" means a motorized vehicle of 3,000 pounds G.V.W. or larger, except passenger carrying vehicles not involved in commercial or industrial activity.

Stat. Auth.: ORS Ch. 183 & 526

Hist.: FB 17, f. & ef. 3-12-68; FB 18, f. & ef. 3-22-68; FB 7-1986, f. & ef. 9-25-86

629-041-0010

Actual Cost Formulas

(1) In the event that a fire burns over forest land which includes both grazing land and timberland, the actual cost for grazing land and timberland shall be determined in accordance with the following formulas:

- (a) Ratio of fire fighting costs applicable to grazing land:

$$C(g) = \frac{(G-D) \times A_1}{(T-E) \times A_2 + (G-D) \times A_1}$$

(b) Ratio of fire fighting costs applicable to timberland: $C(t) = 1.00 - C(g)$;

- (c) Total cost of fire suppression: $C = C \times C(g) + C \times C(t)$.

(2) In order to reveal the nature and meaning of the symbols used in the above formulas, such have the following meaning:

- (a) A_1 = Number of acres of grazing land burned by fire;
- (b) A_2 = Number of acres of timberland burned by fire;
- (c) C = Total cost of fire suppression on both grazing land and timberland;
- (d) D = Established deductible rate per acre to be applied to eligible firefighting expense on grazing land;
- (e) E = Established deductible rate per acre to be applied to eligible firefighting expense on timberland;
- (f) G = Budget rate per acre for grazing land;
- (g) T = Budget rate per acre for timberland;
- (h) $C(g)$ = Ratio of total cost applicable to grazing lands;
- (i) $C(t)$ = Ratio of total cost applicable to timberland.

(3) The above formulas are based upon budget rates established pursuant to ORS 477.205 to 477.291, in particular ORS 477.230 and 477.285, in which the Forester is required to determine actual costs in suppressing fire on grazing land and timberland.

Stat. Auth.: ORS Ch. 183 & 526
Hist.: FB 6, f. 5-9-60; FB 7-1986, f. & ef. 9-25-86

629-041-0015 **Actual Cost**

In all cases in which the Forester is required to recover actual costs of controlling or extinguishing a fire, under the provisions of ORS 477.064 to 477.069, particularly ORS 477.068, such costs shall be determined as follows:

(1) Forest land for which the owner is paying forest patrol assessments, in accordance with ORS 477.205 to 477.291, or is a member of a forest protective association engaged in controlling and extinguishing fire, the cost shall not include regular personnel and equipment of the forest protection district wherein said land is located unless the owner or operator fails to make the effort required by ORS 477.066 or is wilful, malicious, or negligent in the origin of the fire.

(2) Forest land which is not protected as indicated in section (1) of this rule, the actual cost shall be charged, which cost is inclusive of the regular personnel and equipment of the forest protection district wherein said land is located.

Stat. Auth.: ORS Ch.
Hist.: FB 6, f. 5-9-60; FB 23, f. 6-5-70, ef. 6-25-70

629-041-0020 **Cost Limitations**

The annual cost of fire protection provided by the Forester for forest land within any forest protection district, as designated in ORS 477.230 and 477.285, shall not include any of the following:

(1) That part of any salary or wage which is in excess of an amount paid for comparable positions in the State of Oregon civil service classification, and for purposes of determining a salary or wage lodging and utilities furnished without charge to the employee will be included therein; the expense for oil, gas, electricity, or other fuel used for heating a residence occupied by a regular employee.

(2) Any capital outlay purchases not provided for in the budget; Oregon forest fire association dues and expenses incurred in attending functions and activities of Oregon Forest Protection Association; memberships in service clubs or like organizations; subscriptions to trade journals or magazines; insurance premiums covering liability of forest protective association members; and automobile collision insurance less than \$100 deductible, if the fire protection district maintains a full-time automotive shop.

(3) In no event secretarial and clerical services of any kind, when such services are in addition to salaries and wages paid for such services, with exception only for fees charged for the annual audit of the forest protection district books and accounts.

(4) Fire prevention or other services for certain landowners, when such services are not equally available to all other landowners within the forest protection district; provided, however, such services are within the purposes of ORS 477.205 to 477.291.

(5) Any activity or expenditures not directly contributing to the prevention and suppression of fire on forest land in the forest protection district involved.

(6) It is the purpose of the above-cited limitations and restrictions to set forth examples. The list of limitations and restrictions is not fully complete, but will act as a guide and standard for the administrator in determining the cost of forest protection for forest lands within a fire protection district.

Stat. Auth.: ORS Ch.
Hist.: FB 6, f. 5-9-60

629-041-0030 **Files and Records**

(1) In addition to the files and records of the Forester which are made available for public inspection by statute, the Forester will also make available to those of the general public who have an interest in the subject matters the following: Form Name:

- (a) Burning Permit;
- (b) Fire Report;
- (c) Right of Way Permit;
- (d) Forest Operation Permit;
- (e) Temporary Permit to Operate Power Driven Machinery;
- (f) Miscellaneous Forest Tree Products Permit;
- (g) District Fire Plan;
- (h) District Budget;
- (i) District Slash Status Books;
- (j) Monthly Fire Summary Report;
- (k) District Annual Report.

(2) The above listed files and records shall be made available to the public only if such are in final form. Should interested persons desire other files and records which the Forester may have, inquiry for such should be directed to the Office of the State Forester at the Salem headquarters.

Stat. Auth.: ORS Ch.
Hist.: FB 17, f. & ef. 3-12-68

DIVISION 42

FIRE CONTROL

629-042-0005 **Fire Plan**

For purposes of ORS 477.210, any fire plan filed by an owner of forest land shall include the following:

(1) Legal description of the forest land involved.

(2) A map, with scale of two inches to the mile, revealing section, township and range lines of the forest land involved, and showing thereon roads, streams, trails, and the location of protection facilities for such land.

(3) System for discovering and reporting any and all fires originating on or spreading to the forest land involved.

(4) Number of fire fighters available for immediate action to suppress any fire on the forest land; and further, sources of manpower available as fire fighters.

(5) Procedure for notifying the forester, of the headquarters of the forest protection district within which the forest land is located, in the event of any uncontrolled fire on the forest land.

(6) Type and amount of fire fighting equipment in serviceable condition, including but not limited to fire hose, pump trucks, portable pumps, dozers, and mobile equipment for the transportation of men and equipment.

(7) Location of fire-tool caches, and the number and kind of serviceable hand tools in each cache kept available for immediate use in fire fighting, including shovels, hoes, axes, and fire pump cans.

(8) Name, address, and telephone number of the person who is in charge of the protection facilities and obligated to carry out the provisions of the fire plan.

(9) The signature of each owner of the forest land involved in the fire plan, together with his address and phone number.

Stat. Auth.: ORS Ch.
Hist.: FB 6, f. 5-9-60

DIVISION 43

FIRE PREVENTION

[ED. NOTE: Previous rules OAR 629-43-005 through 629-43-150 were renumbered to Division 23 and 24 by FB 17.]

629-043-0005

Snag Falling

(1) Under the requirements of ORS 477.565(1)(a), all dead trees and snags over 15 feet in height and within 100 feet distance of the equipment shall be felled before operation thereof, if such equipment is:

(a) Stationary equipment; or

(b) Mobile equipment to be used in assembling and loading material; the 100 feet distance shall be measured from the point of assembling or loading. The Forester may grant exceptions when logs are loaded along roads or rights-of-way.

(2) Under the requirements of ORS 477.565 (1)(b), the operator shall fell all dead trees and snags over 15 feet in height and 12 inches in diameter currently with the felling of the merchantable timber if the dead trees or snags are:

(a) Inside a clear-cut area and within 100 feet of the upslope cutting lines; or

(b) Inside a clear-cut area and within 100 feet of, or extend over 15 feet above the profile of, a ridge top.

(3) The Forester may require additional snags in an operation area to be felled where needed to reduce a serious fire hazard.

(4) The Forester may, in writing, modify or waive requirements of this rule if he finds that conditions so warrant.

Stat. Auth.: ORS Ch. 183 & 526

Hist.: FB 17, f. & ef. 5-12-68; FB 8-1986, f. & ef. 9-25-86

629-043-0010

Additional Equipment for Logging Operation

(1) For purposes of ORS 477.615, the "additional protection" required by the Forester shall be:

(a) A tank truck with water tank capacity of not less than 300 gallons; such to be in good mechanical condition readily available for use in fighting fire;

(b) The tank truck shall be properly equipped with a power water pump of sufficient size and capacity to provide a discharge of not less than 20 gallons per minute when pumping through 50 feet of hose equipped with a nozzle 1/4 inch in diameter at pump level;

(c) The pump shall be equipped with not less than 500 feet of hose 3/4 inch inside diameter or larger and a nozzle not less than 1/4 inch in diameter.

(2) The Forester may, in writing, modify any requirement of the notice issued under this rule if he finds that the conditions of the logging operation so warrant.

Stat. Auth.: ORS Ch.

Hist.: FB 17, f. & ef. 5-12-68

629-043-0015

Spark Arresters

(1) The engines referred to in ORS 477.645 shall be equipped with a spark arrester that shall meet the standards set forth in the publication of the United States Department of Agriculture, Forest Service, entitled "**Standard 5100-1a for Spark Arresters for Internal Combustion Engines**", issued under date of April 1970, except that non-turbo charged railroad locomotives shall be equipped with a spark arrester that shall meet the standards set forth in the publication of the **Association of American Railroads Manual of Standards and Recommended Practices, "Standard for Spark Arresters for Non-Turbo Charged Diesel Engines Used in Railroad Locomotives"**, issued under date of March 1, 1971.

(2) The following are exempt from the requirements of this rule:

(a) Full turbo-charged internal combustion engines

maintained in good condition;

(b) Gasoline engines in vehicles operating on public roads equipped with adequate muffler with baffles kept in good repair;

(c) Water pumping equipment used in fighting fire.

(3) The Forester may, in writing, modify or waive any requirement of this rule if he finds that conditions so warrant.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Board of Forestry.]

Stat. Auth.: ORS Ch.

Hist.: FB 17, f. & ef. 5-12-68; FB 28, f. 2-14-72, ef. 7-1-72

629-043-0020

Water Supply and Equipment for Stationary Engines

(1) The minimum standards for water supply and equipment under ORS 477.650 shall be:

(a) Water supply:

(A) A self-propelled tanker in operable condition of not less than 300 gallons; or

(B) A pond, stream, tank, or sump with storage of not less than 500 gallons.

(b) Water pump: Size and capacity shall be such that the pump will provide a discharge of not less than 20 gallons per minute when pumping through 50 feet of hose equipped with a 1/4 inch inside diameter nozzle at pump level;

(c) Hose and nozzle: At least 500 feet of serviceable hose of not less than 3/4 inch inside diameter, and a nozzle with an inside diameter of 1/4 inch.

(2) Water supply, pump, and not less than 250 feet of the hose, and the nozzle, as required by this rule, shall be maintained as a connected, operating unit ready for immediate use at any time.

(3) The Forester, in writing, may modify or waive any requirement of this rule if he finds that conditions so warrant.

Stat. Auth.: ORS Ch.

Hist.: FB 17, f. & ef. 5-12-68

629-043-0025

Fire Tools and Fire Extinguishers

Under the provisions of ORS 477.655, the following shall be complied with:

(1) Every person conducting an operation shall provide at the operation site, or at a location designated by the Forester, the number of tools and tool boxes required by **Table 1** located at the end of this division. An operation having an excess of 20 men shall use multiples of any of the columns in the table to arrive at a tool distribution equal to or in excess of the number of men in the operation. The number of tools of each type required by the table may be varied by notice in writing from the Forester when, in his opinion, the nature of the fire hazard requires such adjustment; provided, however, that in no event shall the total number of tools required exceed the total number of tools required by the table.

(2) The Forester may, as an alternative to the requirements of section (1) of this rule, authorize in writing other tools of a use and purpose equivalent to those designated and required by the Tool Table to equip the personnel for firefighting at an operation site.

(3) The tool boxes designated in section (1) of this rule shall be kept in good repair and clearly identified as containing firefighting tools. The tools required by section (1) or (2) of this rule shall be serviceable and kept in good repair; such tools shall be kept in the tool box or boxes to be used for firefighting purposes only.

(4) Each internal combustion engine, except as provided in OAR 629-043-0036, shall be equipped with one chemical fire extinguisher rated by the Underwriters' Laboratories as not less than 4-B.C.

(5) Each truck driven on or through forest land shall be equipped with one round pointed No. 0 shovel or larger, one pulaski or axe with 26 inch handle or larger, and one chemical fire extinguisher rated by the Underwriters' Laboratories as not less than 4-B.C.

(6) The fire extinguisher required by this rule shall be placed on each engine or truck, or both, so as to be visible to the operator

and ready for instant use; and further, said extinguisher shall be equipped with a reliable and easily read pressure gauge or device or method for measurement of the contents of the extinguisher.

(7) The operator of a cable logging operation at each block on the yarding road shall comply with the following:

(a) Provide and maintain a serviceable 5-gallon pump can filled with water;

(b) Provide and maintain a round pointed No. 0 shovel or larger.

(8) The Forester may, in writing, modify or waive any requirement of this rule if he finds that conditions so warrant.

[ED NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]

Stat. Auth.: ORS Ch. 477

Hist.: FB 17, f. & ef. 5-12-68; FB 4-1985(Temp), f. & ef. 6-17-85; FB 3-1986, f. & ef. 3-12-86

629-043-0026

Fire Prevention; Cable Logging Operations

Any person who has been issued a permit pursuant to ORS 477.625 and is conducting an active operation on or within 1/8 mile of forest land, which operation uses power-driven machinery, shall comply with the following precautions to prevent the spread of fire on or from the operation:

(1) During the closed season the operator of a cable logging operation shall: Clear the ground of flammable debris within a ten-foot radius around any block; such area shall be kept clear of such debris while the block is in use.

(2) The operator of a cable logging operation shall avoid line-rub on rock or woody material which may result in sparks or sufficient heat to cause ignition of fire.

(3) The Forester may, in writing, modify or waive any requirements of this rule if the Forester finds that conditions so warrant.

Stat. Auth.: ORS Ch. 183, 477 & 526

Hist.: FB 4-1985(Temp), f. & ef. 6-17-85; FB 3-1986, f. & ef. 3-12-86

629-043-0030

Watchman Service

Under the provisions of ORS 477.665:

(1) A "competent person" means a person who is physically capable and experienced to operate the firefighting equipment required for the operation area.

(2) The watchman shall:

(a) Be constantly on duty for the following specified time after the power driven equipment used by the operator has been shut down for the day:

(A) Three hours; or

(B) That period of time designated in writing by the Forester.

(b) Visually observe all conditions of the operation area on which industrial activity has been in progress;

(c) Have adequate facilities for transportation and communications in order to be able to summon assistance if needed.

(3) After a measurable amount of rain on the operation area, the Forester may suspend the requirement of this rule until such time as conditions warrant reinstatement.

(4) The Forester may, in writing, modify or waive any requirement of this rule if he finds that conditions so warrant.

Stat. Auth.: ORS Ch.

Hist.: FB 17, f. & ef. 5-12-68; FB 23, f. 6-5-70, ef. 6-25-70

629-043-0036

Portable Power Saws

For the purposes of ORS 477.640:

(1) A portable saw powered by an internal combustion engine, used by any person on or within 1/8 mile of forest land shall be constructed and equipped for the prevention of fire as follows:

(a) On all saws purchased after June 30, 1977, which are used on an operation:

(A) An exhaust system equipped with a spark arresting device designed to retain or destroy 90% or more of the carbon

particles having a major diameter greater than 0.023 inches (0.0584 mm). The spark arresting device shall be constructed to permit easy inspection, cleaning, and parts replacement;

(B) An exhaust system constructed so that the exposed surface temperature shall not exceed 550° F. (288° C.) where it may come in direct contact with forest fuels;

(C) An exhaust system constructed so that the exhaust gas temperature shall not exceed 475° F. (240° C.) where the exhaust flow may strike forest fuels;

(D) An exhaust system constructed in such a manner that there are no pockets or corners where flammable material might accumulate. Pockets are permissible only if it can be substantiated by suitable test that material can be prevented from accumulating in the pockets;

(E) An exhaust system constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts designed for easy replacement as a part of routine maintenance shall have a service life of not less than 50 hours.

(b) All saws not described in subsection (a) of this section and operated on or within 1/8 mile of forest lands, shall be equipped with a spark arresting device constructed to retain or destroy 90% or more of the carbon particles having a major diameter greater than 0.023 inches (0.584 mm). A spark arresting device equipped with a woven screen with a maximum opening size of 0.023 inches (0.584 mm) constructed of 0.013 inches (0.330 mm) (or larger) diameter, heat and corrosion resistant wire will be considered in compliance with the requirement provided the total screen opening area is not less than 125 percent of the engine exhaust port area. The unit shall be constructed to permit easy removal and replacement of the screen for field inspection, replacement, and cleaning;

(c) Portable power saws will be deemed to be in compliance with section (1) of the rule if they are certified by the United States Department of Agriculture, Forest Service, San Dimas Equipment Development Center, to meet the performance levels set forth in the Society of Automotive Engineers publication titled, "Multiposition Small Engine Exhaust System Fire Ignition Suppression SAE Recommended Practice J335(b)". This standard is filed together with the certification of adoption of this rule with the Secretary of State. (See **Exhibit 1**.)

(2) Any person using a portable saw powered by an internal combustion engine on or within 1/8 mile of forest land shall have the following immediately available for the prevention and suppression of fire:

(a) A fire extinguisher of at least eight ounce capacity as approved by the Forester;

(b) A size 0 or larger shovel.

(3) If a power saw is fueled on or within 1/8 of a mile of forest land, said power saw shall be moved not less than 20 feet from the place of fueling before starting.

(4)(a) The Forester may, in writing, modify or waive the requirements of this rule if he finds that, under conditions of low fire danger, less restrictive requirements are warranted;

(b) The effective date of paragraphs (1)(a)(B) and (C) of this rule, pertaining to maximum temperatures of exhaust surfaces and exhaust gases, is changed from July 1, 1977 to January 1, 1978. The effective date of the remainder of the rule remains July 1, 1977.

[ED NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]

Stat. Auth.: ORS Ch. 477 & 526

Hist.: FB 47, f. 9-15-76, ef. 7-1-77; FB 48(Temp), f. & ef. 6-29-77; FB 50, f. & ef. 9-1-77

629-043-0040

Burning Permits

For the purposes of ORS 477.515, permits issued during closed season shall be subject to the following conditions:

(1) Permits issued for open burning shall be limited for that period of time needed to accomplish the prescribed burning; provided, however, in no event shall such permit be issued for more than ten days.

(2) All areas described by the permit must be inspected by the Forester prior to the issuance of such permit.

(3) Each permit shall contain all the terms and conditions deemed necessary by the Forester for such burning, which terms and conditions shall remain effective for the entire period of the permit.

(4) In those forest protection districts designated by the Forester, a permit is required when accumulated debris and refuse are regularly burned in closed burners or incinerators. The permits may be issued for a period longer than ten days if the area surrounding the burner or incinerator has been cleared of all inflammable materials which could cause the escape or spread of fire therefrom; provided, however, such burner or incinerator is covered by a screen constructed of not less than 14-gauge wire with mesh not larger than 1/4 inch.

Stat. Auth.: ORS Ch. 183 & 526

Hist.: FB 6, f. 5-9-60; FB 8-1986, f. & ef. 9-25-86

629-043-0041

Burning Permits within Restricted Areas

Pursuant to ORS 477.515, burning on forest land within the boundaries of a forest protection district and lying within a restricted area as set forth in the plan for managing smoke, on file with the Secretary of State (OAR 629-43-043), shall be subject to the following conditions:

(1) A permit to burn from the Forester shall be required for applicable prescribed burning on non-federal lands during any time of the year within the restricted area as set forth in **Exhibit 1** of the above referenced plan. Applicable prescribed burning is that which is regulated by the Oregon Smoke Management Plan (OAR 629-043-0043).

(2) Any prescription burning on forest land assessed at Class I timber rates or on federal forest land in the restricted area subject to provisions of the Smoke Management Plan (OAR 629-043-0043) shall be subject to an annual (calendar year) non-refundable registration fee of \$.50/acre and a burning fee of \$5/acre for broadcast and underburns and \$2/acre for pile burns, except as noted in section (3) of this rule. Burn units having both broadcast and pile burning shall pay the rate of the predominant type of burning for the entire unit:

(a) Any burning identified in sections (3) of this rule as being exempt from fees still must be reported in a manner consistent with other requirements of the Smoke Management Plan (OAR 629-043-0043);

(b) The operator, federal land manager, landowner, or timber owner shall register with the State Forester all forest land that is intended to be burned at least seven days prior to the day of burning;

(c) The State Forester may waive the seven day waiting period required in subsection (2)(b) of this rule contingent upon a burning plan or conditions of Federal prescribed fire policies having already been approved;

(d) In no event shall an operator, landowner, federal land manager, or timber owner burn without having registered the forest land for burning;

(e) Information for registering acres and recording acres burned shall be recorded on forms approved by the State Forester;

(f) The State Forester shall prepare monthly billings to collect the appropriate registration and burning fees from the operator, federal land manager, landowner or timber owner whose name is recorded on the registration form for billing purposes;

(g) No operator, federal land manager, landowner or timber owner shall be allowed to register additional forest land for burning if payment for previous registration or burning is more than 90 days past due.

(3)(a) Areas two acres or less in size shall not be subject to registration or burning fees, except for landing burning noted in subsection (3)(c) of this rule;

(b) Burning of right-of-way slash debris shall not be subject to registration or burning fees;

(c) Landings shall not be subject to registration or burning fees, except if in the opinion of the State Forester the landing debris includes a significant amount of debris from whole-tree

yarding or the yarding of unmerchantable wood (YUM). If the majority of the landing debris from whole-tree yarding or YUM yarding is reduced by utilization, then the registration and burning fees shall not apply. If the fire from a landing not subject to fees spreads to other areas identified in a burn plan the total acres listed in the burn plan shall then be subject to the fees;

(d) Underburning shall be exempt from fees when the primary intent of the burning is for forest health reasons to:

(A) Maintain the natural vegetative species of a site; or

(B) Alter the vegetative species on the site to the natural vegetative species of the area; and

(C) When such burning is done in eastern Oregon on stands that have at least 15 trees per acre that are well-distributed over the unit and that measure at least ten inches DBH; or

(D) When such burning is done in western Oregon on stands that have at least 50 trees per acre that are well-distributed over the unit and that measure at least 11 inches at DBH; and

(E) When there are no slash piles on the site.

(e) Fees for the burning of piled debris, including whole-tree yarded debris and YUM debris on landings, shall be assessed against the acres from which the debris was accumulated;

(f) Burning fees for piled burning or broadcast burning or underburning shall be assessed against the total acres within the registered area after the first time that fire is applied to the area regardless of the number of acres actually burned. Subsequent reburning in the same registered area shall not be subject to additional registration or burning fees in the same calendar year or the following calendar year;

(g) Areas burned as a result of escaped fires that are outside the boundaries of the registered burn area shall not be assessed fees if the area outside of the boundaries is managed as a wildfire. If the area outside of the boundaries is managed as a prescribed fire then the fee provisions in sections (2) and (3) of this rule shall apply.

[ED NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]

Stat. Auth.: ORS Ch. 183, 477.552 - 477.562, Ch. 526 & 527

Hist.: FB 26(Temp), f. & ef. 10-1-71 thru 1-28-72; FB 28, f. 2-14-72, ef. 7-1-72; FB 8-1986, f. & ef. 9-25-86; FB 3-1989(Temp), f. & cert. ef. 12-29-89; FB 2-1990, f. & cert. ef. 6-14-90; FB 1-1992, f. & cert. ef. 1-6-92; FB 2-1993, f. & cert. ef. 1-22-93

629-043-0043

Smoke Management Plan

(1) Objective: To prevent smoke resulting from burning on forest lands from being carried to or accumulating in designated areas (**Exhibit 2**) or other areas sensitive to smoke, and to provide maximum opportunity for essential forest land burning while minimizing emissions; to coordinate with other state smoke management programs; to conform with state and federal air quality and visibility requirements; to protect public health; and to encourage the reduction of emissions.

(2) Definitions:

(a) "Deep mixed layer" extends from the surface to 1,000 feet or more above the designated area ceiling;

(b) "Smoke drift away" occurs where projected smoke plume will not intersect a designated area boundary downwind from the fire;

(c) "Smoke drift toward" occurs when the projected smoke plume will intersect a designated area boundary downwind from the fire or when wind direction is indeterminate due to wind speed less than 5 MPH at smoke vent height;

(d) "Smoke vent height" — Level, in the vicinity of the fire, at which the smoke ceases to rise and moves horizontally with the wind at that level;

(e) "Stable layer of air" — A layer of air having a temperature lapse rate of less than dry adiabatic (approximately 5.5° F. per 1,000 feet) thereby retarding upward mixing of smoke;

(f) "Tons available fuel" — An estimate of the tons of fuel that will be consumed by fire at the given time and place;

(g) "Residual smoke" — Smoke produced after the initial fire has passed through the fuel;

(h) "Field administrator" — A forest officer or federal land

administrator who has the direct responsibility for administering burning permits on a unit of forest land within the boundaries of an official fire district;

(i) "Restricted area" — That area delineated in **Exhibit 2** for which permits to burn on forest land are required year round, pursuant to OAR 629-043-0041;

(j) "Designated area" — Those areas delineated in **Exhibit 2** as principal population centers;

(k) "Heavy use" — Unusual concentrations of people using forest land for recreational purposes during holidays, and special events;

(l) "Major recreation area" — Areas of the state subjected to concentrations of people for recreational purposes;

(m) "State Forester" means the State Forester or delegated Department of Forestry employee representative;

(n) "Instructions" means the specific burn authorizations and weather discussions issued and disseminated as needed by the State Forester;

(o) "Smoke Management Plan" means the administrative rule approved by the State Forester and the Department of Environmental Quality and administered by the State Forester to control prescribed burning on forest lands;

(p) "**Smoke Management Directive 1-4-1-601**", as approved by the Department of Environmental Quality, is the Department of Forestry's operational guidance for administration of the Oregon Smoke Management Program;

(q) "Other Areas Sensitive to Smoke" are intended to consider specific recreation areas during periods of heavy use by the public such as coastal beaches on special holidays, federal mandatory Class I areas during peak summer use, and special events. All Oregon and Washington Class I areas shall be considered as areas sensitive to smoke during the visibility protection period, defined in the Oregon Visibility Protection Plan, OAR 340-020-0047, Sec. 5.2.

(3) Control:

(a) The State Forester is responsible for the coordination and control of the Smoke Management Plan. The plan applies to the restricted area set forth in **Exhibit 2** with full interagency cooperation with the U.S.D.A., Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, private forest landowners, and the Department of Environmental Quality. The smoke management plan, Department of Forestry Directive 1-4-1-601 and the Smoke Management instructions (and authorized variances) issued pursuant to the plan, shall be strictly complied with;

(b) Certain "designated areas" are established in consultation with the Environmental Quality Commission. **Exhibit 2** delineates designated areas and specified ceilings;

(c) During periods of heavy use, major recreation areas in the state shall be provided the same consideration as "designated areas". Other areas sensitive to smoke shall be provided the same consideration as designated areas;

(d) The Smoke Management Plan shall be operated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I areas (OAR 340-020-0047, Sec. 5.2).

(4) Administration:

(a) The State Forester, in developing instructions, and each field administrator issuing burning permits under this plan shall manage the prescribed burning on forest land in connection with the management of other aspects of the environment in order to maintain a satisfactory atmospheric environment in designated areas (**Exhibit 2**). Likewise, this effort shall be applied in special situations where local conditions warrant and that are not defined as designated areas but nevertheless are sensitive to smoke. The development of instructions and accomplishment of burning will entail consideration of air quality conditions and weather forecasts (including burning forecasts and plans of the Department of Environmental Quality and the Washington Department of Natural Resources), acreages involved, amounts of material to be burned, evaluation of potential smoke column vent height, direction and speed of smoke drift, residual smoke, mixing characteristics of the atmosphere, and distance from the designated area of each burning operation;

(b) The State Forester and each field administrator shall evaluate down-wind conditions prior to implementation of burning plans. When the State Forester or a field administrator determines that visibility in a designated area, or other area sensitive to smoke is already seriously reduced or would likely become so with additional burning, or upon notice from the State Forester through the Protection Division, or upon notice from the State Forester following consultation with the Department of Environmental Quality that air in the entire state or portion thereof is, or would likely to become adversely affected by smoke, the affected field administrator shall terminate burning. Upon termination, any burning already under way will be completed, residual burning will be mopped up as soon as practical, and no additional burning will be attempted until approval has been received from the State Forester.

(5) Reports: Field administrators shall report daily at such times and in such manner as required by the State Forester covering their daily burning operations. Any wildfire that has the potential for smoke input into a designated or smoke sensitive area shall be reported immediately to the State Forester's office. The State Forester shall report to the Department of Environmental Quality each day on a timely basis its forecast, planned and accomplished burning, and smoke intrusions.

(6) Key to Smoke Drift Restrictions:

(a) Smoke drift away from designated area: No specific acreage limitation will be placed on prescribed burning when smoke drift is away from designated area. Burning should be done to best accomplish maximum vent height and to minimize nuisance effect on any segment of the public;

(b) Smoke drift toward designated area:

(A) Smoke plume height below designated area ceiling. Includes smoke that for reasons for fire intensity, location, or weather, will remain below the designated area ceiling. Also included are fires that vent into layers of air, regardless of elevation, that provide a downslope trajectory into a designated area:

(i) Upwind distance less than ten miles outside designated areas. No new prescribed fires will be ignited;

(ii) Upwind distance 10-30 miles outside designated area boundary. Burning limited to 1,500 tons per 150,000 acres on any one day;

(iii) Upwind distances 30-60 miles outside designated area boundary. Burning limited to 3,000 tons per 150,000 acres on any one day;

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(B) Smoke will be mixed through the deep layer at the designated area. This section includes smoke that will be dispersed from the surface through a deep mixed layer when it reaches the designated area boundary:

(i) Upwind distance less than ten miles from designated area boundary. Burning limited to 3,000 tons per 150,000 acres on any one day;

(ii) Upwind distance 10 - 30 miles from designated area boundary. Burning limited to 4,500 tons per 150,000 acres on any one day;

(iii) Upwind distances 30 - 60 miles outside designated area boundary. Burning limited to 9,000 tons per 150,000 acres on any one day;

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(C) Smoke above a stable layer over the designated area. Smoke in this group will remain above the designated area, separated from it by a stable layer of air:

(i) Upwind distance less than ten miles outside designated area. Burning limited to 6,000 tons per 150,000 acres on any one day;

(ii) Upwind distance 10 - 30 miles outside designated area. Burning limited to 9,000 tons per 150,000 acres on any one day;

(iii) Upwind distances 30 - 60 miles outside designated area. Burning limited to 18,000 tons per 150,000 acres on any one day;

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(D) Smoke vented into precipitation cloud system. When smoke can be vented to a height above the cloud base from which precipitation is falling, there will be no restrictions to burning, unless otherwise advised by the Forester.

(c) Changing conditions: When changing weather conditions, adverse to the Smoke Management objective, occur during burning operations, aggressive mop-up shall be initiated as soon as practical and no additional burning shall be initiated.

(7) Analysis and Evaluation: The State Forester shall be responsible for the annual analysis and evaluation of burning operations under this plan. Copies of the summaries will be provided to all interested parties.

(8) The Department of Environmental Quality, in cooperation with the State Forester, federal land management agencies, and private forest landowners shall develop maximum annual and daily emission limits in accordance with federal PSD (Prevention of Significant Deterioration) regulations.

[ED NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Board of Forestry.]

Stat. Auth.: ORS Ch. 477

Hist.: FB 25, f. & ef. 10-1-71; FB 29, f. 1-14-72, ef. 3-1-72; FB 1-1987, f. & ef. 4-13-87

629-043-0045 Slash Burning Plans

In order that the burning of annual slashings on forest land as provided by ORS 477.570 and 477.575 shall be done in an acceptable manner with the necessary precautions against the spread of fire to other property, the owner or operator shall, in cooperation with the Forester, develop a written plan prior to slash burning, outlining manpower, equipment, and manner of burning pertinent to the area. The plan shall include slash burning instructions to be given in connection with any permit issued under ORS 477.515. The development of such plan, shall give due consideration to fire prevention measures, silvicultural values, soil erosion, possible damage to residual trees, air and water quality, and other aspects of slash burning as may affect public interests.

Stat. Auth.: ORS Ch.

Hist.: FB 17, f. & ef. 5-12-68

629-043-0050 Slash Hazard Release

Under the provisions of ORS 477.580, the Forester will not withhold a release for any fire hazard located west of the summit of the Cascade Mountains after a period of seven years, nor withhold a release for any fire hazard located east of said summit after a period of five years; said periods of time to be determined from the first day of October immediately following the creation of the hazard.

Stat. Auth.: ORS Ch.

Hist.: FB 6, f. 5-9-60

629-043-0055 Inflammable Debris

Under the provisions of ORS 477.062, all inadequately protected forest land containing inflammable debris likely to further the spread of fire is declared to be a public nuisance. Inadequately protected "dump or refuse areas" and "sawmill refuse areas", which areas are on or within forest land and contain such inflammable debris, are within the purview of ORS 477.062.

Stat. Auth.: ORS Ch.

Hist.: FB 6, f. 5-9-60

629-043-0060 Humidity; High Wind; Weather Instruments

During the closed season as defined in ORS 477.001, every operator conducting an operation shall, upon notice from the Forester, comply with the following:

(1) Humidity: The operator shall close down the operations during any day or part thereof for the period of time that the relative humidity is 30 percent or lower in the operation area unless written permission to continue such operation is given to the operator by the Forester.

(2) High Wind: The operator shall close down the operation during any day or part thereof for the period of time that high wind prevails over the operation area and the relative humidity is 35 percent or lower in the operation area unless written permission to continue such operation is given to the operator by the Forester; high wind shall be considered as any continuous wind or air disturbance causing an increase in fire danger in the operation area.

(3) Weather Instruments: The operator shall furnish and maintain an instrument for the accurate measurement of relative humidity in the operation area; the cost of such instrument need not exceed the sum of \$25.

However, this rule shall not apply to an operator who is conducting an operation in any of the following areas:

(a) East of the summit of the Cascade Mountains;

(b) Jackson and Josephine Counties;

(c) That part of Douglas County drained by the waters of Cow Creek above the confluence of Middle Creek;

(d) That part of Douglas County drained by the waters of the Rogue River.

Stat. Auth.: ORS Ch.

Hist.: FB 6, f. 5-9-60

629-043-0065 Payment for Slashing

In those instances when, under ORS 477.580, the Forester receives payment from an operator or landowner for the release of slash, the monies so received shall be allocated exclusively for use in the forest protection district wherein the fire hazard is located as follows: the payment for such slash release shall be set aside as a reserve for the use of the district wherein the fire hazard is located for the purpose of providing additional protection, hazard reduction, or actual fire suppression on the slash areas involved. All or portions of such funds shall be credited annually to the protection district budget in accordance with a plan for additional protection, hazard reduction, or fire suppression. However, amounts set aside for this purpose which are not expended during a period of seven years shall be credited to the protection district budget the following year.

Stat. Auth.: ORS Ch.

Hist.: FB 6, f. 5-9-60; FB 14, f. 11-18-65

629-043-0070 Operation; Closedown

Any person who has been issued a permit pursuant to ORS 477.625 and is conducting an active operation on or within 1/8 mile of forest land, which operation uses equipment powered by an internal combustion engine, shall, after notice of an order from the Forester, close down the operation for that period of time stated in the order; provided, however, on approval of the Forester, the following operations may be continued or conducted during said period:

(1) Logging:

(a) Repair and maintenance work on equipment in nonhazardous area;

(b) Logging in nonhazardous area;

(c) Loading work in nonhazardous area;

(d) Designated logging activities in which adequate supplemental protection or fire prevention measures have been provided.

(2) Mills:

(a) If refuse is burned, having a closed burner, together with adequate fire protection facilities;

(b) If no refuse is burned, having adequate fire protection facilities for an area which has been inspected by the Forester.

(3) Road construction and Maintenance:

(a) Use of rock crushers in pits;

(b) Road construction and maintenance in nonhazardous

areas;

(c) Designated road construction and maintenance activities in which adequate supplemental protection or fire prevention measures have been provided.

(4) Hauling: Lumber, forest products, or equipment on public roads or forest roads through nonhazardous areas.

(5) Other industrial activity or development work:

(a) Right-of-way clearings or maintenance and other similar operations;

(b) Forest improvement work.

Stat. Auth.: ORS Ch.

Hist.: FB 6, f. 5-9-60; FB 19, f. & ef. 7-15-68

629-043-0075

Notification of Operation on Forest Land

For the purpose of ORS 477.580 and 527.710 in the prevention of fire on forest land and to facilitate the determination of additional hazard and treatment of slashing on forest land, the notification of operation required by ORS 527.670 shall include the date such operator is to begin the operation. If the beginning date given on such notification of operation is in error by more than ten days, the person making the original notification or otherwise responsible for the operation shall notify the Forester of the new date prior to the commencement of the operation. Failure to provide such notice is deemed a failure to comply with the provisions of ORS 477.120, Section (2)(C), until such time as notice is given or an inspection is made of the operation by a duly authorized representative of the Forester.

Stat. Auth.: ORS Ch.

Hist.: FB 35(Temp), f. & ef. 1-17-74; FB 37, f. 4-15-74, ef. 5-11-74

629-043-0080

Additional Fire Hazard

For the purpose of sections (1) and (2) of ORS 477.580, notice of additional fire hazard shall be given to the landowner and operator in writing with instructions for offsetting or abating such fire hazard. Such notice will include one or more options as follows, provided such options are consistent with the provisions of ORS 527.610 through 527.730. The Forester will issue a release upon successful completion of the instructions for offsetting or abating the hazard:

(1) By burning part or all of the slashing to reduce the extra hazard as approved by the Forester.

(2) By altering the fuel loading and arrangement on the site by piling slash, crushing, or otherwise altering the fuel to reduce hazard as approved by the Forester.

(3) By making physical improvements to offset the hazard such as building fire trails, water supply sources, building fuel breaks, compartmentizing the improvement which effectively offsets the fire hazard as approved by the Forester.

(4) By payment to the Forester of a sum of money for extra fire protection for the area if such release is requested by the owner or operator with approval of the owner. Such payment is subject to the provisions of OAR 629-043-0065.

(5) Other hazard offsets as approved by the Forester.

It is intended that physical improvements under sections (1), (2), and (3) of this rule shall offset the additional hazard created to such a degree that the possibility of spread of fire is sufficiently reduced and the ability to control fire sufficiently improved, that extra protection for the area is not warranted.

Stat. Auth.: ORS Ch.

Hist.: FB 35(Temp), f. & ef. 1-17-74; FB 37, f. 4-15-74, ef. 5-11-74

DIVISION 44

EAST SIDE EMERGENCY FIRE COST FUND

629-044-0100 [Renumbered to 629-061-0000]

629-044-0105 [Renumbered to 629-061-0005]

629-044-0110 [Renumbered to 629-061-0010]

629-044-0115 [Renumbered to 629-061-0015]

629-044-0120 [Renumbered to 629-061-0020]

629-044-0125 [Renumbered to 629-061-0025]

629-044-0130 [Renumbered to 629-061-0030]

629-044-0135 [Renumbered to 629-061-0035]

629-044-0140 [Renumbered to 629-061-0040]

629-044-0145 [Renumbered to 629-061-0045]

629-044-0150 [Renumbered to 629-061-0050]

629-044-0155 [Renumbered to 629-061-0055]

629-044-0160 [Renumbered to 629-061-0060]

629-044-0165 [Renumbered to 629-061-0065]

CRITERIA FOR DETERMINATION OF WILDFIRE HAZARD ZONES

629-044-0200

Definitions

As used in OAR chapter 629, division 44, unless otherwise required by context:

(1) "Geographic Area" means the areas which result from the partitioning of all or portions of a jurisdiction into smaller segments, based on the presence of differing hazard values.

(2) "Hazard" means the potential to burn.

(3) "Hazard Factor" means the factors which most influence the potential of a geographic area to burn. Hazard factors are fire weather, topography, natural vegetative fuels, and natural vegetative fuel distribution.

(4) "Hazard Rating" means a cumulative value resulting from the summation of hazard values for all four hazard factors. It reflects the overall potential for a given geographic area to burn.

(5) "Hazard Value" means a value assigned to a hazard factor within a geographic area.

(6) "Jurisdiction" means a unit of local government authorized by law to adopt a building code or a fire prevention code.

(7) "Land Features" means roads, jurisdictional boundaries and other features created by human activity.

(8) "Natural Geographic Features" means streams, ridge lines and other features naturally occurring.

(9) "Wildfire Hazard Zone" means a geographic area having a combination of hazard factors that result in a significant hazard of catastrophic fire over relatively long periods of each year.

Stat. Auth.: ORS 526.016

Stats. Implemented: ORS 93.270

Hist: FB 2-1996, f. 3-13-96, cert. ef. 4-1-96

629-044-0210

Purpose

The purpose of OAR chapter 629, division 44 is to set forth the criteria by which Wildfire Hazard Zones shall be determined by jurisdictions. Such a determination is necessary before the provisions of ORS 93.270(4), portions of the **Oregon One and Two Family Dwelling Specialty Code**, and portions of the **Oregon Structural Specialty Code** can become effective. The determination of Wildfire Hazard Zones by jurisdictions is voluntary.

Stat. Auth.: ORS 526.016

Stats. Implemented: ORS 93.270

Hist: FB 2-1996, f. 3-13-96, cert. ef. 4-1-96

629-044-0220

Wildfire Hazard Zones

(1) For the convenience of administration, when practical, a jurisdiction may utilize nearby natural geographic features or land features to delineate the boundaries of Wildfire Hazard Zones.

(2) It is not the intent of OAR chapter 629, division 44 that Wildfire Hazard Zones be determined on a tax lot or an ownership specific basis, but rather that a landscape approach be used.

(3) To determine the existence of Wildfire Hazard Zones, a jurisdiction shall:

(a) Determine, for each hazard factor, the appropriate geographic areas and associated hazard values; then

(b) Overlay the geographic areas and associated hazard values determined in subsection (3)(a) above, then determine the resulting composite geographic areas and the associated hazard rating for each composite area.

(c) For each composite geographic area determined in subsection (3)(b) above, determine whether a Wildfire Hazard Zone is present from **Table 5**.

TABLE 5
WILDFIRE HAZARD ZONE

HAZARD RATING	WILDFIRE HAZARD ZONE
1, 2, 3, 4, 5, or 6	NO
7, 8, 9, 10, 11 or 12	YES
Stat. Auth.: ORS 526.016	
Stats. Implemented: ORS 93.270	
Hist: FB 2-1996, f. 3-13-96, cert. ef. 4-1-96	

629-044-0230

Fire Weather Hazard Factor

(1) The reference for establishing the fire weather hazard factor shall be data provided by the Oregon Department of Forestry, which was developed following an analysis of daily fire danger rating indices in each regulated use area of the state.

(2) For geographic areas described in **Table 1**, select the appropriate hazard value from **Table 1**.

TABLE 1
FIRE WEATHER HAZARD FACTOR

COUNTY VALUE	H A Z A R D
Baker	3
Benton	2
Clackamas	2
Clatsop, Area 1 - All of Clatsop County except Area 2.	1
Clatsop, Area 2 - That portion of Clatsop County in Township 4 North Range 6 West.	2
Columbia	2
Coos, Area 1 - All of Coos County except Area 2.	1
Coos, Area 2 - That portion of Coos County east of a generally north-south straight line which extends from the boundary with Douglas County, passes through the locales of Allegany and Gaylord, to the boundary with Curry County.	2
Crook	3
Curry, Area 1 - All of Curry County except Area 2.	1
Curry, Area 2 - That portion of Curry County east of the north-south line between Townships 13 West and 14 West.	2
Deschutes	3
Douglas, Area 1 - That portion of Douglas County west of a generally north-south straight line which extends from the boundary with Lane County, passes through the locale of Sulphur Springs, to the boundary with Coos County.	1
Douglas, Area 2 - That portion of Douglas County	2

east of Area 1 and west of the north-south line between Townships 8 West and 9 West.	
Douglas, Area 3 - That portion of Douglas County east of Area 1 and north of a generally east-west straight line which extends from the city of Cottage Grove to the mouth of Winchester Bay.	2
Douglas, Area 4 - That portion of Douglas County east of Area 2, south of Area 3 and west of Area 5.	3
Douglas, Area 5 - That portion of Douglas County east of a generally north-south line which follows the western boundary of the Umpqua National Forest from the boundary with Jackson County to the boundary with Lane County.	2
Gilliam	3
Grant	3
Harney	3
Hood River	3
Jackson	3
Jefferson	3
Josephine, Area 1 - All of Josephine County except Area 2.	2
Josephine, Area 2 - That portion of Josephine County east of a generally north-south line which follows Highway 199 from the California border to the locale of Wonder and then extends straight through the locale of Galice to the boundary with Douglas County.	3
Klamath	3
Lake	3
Lane, Area 1 - All of Lane County except Area 2.	1
Lane, Area 2 - That portion of Lane County east of generally north-south straight line which extends from the boundary with Benton County through the northeast corner of Township 15 South Range 9 West and the southwest corner of Township 18 South Range 9 West to the boundary with Douglas County.	2
Lincoln, Area 1 - All of Lincoln County except Area 2.	1
Lincoln, Area 2 - That portion of Lincoln County east of a generally north-south straight line which extends from the boundary with Lane County through the southwest corner of Township 14 South Range 10 West to the northwest corner of Township 12 South Range 10 West then straight to the northeast corner of Township 14 South Range 10 West then straight through the locale of Rose Lodge to the boundary with Tillamook County.	2
Linn	2
Malheur	3
Marion	2
Morrow	3
Multnomah	2
Polk	2
Sherman	3
Tillamook, Area 1 - All of Tillamook County except Area 2.	1
Tillamook, Area 2 - That portion of Tillamook County east of the north-south line between Townships 7 West and 8 West.	2
Umatilla	3
Union	3
Wallowa	3
Wasco	3
Washington	2
Wheeler	3
Yamhill	2

Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

Stat. Auth.: ORS 526.016
Stats. Implemented: ORS 93.270
Hist: FB 2-1996, f. 3-13-96, cert. ef. 4-1-96

629-044-0240

Topography Hazard Factor

(1) The reference for establishing the topography hazard factor shall be:

(a) The General Soil Map Report published by the Oregon Water Resources Board and the Soil Conservation Service, USDA in 1969; or

(b) The appropriate 7.5 minute quadrangle map published by the U.S. Geological Survey, USDI.

(2) For geographic areas determined by use of a reference set forth in subsection (1) above, select the appropriate hazard value from **Table 2**.

TABLE 2
TOPOGRAPHY HAZARD FACTOR

MAP SLOPE CLASS	HAZARD VALUE
1 (Slopes 00-03%)	0
2 (Slopes 03-07%)	1
3 (Slopes 07-12%)	1
4 (Slopes 12-20%)	2
5 (Slopes 20-35%)	3
6 (Slopes 35-60+%)	3

Stat. Auth.: ORS 526.016
Stats. Implemented: ORS 93.270
Hist: FB 2-1996, f. 3-13-96, cert. ef. 4-1-96

629-044-0250

Natural Vegetative Fuel Hazard Factor

(1) The reference for establishing the natural vegetative fuel hazard factor shall be the "Aids to Determining Fuel Models For Estimating Fire Behavior" published by the Forest Service, USDA Intermountain Forest and Range Experiment Station in 1982 as General Technical Report INT-122.

(2) Using the natural vegetative fuel models described in the reference set forth in subsection (1), and summarized in **Table 3**, divide the jurisdiction into geographic areas which best describe the natural vegetation expected to occupy sites for the next 10 to 15 years and then select the appropriate hazard value from **Table 3**.

TABLE 3
NATURAL VEGETATIVE FUEL HAZARD FACTOR

NATURAL VEGETATIVE FUEL DESCRIPTION	HAZARD VALUE
--	--------------

Little or no natural vegetative fuels are present.	0
--	---

Grass. Very little shrub or timber is present, generally less than one-third of the area. Main fuel is generally less than two feet in height. Fires are surface fires that move rapidly through cured grass and associated material. (Fuel model 1)	3
---	---

Grass. Open shrub lands and pine stands or scrub oak stands that cover one-third to two-thirds of the area. Main fuel is generally less than two feet in height. Fires are surface fires that spread primarily through the fine herbaceous fuels, either curing or dead. (Fuel model 2)	3
--	---

Grass. Beach grasses, prairie grasses, marshland grasses and wild or cultivated grains that have not been harvested. Main fuel is generally less than four feet in height, but considerable variation may occur. Fires are the most intense of the grass group and display high rates of spread under the	3
---	---

influence of wind.
(Fuel model 3)

Shrubs. Stands of mature shrubs have foliage known for its flammability, such as gorse, manzanita and snowberry. Main fuel is generally six feet or more tall. Fires burn with high intensity and spread very rapidly. (Fuel model 4)	3
--	---

Shrubs. Young shrubs with little dead material and having foliage not known for its flammability, such as laurel, vine maple and alders. Main fuel is generally three feet tall or less. Fires are generally carried in the surface fuels and are generally not very intense. (Fuel model 5)	1
---	---

Shrubs. Older shrubs with foliage having a flammability less than fuel model 4, but more than fuel model 5. Widely spaced juniper and sagebrush are represented by this group. Main fuel is generally less than six feet in height. Fires will drop to the ground at low wind speeds and in stand openings. (Fuel model 6)	2
---	---

Timber. Areas of timber with little undergrowth and small amounts of litter buildup. Healthy stands of lodgepole pine, spruce, fir and larch are represented by this group. Fires will burn only under severe weather conditions involving high temperatures, low humidities and high winds. (Fuel model 8)	1
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Timber. Areas of timber with more surface litter than fuel model 8. Closed stands of healthy ponderosa pine and white oak are in this fuel model. Spread of fires will be aided by rolling or blowing leaves. (Fuel model 9)	2
---	---

Timber. Areas of timber with heavy buildups of ground litter caused by overmaturity or natural events of wind throw or insect infestations. Fires are difficult to control due to large extent of ground fuel. (Fuel model 10)	3
---	---

Stat. Auth.: ORS 526.016
Stats. Implemented: ORS 93.270
Hist: FB 2-1996, f. 3-13-96, cert. ef. 4-1-96

629-044-0260

Natural Vegetative Fuel Distribution Hazard Factor

(1) Divide the jurisdiction into geographic areas which best describe the percentage of the area which is occupied by the foliage of natural vegetative fuels.

(2) For each geographic area determined in section (1) above, select the appropriate hazard value from **Table 4**.

TABLE 4
NATURAL VEGETATIVE FUEL DISTRIBUTION HAZARD FACTOR

NATURAL VEGETATIVE FUEL DISTRIBUTION	HAZARD VALUE
---	--------------

0 to 10% of the area	0
10 to 25% of the area	1
25 to 40% of the area	2

40 to 100% of the area
Stat. Auth.: ORS 526.016
Stats. Implemented: ORS 93.270
Hist.: FB 2-1996, f. 3-13-96, cert. ef. 4-1-96

3

DIVISION 45

LAND CLASSIFICATION

629-045-0005

Class 1 or 2 Lands

Lands classified as Class 1 or 2 pursuant to ORS 526.330 or 526.340 may include undeveloped grass lands if such grass lands are within 1/8 mile of forest land; however, inclusion of grass lands as Class 1 or 2 shall be guided by the following:

(1) No contiguous grass area shall be classed as Class 1 or 2 greater than forty acres unless such area is a narrow strip of grass land flanked on each side by forest land and which at no place exceeds 1/4 mile in width.

(2) For the purpose of establishing workable forest protection district boundaries by legal subdivision, it may be necessary to include several grass land areas of 40 acres or less that are contiguous and lying on the exterior limits of the forest protection district boundary.

(3) Undeveloped grass lands are considered as clearing within the definition of forest land as defined in ORS 477.001 insofar as such lands are intermingled with forested land, woodland, brushland, or cutover land and do not exceed the limits as set forth in section (1) or (2) of this rule.

Stat. Auth.: ORS Ch. 526
Hist.: FB 10, f. 11-7-61

629-045-0010

Class 3 Lands

Lands classified as Class 3 pursuant to ORS 526.330 or 626.340 may include undeveloped grass lands containing inflammable growth and debris sufficient to constitute a fire menace to itself or adjoining lands; however, inclusion of undeveloped grass lands as Class 3 shall be guided by the following:

(1) Undeveloped grass lands may be classed as Class 3 if within two miles of forested land, woodland, brushland, or cutover land.

(2) Undeveloped grass lands are considered as clearings within the definition of forest land as defined in ORS 477.001 insofar as such lands are intermingled with forested lands, woodland, brushland, or cutover land and do not exceed the limits as set forth in section (1) of this rule.

Stat. Auth.: ORS Ch. 526
Hist.: FB 10, f. 11-7-61

629-045-0015

Right of Way

Railroad rights of way and public owned road rights of way are excluded from the classification procedures as set forth in OAR 629-045-0005 and 629-045-0010.

Stat. Auth.: ORS Ch. 526
Hist.: FB 10, f. 11-7-61

DIVISION 46

LOG BRANDS

629-046-0005

Definitions

The following words and phrases shall mean the following, unless the context otherwise requires:

(1) "Booming Equipment" includes boom sticks.

(2) "Brand" means an identifying mark upon forest products or booming equipment, as provided by rule and regulation of the State Forester; but any brands in use and registered with the

Public Utility Commissioner on October 1, 1951, with the exception of those brands enclosed in the letter "C", the use of which is particularly reserved for catch brands, may be continued in use, subject to the other provisions of ORS 532.010 to 532.140.

(3) "Catch Brand" means a mark or brand used by a person as an identifying mark upon forest products and booming equipment previously owned by another.

(4) "Forest Products" means any form, including, but not limited to, logs, poles, and piles into which a fallen tree may be cut before it undergoes manufacturing, but not including peeler cores.

(5) "Highway" means every street, alley, road, highway, and thoroughfare in this state, used by the public or dedicated or appropriated to public use.

(6) "Motor Vehicle" means any self-propelled or motor driven vehicle or any train or combination of vehicles used upon any highway in this state in transporting forest products.

(7) "Railroad" means any self-propelled vehicle or any train or combination of vehicles operating wholly on fixed rails or tracks.

(8) "Waters of This State" includes all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation of forest products, and all rivers and lakes and their tributaries, harbors, bays, sloughs, and marshes.

Stat. Auth.: ORS Ch. 526
Hist.: FB 9, f. 9-20-61

629-046-0010

Special Definition "Brand"

(1) For purposes of this division, pursuant to authority of OAR 629-046-0005, "brand" shall mean an identifying mark upon forest products or booming equipment, which mark shall be at least two inches square.

(2) The mark shall be composed of one or more symbols such as letters, characters, or figures, within or without a single form or outline.

(3) The State Forester will not register any brand which is identical with a registered brand, or which closely resembles a registered brand, or which is designed in a style so as to make recognition difficult or confusing with a registered brand; excepting, however, those brands described in OAR 629-046-0005(2).

(4) A metal tag with the name or initial of the owner may be substituted for an impressed or cut brand when branding boom sticks. Such tags are to be registered with the State Forester in the manner prescribed for impressed or cut brands.

Stat. Auth.: ORS Ch. 183 & 526
Hist.: FB 9, f. 9-20-61; FB 11-1986, f. & ef. 9-25-86

629-046-0015

Forest Products; Manufacturing

Under the provisions of ORS 532.010(4), any part of a fallen tree which has been processed through a mill, cut into cordwood, stove wood, hewn ties, or fence posts shall be excluded from the requirements of ORS 532.010 to 532.140.

Stat. Auth.: ORS Ch. 526
Hist.: FB 9, f. 9-20-61

629-046-0020

Forest Products; Branding Bundles

(1) For purposes of this rule, a "bundle" shall mean several sticks or pieces of forest products which are bundled together for purposes of handling or transportation.

(2) Forest products which are being transported in a bundle shall be deemed to be one unit. Placing or affixing a brand to such bundle shall be deemed compliance with ORS 532.010 to 532.140.

Stat. Auth.: ORS Ch. 526
Hist.: FB 9, f. 9-20-61

629-046-0025

Forest Products; Shingle Bolts, Shake Bolts, Stud Logs

Shingle bolts, shake bolts, eight-foot stud logs, and other

such forest products shall each be branded in accordance with the provisions of ORS 532.010 to 532.140; excepting, however, when being transported directly to the place of manufacturing, then, at the option of the owner, such may be branded by marking at least four outside units of such bolts, logs, or other forest products.

Stat. Auth.: ORS Ch. 526
Hist.: FB 9, f. 9-20-61

629-046-0030

Branding; Conspicuous Place

All brands required by ORS 532.010 to 532.140 shall be marked on the forest products and booming equipment in a conspicuous place, which place shall be a surface whereon said brand shall be readily visible and legible.

Stat. Auth.: ORS Ch. 526
Hist.: FB 9, f. 9-20-61

DIVISION 47

ENFORCEMENT POLICY

629-047-0010

Definitions

As used in OAR Chapter 629, Division 47, unless otherwise required by context:

(1) "Authorized Fire Warden" means a person who has been designated, a Fire Warden — Class A or a Fire Warden — Class B, by the forester after the effective date of this rule.

(2) "District" means the geographic areas of the state designated by the Oregon Department of Forestry as districts.

(3) "District Forester" means the person in charge of a district, including Oregon Department of Forestry district foresters and forest protection association district managers and district super-visors.

(4) "Fire Prevention Citation" means a uniform citation issued pursuant to section 3 of Chapter 299, 1993 Oregon Laws and administrative rules adopted thereunder. Receipt of a Fire Prevention Citation requires the violator to pay fine of between \$50 and \$500.

(5) "Fire prevention requirements of ORS Chapter 477" means any of the permit and fire prevention requirements of:

(a) ORS 477.370, 477.510, 477.515, 477.535, 477.540, 477.545, 477.550, 477.565, 477.615, 477.620, 477.625, 477.635, 477.640, 477.645, 477.650, 477.655, 477.660, 477.665, 477.670, 477.685, 477.695, 477.710, 477.720, 477.740; and

(b) Administrative rules adopted pursuant to the statutes listed in subsection (a) of this section; and

(c) Orders of the forester issued pursuant to the statutes and administrative rules described in subsections (a) and (b) of this section.

(6) "Fire Prevention Warning" means written notice issued to a violator pursuant to OAR Chapter 629, Division 47. Receipt of a Fire Prevention Warning requires the violator to pay no fine.

(7) "Fire service agency" means fire suppression resources of, or contracted by, the Oregon Department of Forestry, forest protective association, USDI Bureau of Land Management, USDA Forest Service, rural fire protection district, city fire department or similar government agency.

(8) "Forest protective association" means the Coos Forest Protection Association, the Douglas Forest Protective Association and the Walker Range Patrol Association.

(9) "Forester" means the State Forester or a duly authorized representative of the State Forester.

(10) "Operation" means any industrial activity or any development or improvement on forestland, or within one-eighth of one mile of forestland in a district.

(11) "Operator" means any corporation or person who, either personally or through employ-ees, agents, representatives or contractors, is carrying on or has carried on any operation.

(12) "Serious violation" means a violation that results in a fire which proximately causes human injury, loss of human life, or causes property damage of \$10,000 or more.

(13) "State Forester" means the State Forester appointed by the Oregon Board of Forestry.

(14) "Violation" means the circumstance which exists anytime a violator fails to comply with the fire prevention requirements of ORS Chapter 477.

(15) "Violator" means the corporation, operator or person subject to ORS Chapter 477 responsible for a violation of the fire prevention requirements of ORS Chapter 477.

Stat. Auth.: ORS 477.980
Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0020

General Policy

It is the policy of the Oregon Department of Forestry to gain compliance with the fire prevention requirements of ORS Chapter 477 first through education and cooperation, and second through enforcement. Authorized fire wardens are to educate forest users on the need for the requirements of the fire prevention requirements of ORS Chapter 477 and to cooperate with the users in formulating solutions to compliance problems within the realm of these requirements.

Stat. Auth.: ORS 477.980
Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0030

Purpose

The purpose of OAR Chapter 629, Division 47 is to ensure a uniform response by authorized fire wardens to violations. Exceptions to these enforcement policies are intended to be few in number and shall be approved in writing by the district forester on forms provided by the State Forester for that purpose

Stat. Auth.: ORS 477.980
Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0040

Basic Enforcement Action

(1) When a violation is determined to exist, an authorized fire warden shall:

(a) Issue either a Fire Prevention Citation or a Fire Prevention Warning to the violator in accordance with ORS Chapter 477 and OAR 629-047-0040 to 629-047-0280.

(A) A Fire Prevention Citation shall be issued if:

(i) After the effective date of this rule, a violator has been issued a Fire Prevention Citation or a Fire Prevention Warning for the same violation, in the same district, in the previous 36 months; or

(ii) The enforcement policy for the violation set forth in OAR Chapter 629, Division 47 requires the issuance of a Fire Prevention Citation.

(B) A Fire Prevention Warning shall be issued if the enforcement policy for the violation set forth in ORS Chapter 629, Division 47 requires the issuance of a Fire Prevention Warning.

(b) Not allow continuance of any portion of an operation exposed to an increase risk of fire due to a violation and existing or predicted weather conditions, until such time as compliance is restored, by:

(A) Ordering, in writing, that portion of the operation stopped; and

(B) Suspending, in writing, for that portion of the operation, the permit issued under ORS 477.625. Examples:

(i) When the spark arrester on a dozer is found to be in violation of a requirement of ORS 477.645, the operator shall be ordered to cease operation of the dozer and that portion of the permit issued under ORS 477.625 pertaining to the dozer shall be suspended until the spark arrester is in compliance;

(ii) When fire tools required by ORS 477.655 are found to be inadequate, the operator shall be ordered to cease all activity on the operation and the permit issued under ORS 477.625 shall be suspended until the fire tools are in compliance.

(2) Timber sale contract provisions and other similar instruments shall not be used as enforce-ment measures in lieu of the issuance of a Fire Prevention Citation or of a Fire Prevention Warn-ing.

(3) Notwithstanding the requirements of section (1) of this rule, a district forester may, on a case by case basis, allow an exception to these enforcement policies when circumstances warrant:

(a) In determining if circumstances warrant an exception to these enforcement policies, the district forester shall consider the following factors:

(A) A violator's prior violation of the same or similar fire prevention requirements of ORS Chapter 477; and

(B) The gravity and magnitude of the violation; and

(C) Whether the violation is repeated or continuous; and

(D) Whether the cause of the violation was an unavoidable accident or a willful, malicious or negligent act; and

(E) Whether the violation constitutes a serious violation.

(b) Exceptions to these enforcement policies are intended to be few in number and shall be approved in writing by the district forester on forms provided by the State Forester for that purpose.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0050

Fire Prevention Citation Issuance Limitations

(1) Notwithstanding the requirements of OAR 629-047-0080 to 629-047-0280, multiple violations of the same fire prevention requirement of ORS Chapter 477 on an operation shall be considered a single violation each day they continue. Examples:

(a) If five powersaw spark arrester violations are observed, only one Fire Prevention Citation shall be issued each day for powersaw spark arrester violations;

(b) If two powersaw fire extinguisher violations and one powersaw spark arrester violation are observed, only one Fire Prevention Citation shall be issued each day for powersaw fire extinguisher violations, in addition to the issuance of a Fire Prevention Citation or Fire Prevention Warning for the powersaw spark arrester violation.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0060

Fire Prevention Enforcement Limitations

(1) Only authorized fire wardens who have been designated a Fire Warden — Class A, by the forester on or after the effective date of this rule, may issue a Fire Prevention Warning or a Fire Prevention Citation for violations involving the fire prevention requirements of ORS 477.510, 477.565, 477.615, 477.620, 477.625, 477.635, 477.650, 477.655, 477.660, 477.665, 477.670, 477.685 and 477.695.

(2) An employee of a forest protection association may not issue a Fire Prevention warning or a Fire Prevention Citation for violations involving the fire prevention requirements of ORS 477.370, 477.635 and 477.670.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0070

Records

(1) Each district shall maintain records of all violations occurring on and after the effective date of this rule.

(2) For each violation, districts shall record the following minimum information:

(a) Name of violator, as it appears on a driver license or as it appears in records of the Corporation Division of the Secretary of State; and

(b) Date of the violation; and

(c) A description of the violation, including the Oregon Revised Statute number and the Oregon Administrative Rule number; and

(d) Whether a Fire Prevention Citation or a Fire Prevention Warning was issued; and

(e) The serial number of the Fire Prevention Citation or Fire Prevention Warning form.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0080

Enforcement Policy for ORS 477.370 — Re-fusal to Assist Fire Warden

Enforcement of violations of this statute shall be determined on a case by case basis by the State Forester, using the factors set forth in OAR 629-047-0040(3)(a).

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0090

Enforcement Policy for ORS 477.510 — Acts Prohibited During Closed Fire Season

A Fire Prevention Citation shall be issued for all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0100

Enforcement Policy for ORS 477.515, OAR 629-043-0041 and OAR 629-043-0043 — Burning Permits

(1) The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

(2) Notwithstanding the requirements of section (1) of this rule, if the violation results in a fire, the following shall apply:

(a) If the fire does not cross a property line and if suppression assistance from a fire service agency is not required, the basic enforcement action set forth in OAR 629-047-0040 shall apply.

(b) If the fire crosses a property line or if suppression assistance from a fire service agency is required, a Fire Prevention Citation shall be issued for all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0110

Enforcement Policy for ORS 477.535, ORS 477.540, ORS 477.545 and ORS 477.550 — Regulated, Permit, Absolute Closures.

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0120

Enforcement Policy for ORS 477.565 and OAR 629-043-0005 — Snag Falling

(1) For ORS 477.565(1), the basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

(2) For ORS 477.565(2), following the issuance of written instructions and an adequate and reasonable time for compliance, the basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0130

Enforcement Policy for ORS 477.615 and OAR 629-043-0010 — Additional Water Supply

A Fire Prevention Citation shall be issued for all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0140

Enforcement Policy for ORS 477.620 — Installation or Operation of Mill or Plant

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0150

Enforcement Policy for ORS 477.625 and OAR 629-43-026 — Permit to Use Fire or Power-Driven Machinery; Cable

Logging Systems

A Fire Prevention Citation shall be issued for all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0160

Enforcement Policy for ORS 477.635 — Suspension or Revocation of Permit to Use Fire or Power-Driven Machinery

Enforcement of violations of this statute shall be determined on a case by case basis by the State Forester, using the factors set forth in OAR 629-047-0040(3)(a).

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0170

Enforcement Policy for ORS 477.640 and OAR 629-043-0036 — Powersaws

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0180

Enforcement Policy for ORS 477.645 and OAR 629-43-015 — Spark Arresters

(1) The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

(2) Notwithstanding the requirements of section (1) of this rule, enforcement of the spark arrester requirement may be waived in the following situations:

(a) When equipment is operating in fire safe areas. Example: when a compressor is operating at the bottom of a large rock pit, well away from forest fuels;

(b) When equipment other than motorcycles is powered by an engine of 50 cubic inch displacement or less, if such engine is equipped with an adequate muffler with baffles and with an exhaust system in good repair;

(c) When automobiles and trucks of less than 6,000 gross vehicle weight designed to be used primarily on established roads, if such vehicles are equipped with a muffler with baffles and an exhaust system in good repair;

(d) When trucks of 6,000 pounds gross vehicle weight and larger which are designed to be used primarily on established roads, if:

(A) Such vehicle is equipped with a muffler with baffles; and

(B) Such vehicle has an exhaust system in good repair; and

(C) Such vehicle is equipped with an exhaust system which extends at least to the end of the vehicle frame and discharges to the rear, or which extends above the cab and discharges upward or to the rear.

(e) When motorcycles are equipped with:

(A) A muffler with baffles; and

(B) An exhaust system in good repair or equipped with an exhaust screen which is:

(i) A woven screen having no opening larger than .023 inch; and

(ii) Constructed of wire .25 inch or larger; and

(iii) Heat and corrosion resistant.

(3) This rule does not apply to powersaws.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0190

Enforcement Policy for ORS 477.650 and OAR 629-043-0020 — Water Supply and Clearing Around Stationary Equipment

The basic enforcement action set forth in OAR 629-47-0040 shall to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0200

Enforcement Policy for ORS 477.655 and OAR 629-043-0025 — Fire Tools

The basic enforcement action set forth in OAR 629-47-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0210

Enforcement Policy for ORS 477.660 — Additional Protection Facilities

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0220

Enforcement Policy for ORS 477.665 and OAR 629-043-0030 — Watchman

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0230

Enforcement Policy for ORS 477.670 and OAR 629-043-0070 — Industrial Fire Precaution Levels

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0240

Enforcement Policy for ORS 477.685 — Permit to Clear Right-Of-Way

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0250

Enforcement Policy for ORS 477.695 — Railroad Right-Of-Way

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0260

Enforcement Policy for ORS 477.710 — Campfires

A Fire Prevention Citation shall be issued for all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0270

Enforcement Policy for ORS 477.720 — Accidentally Setting Fire to Forest Land

The basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

629-047-0280

Enforcement Policy for ORS 477.740 — Unlawful Use of Fire

(1) For ORS 477.740(a) and ORS 477.740(b), a Fire Prevention Citation shall be issued for all violations.

(2) For ORS 477.740(c) and ORS 477.740(d), the Basic enforcement action set forth in OAR 629-047-0040 shall apply to all violations.

Stat. Auth.: ORS 477.980

Hist.: FB 2-1994, f. & cert. ef. 6-9-94

DIVISION 51

FOREST INSECT AND DISEASE MANAGEMENT

629-051-0210

Management and Control Actions

Planned activity to manage forest insects and diseases on private lands will be developed with the consent of the appropriate landowner(s). In the event that a landowner ignores an actual or threatened impact of a forest insect or disease which has been deemed a public nuisance, then the State Forester shall, as prescribed in ORS 527.310 - 527.400, plan, organize, direct, and carry out measures as may be necessary to control the problem.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 4-1980, f. & ef. 1-9-80

629-051-0220

Costs of Control

When suppression activities are necessary, the State Forester shall seek to offset the cost of control through contributed funds or labor from affected private landowners and any agency of state or federal government. When private landowners or governmental agencies have the ability and/or the authorities to expend monies and/or services in control programs, the state share shall not exceed 50 percent of the cost of control.

Stat. Auth.: 526 & 527

Hist.: FB 4-1980, f. & ef. 1-9-80

629-051-0230

Introduced Pests

Introduced forest insects or diseases may present a serious threat to forest resources. In the event of introduction of a new forest insect or disease pest, the State Forester shall cooperate with other responsible federal and state agencies and private forest landowners to secure prompt, effective action to prevent the spread of the damage by the new pests. In the absence of action by other agencies the State Forester may employ such control measures as are approved by the State Board of Forestry policy.

Stat. Auth.: 526 & 527

Hist.: FB 4-1980, f. & ef. 1-9-80

DIVISION 55

FOREST PRACTICES ADMINISTRATION

629-055-0005 [Renumbered to 629-670-0010]

629-055-0010 [Renumbered to 629-670-0100]

629-055-0020 [Renumbered to 629-670-0110]

629-055-0030 [Renumbered to 629-670-0200]

629-055-0040 [Renumbered to 629-670-0210]

629-055-0050 [Renumbered to 629-670-0300]

629-055-0060 [Renumbered to 629-670-0310]

629-055-0070 [Renumbered to 629-670-0320]

629-055-0080 [Renumbered to 629-670-0330]

629-055-0090 [Renumbered to 629-670-0340]

629-055-0100 [Renumbered to 629-672-0100]

629-055-0110 [Renumbered to 629-672-0200]

629-055-0120 [Renumbered to 629-672-0210]

629-055-0130 [Renumbered to 629-672-0220]

629-055-0140 [Renumbered to 629-672-0300]

629-055-0150 [Renumbered to 629-672-0310]

629-055-0200 [Renumbered to 629-674-0100]

629-055-0210 [Renumbered to 629-674-0110]

629-055-0400 [Renumbered to 629-676-0100]

629-055-0410 [Renumbered to 629-676-0200]

629-055-0420 [Renumbered to 629-676-0300]

DIVISION 56

**THE PROCESS TO INVENTORY AND PROTECT
SPECIAL RESOURCES ON FOREST LANDS**

629-056-0010 [Renumbered to 629-680-0000]

629-056-0020 [Renumbered to 629-680-0010]

**Threatened and Endangered Fish and Wildlife Species That
Use Resource Sites on Forest Lands**

629-056-0100 [Renumbered to 629-680-0100]

**Sensitive Bird Nesting, Roosting and Watering Forest
Resource Sites**

629-056-0200 [Renumbered to 629-680-0200]

629-056-0210 [Renumbered to 629-680-0210]

629-056-0220 [Renumbered to 629-680-0220]

Significant Wetlands on Forest Land

629-056-0030 [Renumbered to 629-680-0300]

629-056-0310 [Renumbered to 629-680-0310]

**Biological Sites That Are Ecologically and Scientifically
Significant Which Occur on Forest Land**

629-056-0400 [Renumbered to 629-680-0400]

629-056-0410 [Renumbered to 629-680-0410]

629-056-0420 [Renumbered to 629-680-0420]

629-056-0430 [Renumbered to 629-680-0430]

629-056-0900 [Renumbered to 629-680-0020]

629-056-1000 [Renumbered to 629-680-0030]

DIVISION 57

FOREST PRACTICES REFORESTATION RULES

629-057-0000 [Renumbered to 629-635-0000]

629-057-0010 [Renumbered to 629-605-0400]

629-057-2000 [Renumbered to 629-635-0100]

629-057-2010 [Renumbered to 629-635-0110]

629-057-2020 [Renumbered to 629-635-0120]

629-057-2030 [Renumbered to 629-635-0130]

629-057-2040 [Renumbered to 629-605-0500]
629-057-2100 [Renumbered to 629-635-0200]
629-057-2110 [Renumbered to 629-635-0210]
629-057-2120 [Renumbered to 629-635-0220]
629-057-2230 [Renumbered to 629-635-0300]
629-057-2200 [Renumbered to 629-635-0310]
629-057-2220 [Renumbered to 629-640-0000]
629-057-2230 [Renumbered to 629-640-0100]
629-057-2240 [Renumbered to 629-640-0110]
629-057-2250 [Renumbered to 629-640-0200]
629-057-2260 [Renumbered to 629-640-0300]
629-057-2270 [Renumbered to 629-640-0400]
629-057-2280 [Renumbered to 629-640-0500]
629-057-2300 [Renumbered to 629-645-0000]
629-057-2310 [Renumbered to 629-645-0010]
629-057-2320 [Renumbered to 629-645-0020]
629-057-2330 [Renumbered to 629-645-0030]
629-057-2340 [Renumbered to 629-645-0040]
629-057-2350 [Renumbered to 629-645-0050]
629-057-2400 [Renumbered to 629-650-0000]
629-057-2410 [Renumbered to 629-650-0010]
629-057-2420 [Renumbered to 629-650-0020]
629-057-2430 [Renumbered to 629-650-0030]
629-057-2440 [Renumbered to 629-650-0040]
629-057-2500 [Renumbered to 629-655-0000]
629-057-2610 [Renumbered to 629-660-0000]
629-057-2620 [Renumbered to 629-660-0010]
629-057-2630 [Renumbered to 629-660-0020]
629-057-2630 [Renumbered to 629-660-0030]
629-057-2640 [Renumbered to 629-660-0040]
629-057-2650 [Renumbered to 629-660-0050]
629-057-2660 [Renumbered to 629-660-0060]
629-057-3600 [Renumbered to 629-620-0200]
629-057-5170 [Renumbered to 629-610-0070]

EMERGENCY FIRE COST COMMITTEE

DIVISION 60

PROCEDURAL RULES

629-060-0000

Administrative Rule Notification

Prior to the adoption, amendment, or repeal of any rule, the Emergency Fire Cost Committee shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.335(1)(b) at least 21 days prior to the effective date of the proposed rule.

(2) By mailing a copy of the Notice to persons on the Emergency Fire Cost Committee's mailing list established pursuant to ORS 183.335(7), at least 30 days prior to the effective date.

(3) By mailing a copy of the Notice to the following persons, organizations, and publications at least 30 days prior to the effective date:

- (a) Associated Oregon Industries;
- (b) Associated Oregon Loggers;
- (c) Association of Oregon Counties;
- (d) Oregon Forest Resource Institute;
- (e) Louisiana Pacific Corporation - LaGrande;
- (f) Oregon Cattlemen's Association;
- (g) Oregon Farm Bureau Federation;
- (h) Oregon Sheep Growers Association;
- (i) Oregon Small Woodlands Association;
- (j) Oregon State Grange;
- (k) Clackamas-Marion Forest Protective Association;
- (l) Coos Forest Protective Association;
- (m) Douglas Forest Protective Association;
- (n) East Oregon Forest Protective Association;
- (o) Eastern Lane Forest Protective Association;
- (p) Klamath Forest Protective Association;
- (q) Linn Forest Protective Association;
- (r) NW Oregon Forest Protective Association;
- (s) Rogue Forest Protective Association;
- (t) Walker Range Patrol Association;
- (u) Western Lane Forest Protective Association;
- (v) West Oregon Forest Protective Association;
- (w) Western Oregon Livestock Association;
- (x) Boise Cascade Corporation — LaGrande - Medford;
- (y) Georgia-Pacific Corporation — Portland;
- (z) Weyerhaeuser Company — Springfield & Klamath Falls;
- (aa) Willamette Industries, Inc. — Albany;
- (bb) Forestry, Oregon Department of;
- (cc) Governor's Office, Assistant on Natural Resources;
- (dd) Revenue, Oregon Department of;
- (ee) Associated Press, Salem;
- (ff) United Press International, Salem;
- (gg) The Capitol Building Press Room.

Stat. Auth: ORS Ch. 183

Stats. Implemented: ORS 477.001, 477.005 & 477.440

Hist.: FB 5-1982, f. & ef. 6-16-82; FB 1-1995, f. & cert. ef. 1-12-95

629-060-0005

Model Rules of Procedure

Pursuant to the provision of ORS 183.341, the Emergency Fire Cost Committee adopts the Attorney General's Model Rules of Procedure, effective November 4, 1993.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney or Board of Forestry.]

Stat. Auth: ORS Ch. 183 & 477

Stats. Implemented: ORS 447.001 & 477.005

Hist.: FB 4-1982, f. & ef. 4-29-82; FB 2-1984, f. & ef. 1-6-84; FB 4-1986, f. & ef. 6-17-86; FB 1-1989, f. & cert. ef. 1-18-89; FB 1-1995, f. & cert. ef. 1-12-95

DIVISION 61

**OREGON FOREST LAND
PROTECTION FUND**

629-061-0000**Definitions**

The definitions set forth in ORS 477.001 are made a part of this division by this reference; and further the following special definitions are also applicable:

(1) "Oregon Forest Land Protection Fund" means that account established in the State Treasury as a trust fund for the purpose of equalizing emergency fire suppression costs pursuant to Chapter 524, Oregon Law, 1969.

(2) "Regular Fire Suppression Costs" means those fire suppression costs which are regularly budgeted for and incurred by a forest protection district pursuant to ORS 477.205 to 477.291.

(3) "Emergency Fire Suppression Costs" means those fire suppression costs in excess of \$25,000 in any single day which are incurred in an forest protection district in excess of the regular fire suppression costs, which costs shall include, but not limited to labor, services, transportation, supplies, reconditioning and rental equipment, contingency forces costs and expenses incurred for the recovery of emergency fire suppression costs; such emergency fire suppression costs, where applicable, to be based upon the wage rates and equipment rental rates approved by the State Forester.

(4) "District" means a forest protection district organized under ORS 477.255.

(5) "Fiscal Year" means the period beginning July 01 of any year and ending on June 30 of the next year.

(6) "Association" means any forest protective association under contract or agreement with the Forester or Board pursuant to ORS 477.406.

(7) "Administrator" means the administrator appointed pursuant to ORS 477.455(2).

(8) "Contingency Forces" means fire suppression resources added to a district regular forces during time of high fire hazard and/or risk. Such forces may be resources moved from other protection districts, or local forces placed on standby for initial fire attack.

(9) An "Emergency Fire" is a fire that requires greater fire suppression action than a district can reasonably provide at a given time and place under closed fire season suppression resource levels. The following are examples of "emergency fire":

(a) A fire occurs in a unit of a district during August, when the district is at full strength. The dispatch plan on the fire at this time and place specifies a dispatch of two engines, six persons and a district cat. If these forces are inadequate to suppress the fire and additional forces must be hired, it becomes an emergency fire;

(b) If the same fire occurs in February, when the readiness resources are substantially less, the district must still suppress the fire. Hired resources from cooperators will normally be used to supplement limited district resources. The fire becomes an emergency fire when hired and regular district resources exceed the resources equivalent to the closed fire season dispatch of two engines, six person and a cat;

(c) An emergency fire situation may occur when there are multiple fires in a district, although none of the fires may escape initial attack stage. This situation generally occurs during and after severe lightning storms. Extra resources hired to supplement regular forces in the multiple fire situation are emergency fire resources eligible for payment from emergency fire funds.

Stat. Auth.: ORS Ch. 477

Stats. Implemented: 477.750

Hist.: FB 21, f. 9-25-69; FB 1-1981, f. 6-10-81, ef. 7-1-81; Renumbered from 629-44-100; FB 1-1995, f. & cert. ef. 1-12-95; FB 3-1996, f. & cert. ef. 3-13-96

629-061-0005**Deductible Amount Per Acre**

Emergency fire suppression costs are subject to a deductible amount. The Emergency Fire Cost Committee shall establish the deductible amount for each district on or before January 15 of each year. The deductible amount shall be an amount for each acre covered by the timber budget and an amount for each acre covered by the grazing budget established under ORS 477.230,

but may not exceed the limit established under ORS 477.770.

(1) Payment for activities that may be included in meeting the deductible amount shall include, but are not limited to labor, services, transportation, supplies and rental of equipment other than those of the claiming district when incurred in:

(a) Emergency fire suppression, or

(b) Contingency forces costs not to exceed an amount equal to the deductible specified in this rule; provided that the costs were approved by the State Forester before they were incurred and that they were expended on emergency fires.

(2) The requirement in OAR 629-061-0000 that \$25,000/fire/day be expended before emergency fire suppression costs may be paid may be waived by the Committee if conditions so warrant. Conditions that may warrant waiver of the requirement include, but are not limited to one or more of the following:

(a) The unencumbered balance of the fund is determined to be in excess of the reserve base established in ORS 477.760.

(b) The district requesting waiver has over-expended the regular protection budget for the year in which the waiver request is made.

(3) If the requirement in OAR 629-061-0000, defining Emergency Fire Suppression Costs, directly results in an increase in any District Annual Protection Budget in excess of 15 cents per acre on Timber Land or six cents on Grazing Land, the Committee will waive that part of the requirement in excess of this level. It is the intent of the Emergency Fire Cost Committee that the maximum impact of OAR 629-061-0005(2) be limited to an additional 15 cents per acre on Timber Land and six cents per acre on Grazing Land in any District Annual Protection Budget.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.445 & ORS 477.755

Hist.: FB 21, f. 9-25-69; FB 2-1978, f. 1-6-78, ef. 7-1-78; FB 1-1981, f. 6-10-81, ef. 7-1-81; FB 6-1982, f. 6-16-82, ef. 7-1-82; Renumbered from 629-44-105; FB 1-1995, f. & cert. ef. 1-12-95; FB 3-1996, f. & cert. ef. 3-13-96; FB 5-1996, f. & cert. ef. 6-13-96

629-061-0015**Evidence of Necessity**

Each district shall, where payment is claimed from the Oregon Forest Land Protection Fund, provide Administrator with evidence acceptable to Administrator of the necessity for district to incur emergency fire suppression costs in

which an owner or operator has obligations to pay for controlling and extinguishing fire pursuant to provisions of ORS 477.062, 477.068, 477.085 and 477.120. Evidence which may be acceptable to Administrator shall include, but is not limited to:

(1) A statement signed by the district forester or district manager stating the entity responsible for fire suppression costs has refused to accept responsibility or is unable to pay fire costs.

(2) A notification to Administrator that fire cost recovery proceedings have been initiated against an owner or operator that has obligations to pay fire suppression costs.

(3) A statement from an authorized State Forester's staff member or by an assistant attorney general that fire suppression costs are deemed uncollectible. This statement shall include the reason for the decision.

(4) A statement by a district forester that recovery of fire costs appears assured but delays in the recovery process will make it necessary to support the district financial resources until costs can be processed and the responsible party is billed and payment is received.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.505 to 477.550

Hist.: FB 21, f. 9-25-69; Renumbered from 629-44-115; FB 1-1995, f. & cert. ef. 1-12-95

629-061-0020**Qualifications For Payment**

Administrator shall pay only those emergency fire suppression costs as defined in section 629-061-0000(3) incurred

by any district during the fiscal year if district has first expended for similar or other fire emergency costs the deductible amount described in OAR 629-061-0005, provided, however, when a fire originates in one fiscal year and continues burning in fiscal year next following, all emergency fire suppression costs for said fire shall be included in the expenditures for the fiscal year in which the fire started.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.220 & 477.755

Hist.: FB 21, f. 9-25-69; FB 24, f. 6-11-71, ef. 7-11-71; Renumbered from 629-44-120; FB 1-1995, f. & cert. ef. 1-12-95

629-061-0025

Claim Forms

Any claim for emergency fire suppression costs shall be submitted on forms supplied or approved by Administrator. "Current claims" shall be those claims covering such costs for the current fiscal year.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.406, 477.440 & 477.755

Hist.: FB 21, f. 9-25-69; Renumbered from 629-44-125

629-061-0035

Payments

Administrator shall pay to any district an amount from the Oregon Forest Land Protection Fund equal to the emergency fire suppression costs such district has qualified for under OAR 629-061-0020, hereof; the payment shall be 100 percent of the itemized certified costs unless otherwise determined by the Emergency Fire Cost Committee.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.755

Hist.: FB 21, f. 9-25-69; Renumbered from 629-44-135

629-061-0040

Percentage Payment

In the event Administrator makes a payment under rule 629-061-0035, hereof, less than 100 percent of the itemized and certified emergency fire suppression costs, no final payment of said costs shall be made until all emergency fire suppression cost claims against the Oregon Forest Land Protection Fund have been submitted for the current fiscal year.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.755 to 477.770

Hist.: FB 21, f. 9-25-69; Renumbered from 629-44-140

629-061-0045

Payments Conditional — Audits

Any payment made under OAR 629-061-0035 shall be a conditional payment until:

(1) All emergency fire suppression cost claims against the Oregon Forest Land Protection Fund have been submitted for the current fiscal year; and

(2) The Administrator has audited each claim; and

(3) The Emergency Fire Cost Committee has approved each audit.

(4) The district shall reimburse the Oregon Forest Land Protection Fund for any conditional payments that are not approved by the Emergency Fire Cost Committee.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.755 to 477.775

Hist.: FB 21, f. 9-25-69; Renumbered from 629-44-145; FB 1-1995, f. & cert. ef. 1-12-95

629-061-0050

Proceedings — Recovery of Costs

In addition to OAR 629-061-0045, any payment made by Administrator to a claimant, shall be conditioned upon proceedings being brought to recover fire suppression costs from any party or parties liable therefor under ORS Chapter 477, or other law.

Stat. Auth.: ORS Ch. 477.770

Stats. Implemented: ORS 477.755 to 477.775

Hist.: FB 21, f. 9-25-69; Renumbered from 629-44-150

629-061-0060

Collection — Approval

If an Association or the State Forester institutes collection under OAR 629-061-0050, prior to acceptance of any payment there-under, Association or the State Forester whichever the case may be shall first secure the approval of the Administrator, if:

(1) Such fire suppression costs include moneys which have been advanced by Administrator to a district from the Oregon Forest Land Protection Fund; or

(2) Such settlement will affect the amount otherwise payable from the Oregon Forest Land Protection Fund to a district; or

(3) Such settlement will affect the amount otherwise reimbursable by a district to the Oregon Forest Land Protection Fund.

Stat. Auth.: ORS Ch. 477

Stats. Implemented: ORS 477.960

Hist.: FB 21, f. 9-25-69; FB 6-1982, f. 6-16-82, ef. 7-1-82; Renumbered from 629-44-160

629-061-0065

Reimbursement to Account

Whenever an Association or the State Forester receives payment pursuant to OAR 629-061-0060, hereof, they shall retain an amount equal to the emergency fire suppression costs not paid by Administrator from the Oregon Forest Land Protection Fund but eligible for payment, and reimburse the Oregon Forest Land Protection Fund with the remainder, if any; however, any such reimbursement shall in no event exceed the amount paid from said Account.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS 477.755

Hist.: FB 21, f. 9-25-69; Renumbered from 629-44-165

629-061-0075

Transfer of Funds From State Treasurer

(1) The Emergency Fire Cost Committee is authorized by ORS 477.760(2) to request a transfer of funds from the State Treasurer to the Oregon Forest Land Protection Fund at any time and in any amount that will not cause the fund to exceed the reserve base specified in ORS 477.760(1). In the event a transfer of funds is made from the State Treasurer, the Emergency Fire Cost Committee shall notify the State Forester of the amount of the transfer.

(2) The State Forester shall increase taxes and assessments as specified in ORS 477.760(4) in an amount adequate to assure repayment of the transfer and the interest charged thereon. The increase in taxes and assessments specified in ORS 477.760(4)(a) shall be added to the taxes and assessments made under ORS 321.015(2), 477.277(1), 477.295(1), 477.750(1), (2), 477.760(4) and 477.880(2) for the following fiscal year. The amount of transfer will be limited to the amount of money by which known and anticipated claims will exceed the cash balance in the fund, plus anticipated revenues for the remainder of the fiscal year. Negotiations for and approval of the transfer shall be completed before March 1 of each year to allow the State Forester to meet the requirements of ORS 477.760, which requires setting of tax and assessment rates by March 1 of the ensuing year.

Stat. Auth.: ORS Ch. 477

Stats. Implemented: ORS

Hist.: FB 1-1995, f. & cert. ef. 1-12-95

DIVISION 65

STATE FORESTER'S RULES

Establishing an Election Process For The Oregon Forest Resources Institute

629-065-0005

Definitions

For purposes of OAR 629-065-0005 through 629-065-0400:

(1) "Forest products processing activity" means an activity, conducted at a facility that converts raw logs to finished products;

(2) "No direct financial interest" means that no more than 10 percent of the petitioner's gross income is derived from timber or ownership in a timber products processing facility. Ownership in a timber products processing facility does not include the ownership of stock in a publicly held corporation;

(3) "OFRI" means the Oregon Forest Resources Institute;

(4) "OFRI voter registration list" means the list compiled by the State Forester under OAR 629-065-0100 and 629-065-0200 which shows all persons qualified to vote in OFRI elections;

(5) "Producer" means a producer of forest products and includes any person, partnership, association, corporation, cooperative or other business entity, including all affiliates and subsidiaries, actively and directly involved in growing, harvesting or producing timber or timber products, who has paid Forest Products Harvest Tax under ORS 321.005 to 321.185 in at least one of the five years preceding the election; "producer" does not include landowners who meet the requirements of ORS 526.610 (2)(b).

(6) "Producers organization" means a bona fide organization that represents producers of timber or timber products, or organizations representing landowners who meet the requirements of ORS 526.610 (2)(b), a majority of whose members reside in Oregon and whose objectives include public policy participation in statewide issues affecting timber and the timber industry in Oregon. A bona fide organization is one which has a charter, by-laws, membership requirements and which conducts meetings on a regular basis. Organizations meeting this definition include: Northwest Forestry Association, Oregon Forest Industries Council, Oregon Small Woodlands Association, Associated Oregon Loggers, Southern Oregon Timber Industries Association, Douglas Timber Operators and Western Hardwood Association;

(7) "Qualified voter" means a producer or small woodland owner of between 100 and 2,000 acres of forest land who has no direct financial interest in any forest processing activity placed on the OFRI voter registration list by the State Forester;

(8) "State Forester" means the State Forester or the State Forester's designee;

(9) "Timber" means wood of a tree species acceptable for reforestation under the Forest Practices Act, ORS 527.610 to 527.730, and measured in board feet in the ordinary course of business and common practice of the timber industry. The wood may be growing or dead, mature or immature, standing or down. "Timber" does not include Christmas trees as that term is defined in ORS 215.203 or 321.267;

(10) "Timber products" means a commodity which is the result of growing, harvesting or processing timber and is measured in board feet in the ordinary course of business and common practice of the timber industry.

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Stat. Auth.: ORS 526.016(4)

Stats. Implemented: ORS 526.610(2)(a)

Hist.: FB 6-1991(Temp), f. & cert. ef. 10-4-91; FB 3-1993, f. & cert. ef. 2-23-93; FB 7-1996, f. & cert. ef. 10-1-96

629-065-0100

Voter Classification

(1) Voting shall be consistent with the policy of one producer or landowners who meet the requirements of ORS 526.610 (2)(b), one vote. Producer classification shall be based upon the total statewide timber harvest by the producer that is subject to the forest products harvest tax. The State Forester shall establish an OFRI voter registration list of all qualified voters according to the criteria established by rule by the OFRI board.

(2) The State Forester shall establish a statewide OFRI voter registration list of all qualified voters that are owners of 100 to 2,000 acres of forest land that have no direct financial interest in any forest processing activity.

(3) If a producer is eligible for more than one classification

during the five years preceding the election, the producer shall be listed in the classification for which he or she is eligible during the tax year preceding the election.

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Stat. Auth.: ORS 526.016(4)

Stats. Implemented: ORS 526.610(2)(a)

Hist.: FB 6-1991(Temp), f. & cert. ef. 10-4-91; FB 3-1993, f. & cert. ef. 2-23-93; FB 7-1996, f. & cert. ef. 10-1-96

629-065-0200

Voter Registration

(1) When conducting an election for the OFRI board, the State Forester shall mail voter registration forms to all producers whose names are furnished to the State Forester under ORS 321.684. Forms also shall be sent to producers who have requested such notification from the State Forester in writing. The forms shall include the following, which must be completed by the producer and returned to the State Forester no later than the date shown on the registration form:

(a) A description of voter classifications and a check off block for the producer to indicate the classification for which the producer qualifies. Classification shall be based on total statewide harvest of the producer that is subject to the forest products harvest tax.

(b) Information which will allow the State Forester to identify the producer and verify the producer's eligibility to vote in a particular classification. The information may include, but is not limited to, mailing address, legal address, harvest tax information, and any other similar identifying information and;

(c) A certification by the producer that he or she has read the classification descriptions and is eligible to vote in the classification for which the producer registers.

(2) The State Forester may conduct such investigation as is deemed necessary to determine the validity of information provided on the registration form. The State Forester may disqualify from voting in the next election any person who fails to meet or misrepresents the requirements of subsection (1) of this rule.

(3) The State Forester shall promptly notify the person of the person's ineligibility to vote. The person may request the State Forester to review the decision or may provide additional or corrected information within 7 days of the date of the State Forester's notification of ineligibility. The request must be made in writing.

(4) All persons meeting the requirements of subsection (1) of this rule are qualified voters and may vote in OFRI elections. The State Forester shall place all qualified voters on the OFRI voter registration list. Each corporation or partnership, including all subsidiaries, shall be considered as only one qualified voter and shall be entitled to only one vote.

(5) Failure to provide information to the State Forester for the purposes of voter registration shall prohibit the petitioner from participating in that current year election.

(6) Voter registrations post marked after the deadline indicated in the registration instructions shall not be accepted for the current year's election.

(7) Any interested party or individual who wishes to challenge a voter's qualifications must:

(a) Submit the challenge in writing, within 15 business days, prior to the start of the election period, to the State Forester at 2600 State Street, Salem, Oregon 97310 and;

(b) Identify who is making the challenge and give specific details why they feel the person being challenged does not meet the basic qualifications to be a registered voter in the OFRI election.

(8) Upon receipt of such challenges the State Forester shall notify the voter in question within 7 business days and issue a written decision to all parties within 30 business days.

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Stat. Auth.: ORS 526.016(4)

Stats. Implemented: ORS 526.610(2)(a)
Hist.: FB 6-1991(Temp), f. & cert. ef. 10-4-91; FB 3-1993, f. & cert. ef. 2-23-93; FB 7-1996, f. & cert. ef. 10-1-96

629-065-0400

Nomination Requirements for OFRI Board Member

(1) When requested to do so by the OFRI executive director or the OFRI board, the State Forester shall solicit nominations for the OFRI board of directors. The solicitation shall be by publication in a newspaper of general statewide circulation and by solicitation from those producers organizations that request the State Forester to provide notice of election date and identify the positions subject to election.

(2) The State Forester shall supply nomination petitions to all those requesting them. Petitions must be submitted during the nomination period specified by the State Forester in the solicitation.

(3) The petitioner must certify in the nomination petition that the petitioner:

(a) Is a citizen of the United States, a bona fide resident of Oregon and a producer of timber or timber products, an employee of a producer of timber products or owns between 100 and 2,000 acres of forest land in this state on which harvest taxes are paid but has no direct financial interest in any forest products processing facility and;

(b) Has the written statement from a bona fide producer's organization confirming, membership and a profound interest in the development of Oregon's forest products industry and;

(c) Has been actively engaged in producing timber products for at least 5 years prior to the nomination and;

(d) Derives a substantial portion of income from the production of timber products and;

(e) Meets the producer class qualification requirements pursuant to OFRI board rules under ORS 526.610 (2)(a), and;

(f) Is available to fulfill the duties and responsibilities of the OFRI board of directors.

(g) As used in this section, "substantial portion of income" means that 50 percent or more of the petitioner's gross income is derived from timber or timber products ownership or affiliation.

(4) In addition to meeting all of the requirements of subsection (3) of this rule, a petitioner submitting a nomination for a position on the OFRI board of directors representing owners of between 100 and 2,000 acres of forest land shall also certify that the petitioner has no direct financial interest in any forest products processing activity.

(5) The State Forester may disqualify any petitioner who fails to meet or misrepresents any of the requirements of subsections (2)-(4) of this rule. The State Forester may conduct such investigation as is deemed necessary to determine the validity of the nomination petition or the qualifications of the petitioner.

(6) The State Forester shall promptly notify the petitioner of the petitioner's disqualification for nomination. The petitioner may request the State Forester to review the decision or may provide the State Forester with additional or corrected information within 15 days of the date of the State Forester's notification. The request must be in writing.

(7) Failure to provide information to the State Forester for the purposes of nominee registration or qualification verification shall prohibit the petitioner from participating as a nominee in that current year election.

(8) Nominee petitions post marked after the deadline indicated in the registration instructions shall not be accepted for the current year's election.

(9) Any interested party or individual who wishes to challenge a nominee's qualifications must:

(a) Submit the challenge in writing, within 7 business days after the starting date of the election period, to the State Forester at 2600 State Street, Salem, Oregon 97310 and;

(b) Identify who is making the challenge and give specific details why they feel the person being challenged does not meet the basic qualifications to be a nominee in the OFRI election.

(10) Upon receipt of such challenges the State Forester shall notify the nominee in question within 7 business days and issue a

written decision to all parties within 30 business days.

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Stat. Auth.: ORS 526.016(4)

Stats. Implemented: ORS 526.610(2)(a)

Hist.: FB 6-1991(Temp), f. & cert. ef. 10-4-91; FB 3-1993, f. & cert. ef. 2-23-93; FB 7-1996, f. & cert. ef. 10-1-96

629-065-0500

Elections Generally

(1) The general election for OFRI shall begin after the voter and nomination registration periods end, and commence for 30 calendar days. The activities of mailing and subsequent counting of ballots shall be included within the general election period.

(2) The general election period may be delayed for reasons of registration, preparing ballots, rendering decisions on challenges, or other reasonable grounds provided the election is concluded and results filed and published prior to July 1st of that year.

(3) If only one person is nominated for a position the State Forester may provide a space on the ballot for voting for a write-in candidate. All such write-in candidates must be able to meet the nomination requirements set out in OAR 629-065-0400. A ballot containing a write-in candidate not meeting the established eligibility requirements shall be null and void and shall not be counted.

(4) The candidate receiving the most votes for a position shall be elected to that position. In the event a tie exists between two or more candidates by reason of their having an equal and the highest number of votes for that position, the State Forester shall set a time and place for a decision by lot, and the candidate so chosen shall be elected to the position.

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Stat. Auth.: ORS 526.016(4)

Stats. Implemented: ORS 526.610(2)(a)

Hist.: FB 6-1991(Temp), f. & cert. ef. 10-4-91; FB 3-1993, f. & cert. ef. 2-23-93; FB 7-1996, f. & cert. ef. 10-1-96

DIVISION 600

DEFINITIONS

629-600-0100

Definitions

As used in OAR Chapter 629, Divisions 605 through 669 and Divisions 680 through 699, unless otherwise required by context:

(1) "Abandoned resource site" means a resource site that the State Forester determines is not active.

(2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. 'Recent past' shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.

(3) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.

(4) "Alternate plan" means a written plan proposing practices or protection standards different than those specified in rule.

(5) "Aquatic area" means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.

(6) "Artificial reforestation" means restocking a site by planting trees or through the manual or mechanical distribution of seeds.

(7) "Basal area" means the area of the cross-section of a tree stem derived from DBH.

(8) "Basal area credit" means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a

stream, or conducting other enhancement activities such as side channel creation or grazing enclosures.

(9) "Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.

(10) "Channel" is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.

(11) "Chemicals" means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliants, plant desiccants, and plant regulators, as defined in ORS 634.006 (8); fertilizers, as defined in ORS 633.310; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives, anti-foam agents, wetting agents, and spreading agents.

(12) "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.

(13) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.

(14) "Department" means the Oregon Department of Forestry.

(15) "Diameter breast height" (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.

(16) "Domestic water use" means the use of water for human consumption and other household human use.

(17) "Dying or recently dead tree" means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.

(18) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(19) "Filling" means the deposit by artificial means of any materials, organic or inorganic.

(20) "Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(21) "Fledging tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.

(22) "Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.

(23) "Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.

(24) "Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(25) "Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.

(26) "Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.

(27) "High risk areas" are lands determined by the State Forester to have a significant potential for destructive mass soil movement or stream damage because of topography, geology, biology, soils, or intensive rainfall periods.

(28) "High risk sites" are specific locations determined by the State Forester within high risk areas. A high risk site may include but is not limited to: slopes greater than 65 percent, steep headwalls, highly dissected land formations, areas exhibiting frequent high intensity rainfall periods, faulting, slumps, slides, or debris avalanches.

(29) "High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.

(30) "Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.

(31) "Important springs" are springs in arid parts of Eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.

(32) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.

(33) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledging trees or perching trees.

(34) "Lake" means a body of year-round standing open water.

(a) For the purposes of the forest practice rules, lakes include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein; and

(B) Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.

(b) "Lakes" do not include water developments as defined in section (79) of this rule.

(35) "Large lake" means a lake greater than eight acres in size.

(36) "Live tree" means a tree that has 10 percent or greater live crown.

(37) "Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.

(38) "Main channel" means a channel that has flowing water when average flows occur.

(39) "Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.

(40) "Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.

(41) "Nest tree" means the tree, snag, or other structure that contains a bird nest.

(42) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.

(43) "Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.

(44) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.

(45) "Prior approval" means written approval of the State Forester given for specific forest practices before the operation begins, with the exception that verbal permission may be granted followed by immediate written confirmation where timing is critical.

(46) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.

(47) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.

(48) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.

(49) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.

(a) For the purposes of protection:

(A) For threatened and endangered bird species, "resource site" is the nest tree, roost trees, or foraging perch and all identified key components.

(B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.

(C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.

(b) For the purposes of requesting a hearing under ORS 527.670(4) and ORS 527.700(3), "resource site" is defined in OAR 629-680-0020.

(50) "Riparian area" means the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.

(51) "Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and fish and wildlife habitat.

(52) "Roosting site" means a site where birds communally rest at night and which is unique for that purpose.

(53) "Roost tree" is a tree within a roosting site that is used for night time roosting.

(54) "Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.

(55) "Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.

(56) "Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.

(57) "Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection.

(58) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

(59) "Sound snag" means a snag that retains some intact bark or limb stubs.

(60) "Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.

(61) "Stream" means a channel, such as a river or creek, that carries flowing surface water during some portion of the year.

(a) For the purposes of the forest practice rules, streams include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein;

(B) Beds and banks below the high water level which may contain water, whether or not water is actually present;

(C) The area between the high water level of connected side channels;

(D) Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and

(E) Stream-associated wetlands.

(b) "Streams" do not include:

(A) Ephemeral overland flow (such flow does not have a channel); or

(B) Road drainage systems or water developments as defined in section (73) of this rule.

(62) "Stream-associated wetland" means a wetland that is not

classified as significant and that is next to a stream.

(63) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.

(64) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.

(65) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.

(66) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.

(67) "Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.

(68) "Type D stream" means a stream that has domestic water use, but no fish use.

(69) "Type F stream" means a stream with fish use, or both fish use and domestic water use.

(70) "Type N stream" means a stream with neither fish use nor domestic water use.

(71) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.

(72) "Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.

(73) "Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(74) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(75) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in section (73) of this rule.

(76) "Written plan" means a plan submitted by an operator, for written approval by the State Forester, which describes how the operation will be conducted, including the means to protect resource sites described in ORS 527.710(3)(a) (relating to the collection and analysis of resource site inventories), if applicable.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 1-1985, f. & ef. 3-12-85; FB 2-1985(Temp), f. & ef. 4-24-85; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-101

DIVISION 605

PLANNING FOREST OPERATIONS

Compliance

(1) The operator, landowner, or timber owner shall comply with the practices described in the forest practice rules unless prior approval has been obtained from the State Forester for alternate practices which provide equal or better results.

(2) The State Forester may grant prior approval to waive or modify forest practice rules when:

(a) The State Forester determines that a federal or state agency, a college or university, or a private landowner has submitted an application to the State Forester for a bona fide research project involving activities not in accordance with the rules;

(b) The State Forester determines that waiving or modifying a specific practice will result in less environmental damage than if the practice is applied; or

(c) After consulting with the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester determines that waiving or modifying a specific practice will improve soil, water quality, fish habitat, or wildlife habitat.

(3) When the State Forester's prior approval does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain a written explanation of the reasons for allowing alternate practices.

(4) The State Forester may grant prior approval to waive or modify rules for resource sites identified in OAR 629-680-0100 (Threatened or Endangered Fish and Wildlife Species), OAR 629-680-0200 (Sensitive Bird Nesting, Roosting and Watering Sites), OAR 629-680-0300 (Significant Wetlands), or OAR 629-680-0400 (Biological Sites) when:

(a) The county has an adopted program under OAR 660-016-0005 and OAR 660-016-0010 that has evaluated the resource sites; and

(b) Applying the forest practice rules for the identified resource sites would regulate or prevent operations, or uses, allowed under the acknowledged county comprehensive plan.

(5) Information only: For threatened or endangered species, protection standards beyond the Forest Practices Act may be required by federal authorities under the Endangered Species Act. For example, an incidental take permit may be needed where an action could result in a taking.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 7-1992, f. & cert. ef. 6-5-92; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-102

629-605-0110

Annual Review

The State Forester shall, at least once each year, meet with other state agencies concerned with the forest environment to review the Forest Practice Rules relative to sufficiency. The State Forester shall then report to the Board of Forestry a summary of such meeting or meetings together with recommendations for amendments to rules, new rules, or repeal of rules.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.721

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-104

629-605-0120

Consultation

Department personnel shall consult with personnel of other state agencies concerned with the forest environment situations where expertise from such agencies is desirable or necessary.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.721

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-105

629-605-0130

Compliance with the Rules and Regulations of the Department of Environmental Quality

Each operation, as defined by ORS 527.620, shall be conducted in full compliance with the rules and regulations of the Department of Environmental Quality relating to air and water pollution control. In addition to all other remedies, any violation thereof shall be subject to all remedies and sanctions available by law, rule, or regulation to the Department of Environmental Quality.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-106

629-605-0140

Notification to the State Forester - Types of Operations

Under the provisions of ORS 527.670:

(1) Notification to the State Forester shall be given for the following types of operations:

(a) Harvesting of forest tree species including, but not limited to, felling, bucking, yarding, decking, loading or hauling.

(b) Construction, reconstruction and improvement of roads.

(c) Site preparation for reforestation involving clearing or the use of heavy machinery.

(d) Application of chemicals.

(e) Clearing forestland for conversion to any non-forest use.

(f) Disposal or treatment of slash.

(g) Pre-commercial thinning.

(h) Cutting of firewood, when the firewood will be sold or used for barter.

(i) Surface mining.

(2) Notification to the State Forester shall not be required for the following types of activities, which may or may not be operations:

(a) Culturing and harvesting of Christmas trees on land used solely for the production of Christmas trees.

(b) Routine road maintenance, such as grading, ditch cleaning, culvert cleaning or spot rocking.

(c) Tree planting or tree seed applications, except when trees or seeds are treated with rodenticides.

(d) Cutting of firewood, when the firewood will not be sold or used for barter.

(e) Harvesting or collection of minor forest products, such as boughs, cones and hardwood burls.

(f) Road reconstruction of an emergency nature where delay for notification procedures presents a greater potential for resource damage than the operation. Within 48 hours following the commencement of an emergency road reconstruction operation, the operator shall contact the State Forester and report the operation. Upon request of the State Forester, the operator shall be able to demonstrate that an emergency actually existed.

(g) Culturing and harvesting of hardwood timber, including but not limited to hybrid cottonwood, which is:

(A) Grown or growing on land which has been prepared by intensive cultivation methods and which is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the "furnish" for manufacturing paper products;

(C) Harvested on a rotation cycle within 12 years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, insect and disease control, cultivation and irrigation.

(3) Exemption from notification of certain types of operations does not relieve the operator's responsibility for complying with the applicable forest practice rules.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 33, f. 6-15-73, ef. 7-1-73; FB 41(Temp), f. 6-5-75, ef. 7-1-75; FB 43, f. 9-5-75, ef. 9-25-75; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 2-1988, f. & cert. ef. 5-11-88; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-107

629-605-0150

Notification to the State Forester - When, Where and How

(1) The operator, landowner or timber owner shall notify the State Forester as required by ORS 527.670(6), at least 15 days prior to commencement of an operation.

(2) Except as prohibited in ORS 527.670 (9) for aerial applications of chemicals and ORS 527.670 (10) for operations requiring an approved written plan under ORS 527.670 (3)(a)(A) and (B), the State Forester may waive the 15 day waiting period required in section (1) of this rule. Such waivers may be granted when the State Forester has already previewed the operation site or has otherwise determined the operation to have only minor potential for resource damage. Such waivers shall be made in writing, and on an individual notification basis.

(3) Once an operation is actually commenced following proper notification of the State Forester, further notification under ORS 527.670(6) is not required for the following calendar years, provided:

(a) There are no changes to the information required on the notification;

(b) The operation actively continues within the first six months of the following calendar year; and

(c) A valid permit to operate power driven machinery required under ORS 477.625 is obtained prior to continuation of the operation in the new calendar year. Otherwise, the notification is valid only for the calendar year.

(4) Notwithstanding section (3) of this rule, nothing in this rule relieves an operator, landowner or timber owner of the responsibility to comply with ORS 477.625, requiring a permit to operate power driven machinery on a calendar year basis; or ORS 321.550 requiring notification of intent to harvest provided to the Department of Revenue through the Department of Forestry for the purposes of tax collection.

(5) For the purposes of ORS 527.670 a notification will be considered received only when the information required by the State Forester is complete and the necessary forms are on file at the Department of Forestry district or unit office responsible for the area in which the operation will take place. Notifications not properly completed shall be promptly returned to the party submitting them. Properly completed notifications submitted to an incorrect Department of Forestry office will be forwarded.

(6) Notifications required by ORS 527.670(6) shall be completed in detail, on forms provided by the State Forester. When more than one type of operation or more than one location is submitted on a single notification, each operation unit shall be identifiable as to the type of operation, by legal subdivision, maps or other appropriate means. Operations involving harvesting in more than one county may not be combined on the same notification for tax collection purposes.

(7) When operations include the application of chemicals, properly completed notifications shall include the common name of the chemicals to be used; the brand name, if known at the time of notification; the application method; and, for fertilizers, the intended application rate per acre. Public information on allowable application rates of commonly applied forest chemicals will be maintained at department field offices. Additional information on chemical applications shall be collected and recorded by operators at the time of application, and made available upon request to the State Forester, pursuant to OAR 629-620-0600.

(8) The operator, landowner or timber owner, whichever filed the original notification, shall contact the State Forester and report any subsequent change to information contained in the notification. Additions to the geographic location, however, shall require a separate notification.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 33, f. 6-15-73, ef. 7-1-73; FB 5-1978, f. 6-7-78; FB 2-1988, f. & cert. ef. 5-11-88; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-108

629-605-0160

Forest Practices Regions

The state is divided into three regions to better achieve the purposes of the forest practice rules. These regions are:

(1) Eastern Oregon Region Boundary: All land east of the summit of the Oregon Cascade Range as described by the following boundary: Beginning at a point on the Columbia River near the junction of Interstate 84 and State Highway 35, thence southerly along State Highway 35 to the north line of Section 5, T2S-R10E; thence east to the NE corner Section 5; thence southeasterly approximately 1.5 miles to a point of intersection with Forest Road No. 1720 in Section 9, T2S-R10E; thence easterly along said road and along Forest Road No. 44 to the east line of Section 12, T2S-R10E; thence southerly along the western boundaries of Wasco, Jefferson, Deschutes, and Klamath Counties to the southern boundary of Oregon.

(2) Northwest Oregon Region Boundary: All land west of the summit of the Oregon Cascade range as described in the Eastern Oregon Region boundary, north of the south boundary of Lane County.

(3) Southwest Oregon Region Boundary: All land west of the summit of the Cascade Range as described in the Eastern Oregon Region Boundary; south of the south boundary of Lane County.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.640

Hist.: FB 10-1982, f. & ef. 10-21-82; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-112

629-605-0170

Written Plans

(1) Operators shall obtain written approval from the State Forester of written plans before conducting any operations requiring notification under OAR 629-605-0140, which are within:

(a) 100 feet of a large lake, or within 100 feet of a stream classified as Type F or Type D. Written plans for Type F and Type D streams, and large lakes are further described in OAR 629-635-0130.

(b) 300 feet of a specific site involving threatened or endangered wildlife species, or sensitive bird nesting, roosting, or watering sites; as listed by approximate legal description, in a document published by the Department of Forestry titled "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984."

(c) 300 feet of any resource site identified in OAR 629-665-0100 (Sensitive Bird Nesting, Roosting and Watering Resource Sites on Forestlands), OAR 629-665-200 (Threatened and Endangered Species that use Resource Sites on Forestlands), or OAR 629-645-0000 (Significant Wetlands).

(d) 300 feet of any nesting or roosting site of threatened or endangered species listed by the U.S. Fish and Wildlife Service or by the Oregon Fish and Wildlife Commission by administrative rule.

(2) The State Forester shall notify the operator of the presence of one of the sites listed in section (1) of this rule and the requirement of the written plan at any time the State Forester determines the presence of the above sites.

(3) Written plans required under section (1) of this rule shall be subject to the hearings provisions of ORS 527.700(3) (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of ORS 527.670(1), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.

(4) The State Forester may also require the operator to submit a written plan when an operation involves practices requiring prior approval. Written plans required under this section shall not be subject to the provisions of ORS 527.700(3) or 527.670(10), (11) and (12).

(5) Operators shall comply with all provisions of an approved written plan.

(6) A written plan shall contain specific information applicable to the operation regarding but not limited to the location of roads and landings, road and landing design, construction techniques, drainage systems, disposal of waste materials, felling and bucking, buffer strips, yarding systems and

layout, riparian management area protection measures, resource site protection measures and post-operation stabilization measures.

(7) Modification of the written plan shall be required when, based on information that was not available or was unknown at the time the original written plan was approved, the State Forester determines the approved written plan will no longer provide for compliance with applicable forest practice rules or adequately address the conflict with the resource site. Written plans with modifications required under this section shall not be subject to the provisions of ORS 527.670(10) and (11) relating to waiting periods for approval of written plans.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.670

Hist.: FB 3-1983, f. & ef. 9-13-83; FB 3-1985, f. & ef. 6-11-85; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-113

629-605-0180

Interim Process for Protecting Sensitive Resource Sites Requiring Written Plans

(1) Protection practices for sites requiring written plans under OAR 629-605-0170(1)(b) or (d) shall be determined for each site as follows:

(a) The State Forester shall notify the operator and landowner of the presence of a site requiring a written plan, and request their input into the decision making process.

(b) The State Forester shall, when practical, inspect the proposed operation with the landowner or landowner's representative, the operator, and the appropriate representative of the Department of Fish and Wildlife. The State Forester shall then determine if the proposed forest practice is in conflict with the protection of the sensitive resource site.

(c) If planned forest practices are determined to conflict with protection of the sensitive resource site, the written plan shall describe reasonable measures sufficient to resolve the conflict in favor of the resource site. Reasonable measures to resolve the conflict in favor of the resource site may include but are not limited to preparing and implementing a habitat management plan, limiting the timing of forest practices, redesigning the proposed practices in favor of site protection and excluding the forest activities outright.

(d) If planned forest practices are determined not to conflict with protection of the sensitive resource site, the written plan shall describe how the operation will be conducted in compliance with existing forest practice rules. No additional protection measures shall be required.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710

Hist.: FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-118

629-605-0190

Prior Approval for Operations Near Critical, Threatened, or Endangered Wildlife Habitat Sites

Operators shall obtain prior approval from the State Forester before operating near or within:

(1) Critical wildlife or aquatic habitat sites that are listed in a 1984 cooperative agreement between the Board of Forestry and the Fish and Wildlife Commission or sites designated by the State Forester; or

(2) Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-605-0200

Compliance with Statutory Requirements

(1) In addition to all other requirements of administrative rule

promulgated under the Forest Practices Act, operators, landowners and timber owners who conduct forest operations shall comply with the requirements in:

(a) ORS 527.740 Harvest type 3 unit limitations);

(b) ORS 527.750 (Exceeding harvest type 3 size limitations);

(c) ORS 527.755 (Scenic highways and visually sensitive corridors); and

(d) Section 9, Chapter 9, Oregon Laws 1996 Special Session (Live and dead wood retention in harvest type 2 and 3 units greater than 25 acres).

(2) Failure to comply with requirements in section (1) of this rule may be subject to any of the enforcement mechanisms provided in the Oregon Forest Practices Act under ORS 527.680, 527.690, 527.990 or 527.992.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 2-1992(Temp), f. & cert. ef. 1-9-92; FB 5-1992, f. & cert. ef. 5-8-92; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-120

629-605-0210

Harvest Type 3 Units within Single Ownerships

(1) For the purposes of ORS 527.740 and this rule, "single ownership" as defined in ORS 527.620, shall be interpreted broadly to prohibit manipulation of ownership entities or property transfers intended to avoid the provisions of ORS 527.740, restricting the size of harvest type 3 units, as defined by ORS 527.620. "Single ownership" shall not be interpreted to restrict lawful operations on bona fide separate ownerships.

(2) Nothing in ORS 527.740 is intended to restrict the location of a harvest type 3 unit or harvest type 3 unit acreage of one landowner based on the harvest type 3 unit of a wholly separate ownership.

Stat. Auth.: ORS 527.7210

Stats. Implemented: ORS 527.715

Hist.: FB 1-1993, f. & cert. ef. 1-7-93; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-121

629-605-0220

Judicial Determinations of Rule Validity

It is the intent of the Board that if any section of a rule is declared invalid or is remanded by the Court of Appeals under ORS 183.400, the remaining sections of the rule will remain valid.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-605-0400

Forest Activity Safety

Compliance with worker safety regulations is essential for ensuring the safety of operators and their employees. Regulation of forest practices must be achieved in a manner which allows operators to comply with applicable federal and state safety requirements. In administering the forest practice rules to meet the resource protection goals, especially requirements related to working near snags, residual green trees and unstable material, the State Forester shall use appropriate discretion.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

010

629-605-0500

Modification of Requirements for Forest Health and Public Safety

Protection requirements for streams, lakes, wetlands and riparian management areas may be modified by prior approval of the State Forester for reasons of forest health or because of hazards to public safety or property. Hazards to public safety or property include hazards to river navigation and hazards to improvements such as roads, bridges, culverts, or buildings.

Forest health concerns include fire, insect infestations, disease epidemics, or other catastrophic events not otherwise addressed in OAR 629-640-0300. Such modifications of protection requirements should prevent, reduce or alleviate the forest health conflict or hazard while meeting the intent of the protection goals as much as possible.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2040

DIVISION 610

FOREST PRACTICES REFORESTATION RULES

629-610-0000

Purpose

(1) Timely reforestation of forestland following operations that reduce tree stocking below established standards is an essential factor in assuring continuous growing and harvesting of forest tree species, considering landowner objectives and consistent with the sound management of timber and other forest resources. Reforestation or other forms of revegetation are also important for the continued productivity and stabilization of soils exposed as a result of operations.

(2) OAR 629-610-0000 through 629-610-0090 shall be known as the reforestation rules.

(3) The purpose of the reforestation rules is to establish standards to ensure the timely replacement and maintenance of free to grow forest tree cover following forest operations at or above stocking levels that will use the tree growth potential of forestlands in Oregon.

(4) The reforestation rules are designed to:

(a) Define forestland subject to reforestation requirements;

(b) Describe the conditions under which reforestation shall be required;

(c) Specify the minimum number of trees per acre;

(d) Specify the maximum time period allowed for establishment of such trees after an operation reduces stocking;

(e) Describe the acceptable species for reforestation;

(f) Describe the conditions under which revegetation shall be required in lieu of reforestation; and

(g) Specify the conditions under which an exemption from the reforestation requirements may be approved.

(5) Except as described below, the reforestation rules shall become effective on January 1, 1995 and shall be applied as follows:

(a) Operations completed after January 1, 1995 must comply with the reforestation rules;

(b) Except as provided in subsection (c) operations completed before January 1, 1995 must comply with the applicable reforestation requirements of ORS 527.745 and OAR 629-024-0400 to 0404, OAR 629-024-0500 to 0503, and OAR 629-024-0600 to 0604 as they existed on September 6, 1994;

(c) Landowners subject to subsection (b) may request to have the reforestation rules apply to an operation at any time following January 1, 1995. The State Forester shall approve such requests so long as the landowner will fully apply the reforestation rules on the operation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

629-610-0010

Forestlands Suitable for Reforestation

(1) Any forestland which is capable of annual wood production of at least 20 cubic feet per acre at culmination of mean annual increment (Cubic Foot Site Class VI or better) shall be subject to the requirements of the reforestation rules.

(2) Potential site productivity is determined directly by tree growth and stocking measurements throughout the operation area or determined indirectly using applicable USDA Natural

Resources Conservation Service soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

629-610-0020

Reforestation Stocking Standards

(1) The landowner shall increase tree stocking to a level that meets the applicable productivity-based stocking standards described in sections (4), (5) and (6) of this rule within the time limits established by OAR 629-610-0040 whenever post-operation free to grow tree stocking in all or a portion of the operation area is below the applicable stocking standards and:

(a) Trees or snags of acceptable species are harvested; or

(b) Free to grow tree stocking is reduced as a result of the operation.

(2) Reforestation is not required on those portions of the operation area:

(a) Where adequate free to grow tree stocking remains after the completion of the operation;

(b) That are not disturbed by operation activities; or

(c) On soils or sites not meeting the minimum productivity requirements of OAR 629-610-0010.

(3) The reforestation requirements may be waived or modified following a stand improvement operation such as a precommercial thinning, commercial thinning, overstory removal, or other partial cut harvest if the State Forester determines that the residual stand conditions after such an operation will result in enhanced long-term tree growth and there is a high probability the purpose of the reforestation rules will be achieved.

(4) For Cubic Foot Site Class I, II and III forestlands (capable of producing at least 120 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 200 free to grown seedlings per acre; or

(b) 120 free to grow saplings and poles per acre; or

(c) 80 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(5) For Cubic Foot Site Class IV and V forestlands (capable of producing between 50 and 119 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 125 free to grow seedlings per acre; or

(b) 75 free to grow saplings and poles per acre; or

(c) 50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(6) For Cubic Foot Site Class VI forestlands (capable of producing between 20 and 49 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 100 or more free to grow seedlings per acre; or

(b) 60 free to grow saplings and poles per acre; or

(c) 40 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(7) In both even-aged and uneven-aged stands, the stocking of residual seedlings, saplings and poles, and larger trees shall be weighted to determine stand stocking and potential reforestation requirements. For this purpose, seedlings, saplings and poles, and trees 11-inches DBH and larger are proportionally equivalent in the following ratios: 100 free to grow seedlings are equivalent to 60 free to grow saplings and poles, which are equivalent to 40 square feet of basal area of free to grow trees 11-inches DBH and larger.

(8) Live conifer trees 11-inches DBH and larger left standing

in harvested areas to meet the green tree and snag retention requirements of Section 5, Chapter 919, Oregon Laws 1991 shall be counted towards meeting the tree stocking standards if the trees are free to grow.

(9) For the purposes of determining compliance with the tree stocking requirements of the reforestation rules, tree stocking in riparian management areas within an operation area will be considered separately from stocking in the rest of the operation area.

(10) Landowners may submit plans for alternate practices that do not conform to the reforestation stocking levels established under these rules. A plan for alternate practices may be approved if the State Forester determines that there is a high probability that the purpose of the reforestation rules will be achieved, or if the plan carries out an authorized research project conducted by a public agency or educational institution.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

629-610-0030

Written Plans for Natural Reforestation Method

(1) Natural reforestation methods may be the best means to meet a variety of resource management objectives on some forestlands. Successful natural reforestation requires careful, flexible, site-specific pre-harvest planning and post-harvest monitoring.

(2) Reforestation may be difficult on Cubic Foot Site Class VI forestlands due to factors such as poor soils, harsh climate and competing vegetation. Reforestation in wetland areas may be difficult because of high water tables, competing vegetation and inaccessibility. Careful reforestation planning is needed before operations are conducted on these sites. On Cubic Site Class VI forestlands and in wetlands, the use of silvicultural systems that promote natural regeneration and the retention of good quality residual trees after operations often have a higher probability of success than artificial reforestation methods.

(3) When an operation will result in a reforestation requirement and natural reforestation methods are planned, the landowner shall obtain written approval from the State Forester of a written plan which describes how reforestation will be accomplished. Information in the plan shall include:

(a) A description of the seed sources that will be used;

(b) Site preparation and vegetation competition control methods;

(c) An estimate of the time needed to obtain an adequately stocked free to grow stand;

(d) How progress towards natural reforestation will be evaluated; and

(e) Alternative strategies that will be used if natural reforestation does not progress as planned.

(4) The written plan required in section (3) of this rule must be submitted no later than twelve months after tree stocking is reduced.

(5) Written plans for the use of natural reforestation methods shall be approved by the State Forester if a determination is made that the information provided accurately indicates there is a high probability the purpose of the reforestation rules will be achieved.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

629-610-0040

Time Allowed for Reforestation

(1) The time period for compliance with the reforestation rules begins at the completion of the operation or 12 months after tree stocking has been reduced, whichever comes first.

(2) The landowner shall begin reforestation, including any necessary site preparation, within 12 months when reforestation is required.

(3) The landowner shall complete planting or seeding within 24 months unless a written plan for natural reforestation has been approved by the State Forester.

(4) By the end of the sixth full calendar year, the landowner shall have established a free to grow stand of trees which meets or exceeds the minimum stocking level required by OAR 629-610-0020.

(5) When natural reforestation methods are planned, the time limits for evidence of successful germination and for establishing a free to grow stand of trees which meets or exceeds the minimum stocking level required for the site shall be established in the approved written plan required for such methods.

(6) If reforestation cannot be accomplished within the specified time due to circumstances determined by the State Forester to be beyond the landowner's control, the State Forester shall extend the time to accomplish reforestation. Such circumstances may include, but are not limited to:

(a) Nursery failure;

(b) Inadequate seedling availability following salvage harvesting;

(c) Extreme drought;

(d) Insect infestation;

(e) State smoke management restrictions on the burning of slash;

(f) Wildfire or disease damage; or

(g) Severe wildlife damage that could not be reasonably anticipated or controlled by the landowner.

(7) Extensions shall be made only upon a determination by the State Forester, based on timely written evidence provided by the landowner, that documents the landowner made reasonable attempts to comply with the reforestation requirements of the rules.

(8) Where an extension is granted for reforestation failure on land suitable for reforestation or in cases where a violation of the reforestation rules is cited, the landowner shall be required to take remedial action to achieve the required stocking standards within a time prescribed by the State Forester using recognized stand establishment methods.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

629-610-0050

Acceptable Species for Reforestation and Residual Stand Stocking

(1) The State Forester shall determine if tree species are acceptable for artificial reforestation, natural reforestation, and as residual seedling, sapling and pole, or larger tree stocking based on all of the following criteria:

(a) The species must be ecologically suited to the planting site;

(b) The species must be capable of producing logs, fiber, or other wood products suitable in size and quality for the production of lumber, sheeting, pulp or other commercial forest products; and

(c) The species must be marketable in the foreseeable future.

(2) Up to 20 percent of the site-based stocking levels required by 629-610-0020 may be met by using free to grow hardwood trees remaining after harvest if the trees are of species meeting the requirements of section (1) of this rule. Prior approval of the State Forester is required before more than 20 percent of the required stocking may be met with residual, post-operation hardwood trees. Prior approval for the use of higher levels of hardwood residual stocking shall be based on a determination by the State Forester that there is a high probability the purpose of the reforestation rules will be achieved.

(3) Landowners are encouraged to reforest with a mixture of acceptable tree species, where appropriate, to reduce the risk of insect and disease losses and to promote stand diversity. Seedlings or seeds used for artificial reforestation should be from seed sources that are genetically adapted to the growing site.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

629-610-0060

Written Plans for the Use of Non-native Tree Species

(1) When an operation will result in a reforestation requirement, and the landowner intends to plant or seed a tree species not native to the operation area, the landowner shall obtain prior approval from the State Forester of a written plan which describes the tree species and how it will be used to meet the reforestation requirements. Information in the plan shall include:

- (a) The tree species that will be used;
- (b) Evidence that the species is ecologically suited to the planting site;
- (c) Evidence that the species is capable of producing commercial forest products that will be marketable in the foreseeable future; and
- (d) Available research or field test findings which demonstrate the tree species has been successfully used in reforesting sites similar to the operation area.

(2) Written plans for the use of non-native tree species must be submitted for approval no later than twelve months after tree stocking is reduced and prior to planting. Written plans for the use of non-native tree species shall be approved by the State Forester if a determination is made that the information provided indicates there is a high probability the purpose of the reforestation rules will be achieved.

(3) For the purpose of this rule, any tree species that the State Forester determines has naturally existed and reproduced in the operation area or on similar sites shall be considered a native species.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

629-610-0070

Suspension of the Reforestation Rules

(1) A landowner may request for the State Forester a suspension of the reforestation rules for the salvage or conversion of low value forest stands, to establish forest stands that are adequately stocked and free to grow.

(2) (a) The State Forester may suspend the reforestation rules in writing when the harvest area is a conversion of underproducing forestland, or a salvage of forest stands where the merchantable trees are dead or dying due to wildfire, insects, diseases or other factors beyond the landowner's control and the State Forester determines:

(A) The landowner is approved for funding from a forest incentive program, for which the State Forester is the technical advisor; and

(B) The gross harvest revenues will not exceed the total costs of harvest, taxation, and reforestation.

(b) For the purposes of this rule, "conversion of underproducing forestland" means an operation conducted on forestland subject to the reforestation requirements that does not currently support the minimum number of free to grow trees required with the objective of removing undesirable competing vegetation, including the incidental harvest of forest products, and establishing an adequately stocked, free to grow forest stand.

(3) To determine whether subsection (2)(b) of this rule is met on a harvest operation that has not started, the State Forester shall make a field observation of the harvest area to determine:

- (a) The estimated merchantable volume;
 - (b) The value of the merchantable volume by applying current local market values; and
 - (c) The estimated harvest, taxation, and reforestation costs.
- (4) When the State Forester is not able to determine the projected revenues and projected costs from the field observation described in subsection (3) of this rule, the State Forester may require the landowner to submit one or more of the following:

- (a) A third party estimate, by species and grade, of the volumes and values of logs to be delivered to the mill;
- (b) The projected costs of harvesting the forest products, including, but not limited to, harvest planning and administration, road construction and maintenance, felling and bucking, yarding, and loading and hauling;
- (c) The projected severance, harvest, and income taxes;
- (d) The projected costs of reforestation, including planning

and administration, site preparation, trees, tree planting, tree protection, and moisture conservation; or

(e) The projected costs of any other measures necessary to establish a forest stand in an adequately stocked and free to grow condition, as specified in the reforestation rules.

(5) To determine whether subsection (2)(b) of this rule is met on a harvest operation that has started, but is not yet complete, the landowner shall submit to the State Forester one or more of the following:

(a) The contracts executed to sell and harvest forest products, including but not limited to, all logging costs and receipts;

(b) All the forest products scaling summaries showing gross an net volumes, by species and corresponding mill receipts showing payment; or

(c) Any tax forms, records or reports submitted by the landowner that detail the gross and net volumes of forest products harvested, by species, plus logging and management costs used to determine harvest and severance taxes.

(6) Operations that are complete are not eligible for a suspension of the reforestation rules.

(7) The State Forester shall revoke the suspension of the reforestation rules at any time within 6 years of completing the operation if the landowner fails to establish a forest stand:

(a) According to the specifications and time lines required under the applicable forest incentive program; or

(b) In an adequately stocked and free to grow condition, as specified in the reforestation rules.

Stat. Auth.: ORS 527.670, 527.700, 527.710, 527.730, 527.765, Ch. 919.3 & 919.9

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; Renumbered from 629-57-5170

629-610-0080

Revegetation When Reforestation is Not Required

When reforestation is not required or planned, the landowner shall ensure sufficient revegetation of the site to provide continuing soil productivity and stabilization within 12 months of the completion of the operation. Revegetation required by this rule may be planted or naturally established, and shall consist of trees, shrubs, grasses, or forbs suitable for soil stabilization and productivity protection. Landowners are encouraged to revegetate the operation area with native plants.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, F. 12-23-94, cert. ef. 1-1-95

629-610-0090

Exemption from Reforestation for Land Uses not Compatible with Forest Tree Cover

(1) A landowner may request all, or portions of, an operation area be exempted from the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover. Prior approval shall be obtained for such an exemption from the State Forester and shall only be granted for the smallest land area necessary to carry out the intended change in land use. Reforestation shall be required on the portions of operation areas not directly involved in the land use change.

(2) In seeking prior approval, the landowner shall provide written documentation to the State Forester which establishes:

(a) The specific portion of the operation area necessary for the proposed change in land use;

(b) The intended change in land use and the incompatibility of the land use with forest tree cover;

(c) The intended change in land use is authorized under local land use and zoning ordinances, and all necessary permits and approvals have been obtained, or will be obtained within 12 months following the reduction in tree stocking; and

(d) The county assessor and local planning department have been notified in writing of the proposed change in land use.

(3) Reasonable progress towards the change in land use, as determined by the State Forester, shall be made within 12 months of the completion of the operation. Evidence of reasonable

progress towards a change to an agricultural use may include activities such as stump removal, cultivation, fencing, and planting or seeding of crops or pasture. Evidence of reasonable progress towards a change to use involving building a structure may include activities such as stump removal, excavation, and construction.

(4) The change in land use shall be completed and continuously maintained within 24 months of the completion of the operation.

(5) If the change in land use cannot be accomplished within the specified time due to circumstances beyond the landowner's control, the State Forester shall extend the time to accomplish the change in land use. Such circumstances may include, but are not limited to, governmental delays in reviewing and processing permits and approvals, but do not include delays where a landowner is appealing the denial of a permit or approval if the State Forester does not have reason to believe the landowner will prevail on appeal. Extensions shall be made only upon a determination by the State Forester, based on written evidence provided by the landowner, that the landowner made reasonable attempts to comply. Landowners who need extensions are encouraged to contact the State Forester as soon as possible after the circumstances occur.

(6) The State Forester shall determine if the change in land use has been completed by:

(a) The presence or absence of improvements necessary for use of the land for the intended purpose; and

(b) Evidence of established and continuously maintained use of the land for the intended purpose.

(7) To remain exempt from the reforestation requirements the landowner shall continuously maintain the land in the new use until at least 6 calendar years following the completion of the operation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95

DIVISION 615

TREATMENT OF SLASH

629-615-0000

Purpose

(1) OAR 629-615-0000 to 0300 shall be known as the treatment of slash rules.

(2) For the purposes of these rules, treatment of slashing is recognized as a necessary tool for the protection of reproduction and residual stands from the risk of fire, insects, and disease, to prepare the site for future productivity and to minimize the risk of material entering streams. Such treatment may employ the use of mechanical processes, fire, chemical or other means to minimize competitive vegetation and residue from harvesting operations.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-300

629-615-0100

Maintenance of Productivity and Related Values

(1) Operators shall plan and conduct forest operations in a manner which will provide adequate consideration to treatment of slashing to protect residual stands of timber and reproduction to optimize conditions for reforestation of forest tree species, to maintain productivity of forestland, to maintain forest health, and maintain air and water quality and fish and wildlife habitat.

(2) Operators shall dispose of or disperse unstable slash accumulations around landings to prevent their entry into streams.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 33, f. 6-15-73, ef. 7-1-73; FB 5-1978, f. & ef. 6-7-78; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-

629-615-0200

Mechanical Site Preparation Near Waters of the State

(1) When mechanical site preparation is necessary in riparian management areas or near waters of the state, operators shall conduct the operations in a way that sediment or debris does not enter waters of the state.

(2) When using mechanical site preparation, operators shall provide adequate distance between disturbed soils and waters of the state to filter sediment from run-off water.

(3) Operators shall not use mechanical site preparation in riparian management areas:

(a) On slopes over 35 percent, with the exception of excavator-type equipment used during dry periods; or

(b) On sites with evidence of surface or gully erosion; or

(c) Where exposure or compaction of the subsoil is likely to occur.

(4) During mechanical site preparation, operators shall not place debris or soil in waters of the state or where it may enter waters of the state.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2630; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-660-030

629-615-0250

Protection of Soil Productivity During Mechanical Site Preparation

On land clearing projects where mechanical methods are used, operators shall minimize compaction and movement of topsoil to protect soil productivity.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-615-0300

Prescribed Burning

(1) Prescribed burning is a tool used to achieve reforestation, maintain forest health, improve wildlife habitat and reduce wildfire hazard. Prescribed burning is to be done consistent with protection of air and water quality, and fish and wildlife habitat. The purpose of this rule is to ensure that necessary prescribed burning is planned and managed to maximize benefits and minimize potential detrimental effects.

(2) When planning and conducting prescribed burning, operators shall:

(a) Comply with the rules of Oregon's "Smoke Management Plan."

(b) Adequately protect reproduction and residual timber, humus and soil surface.

(c) Consider possible detrimental effects of prescribed burning upon riparian management areas, streams, lakes, wetlands, and water quality, and how these effects can be best minimized.

(d) Lay out the unit and use harvesting methods that minimize detrimental effects to riparian management areas, streams, lakes, wetlands, and water quality during the prescribed burning operation.

(e) Fell and yard the unit to minimize accumulations of slash in channels and within or adjacent to riparian management areas.

(f) Minimize fire intensity and amount of area burned to that necessary to achieve reforestation, forest health, or hazard reduction needs.

(3) When burning within 100 feet of Type F and Type D streams, within 100 feet of large lakes, and within 300 feet of significant wetlands, operators shall describe in the written plan how detrimental effects will be minimized within riparian management areas; especially when burning on highly erosive soils, for example decomposed granite soils and slopes steeper than 60 percent.

(4) During prescribed burning operations, operators shall protect components such as live trees, snags, downed wood, and

understory vegetation required to be retained by OAR 629-635-0310 through OAR 629-650-0040. When the operator has taken reasonable precautions to protect the components, but some detrimental effects occur, the intent of the rule is met if the overall integrity of the riparian management area is maintained. Operators shall not salvage trees killed by prescribed fire in a riparian management area if the trees were retained for purposes of OAR 629-035-0310 through OAR 629-655-0000.

(5) When, in the judgment of the State Forester, the need for prescribed burning outweighs the benefits of protecting components required to be left within the riparian area, aquatic area and wetlands, protection requirements may be modified. This judgment shall consider the environmental impacts and costs of alternative treatments.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-302

DIVISION 620

CHEMICAL AND OTHER PETROLEUM PRODUCT RULES

629-620-0000

Purpose

(1) OAR 629-620-0000 through 629-620-0800 shall be known as the chemical and other petroleum product rules. In addition to the application of chemicals, operators should be aware that certain requirements of these rules also apply to the use of other petroleum products, such as fuel and lubricants, on any forest operation.

(2) Operators are encouraged to voluntarily use integrated pest and vegetation management processes. The use of pesticides is one of a variety of integrated pest management strategies that forest landowners may implement to minimize the impact of forest pests in an environmentally and economically sound manner to meet site specific objectives. When properly used, pesticides and other chemicals can be effective tools in the growing and harvesting of forest tree species.

(3) The purpose of the forest practice chemical and other petroleum product rules is to establish requirements that will ensure:

(a) Chemicals and other petroleum products used on forestland do not occur in the soil, air, or waters of the state in quantities that would be injurious to water quality or to the overall maintenance of terrestrial wildlife or aquatic life; and

(b) The vegetative components of riparian management areas and sensitive resource sites receive protection on herbicide operations consistent with the purposes of the reforestation rules, the requirements of the sensitive resource site rules, and the vegetation retention goals of the water protection rules.

(4) All distances listed in the chemical and other petroleum product rules shall be measured horizontally.

(5) Operations involving the use of chemicals and other petroleum products on forestland are also subject to the pesticide control laws administered by the Department of Agriculture, hazardous waste laws administered by the Department of Environmental Quality, hazard communication rules administered by the Occupational Safety and Health Division, the water use laws administered by the Water Resources Department. Maximum contaminant levels in drinking water for certain pesticides are established by the Health Division.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0100

Preventing, Controlling, and Reporting Leaks and Spills of Chemicals and Other Petroleum Products

(1) The operator shall maintain equipment used for transportation, on-site storage, or application of chemicals in a

leak proof condition. If there is evidence of chemical leakage, the operator shall suspend the further use of such equipment until the deficiency has been corrected.

(2) Operators shall take adequate precautions to prevent leaks or spills of other petroleum products, such as fuel, motor oil, and hydraulic fluid, from entering the waters of the state.

(3) Operators shall take immediate and appropriate action to stop and contain leaks or spills of chemicals and other petroleum products.

(4) The operator shall immediately report to the State Forester any chemical spills and other petroleum product spills resulting from the operation that enter, or may enter, the waters of the state. Such notification will not exempt the operator from any requirements of other local, state, and federal agencies to report chemical or other petroleum product spills.

Stat. Auth.: ORS 527.715

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0200

Protection of Water Quality During Mixing of Chemicals

(1) Whenever water is taken from any stream or water impoundment for use in the mixing of chemicals, the operator shall prevent chemicals from entering the waters of the state by taking at least the following precautions:

(a) Providing an air gap or reservoir between the water source and the mixing tank; and

(b) Using pumps, suction hoses, feed hoses, and check valves that are used only for water.

(2) (For information only) When water is to be withdrawn from the waters of the state for use in mixing pesticides or for slash burning, ORS 537.141 requires operators to notify the Water Resources Department and the Department of Fish and Wildlife. Notification to the State Forester does not satisfy this requirement.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0300

Locations of Mixing, Transfer, and Staging Areas for Chemicals and Other Petroleum Products

(1) Operators shall conduct the following activities only in locations where spillage of chemicals or other petroleum products will not enter the waters of the state:

(a) Mixing chemicals;

(b) Transferring chemicals or other petroleum products between equipment or containers including, but not limited to, fueling of aircraft or heavy equipment;

(c) Cleaning tanks or equipment used during chemical applications;

(d) Landing and staging aircraft.

(2) Notwithstanding section (1), operators shall not locate chemical mixing and staging areas for aerial chemical applications within 100 feet of Type F or Type D streams.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0400

Protection of the Waters of the State and Other Resources When Applying Chemicals

(1) When applying chemicals aerially or from the ground, operators shall protect waters of the state and other forest resources by following the requirements of the chemical product label and by meeting the additional protection measures listed in this rule.

(2) When applying herbicides near or within riparian management areas or waters of the state, operators shall maintain vegetation required to be protected by the water protection rules.

(3) Weather conditions such as temperature, relative humidity, wind speed, wind direction, atmospheric temperature inversions, and precipitation may strongly affect the deposition and drift of chemicals during aerial and pressurized, ground-based

chemical applications. Operators shall apply chemicals only under weather conditions which will protect non-target forest resources and comply with the product label and the other sections of this rule.

(4) Except where the product label or sections (2), (6), or (7) apply more stringent requirements, when applying chemicals by aircraft, operators shall not directly apply chemicals within 60 feet of:

- (a) Significant wetlands;
- (b) The aquatic areas of Type F and Type D streams;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

(5) Except where the product label or sections (2) or (6) apply more stringent requirements, when applying chemicals from the ground, operators shall not directly apply chemicals within 10 feet of:

- (a) Significant wetlands;
- (b) The aquatic areas of Type F and Type D streams;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

(6) Operators shall not directly apply fertilizers within 100 feet of Type D streams and the domestic use portions of Type F streams. For other waters of the state, no untreated strips are required to be left by operators when applying fertilizers, except that operators shall not directly apply fertilizers to:

- (a) The aquatic areas of other Type F streams or to large and medium Type N streams;
- (b) Significant wetlands;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

(7)(a) Except as allowed under subsections (d) and (e), operators shall not directly apply fungicides or non-biological insecticides by aircraft, within 300 feet of:

- (A) Significant wetlands;
- (B) The aquatic areas of Type F and Type D streams;
- (C) The aquatic areas of large lakes;
- (D) The aquatic areas of other lakes with fish use; or
- (E) Other areas of standing open water larger than one-quarter acre at the time of the application.

(b) Operators shall not directly apply fungicides or non-biological insecticides by aircraft within 60 feet of the aquatic areas of Type N streams containing flowing water at the time of application.

(c) For the purpose of this rule, "biological insecticide" means any insecticide containing only naturally occurring active ingredients including, but not limited to, viruses, bacteria, semiochemicals (pheromones), or fungi.

(d) Plans for alternate practices that modify the requirements of subsections (a) and (b) may be approved by the State Forester. Approvals of such plans shall be based on a written finding by the State Forester determining that:

(A) Such a modification is essential to control a fungus or a population of an insect species to reduce damage to, and to better provide for, the overall maintenance of forest resources protected under the Forest Practices Act;

(B) The operational or weather condition constraints placed on the application by the plan for alternate practice, in addition to the requirements of the forest practice rules and the product label, will reduce the potential for the fungicide or non-biological insecticide to drift outside the operation area or to enter the waters of the state; or

(C) Adequate documentation has been submitted by the operator indicating the toxicity to humans, fish populations, or to aquatic invertebrate populations of the fungicide or non-biological insecticide to be applied is lower than the documented toxicity of the fungicide chlorothalonil or the non-biological insecticide carbaryl, as used in forestry prior to September 4, 1996.

(e) The requirements of sections (a) and (b) do not apply to pest eradication programs conducted on forestland by the Department of Agriculture.

(8) The operator shall make all aerial chemical applications parallel to the edge of the water when applying chemicals within 100 feet of:

- (a) Significant wetlands;
- (b) The aquatic areas of Type F and Type D streams;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0500

Disposal of Chemical Containers

Operators shall dispose of chemical containers in accordance with the Department of Environmental Quality's disposal requirements. Operators may apply flushing solution resulting from cleaning of chemical containers to the operation area.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0600

Daily Records of Chemical Applications

(1) Whenever pesticides are aerially applied or applied using a pressurized, ground-based, broadcast application system on forestland, the operator shall maintain a daily record of application operations which includes:

- (a) The legal description of the location of the operation area actually treated with chemicals;
- (b) The acreage actually treated with chemicals;
- (c) Brand name or EPA registration number of the chemicals used, the carrier used, and the application rate;
- (d) Date and time of application;
- (e) Air temperature, to be measured within the operation area and recorded at least hourly for aerial applications and at least at the beginning and end of each day's application for ground applications;

(f) Relative humidity, to be measured within the operation area and recorded at least hourly for aerial applications and at least at the beginning and end of each day's application for ground applications;

(g) Wind velocity and direction, to be measured within the operation area and recorded at least hourly for aerial applications and at least at the beginning and end of each day's application for ground applications;

(h) The name of the person making the application, including the contractor's name and pilot's name when applied aerially, or the contractor's name and/or employee's name for ground application;

(2) Whenever pesticides are applied on forestland using methods other than those described in section (1) of this rule, the operator shall maintain a daily record of all information listed in subsections (a), (b), (c), (d), and (h) of section (1).

(3) Whenever fertilizers are applied on forestland, the operator shall maintain a record of all information listed in subsections (a), (b), (d), and (h) of section (1) of this rule and shall also record the application rate and the formulation used.

(4) The records required in sections (1), (2) and (3) of this rule shall be maintained by the operator for three years from the date of application and be made available at the request of the State Forester.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0700

Chemical and Other Petroleum Product Rules: Effectiveness Monitoring and Evaluation

(1) In cooperation with state agencies, landowners, and other interested parties, the department shall conduct monitoring to evaluate the effectiveness of the chemical and other petroleum product rules. The monitoring shall determine the effectiveness of the rules to meet the goals of the Forest Practices Act and the purposes stated in the rules, as well as their workability and operability.

(2) It is the Board of Forestry's intent that the department and its cooperators place a high priority on assessing the monitoring needs and securing adequate resources to conduct the necessary monitoring. The department shall work with its cooperators and the Legislature to secure the necessary resources, funding and coordination for effective monitoring.

(3) The department shall report to the Board of Forestry annually about current monitoring efforts and, in a timely manner, present findings and recommendations for changes to practices. The Board of Forestry shall consider the findings and recommendations and take appropriate action.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-620-0800

Notification of Community Water System Managers When Applying Chemicals

(1) The purpose of this rule is to ensure that community water system managers are appropriately notified of planned chemical operations so that they can coordinate their monitoring activities with planned operations.

(2) This rule applies to community water systems where the surface water drainage area upstream of their intake is 100 square miles or less. The State Forester shall maintain a list of community water systems for which notification is required. A community water system with a drainage area of more than 100 square miles upstream of its intake may request to be added to the list based upon its ability to conduct effective monitoring in the watershed. The list shall be available at department field offices where notifications are submitted.

(3) When chemicals will be aerially applied within 100 feet, or applied from the ground within 50 feet of domestic portions of Type F or Type D streams, and the water use is by a community water system as designated under section (2) of this rule, the operator shall notify the water system manager of a planned chemical operation at least 15 days before the operation commences.

(4) The operator shall provide the following additional information before commencing the operation if requested by the manager of the affected water system at the time of notification required in section (3) above:

(a) The application technology that will be used;

(b) Practices that will be followed to minimize drift toward the stream;

(c) Any monitoring efforts that will be conducted by the landowner; and

(d) The planned time schedule for the application.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-211

DIVISION 625

FOREST ROADS

Road Construction and Maintenance

629-625-0000

Purpose

(1) Forest roads are essential to forest management and contribute to providing jobs, products, tax base and other social and economic benefits.

(2) OAR 629-625-0000 through 629-625-0650 shall be

known as the road construction and maintenance rules.

(3) The purpose of the road construction and maintenance rules is to establish standards for locating, designing, constructing and maintaining efficient and beneficial forest roads; locating and operating rock pits and quarries; and vacating roads, rock pits, and quarries that are no longer needed; in manners that provide the maximum practical protection to maintain forest productivity, water quality, and fish and wildlife habitat.

(4) The road construction and maintenance rules shall apply to all forest practices regions unless otherwise indicated.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0100

Prior Approval

(1) A properly located, designed, and constructed road greatly reduces potential impacts to water quality, forest productivity, fish, and wildlife habitat. To prevent improperly located, designed, or constructed roads, prior approval of the State Forester is required in the sections listed below.

(2) In addition to the requirements of the water protection rules, operators shall obtain prior approval from the State Forester before:

(a) Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow.

(b) Conducting machine activity in Type F or Type D streams, lakes or significant wetlands.

(c) Constructing roads in riparian management areas.

(3) In the Northwest Oregon and Southwest Oregon Regions, operators shall obtain prior approval from the State Forester before constructing roads on high risk sites.

(4) Operators shall obtain written prior approval from the State Forester of a written plan, as described in OAR 629-625-0320(1)(b)(B), before constructing any stream crossing fill over 15 feet deep.

(5) In addition to the requirements of the water protection rules, operators shall obtain prior approval from the State Forester before placing woody debris or boulders in stream channels for stream enhancement.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0200

Road Location

(1) The purpose of this rule is to ensure roads are located where potential impacts to waters of the state are minimized.

(2) When locating roads, operators shall designate road locations which minimize the risk of materials entering waters of the state and minimize disturbance to channels, lakes, wetlands and floodplains.

(3) Operators shall avoid locating roads on steep slopes, slide areas, high risk sites, and in wetlands, riparian management areas, channels or floodplains where viable alternatives exist.

(4) Operators shall minimize the number of stream crossings.

(5) To reduce the duplication of road systems and associated ground disturbance, operators shall make use of existing roads where practical. Where roads traverse land in another ownership and will adequately serve the operation, investigate options for using those roads before constructing new roads.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0300

Road Design

(1) The purpose of OARs 629-625-0300 through 629-625-0340 is to provide design specifications for forest roads that protect water quality.

(2) Operators shall design and construct roads to limit the alteration of natural slopes and drainage patterns to that which

will safely accommodate the anticipated use of the road and will also protect waters of the state.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0310

Road Prism

(1) Operators shall use variable grades and alignments to avoid less suitable terrain so that the road prism is the least disturbing to protected resources, avoids steep sidehill areas, wet areas and potentially unstable areas as safe, effective vehicle use requirements allow.

(2) Operators shall end-haul excess material from steep slopes or high risk sites where needed to prevent landslides.

(3) Operators shall design roads no wider than necessary to accommodate the anticipated use.

(4) Operators shall design cut and fill slopes to minimize the risk of landslides.

(5) Operators shall stabilize road fills as needed to prevent fill failure and subsequent damage to waters of the state using compaction, buttressing, subsurface drainage, rock facing or other effective means.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0320

Stream Crossing Structures

(1) Operators shall design and construct stream crossing structures (culverts, bridges and fords) to:

(a) Minimize excavation of side slopes near the channel.

(b) Minimize the volume of material in the fill.

(A) Minimizing fill material is accomplished by restricting the width and height of the fill to the amount needed for safe use of the road by vehicles, and by providing adequate cover over the culvert or other drainage structure.

(B) Fills over 15 feet deep contain a large volume of material that can be a considerable risk to downstream beneficial uses if the material moves downstream by water. Consequently, for any fill over 15 feet deep operators shall obtain approval of the State Forester of a written plan that describes the fill and drainage structure design. Approval of such written plans shall require that the design be adequate for minimizing the likelihood of surface erosion, embankment failure, and other downstream movement of fill material.

(c) Prevent erosion of the fill and channel.

(2) Operators shall design and construct stream crossings (culverts, bridges, and fords) to:

(a) Pass a peak flow that at least corresponds to the 50-year return interval. When determining the size of culvert needed to pass a peak flow corresponding to the 50-year return interval, operators shall select a size that is adequate to preclude ponding of water higher than the top of the culvert; and

(b) Allow migration of adult and juvenile fish upstream and downstream during conditions when fish movement in that stream normally occurs.

(3) An exception to the requirements in subsection (2)(a) of this rule is allowed to reduce the height of fills where roads cross wide flood plains. Such an exception shall be allowed if:

(a) The stream crossing site includes a wide flood plain; and

(b) The stream crossing structure matches the size of the active channel and is covered by the minimum fill necessary to protect the structure;

(c) Except for culvert cover, soil fill is not placed in the flood plain; and

(d) The downstream edge of all fill is armored with rock of sufficient size and depth to protect the fill from eroding when a flood flow occurs.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0330

Drainage

(1) Operators shall provide a drainage system using grade reversals, surface sloping, ditches, culverts and/or waterbars as necessary to effectively control and disperse surface water to minimize erosion of the road.

(2) Operators shall not divert water from channels except as necessary to construct stream crossings.

(3) Operators shall locate dips, water bars, or cross drainage culverts above and away from stream crossings so that road drainage water may be filtered before entering waters of the state.

(4) Operators shall provide drainage when roads cross or expose springs, seeps, or wet areas.

(5) Operators shall not concentrate road drainage water into headwalls, slide areas, or high risk sites.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0340

Waste Disposal Areas

Operators shall select stable areas for the disposal of end-haul materials, and shall prevent overloading areas which may become unstable from additional material loading.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0400

Road Construction

OARs 629-625-0400 through 629-625-0440 provide standards for disposal of waste materials, drainage, stream protection, and stabilization to protect water quality during and after road construction.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0410

Disposal of Waste Materials

Operators shall not place debris, sidecast, waste, and other excess materials associated with road construction in locations where these materials may enter waters of the state during or after construction.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0420

Drainage

(1) Operators shall clear channels and ditches of slash and other road construction debris which interferes with effective roadway drainage.

(2) Operators shall provide effective cross drainage on all roads, including temporary roads.

(3) Operators shall install drainage structures on flowing streams as soon as feasible.

(4) Operators shall effectively drain uncompleted roads which are subject to erosion.

(5) Operators shall remove berms on the edges of roads or provide effective drainage through these berms, except for those berms intentionally designed to protect road fills.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0430

Stream Protection

(1) When constructing stream crossings, operators shall minimize disturbance to banks, existing channels, and riparian management areas.

(2) In addition to the requirements of the water protection rules, operators shall keep machine activity in beds of streams to

an absolute minimum. Acceptable activities where machines are allowed in streambeds, such as installing culverts, shall be restricted to periods of low water levels. Prior approval of the State Forester for machine activity in Type F or Type D streams, lakes, and significant wetlands is required by 629-625-0100(2)(c).

(3) For all roads constructed or reconstructed operators shall install water crossing structures where needed to maintain the flow of water and passage of adult and juvenile fish between side channels or wetlands and main channels.

(4) Operators shall leave or re-establish areas of vegetation between roads and waters of the state to protect water quality.

(5) Operators shall remove temporary stream crossing structures promptly after use, and shall construct effective sediment barriers at approaches to channels.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0440

Stabilization

(1) Operators shall stabilize exposed material which is potentially unstable or erodible by use of seeding, mulching, riprapping, leaving light slashing, pull-back, or other effective means.

(2) During wet periods operators shall construct roads in a manner which prevents sediment from entering waters of the state.

(3) Operators shall not incorporate slash, logs, or other large quantities of organic material into road fills.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0500

Rock Pits and Quarries

(1) The development, use and abandonment of rock pits or quarries which are located on forestland and used for forest management shall be conducted using practices which maintain stable slopes and protect water quality.

(2) Operators shall not locate quarry sites in channels.

(3) When using rock pits or quarries, operators shall prevent overburden, solid wastes, or petroleum products from entering waters of the state.

(4) Operators shall stabilize banks, headwalls, and other surfaces of quarries and rock pits to prevent surface erosion or landslides.

(5) When a quarry or rock pit is inactive or vacated, operators shall leave it in the conditions described in section (4) of this rule, shall remove from the forest all petroleum-related waste material associated with the operation; and shall dispose of all other debris so that such materials do not enter waters of the state.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 40, f. 6-5-75, ef. 7-1-75; FB 5-1978, f. & ef. 6-7-78; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-111

629-625-0600

Road Maintenance

(1) The purpose of this rule is to protect water quality by timely maintenance of all active and inactive roads.

(2) Operators shall maintain active and inactive roads in a manner sufficient both to provide a stable surface and to keep the drainage system operating as necessary to protect water quality.

(3) Operators shall inspect and maintain culvert inlets and outlets, drainage structures and ditches before and during the rainy season as necessary to diminish the likelihood of clogging and the possibility of washouts.

(4) Operators shall provide effective road surface drainage, such as water barring, surface crowning, constructing sediment barriers, or outsliping, prior to the rainy and runoff seasons.

(5) When applying road oil or other surface stabilizing materials, operators shall plan and conduct the operation in a manner as to prevent entry of these materials into waters of the

state.

(6) In the Northwest and Southwest Oregon Regions, operators shall maintain and repair active and inactive roads as needed to minimize damage to waters of the state. This may include maintenance and repair of all portions of the road prism during and after intense winter storms, as safety, weather, soil moisture and other considerations permit.

(7) Operators shall place material removed from ditches in a stable location.

(8) In order to maintain fish passage through water crossing structures, operators shall:

(a) Maintain conditions at the structures so that passage of adult and juvenile fish is not impaired during periods when fish movement normally occurs. This standard is required only for roads constructed or reconstructed after September 1994, but is encouraged for all other roads; and

(b) As reasonably practicable, keep structures cleared of woody debris and deposits of sediment that would impair fish passage.

(c) Other fish passage requirements under the authority of ORS 498.268 and 509.605 that are administered by other state agencies may be applicable to water crossing structures, including those constructed before September 1, 1994.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-625-0650

Vacating Forest Roads

(1) The purpose of this rule is to ensure that when landowners choose to vacate roads under their control, the roads are left in a condition where road related damage to waters of the state is unlikely.

(2) To vacate a forest road, landowners shall effectively block the road to prevent continued use by vehicular traffic; and shall take all reasonable actions to leave the road in a condition where road-related damage to waters of the state is unlikely.

(3) Reasonable actions to vacate a forest road may include: removal of stream crossing fills; pullback of fills on steep slopes, frequent cross ditching, and/or vegetative stabilization.

(4) Damage which may occur from a vacated road, consistent with Sections (2) and (3) of the rule, will not be subject to remedy under the provisions of the Oregon Forest Practices Act.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

DIVISION 630

HARVESTING

629-630-0000

Purpose

(1) Harvesting of forest tree species is an integral part of forest management by which wood for human use is obtained and by which forests are established and tended.

(2) Harvesting operations result in a temporary disturbance to the forest environment.

(3) The purpose of the harvesting rules is to establish standards for forest practices that will maintain the productivity of forestland, minimize soil and debris entering waters of the state, and protect wildlife and fish habitat.

(4) OARs 629-630-0000 through 629-630-0800 shall be known as the harvesting rules.

(5) The harvesting rules shall apply to all forest practices regions unless otherwise indicated.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-630-0100

Skidding and Yarding Practices

(1) For each harvesting operation, operators shall select a logging method and type of equipment appropriate to the given slope, landscape, and soil properties in order to minimize soil deterioration and to protect water quality.

(2) Operators shall avoid ground based yarding on unstable, wet, or easily compacted soils and on slopes which exceed 35 percent unless operations can be conducted without damaging soil productivity through soil disturbance, compaction or erosion.

(3) Operators shall locate skid trails where sidecasting is kept to a minimum.

(4) Operators shall locate skid trails on stable areas so as to minimize the risk of material entering waters of the state.

(5) Operators shall avoid excavating skid trails on slumps or slides.

(6) Operators shall limit cable logging to uphill yarding whenever practical. When yarding across high risk sites in the Northwest Oregon Region or Southwest Oregon Region, or when downhill cable yarding in any region is necessary, operators shall use a layout and system which minimizes soil displacement.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-630-0200

Landings

(1) Operators shall minimize the size of landings to that necessary for safe operation.

(2) Operators shall locate landings on stable areas so as to minimize the risk of material entering waters of the state.

(3) Operators shall avoid locating landings in riparian management areas. When no feasible alternative landing locations exist, operators shall obtain prior approval of the State Forester before locating landings in riparian management areas.

(4) Operators shall not incorporate slash, logs, or other large quantities of organic material into landing fills.

(5) Operators shall deposit excess material from landing construction in stable locations well above the high water level.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-630-0300

Drainage Systems

(1) The purpose of this rule is to provide and maintain a drainage system for each landing, skid trail, and fire trail that will control and disperse surface runoff to minimize sediment entering waters of the state.

(2) Operators shall construct dips, grade reversals or other effective water diversions in skid trails and fire trails as necessary to minimize soil displacement and to ensure runoff water is filtered before entering waters of the state.

(3) Operators shall drain skid trails by water barring or other effective means immediately following completion of the operation and at all times during the operation when runoff is likely.

(4) Operators shall establish effective drainage on landings during and after use.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-630-0400

Treatment of Waste Materials

(1) Operators shall leave or place all debris, slash, sidecast and other waste material associated with harvesting in such a manner to prevent their entry into waters of the state.

(2) Where sidecast material or exposed soils are potentially unstable or erodible, the operator shall stabilize it by pullback, spreading out, seeding or other effective means.

(3) Operators shall remove from the forest all petroleum product related waste material associated with the operation including, but not limited to, crankcase oil, filters, grease and oil containers.

(4) Operators shall dispose of all other debris such as machine parts, old wire rope, and used tractor tracks so that such materials do not enter waters of the state.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-630-0500

Harvesting on High Risk Sites in Western Oregon

(1) In the Northwest Oregon and Southwest Oregon regions, operators shall obtain prior approval from the State Forester before conducting harvesting operations on high risk sites.

(2) Written plans, where required for harvesting on high risk sites, will describe how harvesting operations will be conducted to minimize impact upon soil and water resources.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-630-0600

Felling; Removal of Slash

(1) Operators shall fell, buck, and limb trees in ways that minimize disturbance to channels, soils and retained vegetation in riparian management areas, streams, lakes and all wetlands greater than one-quarter acre, and that minimize slash accumulations in channels, significant wetlands and lakes.

(2) During felling operations operators shall:

(a) Whenever possible, fell all conifer trees away from riparian management areas, streams, lakes and significant wetlands, except for trees felled for approved stream improvement projects.

(b) On steep slopes, use felling practices such as jacking, line pulling, high stumps, whole tree yarding, or stage-cutting as necessary and feasible to prevent damage to vegetation retained in riparian management areas, soils, streams, lakes and significant wetlands.

(c) When hardwoods must be felled into or across streams, lakes or significant wetlands, operators shall:

(A) Buck and yard the trees to minimize damage to beds, banks and retained vegetation.

(B) When it can be done consist with protecting beds and banks, yard hardwood trees or logs away from the water before limbing.

(3) Operators shall minimize the effects of slash that may enter waters of the state during felling, bucking, limbing or yarding by:

(a) Removing slash from Type F and Type D streams, lakes and significant wetlands as an ongoing process (removal within 24 hours of the material entering the stream) during the harvest operation.

(b) Not allowing slash to accumulate in Type N streams, lakes or wetlands in quantities that threaten water quality or increase the potential for mass debris movement.

(c) Placing any slash that is removed from streams, lakes, or wetlands above high water levels where it will not enter waters of the state.

Stat. Auth.: ORS 527.710-

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2610; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-660-000

629-630-0700

Yarding; Cable Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas and minimize disturbance to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during cable yarding operations.

(2) Operators shall minimize the yarding of logs across streams, lakes, significant wetlands, and other wetlands greater than one-quarter acre whenever harvesting can be accomplished using existing roads or other practical alternatives.

(3) Operators may use yarding corridors through retained

streamside trees as long as the numbers and widths of yarding corridors are minimized. Operators shall obtain prior approval of the State Forester when yarding across streams classified as Type F or Type D, any large or medium Type N streams, lakes, or significant wetlands.

(4) When yarding across Type F or Type D streams, any large or medium Type N streams, lakes, or significant wetlands is necessary, it shall be done by swinging the yarded material free of the ground in the aquatic areas and riparian areas.

(5) Cable yarding across streams classified as small Type N or other wetlands greater than one-quarter acre shall be done in ways that minimize disturbances to the stream channel or wetland and minimize disturbances of retained streamside vegetation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2620; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-660-010

629-630-0800

Yarding; Ground-based Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas, and minimize disturbances to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during ground-based yarding operations.

(2) Operators shall not operate ground-based equipment within any stream channel except as allowed in the rules for temporary stream crossings.

(3) Operators shall minimize the number of stream crossings.

(4) For crossing streams that have water during the periods of the operations, operators shall:

(a) Construct temporary stream crossing structures such as log crossings, culvert installations, or fords that are adequate to pass stream flows that are likely to occur during the periods of use. Structures shall be designed to withstand erosion by the streams and minimize sedimentation.

(b) Choose locations for temporary stream crossing structures which minimize cuts and fills or other disturbances to the stream banks.

(c) Minimize the volume of material in any fills constructed at a stream crossing. Fills over eight feet deep contain such a large volume of material that they can be a considerable risk to downstream beneficial uses should the material move downstream by water. For any fill for a temporary crossing that is over eight feet deep, operators shall obtain approval by the State Forester of a written plan that includes a description of how the fills would be constructed, passage of water, and the length of time the fills would be in the stream.

(d) Design temporary structures so that fish movement is not impaired on Type F streams.

(e) Remove all temporary stream crossing structures immediately after completion of operations or prior to seasonal runoff that exceeds the water carrying capacity of the structures, whichever comes first. When removing temporary structures, operators shall place fill material where it will not enter waters of the state.

(5) For stream crossings where the channels do not contain water during the periods of the operations, operators are not required to construct temporary crossings as long as disturbances are no greater than what would occur if structures were constructed. Soil that enters the channels during the yarding operations must be removed after completion of the operation or prior to stream flow, whichever comes first. When removing such materials from the channels, operators shall place the materials in locations where they will not enter waters of the state.

(6) Operators shall construct effective sediment barriers such as water bars, dips, or other water diversion on stream crossing approaches after completion of operations, or prior to rainy season runoff, whichever comes first.

(7) Machine activity near (generally within 100 feet) streams, lakes, and other wetlands greater than one-quarter acre shall be conducted to minimize the risk of sediment entering waters of the state and preventing changes to stream channels. Operators shall

only locate, construct, and maintain skid trails in riparian management areas consistent with the harvesting rules.

(8) Operators shall minimize the amount of exposed soils due to skid trails within riparian management area. Except at stream crossings, operators shall not locate skid trails within 35 feet of Type F or Type D streams. Operators shall provide adequate distances between all skid trails and waters of the state to filter sediment from runoff water.

(9) Operators shall locate and construct skid trails so that when high stream flow occurs water from the stream will not flow onto the skid trail.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-26300; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-660-020

DIVISION 635

WATER PROTECTION RULES: PURPOSE, GOALS, CLASSIFICATION AND RIPARIAN MANAGEMENT AREAS

629-635-0000

Purpose, Goals, Classification and Riparian Management Goals

The definitions in OAR 629-600-0100 apply to the Water Protection Rules, unless otherwise defined in the specific rules.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-000; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-635-0100

Purpose and Goals

(1) The leading use on private forestland is the growing and harvesting of trees, consistent with sound management of soil, air, water, fish and wildlife resources. There is a unique concentration of public resource values in and near waters of the state because these areas are critical for the overall maintenance of fish and wildlife and for maintaining water quality. Consequently, the policies of the Forest Practices Act, including encouraging economically efficient forest practices, are best achieved by focusing protection measures in riparian management areas.

(2) OAR 629-635-0000 through 629-660-0060 shall be known as the "water protection rules."

(3) The purpose of the water protection rules is to protect, maintain and, where appropriate, improve the functions and values of streams, lakes, wetlands, and riparian management areas. These functions and values include water quality, hydrologic functions, the growing and harvesting of trees, and fish and wildlife resources.

(4) The water protection rules include general vegetation retention prescriptions for streams, lakes and wetlands that apply where current vegetation conditions within the riparian management area have or are likely to develop characteristics of mature forest stands in a "timely manner." Landowners are encouraged to manage stands within riparian management areas in order to grow trees in excess of what must be retained so that the excess may be harvested.

(5) The water protection rules also include alternative vegetation retention prescriptions for streams to allow incentives for operators to actively manage vegetation where existing vegetation conditions are not likely to develop characteristics of mature conifer forest stands in a "timely manner."

(6) OARs 629-640-0400 and 629-645-0020 allow an operator to propose site-specific prescriptions for sites where specific evaluation of vegetation within a riparian management area and/or the condition of the water of the state is used to identify the appropriate practices for achieving the vegetation and protection goals.

(7) The overall goal of the water protection rules is to provide resource protection during operations adjacent to and

within streams, lakes, wetlands and riparian management areas so that, while continuing to grow and harvest trees, the protection goals for fish, wildlife, and water quality are met.

(a) The protection goal for water quality (as prescribed in ORS 527.765) is to ensure through the described forest practices that, to the maximum extent practicable, non-point source discharges of pollutants resulting from forest operations do not impair the achievement and maintenance of the water quality standards.

(b) The protection goal for fish is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-000 (streams), OAR 629-645-000 (significant wetlands), and OAR 629-650-000 (lakes) that will maintain water quality and provide aquatic habitat components and functions such as shade, large woody debris, and nutrients.

(c) The protection goal for wildlife is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-000 (streams), OAR 629-645-000 (significant wetlands), and OAR 629-650-000 (lakes) that will maintain water quality and habitat components such as live trees of various species and size classes, shade, snags, downed wood, and food within riparian management areas. For wildlife species not necessarily reliant upon riparian areas, habitat in riparian management areas is also emphasized in order to capitalize on the multiple benefits of vegetation retained along waters for a variety of purposes.

Stat. Auth.: ORS Ch. 527.710 & 527.765

Stats. Implemented: ORS Ch. 527.710

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2000

629-635-0110

Applicability and Monitoring

(1) Except as described below, the water protection rules shall become effective on September 1, 1994 and shall be applied as follows:

(a) Operations for which a notification has been received after April 22, 1994, must comply with the water protection rules in all portions of the operation that have not been felled prior to September 1, 1994.

(b) Operations for which a notification has been received and a written plan has been approved by the State Forester on or before April 22, 1994, shall continue to comply with the written plan and the rules that were in effect April 21, 1994, through December 31, 1994, unless the operator has requested and the State Forester has approved a change to the water protection rules as allowed in subsection (1)(d).

(c) After December 31, 1994 the water protection rules shall apply fully to all operations.

(d) Operators may request to have the water protection rules apply to an operation at any time following April 22, 1994. The State Forester shall approve such requests so long as the operator will fully apply the water protection rules on the operation.

(2)(a) For the purposes of the Oregon Forest Practices Act (ORS 527.610 to ORS 527.770, and related sections, Chapter 919, Oregon Laws 1991), Type F and Type D streams classified under OAR 629-635-0200 are equivalent to "Class I streams."

(b) For the purposes of ORS 215.730(1)(b)(c), Type N Streams classified under OAR 629-635-0200 are equivalent to "Class II streams."

(3)(a) Monitoring and evaluation of the water protection rules are necessary because of the innovative approach taken in the rules. Monitoring and evaluation are needed to increase the level of confidence of all concerned that the rules will maintain and improve the condition of riparian vegetation and waters of the state over time.

(b) In cooperation with state and federal agencies, landowners and other interested parties, the department shall conduct monitoring on a continuing basis to evaluate the effectiveness of the water protection rules. The monitoring shall determine the effectiveness of the rules to meet the goals of the Forest Practices Act and the purposes stated in the rules, as well as their workability and operability.

(c) It is the Board of Forestry's intent that the department and its cooperators place a high priority on assessing the monitoring needs and securing adequate resources to conduct the necessary monitoring. The department shall work with its cooperators and the Legislature to secure the necessary resources, funding and coordination for effective monitoring.

(d) The department shall report to the Board of Forestry annually about current monitoring efforts and, in a timely manner, present findings and recommendations for changes to practices. The Board of Forestry shall consider the findings and recommendations and take appropriate action.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2010

629-635-0120

Watershed Specific Practices for Water Quality Limited Watersheds and Threatened or Endangered Aquatic Species

(1) The objective of this rule is to describe a process for determining whether additional watershed specific protection rules are needed for watersheds that have been designated as water quality limited or for watersheds containing threatened or endangered aquatic species.

(2) The Board of Forestry shall appoint an interdisciplinary task force, including representatives of forest landowners within the watershed and appropriate state agencies, to evaluate a watershed, if the board has determined based on evidence presented to it that forest practices in a watershed are measurably limiting to water quality achievement or species maintenance, and either:

(a) The watershed is designated by the Environmental Quality Commission as water quality limited; or

(b) The watershed contains threatened or endangered aquatic species identified on lists that are adopted by rule by the State Fish and Wildlife Commission, or are federally listed under the Endangered Species Act of 1973 as amended.

(3) The board shall direct the task force to analyze conditions within the watershed and recommend watershed-specific practices to ensure water quality achievement or species maintenance.

(4) The board shall consider the report of the task force and take appropriate action.

(5) Nothing in this rule shall be interpreted to limit the Board's ability to study and address concerns for other species on a watershed basis.

Stat. Auth.: ORS Ch. 527.710 & 527.765

Stats. Implemented: ORS Ch. 527.710

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2020

629-635-0130

Written Plans for Streams, Lakes, Wetlands and Riparian Management Areas

(1) Operators shall obtain written approval from the State Forester of a written plan before conducting any operation requiring notification under OAR 629-605-0140(1) within:

(a) 100 feet of fish use or domestic water use streams (classified as Type F or Type D under OAR 629-635-0200), except as described in section (3) of this rule;

(b) 300 feet of significant wetlands; or

(c) 100 feet of large lakes.

(2) In addition to the written plan requirements in OAR 629-605-0170(6), operators shall specifically describe in the written plan for operations within 100 feet of domestic water use portions of Type F or D streams the practices and methods that will be used to prevent sediment from entering waters of the state.

(3) The State Forester may waive, in writing, the requirement for a written plan within 100 feet of a Type F or Type D stream, if the State Forester determines the intended forest practice will not directly affect the physical components of the riparian management area. "Physical components" means materials such as, but not limited to, vegetation, snags, rocks, and soil. "Directly affect" means that physical components will be moved, disturbed,

or otherwise altered by the operation activity, even if only temporarily.

(4) Written plans required under section (1) of this rule are subject to the process required for a written plan pursuant to ORS 527.670(8) through (12), and appeal pursuant to ORS 527.700.

(5) The operator shall comply with all provisions of an approved written plan.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2030; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-635-0200

Water Classification

(1) The purpose of this water classification system is to match the physical characteristics and beneficial uses of a water body to a set of appropriate protection measures.

(2) For the purposes of applying appropriate protection measures, waters of the state shall be classified as either streams, wetlands, or lakes.

(3) Streams shall be classified further according to their beneficial uses and size.

(4) Streams shall be classified into one of the following three beneficial use categories:

(a) Streams that have fish use, including fish use streams that have domestic water use, shall be classified as Type F.

(b) Streams that have domestic water use, but not fish use, shall be classified as Type D.

(c) All other streams shall be classified as Type N.

(5) For purposes of classification, a stream is considered to have domestic water use only if a water use permit has been issued by the Oregon Water Resources Department.

(6) A channel is considered to have domestic water use upstream of an intake for the distances indicated below:

(a) For domestic water use that is a community water system (as defined under OAR 333-61-0020), Type D classification shall initially apply to the length of stream that was designated as Class I under the classification system that was in effect on April 22, 1994, which is that shown on district water classification maps at the time of adoption of this rule.

(b) For domestic water use that is not a community water system, Type D classification shall be initially applied for the shortest of the following distances:

(A) The distance upstream of the intake to the farthest upstream point of summer surface flow;

(B) Half the distance from the intake to the drainage boundary; or

(C) 3000 feet upstream of the intake.

(c) Type D classification shall apply to tributaries off the main channel as long as the conditions of subsections (6)(a) and (b) of this rule apply.

(7)(a) A representative of a community water system or other domestic use water permit holder may request that the department designate additional lengths of channels upstream of a domestic water intake or reservoir as Type D. The representative or permit holder must present evidence that the additional stream protection is needed. The department will decide whether or not to extend Type D classification to these other channels based on evidence presented by the requesting party showing that protection measures associated with Type N classification would be insufficient to prevent adverse detrimental temperature increases, turbidity increases, or other adverse water quality changes at the domestic water use intake or reservoir.

(b) The process and criteria described in subsection (7)(a), and the criteria under section (6) of this rule will be used to evaluate the extent of Type D classification for new community water systems.

(c) The department will decide whether or not to extend the length of Type D classification within 30 days of the presentation of evidence.

(8) The domestic water use classification may be waived by the department at the request of a landowner who is the sole domestic water use permit holder for an intake and who owns all

the land along upstream channels that would be affected by the classification related to that intake. This waiver shall not affect the classification related to downstream domestic water use intakes.

(9) A stream or lake will be considered to have fish use if inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(10) The fish use classification does not apply to waters where fish were introduced through a fish stocking permit that includes documentation that the stream had no fish prior to stocking.

(11) The department, with assistance from the Oregon Department of Fish and Wildlife, will conduct a comprehensive field survey to identify fish use on non-federal forestland in Oregon. However, this survey will take a number of years to complete. In the interim, the following procedures apply to determining which unsurveyed waters are designated Type F:

(a) The department will assume that waters have fish use if they were Class I under the previous classification system. Waters that were Class I solely because of domestic water use are excluded.

(b) If waters within the boundaries of a proposed operation were not Class I (under the previous classification system) and fish use is unknown, then:

(A) The department will conduct a field survey for fish after a notification of operation is received; or

(B) The department will approximate the upstream extent of fish use in a watershed by considering the connection of the water with downstream waters where fish use is known. Fish use will be assumed to occur upstream of the known fish use until the first natural barrier to fish use is encountered.

(c) Where fish use is unknown, an operator may request that the department conduct a field survey for fish use for reaches of a stream that will be included within an operation that is scheduled to start at least 12 months following the request. The operator shall limit such requests to operations that are part of a landowner's planned harvest schedule and will be conducted during the following year. The department, with assistance from the Oregon Department of Fish and Wildlife when needed, shall attempt to complete such surveys within 12 months following the request. If the survey cannot be conducted in the time indicated, the stream will be considered to have no fish use. However, if the operation has not commenced within six months of the time the operation was scheduled to begin, the stream will again be considered to have unknown fish use.

(d) The department may use other reliable fish survey information when determining whether or not a stream has fish use. This information could include surveys done by landowners, federal or state agencies, universities, or other persons or entities. The department will determine whether such information is reliable.

(12) For each of the three beneficial use categories (Type F, Type D, and Type N), streams shall be categorized further according to three size categories: large, medium, and small. The size categories are based on average annual flow.

(a) Small streams have an average annual flow of two cubic feet per second or less.

(b) Medium streams have an average annual flow greater than 2 and less than 10 cubic feet per second.

(c) Large streams have an average annual flow of 10 cubic feet per second or greater.

(13) The assignment of size categories to streams on forestland will be done by the department as follows:

(a) The department will index average annual flow to the upstream drainage area and average annual precipitation. The methodology is described in Technical Note FP1 dated April 21, 1994.

(b) Actual measurements of average annual flow may substitute for the calculated flows described in the technical note.

(c) Any stream with a drainage area less than 200 acres shall be assigned to the small stream category regardless of the flow index calculated in subsection (13)(a).

(14) Wetlands shall be classified further as indicated below:

(a) The following types of wetlands are classified as "significant wetlands":

- (A) Wetlands that are larger than 8 acres;
- (B) Estuaries;
- (C) Bogs; and
- (D) Important springs in eastern Oregon.

(b) Stream-associated wetlands that are less than 8 acres are classified according to the stream with which they are connected.

(c) All other wetlands, including seeps and springs are classified according to their size as either "other wetlands greater than one-quarter acre" or "other wetlands less than one-quarter acre."

(15) Lakes shall be classified further as indicated below:

(a) Lakes greater than 8 acres are classified as "large lakes."

(b) All other lakes are classified as "other lakes."

Stat. Auth.: ORS Ch. 527.710 & 919(9)

Stats. Implemented: ORS Ch. 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2100

629-635-0210

Designation of Waters; Notice to Landowners; Reconsideration

(1) The State Forester shall maintain a map showing the classification of waters of the state in each Department of Forestry unit office where notice of operations required by ORS 527.670(6) may be submitted. The map shall show streams, lakes and significant wetlands of known classification within the geographic area of responsibility for that unit office. For streams, the maps shall indicate the size class and, when known, extent of fish use and domestic water use classification.

(2) Once a water of the state has been classified according to OAR 629-635-0200, the State Forester shall not change the classification without written notice to the landowners immediately adjoining the portion(s) of water to be reclassified. Notice to landowners shall include the reason for the change of classification and applicable rules.

(3) Any landowner whose land immediately adjoins the water to be reclassified, any landowner who has received a water right or was granted an easement affecting the water classification, or any state resource agency may request reconsideration of classifications of waters of the state by the department. Such a request shall be in writing and shall identify on a map the portion of the stream or water of the state which should be reconsidered. The request shall present evidence that the current classification is not consistent with OAR 629-635-0200 "Water Classification."

(4) The department shall have up to 14 days to provide a final decision on a request for reconsideration of water classification. Until such a decision is provided, operators shall conduct any operation based upon the most protective potential water classification.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2110

629-635-0220

Geographic Regions

For the purposes of assigning protection measures to waters of the state, seven geographic regions have been delineated for forested areas within the state. The boundaries and names of the geographic regions are displayed in Figure 1. Precise boundaries are found on maps at department field offices. Geographic regions are not "forest regions" established pursuant to ORS 527.640(1).

[ED. NOTE: The Figure referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.

Stat. Auth. ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2120

629-635-0300

Riparian Management Areas and Water Quality Protection Measures

(1) Riparian management area widths are designated to provide adequate areas along streams, lakes, and significant wetlands to retain the physical components and maintain the functions necessary to accomplish the purposes and to meet the protection objectives and goals for water quality, fish, and wildlife set forth in OAR 629-635-0100.

(2) Specified protection measures, such as for site preparation, yarding and stream channel changes, are required for operations near waters of the state and within riparian management areas to maintain water quality.

(3)(a) Operators shall apply the specified water quality protection measures and protect riparian management areas along each side of streams and around other waters of the state as described in OAR 629-635-0310 through 629-660-0060.

(b) Operators may vary the width of the riparian management area above or below the average specified width depending upon topogra-phy, operational requirements, vegetation, fish and wildlife resources and water quality protection as long as vegetation retention and protection standards are met. However, the average width of the entire riparian management area within an operation must equal or exceed the required width.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2150

629-635-0310

Riparian Management Area Widths for Streams

(1)(a) The riparian management area widths for streams are designated for each stream type as shown in Table 1.

Table 1
Riparian Management Area Widths for Streams of Various Sizes and Beneficial Uses

	Type F	Type D	Type N
LARGE	100 feet	70 feet	70 feet
MEDIUM	70 feet	50 feet	50 feet
SMALL	50 feet	20 feet	Apply specified water quality protection measures, and see OAR 629-640-200.

(b) Except as indicated in section (2), operators shall measure the riparian management area width as a slope distance from the high water level of main channels.

(c) Notwithstanding the distances designated in subsection (1)(a), where wetlands or side channels extend beyond the designated riparian management area widths, operators shall expand the riparian management area as necessary to entirely include any stream-associated wetland or side channel plus at least 25 additional feet. This provision does not apply to small Type N streams.

(2) In situations where the slope immediately adjacent to the stream channel is steep exposed soil, a rock bluff or talus slope, operators shall measure the riparian management area as a horizontal distance until the top of the exposed bank, bluff or talus slope is reached. From that point, the remaining portion of the riparian management area shall be measured as a slope distance.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2200

DIVISION 640

WATER PROTECTION RULES: VEGETATION RETENTION ALONG STREAMS

629-640-0000

Vegetation Retention Goals for Streams; Desired Future

Conditions

(1) The purpose of this rule is to describe how the vegetation retention measures for streams were determined, their purpose and how the measures are implemented. The vegetation retention requirements for streams described in OAR 629-640-0100 through OAR 629-640-0400 are designed to produce desired future conditions for the wide range of stand types, channel conditions, and disturbance regimes that exist throughout forestlands in Oregon.

(2) The desired future condition for streamside areas along fish use streams is to grow and retain vegetation so that, over time, average conditions across the landscape become similar to those of mature streamside stands. Oregon has a tremendous diversity of forest tree species growing along waters of the state and the age of mature streamside stands varies by species. Mature streamside stands are often dominated by conifer trees. For many conifer stands, mature stands occur between 80 and 200 years of stand age. Hardwood stands and some conifer stands may become mature at an earlier age. Mature stands provide ample shade over the channel, an abundance of large woody debris in the channel, channel-influencing root masses along the edge of the high water level, snags, and regular inputs of nutrients through litter fall.

(3) The rule standards for desired future conditions for fish use streams were developed by estimating the conifer basal area for average unmanaged mature streamside stands (at age 120) for each geographic region. This was done by using normal conifer yield tables for the average upland stand in the geographic region, and then adjusting the basal area for the effects of riparian influences on stocking, growth and mortality or by using available streamside stand data for mature stands.

(4) The desired future condition for streamside areas that do not have fish use is to have sufficient streamside vegetation to support the functions and processes that are important to downstream fish use waters and domestic water use and to supplement wildlife habitat across the landscape. Such functions and processes include: maintenance of cool water temperature and other water quality parameters; influences on sediment production and bank stability; additions of nutrients and large conifer organic debris; and provision of snags, cover, and trees for wildlife.

(5) The rule standards for desired future conditions for streams that do not have fish use were developed in a manner similar to fish use streams. In calculating the rule standards, other factors used in developing the desired future condition for large streams without fish use and all medium and small streams included the effects of trees regenerated in the riparian management area during the next rotation and desired levels of instream large woody debris.

(6) For streamside areas where the native tree community would be conifer dominated stands, mature streamside conditions are achieved by retaining a sufficient amount of conifers next to large and medium sized fish use streams at the time of harvest, so that halfway through the next rotation or period between harvest entries, the conifer basal area and density is similar to mature unmanaged conifer stands. In calculating the rule standards, a rotation age of 50 years was assumed for even-aged management and a period between entries of 25 years was assumed for uneven-aged management. The long-term maintenance of streamside conifer stands is likely to require incentives to landowners to manage streamside areas so that conifer reforestation occurs to replace older conifers over time.

(7) Conifer basal area and density targets to produce mature stand conditions over time are outlined in the general vegetation retention prescriptions. In order to ensure compliance with state water quality standards, these rules include requirements to retain all trees within 20 feet and understory vegetation within 10 feet of the high water level of specified channels to provide shade.

(8) For streamside areas where the native tree community would be hardwood dominated stands, mature streamside conditions are achieved by retaining sufficient hardwood trees. As early successional species, the long-term maintenance of hardwood streamside stands will in some cases require managed harvest using site specific vegetation retention prescriptions so that reforestation occurs to replace older trees. In order to ensure

compliance with state water quality standards, these rules include requirements in the general vegetation retention prescription to retain all trees within 20 feet and understory vegetation within 10 feet of the high water level of specified channels to provide shade.

(9) In many cases the desired future condition for streams can be achieved by applying the general vegetation retention prescriptions, as described in OAR 629-640-0100 and OAR 629-640-0200. In other cases, the existing streamside vegetation may be incapable of developing into the future desired conditions in a "timely manner." In this case, the operator can apply an alternative vegetation retention prescription described in OAR 629-640-0300 or develop a site specific vegetation retention prescription described in OAR 629-640-0400. For the purposes of the water protection rules, "in a timely manner" means that the trees within the riparian management area will meet or exceed the applicable basal area target or vegetation retention goal during the period of the next harvest entry that would be normal for the site. This will be 50 years for many sites.

(10) Where the native tree community would be conifer dominant stands, but due to historical events the stand has become dominated by hardwoods, in particular, red alder, disturbance is allowed to produce conditions suitable for the re-establishment of conifer. In this and other situations where the existing streamside vegetation is incapable of developing characteristics of a mature streamside stand in a "timely manner," the desired action is to manipulate the streamside area and woody debris levels at the time of harvest (through an alternative vegetation retention prescription or site specific vegetation retention prescription) to attain such characteristics more quickly.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2220

629-640-0100

General Vegetation Retention Prescription for Type F Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type F streams.

(b) Segments of Type F streams that are different sizes within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count towards the requirements of another stream type.

(2) Operators shall retain:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(3) Operators shall retain within riparian management areas and streams all downed wood and snags that are not safety or fire hazards. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects approved by the State Forester.

(4) Notwithstanding the requirements of section (2) of this rule, vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in other rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 40 live conifer trees per 1000 feet along large streams and 30 live conifer trees per 1000 feet along medium streams. This includes trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and 8 inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain trees or snags six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in **Table 2** where the harvest unit will be a harvest type 2 or type 3

unit (as defined by ORS 527.620), or **Table 3** where the harvest unit will be a harvest type 1, partial harvest, or thinning, operators shall retain live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in **Table 2** where the harvest unit will be a harvest type 2 or type 3 unit, or **Table 3** where the harvest unit will be a harvest type 1, partial harvest, or thinning) but greater than one-half the standard target shown in **Table 2**, operators shall retain all live conifer trees six inches DBH or larger in the riparian management area (up to a maximum of 150 conifers per 1000 feet along large streams, 100 conifers per 1000 feet along medium streams, and 70 conifers per 1000 feet along small streams).

(c) If live conifer tree basal area in the riparian management area is less than one-half the standard target shown in **Table 2**:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-640-0300, where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-640-0400; or

(B) Operators shall retain all conifers in the riparian management area and all hardwoods within 50 feet of the high water level for large streams, within 30 feet of the high water level for medium streams, and within 20 feet of the high water level for small streams.

(7) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type F streams, may count toward the basal area requirements.

(b) Up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(8) In the Eastern Cascade and Blue Mountain geographic regions, hardwood trees, dying or recently dead or dying trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) The basal area of retained live hardwood trees may count toward meeting the basal area requirements.

(b) Up to 10 percent of the basal area retained to meet the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For small Type F streams, the maximum required live conifer tree basal area that must be retained to meet the standard target is 40 square feet. The remaining basal area required may come from retained snags, dying or recently dead or dying trees, or hardwoods if available within the riparian management area.

(9) Notwithstanding the requirements indicated in this rule, operators may conduct precommercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(10) When determining the basal area of trees, the operator may use the average basal area for a tree's diameter class, as shown in **Table 4**, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(11)(a) For large and medium Type F streams, live conifer trees retained in excess of the active management target and hardwoods retained beyond 20 feet of the high water level of the stream that otherwise meet the requirements for leave trees may be counted toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(b) For small Type F streams, all retained live trees that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type

3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(12) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management areas so long as the trees are at least 11 inches DBH for large streams and eight inches DBH for medium streams.

(13) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the State Forester may modify the retention requirements on a site specific basis.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2230; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-640-0110

Live Tree Retention Credit for Improvement of Type F Streams

(1) Many Type F streams currently need improvement of fish habitat because they lack adequate amounts of large woody debris in channels, or they lack other important habitat elements.

(2) This rule allows operators incentives to place conifer logs in channels or to take other enhancement actions to create immediate improvements in fish habitat.

(3) Subject to prior approval of the State Forester, operators may place conifer logs or downed trees in Type F streams and receive basal area credit toward meeting the live tree retention requirements in a stream's riparian management area.

(4) For each conifer log or tree the operator places in a large or medium Type F stream, the basal area credit is twice the basal area of the placed log or tree.

(5) For each conifer log or tree the operator places in a small Type F stream, the basal area credit is equal to the basal area of the placed log or tree.

(6) Basal area credit will be determined by measuring the cross-sectional area of the large end of a log or by measuring the point on a downed tree that would be equivalent to breast height.

(7) To receive basal area credit for downed trees or conifer logs placed in a stream, the operator shall comply with the guidance and restrictions for placing logs or trees prescribed by the State Forester.

(8) Operators may propose other stream enhancement projects for basal area credit such as creation of backwater alcoves, riparian grazing exclosures (such as fencing), and placement of other instream structure such as boulders and rootwads. When a project is approved by the department through consultation with the Department of Fish and Wildlife, basal area credit shall be given toward meeting the live tree requirements within riparian management areas. The basal area credit shall be negotiated between the department, operator and Department of Fish and Wildlife.

(9) Basal area credit may be given to an operation for enhancement projects conducted at locations other than at the operation site so long as the project is in the same immediate vicinity as the operation site (for instance, within one or two miles of the operation).

(10) Basal area credit may be given to an operation for improvement projects conducted at a later date (this may be

necessary to avoid operating under high water conditions or to protect spawning areas), but the project must be completed within six months of the completion of the operation.

(11) In granting basal area credit, the standing tree basal area retained within riparian management areas of Type F streams shall not be reduced to less than the active management targets shown in **Table 2** or **3**, as applicable.

(12) For small Type F streams in the Eastern Cascade and Blue Mountain geographic regions, the live conifer tree basal area may be reduced to 30 square feet for the active management target. The remaining portion of the basal area requirement must come from snags, dying or recently dead or dying trees, or hardwood trees if available in the riparian management area.

(13) Operators shall notify the State Forester of the completion of live tree retention credit stream improvement projects that were planned for locations other than on the operation site under section (9) of this rule or that were planned to be completed at another date under section (10) of this rule.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]
Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715 & ORS 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2240; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-640-0200

General Vegetation Retention Prescription for Type D and Type N Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type D and Type N streams.

(b) Segments of Type D or Type N streams that may be of a different size within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count toward the requirements of another stream type.

(2) Operators shall retain along all Type D, and large and medium Type N streams:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(3) Operators shall retain all downed wood and snags that are not safety or fire hazards within riparian management areas and streams. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects approved by the State Forester.

(4) Notwithstanding the requirements of section (2), vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in the rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 30 live conifer trees per 1000 feet along large Type D and Type N streams and 10 live conifer trees per 1000 feet along medium Type D and Type N streams. This includes any trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and eight inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain all understory vegetation and non-merchantable conifer trees (conifer trees less than six inches DBH) within 10 feet of the high water level on each side of small perennial Type N streams indicated in **Table 5**.

(a) The determination that a stream is perennial shall be made by the State Forester based on a reasonable expectation that the stream will have summer surface flow after July 15.

(b) The determination in subsection (6)(a) of this rule can be made based on a site inspection, data from other sources such as landowner information, or by applying judgment based upon stream flow patterns experienced in the general area.

(c) Operators are encouraged whenever possible to retain

understory vegetation, non-merchantable trees, and leave trees required within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session) along all other small Type N streams within harvest units.

(7) Operators shall retain trees six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in **Table 6** where the harvest will be a harvest type 2 or type 3 unit (as defined by ORS 527.620), or in **Table 7** where the harvest unit is a harvest type 1, partial harvest, or thinning, operators shall retain along all Type D, and medium and large Type N streams live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in **Table 6** where the harvest will be a harvest type 1 or type 2 unit or **Table 7** where the harvest unit is a harvest type 1, partial harvest, or thinning), but greater than one-half the standard target shown in **Table 6**, operators shall retain along all Type D, and medium and large Type N streams all conifers 6 inches DBH or larger in the riparian management area (up to a maximum of 100 conifers per 1000 feet along large streams, and 70 conifers per 1000 feet along medium streams).

(c) If the live conifer tree basal area in the riparian management area is less than one-half the standard target shown in **Table 6**:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-640-0300, where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-640-0400; or

(B) Operators shall retain along all Type D, and medium and large Type N streams all conifers in the riparian management area and all hardwoods within 30 feet of the high water level for large streams and within 20 feet of the high water level for medium streams.

(8) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (7)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type D and N streams, may count toward the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(c) For medium Type D and N streams:

(A) Up to 30 square feet of basal area per 1000 feet of stream may be comprised of hardwood trees.

(B) Up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(9) In the eastern Oregon and Blue Mountain geographic regions:

(a) The basal area of all retained live hardwood trees may count toward meeting the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For medium Type D and N streams, up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(10) Notwithstanding the requirements indicated in this rule, operators may conduct precommercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(11) When determining the basal area of trees along streams in a harvest unit, operators may use the average basal area for a

tree's diameter class, as shown in **Table 4** in OAR 629-640-0100, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(12) All live trees retained along Type D and N streams that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(13) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management areas so long as the trees are at least 11 inches DBH for large streams and 8 inches DBH for medium streams.

(c) All merchantable trees may be harvested from islands within small Type N streams.

(14) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the State Forester may modify the retention requirements on a site specific basis.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]
Stat. Auth.: ORS 527
Stats. Implemented: ORS 527.715 & 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2250; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-640-0300

Alternative Vegetation Retention Prescriptions

(1) Alternative prescriptions are intended to apply to situations where the existing streamside stand is too sparse or contains too few live conifers to maintain fish, wildlife, and water quality resources over time. Future desired streamside stand conditions are achieved through immediate manipulation of vegetation, including reforesting the riparian management area with conifers.

(2) Sections (3) and (4) of this rule are alternative vegetation retention prescriptions that operators may apply if the conifer basal area in the riparian management area is no more than one-half of the standard target indicated in either **Table 2** of OAR 629-640-0100 or **Table 6** of OAR 629-640-0200, as may be applicable, and conditions described in the alternative prescription are applicable.

(3) Alternative Vegetation Retention Prescription 1 (Catastrophic Events). This alternative prescription applies to streamside stands that have been damaged by wildfire or by catastrophic wind-throw, insect or disease mortality. Such mortality must occur at the stand level and shall not include normal endemic mortality. The prescription is intended to provide adequate stream shade, woody debris, and bank stability for the future while creating conditions in the streamside area that will result in quick establishment of a new and healthy stand. Operators shall:

(a) Retain trees that have fallen in the stream. Only portions of these trees that are outside the high water levels and do not contribute to the ability of the downed tree to withstand movement during high flows may be harvested.

(b) Retain all live and dead trees within 20 feet of the high water level of large and medium streams and 10 feet of the high water level of small streams.

(c) For Type F streams, retain live trees, dying or recently

dead trees, and downed logs sufficient to satisfy the active management target shown in **Table 2**.

(d) For Type D and N streams, retain live trees, dying or recently dead trees, or downed logs sufficient to satisfy the standard target shown in **Table 6**.

(e) Live conifers shall be retained first to meet the target. If live conifers are too few to satisfy the target, then the target shall be met as much as possible by including windthrown trees within the channel and dying or recently dead trees.

(f) For purposes of this prescription the basal area of a windthrown tree in the channel or a retained dying or recently dead tree contributes two times its basal area toward meeting the target.

(4) Alternative Vegetation Retention Prescription 2 (Hardwood Dominated Sites). This alternative prescription applies to streamside sites that are capable of growing conifers, and where conifer stocking is currently low and unlikely to improve in a "timely manner" because of competition from hardwoods and brush. If portions of such riparian management areas currently contain abundant conifer basal area, it is intended that these areas of good conifer basal area be segregated and managed using the general vegetation retention prescription while the remainder is managed according to this alternative prescription. The alternative prescription is intended to provide adequate stream shade, some woody debris, and bank stability for the future while creating conditions in the streamside area that will result in quick establishment of a conifer stand. The operator shall:

(a) Evaluate the stand within the riparian management area and, where they exist, segregate segments (200 feet or more in length) that are well-stocked with conifer, as identified from an aerial photograph, from the ground or through other appropriate means. The general vegetation retention prescription for vegetation retention shall be applied to these segments.

(b) For the remaining portion of the riparian management area that has lower conifer basal area, the riparian management area shall be divided into conversion blocks and retention blocks.

(c) No more than half of the total stream length in the harvest unit can be included within conversion blocks. Conversion blocks can be no more than 500 feet long and must be separated from each other by at least 200 feet of retention block or by at least a 200 foot segment where the general vegetation retention prescription is applied.

(d) Within conversion blocks the operator shall retain:

(A) All trees growing in the stream or within 10 feet of the high water level of the stream.

(B) All trees leaning over the channel within 20 feet of the high water level of large streams.

(e) Within retention blocks the operator shall retain:

(A) For large streams, all conifer trees within 50 feet of the high water level of the stream and all hardwood trees within 30 feet of the high water level of the stream.

(B) For medium streams, all conifer trees within 30 feet of the high water level of the stream and all hardwood trees within 20 feet of the high water level of the stream.

(C) For small streams, all trees within 20 feet of the high water level of the stream.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Forestry.]
Stat. Auth.: ORS Ch. 527.710
Stats. Implemented: ORS Ch. 527.710, 527.765 & 919(9)
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2260

629-640-0400

Site Specific Vegetation Retention Prescriptions for Streams and Riparian Management Areas

(1)(a) Operators are encouraged to develop site specific vegetation retention prescriptions in an alternate plan.

(b) A primary aim of these prescriptions is to identify opportunities and allow incentives for restoring or enhancing riparian management areas or streams.

(c) Another purpose of site specific vegetation retention

prescriptions is to allow for changes to the vegetation retention requirements in OARs 629-640-0100 and 629-640-0200. The changes must provide for the functions and values of stream and their riparian management areas as described in the vegetation retention goals for streams while affording a better opportunity to meet other objectives.

(2) Operators may develop site specific vegetation retention prescriptions for streams and their riparian management areas to achieve the vegetation retention goals described in OAR 629-640-0000 if:

(a) The potential of the streamside stand to achieve basal area and stand density similar to mature conifer forest stands in a "timely manner" is questionable; or

(b) In-stream conditions are impaired due to inadequate large woody debris or other factors; or

(c) The modification of a standard or practice would result in less environmental damage than if the standard or practice were applied.

(3) A site specific vegetation retention prescription shall be approved if the State Forester determines that when properly executed the alternate plan will have no significant or permanent adverse effects: and

(a) It will meet or exceed the vegetation retention goals in a more "timely manner" than if the plan were not implemented; or

(b) The long-term benefits of the proposed restoration practice are greater than short-term detrimental effects; or

(c) The proposed practice will result in less environmental damage than if the regular rules were followed.

(4) Factors that may need to be considered in the plan include, but are not limited to, the potential of the existing streamside stand to achieve mature conifer forest characteristics, the long-term supply of woody debris, survival of planted conifers, sensitivity to changes in water temperature and water quality, the potential for sedimentation, the stability of woody debris placed in aquatic areas, and monitoring the direct effects of the proposed practices.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2270

629-640-0500

Reforestation Within Stream Riparian Management Areas

Harvested portions of riparian management areas along streams are subject to the same reforestation requirements that apply to adjacent areas outside of the riparian management areas. Reforestation is more difficult in riparian management areas due to a number of factors. To succeed with the required reforestation, land-owners should anticipate and plan for such factors as brush control measures, animal damage problems, and tree species that are suitable for wetter sites.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2280

DIVISION 645

WATER PROTECTION RULES: RIPARIAN MANAGEMENT AREAS AND PROTECTION MEASURES FOR SIGNIFICANT WETLANDS

629-645-0000

Riparian Management Areas and Protection Measures for Significant Wetlands

(1)(a) The purpose of these rules is to protect the functions and values of significant wetlands, including wetlands larger than eight acres, estuaries, bogs and important springs in eastern Oregon on forestlands.

(b) Significant wetlands on forestlands provide a wide range of functions and values, including those related to water quality, hydrologic function, fish and other aquatic organisms, and

wildlife.

(c) Estuaries are unique systems because they form transitions between terrestrial, marine, and freshwater environments. Because of this link, estuarine systems are among the most biologically productive in the world. Estuaries support many resident species. Estuaries also provide food, spawning area, and shelter for numerous other species at critical points in their life cycles. Removal of shoreline trees reduces the overall productivity of the estuary by reducing leaf and litter fall, thus depriving the estuary of substrate, and by removing feeding and resting habitat for birds and small mammals.

(d) Bog communities are a result of specific hydrologic, soil, and nutrient conditions. Bogs are usually saturated, low in nutrients, and highly acidic. changes in runoff, sediment loading, and nutrient loading can alter the plant community composition. The peat soils have evolved over time. Compaction damages plant communities and may encourage the invasion of exotic species. Harvesting may disrupt shade tolerant vegetation, alter plant community characteristics, and hasten succession. Compaction, saturated conditions, and poor nutrient status make reforestation difficult.

(e) In arid parts of eastern Oregon, springs provide a critical source of water. These important springs have established wetland vegetation, flow year round in most years, and are used by a concentration of diverse animal species. By reason of sparse occurrence, important springs have a major influence on the distribution and abundance of upland species. Important springs shall be identified by the State Forester.

(2)(a) The goals of significant wetland protection are to maintain the functions and values of significant wetlands on forestlands over time, and to ensure that forest practices do not lead to resource site destruction or reduced productivity, while at the same time ensuring the continuous growth and harvest of forest tree species. In order to accomplish these goals, the rules focus on the protection of soil, hydrologic functions, and specified levels of vegetation.

(b) The intent of the rules is to minimize soil disturbance and to minimize disturbance to the natural drainage patterns of the significant wetland.

(c) Vegetation retention (including understory vegetation, snags, downed wood, and live trees) is needed to prevent erosion and sedimentation into the significant wetland, minimize soil disturbance and hydrologic changes, and to maintain components of the vegetation structure to provide for other benefits, particularly fish and wildlife values.

(3) Significant wetlands other than estuaries, bogs or important springs in eastern Oregon shall have riparian management areas extending 100 feet from the wetlands.

(4) When an operation is proposed within 300 feet of an estuary, bog or important spring in eastern Oregon, the State Forester shall determine the riparian management area during the resource site inspection required by OAR 629-665-0020. Riparian management areas shall extend outward 100 to 200 feet from the estuary, 50 to 100 feet from the bog, or 50 to 100 feet from the important spring in eastern Oregon. The distance determination of the State Forester shall depend on:

(a) Stocking level of the timber stand adjacent to the estuary, bog or spring;

(b) Ability of the area to withstand windthrow;

(c) Size of the estuary, bog or spring. As the size increases, the size of the riparian management area shall increase; and

(d) For bogs and springs only, topography and erodibility of adjacent uplands.

(5) For all significant wetlands, operators shall provide the following to the wetlands and riparian management areas:

(a) Live tree retention (OAR 629-645-0010);

(b) Soil and hydrologic function protection (OAR 629-645-0030);

(c) Understory vegetation retention (OAR 629-645-0040);

(d) Snag and down wood retention (OAR 629-645-0050).

(6) For forested significant wetlands, written plans must address reforestation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2300; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

2330; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-645-0010

Live Tree Retention for Significant Wetlands

(1) In significant wetlands and their riparian management areas, operators shall retain approximately 50 percent of the original live trees, by species, in each of the following diameter classes (DBH):

- (a) 6 to 10 inches;
- (b) 11 to 20 inches;
- (c) 21 to 30 inches; and
- (d) larger than 30 inches.

(2) As part of the live trees in subsection (1) above, operators shall retain trees bordering significant wetlands.

(3) For estuaries and the adjacent riparian management areas, operators shall protect live trees that are:

- (a) Perch and nest trees for predatory birds and colonial nesting birds;
- (b) Likely to provide for future large woody debris to the estuaries' perimeters; and
- (c) Contributing to bank stability.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2310

629-645-0020

Site Specific Vegetation Retention Prescriptions for Significant Wetlands

(1) Operators are encouraged to develop site specific vegetation retention prescriptions for significant wetlands by alternate plans.

(2) The functions and values of forested wetlands vary with species composition, stocking levels, and geographic location. Operators are encouraged to propose site specific vegetation retention prescriptions in alternate plans that allow for changes to the live tree requirements in OAR 629-645-0010 and that provide equal or better protection of the functions and values of forested significant wetlands and forested stream-associated wetlands, and address operational concerns.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2320

629-645-0030

Soil and Hydrologic Function Protection for Significant Wetlands

(1) In significant wetlands and their riparian management areas, operators shall protect soil from disturbances that result in impaired water quality, hydrologic functions, or soil productivity. Operators shall protect hydrologic functions by minimizing disturbances and shall prevent accelerating the natural conversion of the wetland to uplands.

(2) The written plan required under OAR 629-635-0130 shall describe how the operation will be conducted to prevent adverse effects on water quality, hydrologic functions or soil productivity. The following practices shall be addressed in written plans when they are proposed in significant wetlands:

- (a) Filling within wetlands;
 - (b) Machine activity within wetlands; and
 - (c) Road construction within wetlands.
- (3) Operators shall not drain significant wetlands.

(4) Notwithstanding subsection (3) of this rule, minor drainage for reforestation may be allowed through a written plan approved by the State Forester. Any drainage for reforestation must be designed so the significant wetland is not converted to an upland.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & ORS 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

629-645-0040

Understory Vegetation Retention for Significant Wetlands

(1) The purpose of retaining understory vegetation is to provide soil stability and bank stability in and along significant wetlands, to maintain cover and shade for wildlife habitat and aquatic habitat, and to protect water quality.

(2) To achieve the purpose of understory retention, the operator shall limit disturbance of understory vegetation within significant wetlands and their riparian management areas to the minimum necessary to remove timber harvested from the area and achieve successful reforestation.

(3) The written plan required in OAR 629-635-0130 for operations within 300 feet of significant wetlands shall describe how disturbance to the understory vegetation will be minimized during harvest or site preparation for reforestation.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2340

629-645-0050

Snag and Downed Wood Retention for Significant Wetlands

(1) For significant wetlands, operators shall retain all snags and downed trees within the wetlands and the applicable riparian management areas.

(2) Notwithstanding subsection (1) of this rule, any snag defined to be a safety hazard under the safety requirements found in OAR 437, Division 6, Forest Activities, or determined to be a fire hazard by the State Forester, may be felled. Any snag felled because of a safety or fire hazard shall be left unyarded.

(3) Notwithstanding subsection (1) of this rule, retention requirements may be modified for reasons of forest health for trees that are dying or recently dead or dying because of fire, insect or disease epidemics, or other catastrophic events when addressed in a written plan approved by the State Forester.

(4) Snags and downed wood left pursuant to subsection (1) of this rule may not be counted toward the requirements of Section 9, Chapter 9, Oregon Laws 1996 Special Session.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2350; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

DIVISION 650

WATER PROTECTION RULES: RIPARIAN MANAGEMENT AREAS AND PROTECTION MEASURES FOR LAKES

629-650-0000

Riparian Management Areas and Protection Measures for Lakes

(1) The purpose of this rule is to protect the functions and values of lakes. Lakes on forestlands provide a wide range of functions and values, including those related to water quality, hydrologic functions, aquatic organisms, fish and wildlife.

(2) Operators shall protect riparian management areas extending:

- (a) 100 feet from the high water level of large lakes; and
- (b) 50 feet from the high water level of other lakes that have fish use or other lakes that are equal to or greater than one half acre in size.

(c) No riparian management area is required for other lakes that do not have fish and that are less than one-half acre.

(3) For all lakes with riparian management areas, operators shall provide the following to the riparian management areas and the aquatic areas:

- (a) Live tree retention (OAR 629-650-0010);
- (b) Soil and hydrologic function protection (OAR 629-650-0020);

(c) Understory vegetation retention (OAR 629-650-0030);
and

(d) Snag and down wood retention (OAR 629-650-0040).

(4) For all lakes not having riparian management areas, the lakes shall be protected as other wetlands (OAR 629-655-0000).

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2400

629-650-0010

Live Tree Retention for Lakes

(1) Operators shall retain in the riparian management areas of lakes approximately 50 percent of the original live trees, by species, in each of the following diameter classes (DBH):

(a) 6 to 10 inches;

(b) 11 to 20 inches;

(c) 21 to 30 inches; and

(d) larger than 30 inches.

(2) As part of the live trees in subsection (1) above, trees on the edge of lakes shall be retained.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2410

629-650-0020

Soil and Hydrologic Function Protection for Lakes

(1) Operators shall protect soil within the riparian management areas of lakes from disturbances that result in impaired water quality, hydrologic functions, or soil productivity. Operators shall protect hydrologic functions by minimizing disturbances and shall prevent accelerating the natural conversions of lakes to uplands.

(2) Operators shall not drain lakes except for lakes formed by plugged culverts or beaver dams and as allowed in rule for road maintenance.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2420

629-650-0030

Understory Vegetation Retention for Lakes

(1) The purpose of retaining understory vegetation is to provide soil stability and bank stability along lakes, to maintain cover and shade for wildlife habitat and aquatic habitat, and to protect water quality.

(2) To achieve the purpose of understory retention, operators shall limit disturbance of understory vegetation within riparian management areas of lakes to the minimum necessary to remove timber harvested from the areas and to achieve successful reforestation.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2430

629-650-0040

Snag Retention and Downed Wood Retention for Lakes

(1) For lakes, operators shall retain all snags and downed trees within the lakes and the applicable riparian management areas.

(2) Notwithstanding subsection (1) of this rule, any snag defined to be a safety hazard under the safety requirements found in OAR 437, Division 6, Forest Activities, or determined to be a fire hazard by the State Forester, may be felled. Any snag felled because of a safety or fire hazard shall be unyarded.

(3) Notwithstanding subsection (1) of this rule, retention requirements may be modified for reasons of forest health for trees that are dying or recently dead because of fire, insect or disease epidemics, or other catastrophic events when addressed in a written plan approved by the State Forester.

(4) Snags and downed wood left pursuant to this rule may not be counted toward the requirements of Section 9, Chapter 9, Oregon Laws 1996 Special Session.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2440; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

DIVISION 655

WATER PROTECTION RULES: PROTECTION MEASURES FOR "OTHER WETLANDS", SEEPS AND SPRINGS

629-655-0000

Protection Measures for "Other Wetlands," Seeps and Springs

(1) There is no riparian management area for other wetlands, seeps and springs.

(2) When operating in or along other wetlands greater than one-quarter acre, the operator shall:

(a) Protect soil and understory vegetation from disturbance that results in reduced water quality, hydrologic function or soil productivity. Operators shall protect hydrologic functions by minimizing disturbances to soils during forest operations and shall prevent accelerating the natural conversions of wetlands to uplands;

(b) Leave snags and downed trees in the wetlands, except for any snags determined by the State Forester to be fire hazards, or any snags that must be felled to achieve compliance with the safety requirements found in OAR 437, Division 6, Forest Activities.

(A) Any snags felled because of safety or fire hazards shall be left unyarded.

(B) Snags and downed wood left within other wetlands, seeps or springs may apply toward the requirements of Section 9, Chapter 9, Oregon Laws 1996 Special Session.

(3) When conducting operations along other wetlands less than one quarter acre, springs or seeps, operators shall protect soil and vegetation from disturbances which would cause adverse effects on water quality, hydrologic function, and wildlife and aquatic habitat.

(4) Identification of other wetlands is sometimes difficult, especially when the wetland has no standing water. This is particularly true when the other wetland is forested or very small. In recognition of these facts, the State Forester shall apply appropriate discretion when determining compliance with this rule.

(5) Operators are encouraged to:

(a) Retain portions of in-unit live green trees and snags as blocks of intact vegetation around other wetlands; and

(b) For other wetlands that are forested, adequately consider how reforestation will be accomplished.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-2500; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

DIVISION 660

WATER PROTECTION RULES: SPECIFIC RULES FOR OPERATIONS NEAR WATERS OF THE STATE

629-660-0000 [Renumbered to 629-630-0600]

629-660-0010 [Renumbered to 629-630-0700]

629-660-0020 [Renumbered to 629-630-0800]

629-660-0030 [Renumbered to 629-615-0200]

629-660-0040

Stream Channel Changes

(1) Operators shall not channelize, relocate, or divert water from any stream, except as allowed in the forest practices rules for construction of roads, approved stream improvement projects or temporary stream crossings.

(2) Operators shall not add to or remove soil or rock from any streams, except as allowed in the forest practice rules for construction of roads, approved stream improvement projects or temporary stream crossings.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2650

629-660-0050

Beaver Dams or Other Natural Obstructions

(1) Except as needed for road maintenance, operators shall not remove beaver dams and other natural obstructions from waters of the state during forest operations without prior approval of the State Forester. Removal of any beaver dam that is within 25 feet of a culvert shall be considered to be needed for road maintenance.

(2) Prior approval for removal of a beaver dam or obstruction may be granted if:

(a) A beaver dam or obstruction threatens existing forests or plantations; or

(b) Beaver dam removal is part of a beaver population control program approved by the Oregon Department of Fish and Wildlife; or

(c) Retaining the beaver dam or obstruction would result in greater environmental harm than benefit.

(3) Sediment releases and downstream channel scouring can occur when beaver dams are removed. Operators are encouraged to use techniques that result in a gradual release of water when a dam is removed.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2660

629-660-0060

Headwater Amphibian Species

Amphibians that are sensitive to temperature and moisture fluctuations may live in small Type N streams. Operators are encouraged to retain portions of in-unit green live trees and snags as blocks of intact vegetation along small Type N streams.

Stat. Auth.: ORS Ch. 527.710

Stats. Implemented: ORS Ch. 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-57-

2670

DIVISION 665

SPECIFIED RESOURCE SITE PROTECTION RULES

629-665-0000

Purpose

(1) OAR 629-665-0000 to 0300 shall be known as the specified resource site protection rules.

(2) These rules provide a protection goal, describe the duties of the State Forester, landowner, timber owner and operator, and outline protection for:

(a) Sensitive Bird Nesting, Roosting and Watering Resource Sites (OAR 629-665-0100);

(b) Threatened and Endangered Fish and Wildlife Species that use Resource Sites on Forestlands (OAR 629-665-0200);

(c) Biological Sites that are Ecologically and Scientifically Significant (OAR 629-665-0300); and

(d) Significant Wetlands on Forestlands (OAR Chapter 629, Division 645).

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 5-1992, f. & cert. ef. 5-8-92; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-690

629-665-0010

Protection Goal for a Resource Site

(1) The goal of resource site protection is to ensure that forest practices do not lead to resource site destruction, abandonment or reduced productivity.

(2) A resource site shall receive protection when the State Forester determines:

(a) It is an active resource site; and

(b) Proposed forest practices conflict with the resource site.

(3) The State Forester may grant an exception from either structural or temporal protection as determined by the Board for each species or resource site.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-695

629-665-0020

Application of Protection and Exception Rules; State Forester Duties; Landowner, Timber Owner and Operator Duties

(1) When a landowner, timber owner or operator proposes an operation near a resource site that requires special protection, the State Forester shall inspect the resource site with the landowner or landowner's representative, the operator and when available, the appropriate representative of the Department of Fish and Wildlife. The State Forester shall:

(a) Identify the resource site.

(b) Apply the protection goal in OAR 629-665-0010.

(A) If the proposed forest practices do not conflict with the resource site, the operation will not be subject to the protection requirements for the resource site. The operation shall be conducted in compliance with all other existing forest practice rules;

(B) If the proposed forest practices conflict with the resource site, the structural and temporal protection requirements for the resource site shall be required to eliminate the conflict;

(C) When the proposed forest practices conflict with a resource site, the landowner or operator may request a structural or temporal exception, if the applicable administrative rule provides for such an exception.

(D) The State Forester shall document and maintain on file the reasons for granting or denying all exceptions.

(2) If the proposed operation conflicts with the resource site, the operator shall obtain approval of a written plan from the State Forester before starting operations. The written plan shall comply with the requirements of OAR 629-605-0180, Written Plans.

(3) When an approved written plan does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain on file a written explanation of the reasons for:

(a) Differences in the identification of the resource site; and

(b) Different protection levels required for the resource site.

(4) When a resource site is discovered by the operator, timber owner or landowner during a forest operation, the party making the discovery shall:

(a) Immediately protect all remaining trees within 300 feet of the resource site until the State Forester approves a written plan for the resource site; and

(b) Immediately notify the State Forester.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 6-1990, f. 8-1-90, cert. ef. 1-1-1991; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1991, f. & cert. ef. 11-18-91; Renumbered from 629-24-705; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-699

629-665-0100

Species Using Sensitive Bird Nesting, Roosting and Watering

Sites

The following species use sensitive bird nesting, roosting and watering resource sites:

- (1) Osprey use sensitive bird nesting sites.
- (2) Great blue herons use sensitive bird nesting sites.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 6-1990, f. 8-1-90, cert. ef. 1-1-1991; FB 1-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-700

629-665-0110

Osprey Resource Sites; Key Components; Protection Requirements; and Exceptions

(1) For osprey, the resource site is the active nest tree and any identified key components.

(a) An active nest tree is one that has been used by osprey within the past five nesting seasons. No protection is required for abandoned resource sites.

(b) The key components associated with an osprey resource site are perching and fledging trees and replacement trees.

(2) When the State Forester identifies the resource site as per OAR 629-665-0020, the operator shall provide the following protection measures:

(a) During forest operations, the resource site shall be retained and protected from damage. The operation shall be designed to protect these trees from windthrow;

(b) During the critical period of use, the active nest tree and any perch tree identified as a key component shall be protected from disturbance. From March 1st through September 15th, forest operations shall not be permitted within 600 feet of the active nest tree or perch tree unless the State Forester determines that the operations will not cause the birds to flush from these trees. The critical period of use may be modified in writing by the State Forester as the resource site is evaluated as per OAR 629-665-0020.

(3) The State Forester shall not permit structural exceptions for the resource site: Removal of a resource site may be permitted if replacement nest trees, artificial structures, or replacement key components are provided by the operator or landowner. Replacement is not considered an exception, since the productivity of the nesting territory is maintained. Replacement may be considered by the State Forester when:

(a) Alternate forest practices which retain and protect the resource site are not economically feasible; and

(b) The productivity of the nesting territory is not reduced.

(4) Temporal exceptions for the resource site may be permitted by the State Forester when these criteria are met:

(a) Nest disruption or failure for a season does not affect the local population; and

(b) There are no economically feasible forest practices that avoid disturbance to the resource site during the critical period of use.

(5) Factors considered by the State Forester before granting a temporal exception under section (4) of this rule shall include, but are not limited to:

(a) The size of the local population;

(b) The contribution of the resource site in question to the local population; and

(c) The feasibility of alternate forest practices that do not cause disturbance.

(6) The State Forester shall document all requests and decisions concerning structural or temporal exceptions. All permitted structural replacements shall be documented.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 6-1990, f. 8-1-90, cert. ef. 1-1-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-710

629-665-0120

Great Blue Heron Resource Sites; Key Components; Protection Requirements; and Exceptions

(1) For the great blue heron, the resource site is the active nest tree(s) and any identified key components.

(a) An active nest tree is one that has been used by one or more pair of great blue heron within the past three nesting seasons. No protection is required for an abandoned resource site.

(b) The key components associated with a great blue heron resource site are the nest tree(s), a vegetative buffer around the nest tree(s) including perching and fledging trees, and replacement tree(s).

(2) The operator shall provide the following protection measures when operating within or near a great blue heron resource site:

(a) During and after forest operations, the resource site shall be retained and protected from damage. The operation shall be designed to protect the key components from windthrow;

(b) During the critical period of use, operations shall be designed and conducted so as not to disturb great blue herons using the key components. From February 15 through July 31, forest operations shall not be permitted within one-quarter (1/4) mile of the active nest tree(s) unless the State Forester determines that the operations will not cause the birds to flush from these trees. The critical period of use may be modified by the State Forester after the resource site is evaluation following OAR 629-665-0020.

(3) Structural exceptions for the resource site may be permitted by the State Forester when these criteria are met:

(a) The site contains five nests or fewer;

(b) The State Forester determines that the loss of the site will not adversely affect the local population; and

(c) There are no economically feasible alternatives that maintain the key components.

(4) Factors considered by the State Forester before granting a structural exception to protection of a great blue heron resource site shall include, but are not limited to:

(a) The size of the site (number of nests);

(b) The size of the breeding population in the local area;

(c) The productivity of great blue herons in the local area;

(d) The contribution of the site to local productivity;

(e) The probability that protection measures will be successful;

(f) Available alternate nesting sites; and

(g) Whether alternatives that protect the site are economically feasible.

(5) Temporal exceptions to protection of a great blue heron resource site may be permitted by the State Forester when:

(a) The State Forester determines that nest disruption or failure for a season or site abandonment will not adversely affect the local population; and

(b) There are no economically feasible alternatives that will not disturb the birds during the critical period of use.

(6) Factors considered by the State Forester before granting a temporal exception shall include, but are not limited to:

(a) The size of the site (number of nests);

(b) The size of the breeding population in the local area;

(c) The productivity of great blue herons in the local area;

(d) The contribution of the site to local productivity; and

(e) Whether alternatives that protect the site are economically feasible.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 2-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-711

629-665-0200

Resource Sites Used By Threatened and Endangered Species

The following resource sites used by threatened or endangered species are sensitive to forest practices:

(1) Northern spotted owl nesting sites.

(2) Bald eagle nesting sites.

(3) Bald eagle roosting sites.

(4) Bald eagle foraging perches.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-800

629-665-0210

Interim Requirements for Northern Spotted Owl Nesting Sites

(1) Whenever the State Forester determines that an operation will conflict with protection of a nesting site of the northern spotted owl (*Strix occidentalis caurina*), the operator must obtain the State Forester's approval of a written plan before commencing the operation. The written plan, at a minimum, must address how the operation will be conducted to provide for the following:

(a) A 70 acre area of suitable spotted owl habitat encompassing the nest site, to be maintained as suitable spotted owl habitat;

(b) Prevention of disturbances resulting from operation activities which cause owls to flush from the nesting site. Such disturbances must be prevented during the critical period of use for nesting. The critical period of use is the time period between March 1 and September 30, each year.

(2) For the purposes of this rule, nesting site means and includes the tree, when known, containing a spotted owl nest; or when not specifically known, includes an activity center of a pair of adult spotted owls. An activity center is a location determined by the State forester to have been reliably identified as being occupied by an adult pair of spotted owls, capable of breeding. Such determination must be supported by repeated observation of the owls in close proximity or observation of nesting behavior.

(3)(a) For the purposes of this rule, suitable spotted owl habitat means and includes:

(A) A stand of trees with moderate to high canopy closure (60 to 80%); a multi-layered, multi-species canopy dominated by large overstory trees (greater than 30 inches in diameter at breast height); a high incidence of large trees with various deformities (e.g., large cavities, broken tops, and other evidence of decadence); numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly; or

(B) In the absence of habitat which exhibits all the characteristics listed above, the available forested habitat which comes closest to approximating the listed conditions.

(b) Stands which do not exhibit at least two of the characteristics listed in paragraph (a)(A) of this section are not suitable habitat.

(4) (For information only) Federal law prohibits a person from taking northern spotted owls. Taking under the federal law may include significant alteration of owl habitat on any class of land ownership. Compliance with subsection (1) of this rule is not in lieu of compliance with any federal requirements related to the federal Endangered Species Act.

(5) Exceptions to the requirements for protecting northern spotted owl nesting sites may be approved by the State Forester if the operator has obtained an incidental take permit from federal authorities under the federal Endangered Species Act.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 11-1990(Temp), f. 12-20-89, cert. ef. 12-21-90; FB 5-1991, f. & cert. ef. 6-6-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-809

629-665-0220

Bald Eagle Nesting Sites; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle nesting sites, the resource site is the active nest tree and all identified key components:

(a) An active nest tree is one in which a bald eagle has nested in the past, and that the State Forester determines to be structurally capable of successful future use, whether or not the tree still contains a nest.

(b) An active nest tree may fall down or may become structurally incapable of supporting a bald eagle nest site. When this happens the nest resource site shall be considered active and shall be protected for an additional five years only if the site contains suitable nesting sites. In this case, if a nesting resource site is not used during this five-year period, the site shall be considered abandoned and no protection will be required.

(c) The key components associated with a bald eagle nesting site are perching and fledging trees, replacement nest trees, and a forested buffer around the nest tree.

(2) The operator shall provide the following protection measures when operating within or near a bald eagle nesting site:

(a) During and after forest operations, the resource site shall be retained and protected from damage. The operation shall be designed to protect the trees from windthrow;

(b) During the critical period of use, operations shall be designed and conducted to not disturb bald eagles using the resource site:

(A) Except as provided in paragraph (B) of this subsection, during the critical period of use, operations shall not be permitted within one-quarter (1/4) mile of the active nest tree or perch trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

(B) If the State Forester determines through approval of a written plan that the operations will not cause the birds to flush from the trees identified in paragraph (A) of this section, then there is no conflict and the distance restrictions in paragraph (A) of this section may be modified.

(C) The critical period of use is January 1 through August 31. The specific critical period of use for individual nesting resource sites may be modified in writing by the State Forester depending upon the actual dates that bald eagles are present at the resource site and are susceptible to disturbance.

(3) Structural or temporal exceptions for the resource site may be permitted by the State Forester if an applicable incidental take permit has been issued by the U.S. Fish and Wildlife Service.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-811

629-665-0230

Bald Eagle Roosting Sites; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle roosting sites, the resource site is the active roost trees, probable roost trees as identified by the State Forester, and all identified key components:

(a) An active roosting site is one that has been used within the past 5 years for roosting by bald eagles. No protection is required for an abandoned bald eagle roosting site.

(b) The key components associated with a bald eagle roosting site are staging trees, probable roost trees as identified by the State Forester, and a forested buffer around the roost trees. The forested buffer must be adequate to maintain suitable microclimate conditions around the roost trees.

(2) The operator shall provide the following protection measures when operating within or near a bald eagle roosting site:

(a) During and after forest operations, the resource site shall be retained and protected from damage. The operation shall be designed to protect the trees from windthrow.

(b) During the critical period of use, operations shall be designed and conducted to not disturb bald eagles using the resource site:

(A) Except as provided in paragraph (B) of this subsection, during the critical period of use, operations shall not be permitted within one-quarter (1/4) mile of the active roost trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

(B) If the State Forester determines through approval of a written plan that the operations will not cause the birds to flush from trees identified in paragraph (A) of this subsection, then there is no conflict and the distance restrictions in paragraph (A) of this subsection may be modified.

(C) The critical period of use for bald eagle roosting sites in the Klamath Basin is October 31 through March 31. In other areas of Oregon the critical period of use is November 15 through March 15. The specific critical period of use for individual roosting resource sites may be modified in writing by the State Forester depending upon the actual dates that bald eagles are present at the resource site and are susceptible to disturbance.

(3) Structural or temporal exceptions for the resource site may be permitted by the State Forester if an applicable incidental take permit has been issued by the U.S. Fish and Wildlife Service.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-812

629-665-0240

Bald Eagle Foraging Perches; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle foraging perches, the resource site is the active foraging perch. An active foraging perch is one that is habitually used by eagles as a vantage point while hunting. No protection is required for abandoned bald eagle foraging perches. The presence or absence of foraging perches within or near a foraging area shall be determined by the State Forester when the forester conducts an operation inspection.

(2) The operator shall provide the following protection measures when operating near a bald eagle foraging perch:

(a) During and after forest operations, the foraging perch shall be retained and protected from damage. The operation shall be designed to protect the foraging perch from windthrow.

(b) During the critical period of use, operations shall be designed and conducted so they do not cause excessive disturbance to bald eagles using the foraging area. The critical period of use shall be determined on a site specific basis. The critical period of use varies for each bald eagle foraging area, depending on whether the foraging area is used by nesting, wintering, or migrating bald eagles.

(3) Temporal exceptions for the entire foraging areas shall not be permitted by the State Forester. Temporal protection is determined by evaluating the potential disturbance to the entire foraging area used by a breeding pair or wintering population of bald eagles. Disturbance at a single foraging perch in a foraging area may be determined by the State Forester to not cause a conflict. This evaluation shall be based on the number of alternative foraging perches in the bald eagle foraging area.

(4) Structural exceptions for an active foraging perch may be permitted if the State Forester determines that adequate replacement foraging perches will remain in the vicinity after completion of the forest operation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-24-813

DIVISION 670

FOREST PRACTICES ADMINISTRATION

Civil Penalties

629-670-0000

Applicability

(1) Except as provided in sections (2) and (3) of this rule, the provisions of OAR 629-670-0000 to 629-670-0340, as amended April 28, 1995, shall become effective July 1, 1995.

(2) For violations determined to exist prior to July 1, 1995, civil penalties shall be assessed according to OAR 629-055-0040, as it was in effect immediately prior to April 28, 1995.

(3) Notwithstanding sections (1) and (2) of this rule, the amendment to OAR 629-670-0320(6), providing that no hearing shall be held later than 180 days from the service of the notice unless all parties agree, shall become effective only if and when ORS 527.687(2) is similarly amended and made effective.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.685

Hist.: FB 2-1995, f. 6-19-95, cert. ef. 7-1-95

629-670-0010

Definitions

As used in OAR Chapter 629, Division 670 through 676:

(1) "Board" means the State Board of Forestry.

(2) "Damage" means an adverse alteration to a resource protected by the Forest Practices Act.

(3) "Forest practice rule" means any rule regulating operations under the Oregon Forest Practices Act, as found in OAR Chapter 629, Divisions 600 through 699.

(4) "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.

(5) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(6) "State Forester" means the State Forester or a duly authorized representative of the State Forester.

(7) "Statement of unsatisfactory condition" means a written statement issued by the State Forester informing an operator of the existence of an unsatisfactory condition, and specifying the corrective action to be taken within a definite time limit.

(8) "Timely corrective action" means action to be taken by the operator within a specified time to prevent or reverse the damage potentially caused by an unsatisfactory condition.

(9) "Unsatisfactory condition" means the circumstance which exists when an operator fails to comply with a practice specified in a forest practice rule or statute listed in ORS 527.990(1) or 527.992 and the State Forester determines both of the following conditions exist:

(a) The forest practice rule or statute applies to the type of operation conducted; and

(b) The operator has not been exempted from the rule or statute by obtaining approval for, or having obtained approval has not followed, an alternate practice as prescribed by OAR 629-605-0100.

(10) "Violation" means the circumstances which exist anytime one or more of the following occurs:

(a) An operator fails to comply with any provision of ORS 527.670(6) or (7) requiring notification to the State Forester before commencing an operation.

(b) An unsatisfactory condition exists, and:

(A) Damage has resulted; or

(B) The State Forester has determined that it is not feasible for the operator, by timely and appropriate action, to eliminate the consequences of the unsatisfactory condition; or

(C) A statement of unsatisfactory condition has been issued to the operator, the deadline for action has passed and appropriate action has not been taken by the operator.

(c) Required prior approval for a practice has not been granted and the operator has commenced the practice.

(d) An operator fails to comply with any term or condition of any order of the State Forester issued in accordance with ORS 527.680.

Stat. Auth.: ORS Ch. 527.710

Stats. Implementing: ORS 527.685 & 527.715

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-005; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97

629-670-0100

Inspections, Compliance Determination

(1) The State Forester shall conduct investigations of reported Forest Practices Act violations and make preventative and compliance inspections on forest operations subject to the Oregon Forest Practices Act.

(2) When inspecting operations, the State Forester shall examine practices employed by the operator and the results thereof to assess compliance with the applicable forest practice rules and written plans. The State Forester may make recommendations to the operator where such recommendations would be helpful in avoiding any unsatisfactory condition.

(3) When the State Forester determines that an unsatisfactory condition exists, the State Forester shall determine whether timely corrective action can be taken by the operator to prevent damage. Such factors as expected weather and site conditions, availability of equipment, expertise to accomplish work, and access to the site may be considered in making this determination.

(4) If the State Forester determines that an opportunity for

Chapter 629 Department of Forestry
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

timely corrective action exists, the State Forester shall issue a written statement of unsatisfactory condition to the operator. Such a statement shall contain the nature of the unsatisfactory condition, the corrective action to be taken, the time within which it must be taken, and a notice that enforcement action will be initiated if damage results prior to completion of corrective action, or corrective action is not completed by the date specified.

(5) When the State Forester determines that a violation exists, enforcement action shall be initiated by the State Forester.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.680

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-010

629-670-0110

Enforcement Action, Criminal Prosecution

(1) When a violation is determined to exist, enforcement action shall be initiated by issuance and service of a citation to the responsible person, persons, or corporation in accordance with ORS 527.680.

(2) Whenever a citation is served, an order to cease further violation shall be issued and served, in accordance with ORS 527.680(2)(a).

(3) Whenever a citation is issued, the State Forester shall determine whether it is practical and economically feasible for the operator to take corrective action to repair the damage or correct the unsatisfactory condition. Upon such a determination, the State Forester may issue and serve an order directing the operator to make reasonable efforts to repair the damage or correct the unsatisfactory condition in accordance with ORS 527.680(2)(b).

(4) Citations for violation of any forest practice rule or statute shall be presented to the District Attorney for the county where the violation occurred, along with a case brief, for the purpose of filing a complaint or information pursuant to ORS 527.990(1), whenever:

(a) In the judgment of the State Forester, the operator acted intentionally, knowingly, or recklessly as defined in ORS 161.085 relating to criminal liability; or

(b) The violation appears in the judgment of the State Forester to have resulted in monetary gain to the operator, substantially in excess of any amount recoverable by a civil penalty, and which would not have resulted under compliance with the rule.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.680

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-020

629-670-0200

Assessment of Civil Penalties; Notice of Penalty

(1) In addition to any other remedy, the State Forester may assess a civil penalty for any violation as described in ORS 527.992(1).

(2) After a citation is issued, the citation and any accompanying information shall be reviewed by a civil penalty administrator, appointed by the State Forester. The civil penalty administrator shall review the circumstances of the violation and determine the amount of penalty to be assessed in accordance with OAR Chapter 629, Division 670.

(3) The State Forester shall give written notice of a civil penalty by personal service or by certified mail to the person incurring the penalty. The notice shall include but not be limited to:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed and how it was calculated;

(d) A statement of the party's right to request a hearing within 20 days of service of the notice and an explanation of how a hearing or mitigation of a penalty may be requested;

(e) A statement that the notice becomes a final order unless

the person upon whom the civil penalty is assessed, makes a written request for a hearing within 20 days from the date of service of the notice; and

(f) A statement that the record of the proceedings to date, including the agency file or files on the subject of the civil penalty, automatically becomes part of the contested case record upon default for the purpose of providing a prima facie case.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.683, 527.687 & 527.992

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 4-1992, f. & cert. ef. 4-21-92; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-030

629-670-0210

Amount of Civil Penalties

(1) The amount of civil penalty per violation shall be the lesser of \$5,000 or the amount determined by the formula $\$B (C \times P) + [(\$B \times D) - (\$B \times D \times R)]$ where:

(a) $\$B$ is a base fine established by type of violation in section (2) of this rule;

(b) C is cooperation;

(c) P is prior knowledge or prior violations;

(d) D is damage to protected resources; and

(e) R is the extent to which damage can be repaired and future damage avoided by repair;

(2) The base penalty value ($\$B$) shall be established as follows:

(a) A base penalty of \$100 shall be applied to violations of a type where the operator fails to notify the State Forester of intent to operate, or fails to obtain written prior approval for a written plan, or for a forest practice where prior approval is required.

(b) A base penalty of \$250 shall be applied to:

(A) Violations of any rule or statute which requires or sets standards for accomplishing reforestation.

(B) Violations involving a failure to comply with the terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(C) Violations of a type where the operator fails to comply with any term or condition of a written waiver, written plan, or prior approval granted or accepted by the State Forester.

(D) Violations where the State Forester determines that an operator has intentionally failed to notify the State Forester of intent to operate, notwithstanding subsection (2)(a) of this rule.

(E) All other violations of forest practice rules or statutes not specifically described in section (2) of this rule.

(c) A base penalty of \$1000 shall be applied to violations of any rule or statute which sets a maximum size for harvesting operations.

(3) The cooperation value (C) shall be determined by the State Forester after reviewing whether the operator is taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assigned as follows:

(a) A value of 0.5 shall be assigned when, in the judgement of the State Forester, the operator takes substantial initiative to correct the damage or problem that led to the violation. Such initiative may include, but is not limited to, reporting the violation before it is otherwise discovered, initiating effective repairs without having to be directed, or making substantive changes in operating procedures designed to identify and avoid potential recurrences.

(b) A value of 1 shall be assigned when the operator cooperates in the following direction of the State Forester by immediately ceasing further violation and taking prompt action to repair damage or correct any unsatisfactory condition where deemed feasible by the State Forester;

(c) A value of 2 shall be assigned when the State Forester determines that the operator does not immediately cease further violation, is evasive upon attempts to make necessary communications, or neglects to take necessary and timely action to repair damage or correct any unsatisfactory condition.

(4) The prior knowledge value (P) shall be determined by the State Forester after reviewing Department of Forestry records of citations, operation notifications or operation inspections. A value

from 0.5 through 10 shall be assigned as follows:

(a) A value of 0.5 is appropriate when the operator has little or no prior knowledge of the Forest Practices Act but has cooperated in ceasing violation and correcting unsatisfactory conditions.

(b) A value of 1 is appropriate when the operator has general knowledge of the Forest Practices Act and rule, but has not has significant past experience with the practice in question, or has significant past experience with the practice, but the violation is determined by the State Forester to be inadvertent or accidental.

(c) A value of 2 is appropriate when the operator has had significant past experience with a practice or condition, or has had specific correspondence or conversation with the Department of Forestry personnel regarding the required practices or actions involved in the violation, prior to the violation.

(d) A value of 4 is appropriate when the State Forester has issued a statement of unsatisfactory condition to the operator prior to determination of the the violation, and timely corrective action was not taken.

(e) A value from 3 through 5 is appropriate when the operator has previously received citations for any other forest practice rule or statute.

(f) A value from 5 to 10 shall be assigned when the operator has been previously cited for a violation of the same forest practice rule, statute, or condition; or in a case of failure to comply with an order to cease further violation, or order to repair damage, or order to correct an unsatisfactory condition (ORS 527.680(2)).

(5) The damage value (D) shall be determined by the State Forester as a measure of extent or relative adverse effect of damage. A value from 0 through 20 shall be assigned. The following shall guide the State Forester's determination:

(a) A value of zero shall be assigned where the State Forester determines the violation has not resulted and will not result in resource damage;

(b) A value of 1 shall be assigned when the State Forester determines the adverse effects of the violation left uncorrected are minor and the affected resources will naturally self-restore within one year. Example: Siltation from exposed soil flows into the upper reaches of a stream, but the site will naturally revegetate within the next growing season, preventing further siltation;

(c) A value from 2 to 5 shall be assigned when the State Forester determines the damage from the violations left uncorrected is more serious than described in subsection (b) of this section, but the affected resources will self-restore naturally within five years. Examples: A small volume debris avalanche is caused by road construction material placed in an unstable location and the debris comes to rest in a fish-bearing or domestic use water, or logs are skidded across a stream without an adequate temporary crossing leaving ruts and disturbed soil areas that will flow muddy water directly into the stream.

(d) A value from 5 through 10 shall be assigned when the State Forester determines the damage from the violation left uncorrected is major in relative effect, such that natural self-restoration will take up to 10 years. A consideration in selecting a value from 5 to 10 may include, but is not limited to, the size of the area affected. Examples: Failure to reforest 5 acres or less would be assigned no less than a 5, while removal of understory vegetation along 500 feet of a small stream may be assigned a 10.

(e) A value from 5 through 20 shall be assigned when damage is the result of harvest or destruction of trees or snags required to be maintained. The State Forester's determination of the specific value applied shall be achieved by considering the severity of damage associated with the removal or destruction of the trees or snags and by considering any potential economic gain to any involved operators. The resultant damage value should be consistent with the policy of deterring future violations.

(6) The repair value (R) shall be assigned by the State Forester as a measure of the relative extent to which damage resulting from the violation can be corrected and expected future damage prevented by proper completion of an order to repair damage or correct unsatisfactory condition. The value shall be set by the State Forester between zero and 1 inclusive, expressed as a

decimal; indicating the degree to which damage will be prevented, divided by the total damage which would occur if left uncorrected until nature would restore the resource. Example: A tractor crossed a stream with no temporary structure, breaking the streambanks down, and leaving exposed skid trails which will erode creating turbidity and sedimentation of the stream. If left unrepaired, nature will eventually stabilize the bank, and the skid trails will revegetate within a few years. Compliance with the repair order, placing rip-rap and woody material against the streambank and mulching the skid trails, in the State Forester's judgement will result in avoidance of 85 percent of the potential damage over the next few years. Therefore, "R" equals 0.85.

(7) Upon written request of the person assessed, actual costs of repair up to an amount equal to $\$B \times D \times R$ may be substituted for the value of $\$B \times D \times R$ when such request is made in writing and received by the State Forester within 20 days of service of the notice of civil penalty and the State Forester determines said costs to be reasonable. Evidence of costs may be presented by the person without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

(8) The civil penalty administrator shall have the discretion to combine violations for the sake of assessing reasonable penalties, under the following circumstances:

(a) Multiple citations have been issued for violations resulting from the same practice; or

(b) Multiple citations have been issued for violations resulting in the same damage; or

(c) Upon a finding of the State Forester that a combination of violations is in the public interest and consistent with the policy of the Forest Practices Act, ORS 527.630.

(9) The civil penalty administrator shall have the discretion to determine a penalty is not warranted for reforestation violation cases, in the following circumstances:

(a) The party cited for the violation was not the landowner at the time the harvesting operation reduced stocking below the minimum standards; and

(b) The repair order associated with the violation has been complied within a timely and cooperative fashion.

(10) The civil penalty administrator shall have the discretion to determine a penalty is not warranted for cases where all of the following conditions exist:

(a) The violation arose inadvertently;

(b) There was little or no potential for damage;

(c) No damage resulted; and

(d) The operator cooperated in a fashion that indicates there is little or no chance that the violation will be repeated.

(11) Penalties totalling less than \$100 will be suspended, pending no further violations within one year of issuance of the citation.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.685

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 5-1990, f. 7-27-90, cert. ef. 8-1-90; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-040

629-670-0220

Amount of Penalties; Special Circumstances

(1) Notwithstanding OAR 629-670-0210, when an operator has had three or more separate incidents of forest practice violations within any three year period, the State Forester may assess a civil penalty of any amount up to the limit established in ORS 527.685(1) as may be deemed appropriate to deter the operator from further violation.

(2) For violations involving the harvest or destruction of trees or snags required to be maintained, in order to deter future violations, each tree or snag, or group of trees or snags harvested may be treated as a separate violation when it is appropriate in the judgment of the State Forester, considering the real or potential economic gain of operators involved.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.685

Hist.: FB 2-1995, f. 6-19-95, cert. ef. 7-1-95

629-670-0300

Civil Penalties Contested Case Hearings Procedures

The rules of procedure in OAR 629-670-0310 through 629-670-0340 are in addition to the procedural requirements of the Attorney General's Model Rules of Procedure adopted under OAR 629-001-0005. Together they shall govern the conduct of all contested case proceedings involving civil penalties. When OAR 629-670-0310 through 629-670-0340 conflict with any rule adopted under OAR 629-001-0005, the provisions of this division shall take precedence over those of the Attorney General's Model Rules.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.685 & 527.687

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88 ; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-050

629-670-0310

Requesting Hearings

(1) When requesting a hearing, or within ten (10) days following a request for hearing, the person assessed a civil penalty must admit or deny, in writing, all factual matters stated in the notice of penalty. Otherwise, any factual matters not denied shall be presumed admitted.

(2) When requesting a hearing, or within 10 days following a request for hearing, the person assessed a civil penalty shall affirmatively state, in writing, any and all claims or defenses the person may have and the reasoning in support of the claim or defense. Otherwise, failure to raise a claim or defense shall be presumed to be a waiver of such claim.

(3) Evidence shall not be taken on any issue not raised in the notice and either the request for hearing or a subsequent statement within ten days following the request for hearing as required in sections (1) and (2) of this rule.

(4) Unless the issue is raised in the person's request for hearing or subsequent statement within 10 days following the request for hearing, no evidence may be presented at the hearing on the economic and financial condition of the person. At the hearing, the burden of proof and the burden of going forward with evidence concerning the person's economic and financial condition, shall be upon the person against whom the civil penalty is assessed.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.685 & 527.687

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88 ; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-060

629-670-0320

Conduct of Hearings

(1) Prior to a hearing, the State Forester or hearing officer may schedule conferences to:

(a) Establish a procedural schedule, including dates for prefiled testimony and exhibits;

(b) Identify, simplify or clarify issues;

(c) Eliminate irrelevant or immaterial issues;

(d) Obtain stipulations, authenticate documents, admit documents into evidence and decide the order of proof; and

(e) Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

(2) Except as provided in section (3) of this rule, the record shall reflect the results of any conferences, which shall be binding on all parties.

(3) Unaccepted proposals of settlement at conference shall be privileged and shall not be admissible as evidence in the proceeding.

(4) Failure of the person against whom the civil penalty is assessed to appear at the conference shall be deemed a default and the written notice shall become a final order upon a prima facie case made on the record of the Department of Forestry.

(5) Unless allowed by the State Forester or hearing officer, the person may not reopen any matter determined at the conference or hearing. If the State Forester or hearing officer finds there was good cause for the person's failure to appear, the State

Forester or hearing officer may permit the matter to be reopened, heard, and considered.

(6) Hearings shall be conducted under the provisions of ORS 183.310 to 183.550 applicable to contested cases. No hearing shall be held earlier than 45 days or later than 180 days from the service of the notice unless all parties agree on an extension.

(7) If no hearing is requested or if the person requesting a hearing fails to appear, the final order shall be entered upon a prima facie case made on the record of the agency.

(8) Conferences and hearings shall be held at locations which are within the forest practices region of the person being assessed the penalty, unless otherwise agreed to by all parties.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.685 & 527.687

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 4-1992, f. & cert. ef. 4-21-92; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-070

629-670-0330

Orders

(1) The State Forester or hearings officer shall draft, file with the board, and serve on all parties, a proposed order, including rulings on the admissibility of offered evidence if the rulings are not set forth in the record, recommended findings of fact, conclusions of law, and recommendation for disposition of the case.

(2) If the State Forester modifies the hearing officer's draft proposed order, all parties to the hearing must be notified of the changes.

(3) Not later than ten days after the date of the filing of the proposed order with the Board, the person on whom the civil penalty has been imposed may file with the board, and serve on the department and the hearing officer, the person's written exceptions to the proposed order:

(a) The exception shall be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

(A) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;

(B) A necessary legal conclusion is omitted or is contrary to law or the Board's policy; or

(C) Prejudicial procedural error occurred.

(b) The exception shall be numbered and shall specify the disputed finding, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

(4) After the Board has received and reviewed the proposed order and the exceptions, if any, the Board shall:

(a) Entertain such oral argument as the Board determines necessary or appropriate to assist the Board in the proper disposition of the case;

(b) Remand the matter to the State Forester or hearing officer for further proceedings on any issues of fact which the Board believes were not fully or adequately developed; or

(c) Enter a final order adopting the recommendation of the State Forester or hearing officer as the Board's order or rejecting the recommendation of the State Forester or hearing officer. If the Board elects to reject the recommendation of the State Forester or hearing officer, the Board's final order shall contain necessary findings of fact and conclusions of law.

Stat. Auth.: ORS 527

Stats. Implements: ORS 527.685, 527.687

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 4-1992, f. & cert. ef. 4-21-92; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-080

629-670-0340

Delegation of Authority to State Forester; Mitigation of Penalties

(1) In addition to any duties and responsibilities conferred upon the State Forester by law or any other delegation of authority from the Board of Forestry, the State Forester may, with respect to the administration of this division:

(a) Execute any written order, on behalf of the Board, which has been consented to in writing by the person or persons

adversely affected by the order;

(b) Prepare and execute written orders, on behalf of the Board, implementing any action taken by the Board on any matter;

(c) Prepare and execute orders, on behalf of the Board, upon default where:

(A) The adversely affected party or parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or

(B) Having requested a hearing, the adversely affected person or persons have failed to appear at the hearing or at any duly scheduled prehearing conference.

(2) The State Forester or the forester's designated representative may conduct any hearing authorized under OAR 629-670-0100 through OAR 629-670-0340. "Designated representative" may include those persons designated by the State Forester as hearing officers.

(3) Upon written request of any person assessed a civil penalty, the State Forester may remit or mitigate the amount of any civil penalty upon a finding that remitting or mitigating the civil penalties is in the public interest and consistent with the policy of ORS Chapter 527:

(a) The request for mitigation shall be made in a written request for hearing to the State Forester under OAR 629-670-0310 and must be received by the State Forester within 20 days from the date of personal service or mailing of the notice of civil penalty;

(b) If requested to do so in the written request for mitigation, the State Forester shall consider evidence of the person's economic and financial condition;

(c) The burden of going forward with evidence of the person's economic and financial condition is on the person seeking mitigation. Such evidence may be presented by the person without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.685 & 527.687

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 5-1990, f. 7-27-90, cert. ef. 8-1-90; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-090

DIVISION 672

FOREST PRACTICES ADMINISTRATION

629-672-0100

Orders of the State Forester

(1) As used in OAR 629-672-0100 to 629-672-0310, order of the State Forester issued under ORS 527.610 to 527.770 means:

(a) An order denying approval of a written plan (ORS 527.670(2), (3), (10) and (11)).

(b) An order to repair damage or correct unsatisfactory condition (ORS 527.680 (2)(b)).

(c) Temporary order to cease further activity (ORS 527.680(3)).

(2) Whenever an order affecting an operator, timber owner or landowner is issued under ORS 527.610 to 527.770, notice of the order shall be given to the affected party by personal service or certified mail. As used in this section, "personal service" means service on the party by any officer, employee, or agent of the Oregon State Department of Forestry. The notice shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the person's right to request a hearing within 30 days from the date of service;

(d) A statement that the notice becomes a final order unless the person makes a written request for a hearing within 30 days from the date of service or mailing of the notice; and

(e) A statement that the record of the proceedings to date, including the agency file on the subject of the order automatically becomes part of the contested case record upon default, for the purpose of providing a prima facie case.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-100

629-672-0200

Hearings for Operators, Landowners or Timber Owners

(1) As provided in ORS 527.700 (1), any operator, timber owner or landowner affected by a finding or order of the State Forester issued under ORS 527.610 to 527.770 may request a hearing within 30 days of the issuance of the order. The request for a hearing shall be in writing and must include a specific statement as to the reasons for disputing the State Forester's order, including but not limited to disagreement with any findings leading to the order. In addition, the request for hearing shall state what relief from the order is sought.

(2) Hearings under this rule shall be conducted as contested case proceedings under ORS 183.413 to 183.470.

(3) The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for hearing unless all parties agree to an extension of the time limits.

(4) Failure of the person requesting the hearing to appear at the hearing shall be deemed a default and shall result in a final order being entered upon a prima facie case made on the record of the agency.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-110

629-672-0210

Hearings for Persons Adversely Affected by an Operation for Which a Written Plan is Required Under ORS 527.670(3)

(1) If a written plan under ORS 527.670(3) is required for an operation, any person who submitted written comments on the operation and who is adversely affected or aggrieved by the operation may file a request to the board for a hearing on the plan. The request shall be filed and copies served on the operator, timber owner and landowner personally or by certified mail within 14 days of the date the written plan was approved. The request shall include:

(a) The person's name and address and the organization represented;

(b) If represented by an attorney, the name and address of the attorney representing the person;

(c) A detailed statement of the person's interest and of how such interest may be affected by the results of the proceeding;

(d) A detailed statement of the fact regarding how the person's interest is affected by the Forest Practices Act or rules adopted thereunder;

(e) A detailed statement of fact showing that the operation is the type described in ORS 527.670(3);

(f) A brief statement of what board action is sought by the person.

(2) Upon receipt of a request provided under section (1) of this rule, the State Forester shall determine whether the request meets the requirements of ORS 527.700(3) through (5). In making this determination, the State Forester shall consider:

(a) Whether the person has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the board's jurisdiction;

(c) The interest the petitioner represents and the qualifications the petitioner possesses in cases in which a public interest is alleged;

(d) Whether the person could reasonably be considered to be affected by the Forest Practices Act or rules adopted thereunder.

(3) If the State Forester determines that the person making the request meets the requirements of ORS 527.700(3) through (5), the State Forester shall send written notification of the date of the hearing to the person requesting the hearing and to the timber owner, landowner and operator.

(a) The hearing date shall be no later than 14 days from the receipt of the request for hearing.

(b) The notice of hearing shall contain the statements that:

(A) Failure of the person requesting a hearing to appear at the hearing shall be deemed a default and a record of the proceedings to date, including the agency file or files on the subject of the written plan, automatically becomes a part of the record for the purpose of providing a prima facie case upon which default may be granted; and

(B) The hearing shall be conducted by a hearings officer, appointed by the Board of Forestry, according to the Attorney General's Model Rules for contested case proceedings.

(4) If the State Forester determines that the person making the request does not meet the requirements of ORS 527.700(3) through (5) the State Forester shall recommend to the chairperson of the Board of Forestry that a hearing be denied for cause. The chairperson, upon review of the request for hearing and the State Forester's recommendation, shall either:

(a) Issue a final order on behalf of the board, denying a hearing for cause; or

(b) Direct the State Forester to schedule a hearing and send notices as required in section (3) of this rule.

(5) Failure of the person requesting the hearing to appear at the hearing shall be deemed a default. A final order upon a prima facie record shall be entered approving the written plan.

(6) The landowner, timber owner or operator shall be made a party to the proceeding.

(7) The person requesting the hearing under these provisions may only present evidence on those issues raised in the person's written comments to the written plan filed under ORS 527.670(9).

Stat. Auth.: ORS Ch. 527

Stats. Implemented: 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-120

629-672-0220

Hearings Generally; Final Orders

(1) The Board of Forestry may appoint a hearings officer to conduct hearings under ORS 527.700. The hearings officer shall conduct the hearing and prepare the record for filing with the board within five working days of the close of the hearing. Except as provided in section (2) of this rule, no less than a majority of the board shall then review and consider the record, hold a meeting or telephone conference, and issue a final order.

(2) If upon a determination by the chairperson of the Board of Forestry, the board cannot complete a final order in the matter within 28 days of the request for a hearing, the chairperson may delegate the authority to issue a final order to the hearings officer as provided in ORS 527.700(2).

(3) Unless consent to an extension is granted by all parties, a final order shall be issued no later than 28 days after the request for hearing was filed. The order may affirm, rescind or modify the written plan. Appeals from the final order shall be filed as provided in ORS 183.482.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-130

629-672-0300

Stay of Operation

(1) The State Forester is authorized to issue temporary orders pertaining to a stay of operations under ORS 527.700(8).

(2) Any person entitled to a hearing under OAR 629-672-0210 may apply to the State Forester for a stay of the operation pending a hearing on the matter. The request for a stay shall include:

(a) The name, address and telephone number of the person

filing the request, identifying that person as a petitioner; and the names, addresses and telephone numbers of each of the other parties to the proceedings, identifying those parties' roles in the proceedings. When any party is represented by an attorney in the proceeding, then the name, address and telephone number of the attorney shall be provided and the address and telephone number of the party may be omitted;

(b) Identification of the operation for which the stay is requested;

(c) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) Commencement or continuation of the operation will constitute a violation of the rules of the board;

(B) The person requesting the stay will suffer irreparable injury if the stay is not granted;

(C) The person requesting the stay has met the requirements of ORS 527.700(3), (4) and (5); and

(D) Granting the stay will not result in substantial public harm.

(d) A statement identifying any potential injury to the other parties in the matter if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. Petitioner shall propose an amount of bond or other undertaking, not less than \$15,000 to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(e) A description of any other procedures, if any, the petitioner believes should be followed by the State Forester in determining the appropriateness of the stay request; and

(f) An appendix of affidavits containing all evidence upon which the petitioner relies in support of the statements required in subsections (2)(c) and (d) of this rule.

(3) The request for stay and all required accompanying documents must be filed with the State Forester at the same time the request for a hearing is filed.

(4) The State Forester shall notify the parties listed in the petition for stay, that they may participate in the stay proceeding if they file a response in accordance with section (5) of this rule. The State Forester shall include in this notice a time certain for filing a response to the request for stay.

(5) The landowner, timber owner or operator may file a response to the request for stay. The response shall contain:

(a) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(b) A statement accepting or denying each of the statement of facts and reasons provided in the petitioner's stay request;

(c) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(6) The response may contain affidavits containing additional evidence upon which the person relies in support of the statement required under subsections (5)(b) and (c) of this rule.

(7) The response must be delivered or mailed to the State Forester and to all parties identified in the stay request.

(8) After the deadline for filing responses, the State Forester may:

(a) Issue a temporary order on the stay upon the basis of the material before the State Forester; or

(b) Conduct such further proceedings as the State Forester deems desirable; or

(c) Determine that the circumstances reasonably permit delay of consideration of a stay until the hearing.

(9) The State Forester's temporary order may:

(a) Grant the stay upon a showing that commencement or continuation of the operation will constitute a violation of the rules of the board, the person requesting the stay will suffer irreparable injury if the stay is not granted, and the requirements

of ORS 527.700(3), (4) and (5) are met. The State Forester shall limit the effect of the stay to the specific geographic area or elements of the operation for which the person requesting the stay has demonstrated a violation of the rules and irreparable injury;

(b) Deny the stay request upon a finding that the petitioner failed to show that the requirements of ORS 527.700(8)(a) are met or granting the stay will result in substantial public harm.

(10) If the State Forester grants the stay, the person requesting the stay shall be required to give an undertaking which may be in the amount of the damages potentially resulting from the stay, but in any event shall not be less than \$15,000. The undertaking shall be in the form that the State Forester determines best protects the interests of the person against whom the stay is imposed. In the event the written plan for which the stay was granted is affirmed in whole or in part, the State Forester shall retain the undertaking until all damages, including attorney fees, costs and expenses have been paid.

(11) The State Forester's temporary order shall be subject to review as part of the hearing reviewing the written plan. The temporary order of the State Forester may be affirmed, rescinded or modified by final order of the Board.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-140

629-672-0310

Actual Damages Resulting from a Stay; Attorney's Fees

(1) If the board or hearings officer affirms the written plan of an operation for which a stay was granted, the board shall award actual damages in favor of each prevailing party against the person requesting the stay. A landowner, timber owner, or operator against whom a stay was entered may petition for actual damages for the portion of the case upon which it prevailed.

(2) The board may award reasonable attorney's fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well founded, or made a request primarily for a purpose other than to secure appropriate action by the board. If a written plan pertaining to an operation for which a stay was granted is affirmed, the board shall award reasonable attorney's fees in favor of each of the prevailing parties against the person requesting the stay. If a written plan submitted to and approved by the State Forester is disapproved or modified, the board shall award reasonable attorney's fees and costs against the state in favor of each of the prevailing parties. Any prevailing party, as described above, may file a petition for attorney's fees, expenses and costs for the portion of the case upon which it prevailed.

(3) An award of attorney's fees shall not exceed \$5,000.

(4) As used in this section, a "prevailing party" is one in whose favor an order pertaining to a written plan is issued, and may include the Department of Forestry where a written plan is affirmed. Where a written plan is affirmed in part and modified in part, each party may be regarded as a prevailing party.

(5) "Actual damages" include but are not limited to costs such as:

- (a) Penalties for non-performance of contracts;
- (b) Losses due to market fluctuations;
- (c) Payments for crew stand-by;
- (d) Equipment down-time;
- (e) Move-in and move-out costs; and
- (f) Loss in value of logs left sitting on the site for long periods.

(6) Attorney's fees, expenses and costs shall include only the following:

(a) The actual amount of fees charged by the attorney for services directly connected with prosecuting or defending against the challenge to the written plan; or

(b) Where the prevailing party is not charged a specific fee for the case (e.g., because the attorney is paid on a retainer basis or is an employee of the party), the fee shall be the reasonable value of the attorney's services directly connected with

prosecuting or defending against the challenge to the written plan. "Reasonable value" means the equivalent of the fees charged by practitioners of similar skill and experience under section (6)(a) of this section, and includes such secretarial and other overhead costs as are customarily included in those fees.

(7) A prevailing party must file a petition and supportive affidavit for award of actual damages from a stay or attorney fees within 30 days of the date of the issuance of the board's order in the case for which awards are requested. A copy of the petition, together with a supporting affidavit, shall be served upon the opposing party or parties at the time the petition is filed and proof of service shall be provided to the board. The board shall dismiss petitions which do not comply with this rule. The petition shall include:

(a) A statement of the facts upon which petitioner relies in claiming that it is a prevailing party;

(b) A statement of the amount of award requested, supported by an affidavit that describes in detail the actual damages incurred and the basis for the amount of damages requested; or amount of the fees incurred by petitioner, or where the petitioner was not charged fees, the basis for the amount of the costs requested; and

(c) A statement describing how the amount of the award requested would be consistent with the policies and the purposes of the Oregon Forest Practices Act.

(8) An opposing party shall have 14 days from the date of service of the petition to file written objections. Such objections shall be served on the petitioner at the time the objections are filed and proof of service shall be provided to the board.

(9) In designating the amount of fees and costs to be awarded, the board shall consider, but is not limited to, the following factors:

(a) Consistency with the policies and purposes of the Oregon Forest Practices Act including but not limited to the following considerations:

(A) The issue in the case was one of first impression; or

(B) A complaint or defense was frivolous or otherwise without merit; or

(C) A party was an individual who, due to the circumstances of the case, had to rely upon his or her personal financial resources.

(b) In the case of attorney's fees, the appropriate charges for the services rendered, based on:

(A) The time and labor customarily required in the same or similar cases;

(B) Hourly charges customarily made by attorneys for rendering similar services;

(C) The novelty and difficulty of the issues and the amount of preparation, research or briefing reasonably required; and

(D) The skill requisite to perform the services properly.

(c) Awards in similar cases.

(10) The hearings officer who presided over the hearing on the written plan shall examine the petition for award of actual damages or attorney's fees and any associated arguments. The hearings officer may require the parties to provide additional information or conduct hearings as the officer deems necessary. The hearings officer shall prepare a proposed order for the board.

(11) The board shall review the hearings officer's proposed order and issue a final order awarding actual damages or attorney's fees pursuant to this section, based upon the record. The board may award all or a portion of the actual damages or fees requested. The board will not act on a petition until the appeal period has run or, where an appeal has been filed, during the pendency of the appeal.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-150

DIVISION 674

FOREST PRACTICES ADMINISTRATION

Access to Notifications and Written Plans

629-674-0100

Procedures for Requesting Copies of Notifications and Written Plans; Fees

(1) Any person may examine or request copies of notifications or written plans filed with the State Forester as required by the Forest Practices Act. Examination of records, or requests for copies shall be made at the Department of Forestry district or unit office responsible for the geographic areas in question.

(2) When a person requests copies of notifications or written plans already on file, a fee shall be charged, as specified in OAR 629-10-200, Charges for Copying and Purchasing Public Records.

(3) When a person requests to be sent notifications or written plans as they are filed at some time in the future, the request shall be made in writing on forms provided by the State Forester. The request shall require payment, in advance, of a fee as established in sections (4) and (5) of this rule. Such request shall specify the geographic area of interest by legal description. The smallest unit of area described in such a request shall be a section (usually 640 acres).

(4) The fee for sending copies of notifications or written plans to persons requesting them, shall be a minimum of \$15. For requests covering more than five sections, an additional \$3 shall be charged for every section in excess of five sections. Complete townships shall be discounted to \$100 per township.

(5) The fees described in section (4) of this rule are based on estimated costs of services, and the likelihood that such services shall be rendered for any particular section. For complete Department of Forestry districts, costs of services can be estimated with more precision, based on the annual average number of notifications filed, as shown below. Therefore, as a person requests to receive copies over several townships, the costs of sending copies under section (4) of this rule approaches the estimated maximum cost per district expressed in **Table 1**. The fee charged per district shall be the lesser of the amount derived from either section (4) or this rule.

TABLE 1

Office - District	Location	Maximum Fee
Astoria	Astoria	\$400
Central Oregon - Walker Range	Prineville The Dalles John Day Fossil	\$725
Clackamas - Marion	Mollala Mehama	\$900
Coos	Coos Bay Bridge Gold Beach	\$1,200
Douglas	Roseburg	\$700
Eastern Lane	Springfield	\$900
Forest Grove	Forest Grove Columbia City	\$1,300
Klamath - Klamath Lake	Falls Lakeview	\$350
Linn	Sweet Home Mehama	\$800
Northeast	LaGrande Pendleton Wallowa	\$500

Southwest	Central Point Grants Pass	\$600
Tillamook	Tillamook	\$350
Western Lane	Veneta	\$900
West Oregon	Philomath Dallas Toledo	\$1,300

(6) Upon payment of fees described in sections (4) and (5) of this rule, the person shall be sent all notifications and written plans filed with the State Forester for the geographic area described in the request for a period of one year from the date of payment.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: 527.670

Hist.: FB 2-1988, f. & cert. ef. 5-11-88; FB 2-1995, f. 6-19-95, cert. ef.

7-1-95; Renumbered from 629-55-200

629-674-0110

Exemption from Sending Written Plans to Department of Revenue or County Assessors

(1) Notwithstanding ORS 527.670 (8), the State Forester may enter into cooperative agreements with the Director of the Department of Revenue and any of the county assessors for the purpose of exempting the State Forester from the requirement to send written plans.

(2) Notwithstanding ORS 527.670(8), the State Forester may enter into cooperative agreement with the Director of the Department of Revenue and any of the county assessors for the purpose of exempting the State Forester from the requirement to send notifications within three working days of receipt. Such agreement shall establish the procedures for sending notifications, appropriate to the use of the receiving party. In those counties which do not assess a personal property tax or otherwise do not have a use for notifications, a cooperative agreement may exempt sending notifications altogether.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.670

Hist.: FB 2-1988, f. & cert. ef. 5-11-88; FB 2-1995, f. 6-19-95, cert. ef.

7-1-95; Renumbered from 629-55-210

DIVISION 676

**FOREST PRACTICES
ADMINISTRATION**

Regional Forest Practice Committees

629-676-0100

Regional Forest Practice Committee Responsibilities

(1) Pursuant to ORS 527.650 and 527.660, Regional Forest Practice Committees are advisory committees established to assist the Board of Forestry in developing appropriate forest practice rules. The committees are comprised of citizens qualified by education or experience in natural resource management. The committees may review proposed forest practice rules, identify the need to amend forest practice rules or propose amended forest practice rules.

(2) The regional committees will be requested to review proposed forest practice rules whenever:

(a) The proposed rule prescribes operating practices needing review to ensure clarity, technical feasibility and practicality;

(b) The proposed rule deals with administrative matters that the Board determines to be of importance to operators and landowners; or

(c) The Board determines that there is a need to provide for greater public involvement in the rulemaking process for a given

rule and chooses the regional committees as a vehicle of that public involvement.

(3) When requested by the Board of Forestry or the State Forester to review proposed rules, the regional committees shall report back to the Board regarding the clarity, technical feasibility, and practicality of the proposed rule as well as any other comments or recommendations the committee may have. For the purpose of this rule, the following definitions apply:

(a) "Clarity" is a test of the ease with which the intent of the rule can be understood by the regulated parties;

(b) "Technical feasibility" is a test of whether the technology exists and is reasonably available to be applied within the region in question;

(c) "Practicality" is a test of whether the rule provides an actual solution to the problem, and when applied, will the rule meet the objectives of the Forest Practices Act.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: ORS 527.660

Hist.: FB 2-1988, f. & cert. ef. 5-11-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-400

629-676-0200

Member Qualifications, Appointments, Organization

(1) The regional committee members shall be appointed by the Board of Forestry and shall be qualified as prescribed by ORS 527.650.

(2) The chairperson and vice-chairperson of each committee shall be selected by the committee members.

(3) The State Forester shall appoint a member of the Department of Forestry to serve as secretary for each of the committees.

(4) Reports to the Board of Forestry shall be made by the respective regional committee chairperson or the chair's designee.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: 527.650

Hist.: FB 2-1988, f. & cert. ef. 5-11-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-410

629-676-0300

Conduct of Meetings

(1) The regional committees may determine operating procedures governing the transaction of their business.

(2) The chairperson shall have the usual duties and power of a presiding officer.

(3) All meetings of the regional committees will be conducted as open public meetings. However, although most meetings will provide for the opportunity for public testimony as a necessary means of conducting business, such an opportunity is not required and may be excluded at the discretion of the chairperson when necessary to conduct business.

(4) The committee secretary shall send an agenda together with minutes of the previously held meeting to all members of the committee prior to each committee meeting.

Stat. Auth.: ORS Ch. 527

Stats. Implemented: 527.660

Hist.: FB 2-1988, f. & cert. ef. 5-11-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95; Renumbered from 629-55-420

DIVISION 680

RESOURCE SITE INVENTORY AND PROTECTION PROCESS RULES

629-680-0000

Purpose

(1) OAR 629-680-0000 to 0430 shall be known as the Resource Site Inventory and Protection Process Rules.

(2) The purpose of the rules in OAR 629, Division 680 is to set criteria to inventory and protect special resources described in ORS 527.710 (3)(a) on forestlands regulated by the Forest Practices Act. Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic

benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Consistent with ORS 527.630, it is the policy of these rules to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water and fish and wildlife resources that assures the continuous benefits of those resources for future generations of Oregonians.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 3-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-010

629-680-0010

Definitions

In addition to the definitions listed in OAR 629-600-0100, as used in OAR Chapter 629, Division 680:

(1) "Critical period of use" means the time of year the State Forester determines a species is sensitive to disturbance at a resource site.

(2) "Disturbance" means actions which cause birds to flush from the resource site.

(3) "Endangered species" means any fish or wildlife species identified as "endangered" on lists that are adopted, by rule, by the Oregon Fish and Wildlife Commission or are federally listed as "endangered" under the Endangered Species Act of 1973 as amended.

(4) "Listed species" means a species adopted by the Board under OAR 629-680-0200.

(5) "Site productivity" means the ability of a resource site to produce the benefits for which it is being protected. As an example, nesting site productivity is measured by the number of young birds successfully raised. For a roosting site, productivity is measured by the number of birds roosting over a given time. Watering site productivity is measured by the number of band-tailed pigeons that visit the resource site over a given time.

(6) "Threatened species" means any fish or wildlife species identified as "threatened" on lists that are adopted, by rule, by the Oregon Fish and Wildlife Commission or are federally listed as "threatened" under the Endangered Species Act of 1973 as amended.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 3-1991, f. & cert. ef. 5-23-91; FB 8-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-020

629-680-0020

Resource Site Defined for the Purpose of a Hearing

(1) Notwithstanding OAR 629-680-0010 (14), 629-600-0100 (49), and 629-665-0110 (1), 629-665-0120 (1), 629-665-0220 (1), 629-665-0230 (1), and 629-665-0240 (1), key components are not considered a part of the resource site in determining the place from which distances are measured for the purpose of requesting a hearing under ORS 527.670(4) and ORS 527.700(3).

(2) For threatened or endangered bird species, the place from which such distances are measured is the active nest tree, roost trees, or foraging perch.

(3) For birds which use sensitive bird nesting, roosting or watering sites, the place from which such distances are measured is the specific nest tree, roosting tree or watering place.

(4) For significant wetland types identified in OAR 629-680-0310, the place from which such distances are measured is the significant wetland boundary as determined by the State Forester.

(5) For other sites protected under ORS 527.710(3)(a), the place will be defined by rule as rules are adopted to protect the sites.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 3-1991, f. & cert. ef. 5-23-91; FB 8-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97;

Renumbered from 629-56-900

629-680-0030

Reporting

The department shall review the resource site rules for sensitive bird nesting, roosting and watering sites; for threatened and endangered fish and wildlife species; and for significant wetlands to determine if protection levels are effective. Every two years the department shall report to the Board:

(1) The number and types of operations conducted adjacent to, or within, resource sites.

(2) The productivity of a sample of resource sites, including an evaluation of the success of the applied protection levels and an assessment of the economic impacts.

(3) The number of structural and temporal exceptions requested; the number of exceptions permitted and denied; when exceptions are permitted, any disagreement to the exception on the part of the Department of Fish and Wildlife; and the reasons for granting or denying the exceptions.

(4) The number of approved alternate plans for each significant wetland type.

(5) Recommended changes to protection rules.

(6) Research needed to further evaluate the protection levels.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 8-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-1000

629-680-0100

Process for Board Evaluation of Threatened and Endangered Fish and Wildlife Species that use Resource Sites that are Sensitive to Forest Practices

(1) When a species is listed as threatened or endangered by state or federal authorities, the Board shall adopt rules to protect resource sites that are used by those species and that are sensitive to forest practices. The following process shall be used when the Board develops protection rules for these resource sites:

(a) The Board's evaluation shall be based on the best available information summarized in a technical review paper. The paper must be submitted by those proposing protection for resource sites used by a threatened or endangered species. The paper may be written by the State Forester, another agency, an organization or a person. The paper shall demonstrate how the resource sites are sensitive to forest practices. The paper may rely upon information used during the listing process and must:

(A) Identify the resource sites used by the species;

(B) Identify forest practices that conflict with the resource sites;

(C) Evaluate the biological consequences of the identified conflicts; and

(D) Propose protection requirements and exceptions for the resource sites.

(b) The State Forester shall review the technical paper submitted under subsection (1)(a) of this rule. The review shall include an evaluation of the literature used, consultation with technical experts and a technical review by experts chosen by the State Forester. The State Forester shall submit a report of this review to the Board.

(c) The Board shall review and accept or reject the information presented in subsections (1)(a) and (b) of this rule;

(d) Using the technical review paper and the State Forester's report, plus other available information for the species, the Board shall:

(A) Identify the resource sites for the species;

(B) Identify forest practices that conflict with the resource sites and evaluate the consequences of those conflicts;

(C) Determine the protection requirements for the resource sites; and

(D) Determine any exceptions criteria.

(2) The Board shall adopt protection requirements and exception criteria for resource sites used by the threatened or endangered species.

(3) The State Forester shall maintain an inventory of

protected resource sites that are used by threatened or endangered species.

(4) When a threatened or endangered species is de-listed by the Oregon Fish and Wildlife Commission or the U.S. Fish and Wildlife Service, the Board shall determine whether continued protection of resource sites is warranted:

(a) If the Board determines that continued protection rules are warranted, the rules shall be promulgated under the appropriate statutory authority;

(b) If the Board determines that continued protection rules are not warranted, existing rules shall be repealed.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-100

629-680-0200

Process for Board Listing and De-listing Species that use Sensitive Bird Nesting, Roosting and Watering Sites

(1) The department, a person, an organization or other agency may propose listing species that use sensitive bird nesting, roosting and watering sites. The following process shall be used when the Board considers listing a species:

(a) The Board's evaluation of each species shall be based on the best available information. This information must be summarized in a technical review paper and may be supported by other written information. The technical review paper must be submitted by those proposing the species for listing. Others also may submit technical review papers for the Board's consideration. Technical review papers must include:

(A) The biology of the species. This should include the life history, population status and trends, and identification of the resource site;

(B) The best available information on the number of resource sites of the species on private and public lands in Oregon;

(C) An evaluation of how the resource sites used by the species meet the criteria in OAR 629-680-0210;

(D) An identification of forest practices that conflict with the resource site;

(E) An evaluation of the biological consequences of the identified conflicts;

(F) The proposed protection requirements for the resource site;

(G) The proposed exception criteria for the resource site.

(b) The State Forester shall review all technical papers submitted under subsection (1)(a) of this rule. The review shall include an evaluation of the literature used, consultation with technical experts and a technical review by experts chosen by the State Forester. The State Forester shall submit a report of the review to the Board;

(c) The Board shall review and accept, reject or modify the information presented in subsections (1)(a) and (b) of this rule. Using the process set out in OAR 629-680-0220, the Board shall use this information to identify forest practice conflicts and consequences and to set appropriate protection for the resource site;

(d) The Board shall accept or reject the species as using sensitive bird nesting, roosting, or watering sites based on the criteria listed in OAR 629-680-0210. A species accepted by the Board must be a native species that requires site specific protection in order to assure the continuation of the species throughout its natural range;

(e) Accepted species shall be listed in OAR 629-665-0100 by the Board. The State Forester shall develop an inventory of resource sites used by the species.

(2) The department, a person, an organization or other agency may propose de-listing species that use sensitive bird nesting, roosting, or watering sites. The following process shall be used when the Board considers de-listing a species:

(a) The Board's evaluation of a proposal to de-list a species shall be based on the best available information. This information must be summarized in a technical review paper and may be supported by other written information. The technical review

paper must be submitted by those proposing the species for de-listing. Others also may submit technical review papers for the Board's consideration. Technical review papers must include:

(A) The biology of the species. This should include the life history, population status and trends, the critical period of use of a resource site by the species, and identification of the resource site;

(B) The best available information on the number of resource sites of the species on private and public lands in Oregon;

(C) An evaluation of how the species fails to meet the criteria in OAR 629-680-0210.

(b) The State Forester shall review all technical papers submitted under subsection (2)(a) of this rule. The review shall include an evaluation of the literature used, consultation with technical experts and a technical review by experts chosen by the State Forester. The State Forester shall submit a report of the review to the Board;

(c) The Board shall review and accept, reject or modify the information presented in subsections (2)(a) and (b) of this rule. Based on this information the Board shall remove species not meeting the criteria in OAR 629-680-0210 from the list. The State Forester shall remove resource sites of de-listed species from the inventory.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 3-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-200

629-680-0210

Criteria To Identify Sensitive Bird Nesting, Roosting and Watering Sites

Resource sites must meet the following criteria in order to be listed as sensitive bird nesting, roosting or watering sites:

(1) The resource sites must be used by native species and require site-specific protection in order to assure the continuation of the species throughout its natural range.

(2) The resource sites must have a probability of being directly and adversely affected by forest practices.

(3) In addition, the resource sites must meet one or more of the following criteria:

(a) They are resource sites in which birds concentrate the nesting, roosting, or watering:

(A) Once established, the resource sites must have a history of long and repeated use;

(B) The numbers of resource sites used by the birds are limited (occur in fixed amounts); or

(C) The resource sites provide special requirements for the species.

(b) The number of suitable resource sites is limited (occur in fixed amounts) and the resource sites are used by species with specialized nesting or roosting requirements:

(A) Once established, the resource sites must have a history of long and repeated use;

(B) Populations of the species using these resource sites are, or evidence indicates are, naturally small; or

(C) Populations of the species using these resource sites are only found in a few locations in Oregon.

(c) The number of suitable resource sites is declining and expected to decline in the future, and the resource sites are used by species with specialized nesting or roosting requirements:

(A) Once established, the resource sites must have a history of long and repeated use;

(B) Populations of the species using these resource sites are, or evidence indicates are, naturally small; or

(C) Populations of the species using these resource sites are only found in a few locations in Oregon.

(d) The resource sites are protected by the federal 1940 Bald Eagle Protection Act (16 U.S.C. 668- 668d). This act includes protection of the golden eagle.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 3-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-210

629-680-0220

Process for Determining Forest Practices Conflicts and Consequences; Protection Requirements for the Resource Site

(1) The following process shall be used by the Board to evaluate forest practices conflicts and consequences and in setting appropriate protection for the resource site. Using the technical review paper developed in OAR 629-680-0200, plus other available information for each listed species, the Board shall:

(a) Identify the resource site for each listed species;

(b) Identify forest practices that conflict with the resource site and evaluate the consequences of those conflicts;

(c) Determine the protection requirements necessary to protect the resource site;

(d) Determine any exceptions criteria.

(2) The Board shall adopt protection requirements and exception criteria for each species listed in OAR 629-665-0100.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-220

629-680-0300

Purpose

ORS 527.710(3)(a)(D) requires the Board to identify and protect significant wetlands. The purpose of these rules is to identify significant wetlands types on forestlands. Significant wetlands require site-specific protection and written plans. Protection rules for significant wetlands are in OAR 629-645-0000 through OAR 629-645-0050.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 8-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-300

629-680-0310

Significant Wetland Types

The following wetland types are determined by the Board to be significant:

(1) Wetlands that are larger than eight acres;

(2) Estuaries;

(3) Bogs; and

(4) Important springs in eastern Oregon.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 8-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-310

629-680-0400

Definition

Biological sites are resource sites which contain examples of ecologically and scientifically significant living natural resources. Biological sites include important native plant associations or animal communities, or both.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 6-1992, f. & cert. ef. 5-8-92; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-400

629-680-0410

Protection Goal for Biological Sites

The protection goal for biological sites is to assure that forest practices maintain the biological (plant and animal) diversity and the essential habitat at the resource site over time.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 6-1992, f. & cert. ef. 5-8-92; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-56-410

629-680-0420

Process To Inventory a Biological Site

(1) A technical site report is used to propose a biological site for listing on the inventory. The report is written by an individual, a landowner, an agency, or an organization. The report shall: