

DIVISION 605
PLANNING FOREST OPERATIONS

COMPLIANCE

629-605-0100

- (1) *The operator, landowner, or timber owner shall comply with the practices described in the forest practice statutes and rules unless approval has been obtained from the State Forester for a plan for an alternate practice which is designed to result in the same effect or to meet the same purpose or provide equal or better results as those practices described in statute or administrative rule.*

APPLICATION:

This section is not used for enforcement.

This section establishes the standard for compliance with the Forest Practices Act, while it recognizes the need for flexibility by establishing the “plan for an alternate practice.” A plan for an alternate practice proposes a modification of the FPA standards that will result in the same effect or meet the same purpose or provide equal or better results as those practices described in statute or administrative rule. Enforcement action should be taken under specific rules or under OAR 629-605-0173(4) for failure to comply with the provisions of an approved plan for an alternate practice.

ADMINISTRATION:

Purpose

A plan for an alternate practice allows an operator to propose practices or protection standards different than those described in rule or statute that achieves the purpose in a manner different than prescribed. An alternate practice may be proposed for any rule or standard in the FPA. If an operator wishes to propose an alternate practice, a plan for an alternate practice must be submitted and approved by the State Forester prior to implementing the practice. If an operator does not obtain approval of a plan for an alternate practice, the operator must comply with the applicable standards as described in rule or statute.

Preparing Plans for an Alternate Practice

Operators or landowners are responsible for preparing the plan. It is expected they and the SF will work together to address resource protection concerns. When a viable plan is developed and approved in writing by the SF, the operation may begin subject to the appropriate waiting periods. This is the only plan approval preserved by the 2003 HB 3264 that otherwise eliminated prior approval and approval of written plans. To facilitate the preparation of a plan for an alternate practice, the SF should provide the operator a copy of the most current guide to preparing written plans.

Plan Content

Plans for an alternate practice must contain sufficient detail to allow an evaluation by the State Forester. The evaluation must determine if the operation will provide equal or better results or

meet the same purpose as the applicable standards in the Forest Practices Act or administrative rules. The SF may require specific content but most plans for an alternate practice will have the same content as a written plan. Refer to the guidance under OAR 629-605-0170(6) and (7) for more information on written plan content.

Plan Approval

The State Forester has the authority to interpret the administrative rules, but is restricted to following the wording in statute. Interpretations of statute might need legal counsel unless the statute itself describes alternatives the SF may accept. One way this is done is through approving a plan for an alternate practice.

A plan for an alternate practice is the only pre-operation document that requires approval before beginning the practice or operation. Except as described in subsection (3) of this rule, plans for an alternate practice are not subject to the hearings provisions of ORS 527.700 or the provisions of ORS 527.670 prescribing certain waiting periods and procedures. Those plans that propose alternate practices where there is a parallel requirement for a statutory written plan are subject to the hearings provisions, waiting periods, and procedures required in the FPA.

For example, an operator adequately justifies constructing a road within a significant wetland's RMA and proposes reducing leave tree numbers in the RMA below the usual one-half of the existing number by species and diameter class. The operator would be required to submit a statutory written plan for road construction within 300 feet of a significant wetland. Included in this plan would be the proposed alternate practice to reduce the leave tree requirement below one-half the trees by species and diameter class. One plan addressing both topics would be required. The portion of the plan addressing the reduction of leave tree numbers requires approval; the entire plan would require a statutory comment period.

Equal or Better

In the approval process, the SF must determine if the proposed practice will result in an "equal or better" condition at the conclusion of the operation or if a future desired condition will be met sooner than if the standard in rule were applied. An example of equal or better results is found in OAR 629-625-0320(3). This rule requires a plan for an alternate practice to allow an exception to subsection 2(a) of that rule, requiring stream crossing structures to pass a 50-year peak flow. By approving a plan for an alternate practice, a stream crossing structure can be built in a wide floodplain with less impact (less fill material in the floodplain than if the rule were followed). The alternate practice results in a crossing that passes the required peak flow and is "better" than one built according to the standards in rule. There are some circumstances where the standards of "equal or better" do not apply. These circumstances are discussed under 629-605-0100(2) Compliance.

Meets the Same Purpose

A practice or practices that are partially or completely different from the normal prescription and may produce a different outcome, but fit the purpose of the resource protection prescribed as stated or implied in rule or statute. An example is using a log "bumper" next to the stream during cable yarding rather than fully suspending the yarded logs because of insufficient deflection. (OAR 629-630-0700(1)).

Results in the Same Effect

A practice or practices that may be partially or completely different from the normal rule prescription, but provide the desired resource protection effect. An example is the use of a ford as a stream crossing instead of constructing a temporary crossing structure

Not Equal or Better

Some alternate practices are allowed in the rules and statutes to modify or waive protection requirements. In these rules and statutes, approval of the alternate practice may not be based on providing "equal or better" results. For example, modifications of the protection standards are allowed under OAR 629-605-0500 for forest health and public safety. The operator may wish to remove a hazard tree in an RMA which would otherwise be required to be retained. Because of the public safety hazard that leaving this tree poses, the rules allow for this modification even though the result is not "equal or better."

RELATED RULES AND STATUTES:

- OAR 629-605-0100(2)(b) Waive or modify a specific practice that results in less environmental damage than if the practice is applied
- OAR 629-605-0100(2)(c) Waive or modify FPA rules after consultation with coordinating agency
- OAR 629-605-0100(4) Waive or modify FPA rules for county comprehensive plan
- OAR 629-605-0170 Written plans
- OAR 629-605-0173 Plans for an Alternate Practice
- OAR 629-605-0175(2) Type 3 harvest exceeding 120 ac
- OAR 629-605-0175(7) Type 3 harvest exceeding 120 ac for conversions or disasters
- OAR 629-605-0500 FPA modification for forest health and public safety
- OAR 629-610-0020(3) Modification for timber stand improvement project
- OAR 629-610-0020(10) Modification of reforestation stocking levels for research project
- OAR 629-610-0030(3) Natural Reforestation
- OAR 629-610-0050(2) Use of >20% hardwood component in reforestation stocking
- OAR 629-610-0060(1) Use of Non-native tree species in reforestation
- OAR 629-610-0070(1) Suspension of reforestation rules for a FIP
- OAR 629-610-0090(1) Reforestation exemption for LUC
- OAR 629-615-0300(5) Modification when benefits of burning outweighs protecting RMA
- OAR 629-620-0400(7)(d) Modification for aerial applications of fungicides
- OAR 629-625-0320(3) Exception to OAR 629-625-0320(2)(a) where road crosses a wide flood plain
- OAR 629-640-0200(14) To remove trees on upland side of road in Type D or N RMA
- OAR 629-640-0400(1) Implement site specific plans for streams, lakes or RMAs
- OAR 629-650-0040(3) Modify retention requirements for lakes for forest health reasons
- OAR 629-665-0110(3) Structural replacement for Osprey Resource Sites
- OAR 629-665-0110(4) Temporal exception for Osprey Resource Sites
- OAR 629-665-0120(3) Structural exception for Great Blue Heron Resource Sites
- OAR 629-665-0120(5) Temporal exception for Great Blue Heron Resource Sites
- OAR 629-610-0020(3) Reforestation stocking standards
- OAR 629-635-0100(6) Water protection rules; purpose and goals

- OAR 629-640-0400 Site specific vegetation retention prescriptions for streams and riparian management areas
- OAR 629-645-0020 Site specific vegetation retention prescriptions for significant wetlands
- OAR 629-670-0100 Inspections, compliance determination
- ORS 527.676(3) and (6) Leaving snags and down logs in harvest type 2 or type 3 units; green trees to be left near certain streams
- ORS 527.740(4) and (5) Harvest Type 3 limitations; exceptions
- ORS 527.750 Exceeding harvest type 3 size limitations; conditions
- ORS 527.755(3) and (4)(c) Scenic highways; visually sensitive corridors; operations restricted
- ORS 527.760 Reforestation exemptions for land use changes

REFERENCES:

- Forest Practices Notes No. 9, *Written Plans Guidance*, Oregon Department of Forestry, 1994

COMPLIANCE**629-605-0100**

- (2) *The State Forester may approve a plan for an alternate practice 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; or*
 - (d) *The State Forester determines that the alternate practice is necessary to provide for public safety or to accomplish a land use change.*

APPLICATION:

This section is not used for enforcement.

ADMINISTRATION:

The SF may approve a plan for an alternate practice that results in the same effect or purpose even though it may not produce “equal or better” results. This rule identifies four circumstances where the standard of protection is not necessarily required as in OAR 629-605-0100(1).

Research Projects

When a federal or state agency, college or university, or private landowner submits an application for a research project under subsection (2)(a), the SF shall consult with the Monitoring Manager before approving such a plan. The Monitoring Manager will help evaluate whether (1) the research is appropriate, (2) the proposed methods are well thought out, and (3) the site is suitable and appropriate. Appropriate research will likely produce results that are beneficial for improving the understanding of forests or forestry. The selected methods and sites should achieve the research objectives while acceptably limiting adverse impacts to protected resources. To determine acceptable impacts, the SF should consult with ODFW and other appropriate agencies.

Less Environmental Disturbance

Subsection (b) requires the SF to determine how the modification or waiver of a specific practice will result in less environmental disturbance than if the practice was applied. For example, even though slash removal is required during an operation involving Type F streams, in some cases less environmental damage may occur by retaining large wood that inadvertently falls into the channel. For this example, the SF must approve a plan for an alternate practice.

Improve Soil, Water or Habitat

Subsection (c) allows the SF to approve a plan for an alternate practice that (1) defines management objectives, (2) describes how the management objectives are incompatible with the required practices, (3) addresses specific activities that will improve habitat, soil, or water quality, and (4) describes the need to waive or modify the rules.

Provide for Public Health or Land Use Changes

Subsection (d) allows the SF to approve a plan for practices necessary to provide for public safety or accomplish land use changes. Removal of trees required to be retained by other rules may be approved through a plan for an alternate practice when those trees pose a public safety hazard.

Nothing in the Forest Practices Act precludes a landowner from accomplishing a land use change; however other agencies' regulations may apply. An exemption from the reforestation rules may be allowed to complete a land use change not compatible with forest tree cover. Refer to the guidance for OAR 629-610-0090 Exemption from Reforestation for Land Uses Not Compatible with Forest Tree Cover.

Other Agency Consultation

The SF must consult with other state agencies that have expertise or shared management responsibility before approving the plan for an alternate practice. The decision to waive or modify a practice must be based on an agreement that the benefit to the habitat, soil, or water quality is more valuable than implementing the practice.

This may require the SF to weigh the improvement in one resource value against the impacts to other protected resources. For example, a municipal water supplier might request the removal of hardwoods from the first twenty feet of a riparian management area to reduce organic matter and leaves in its water supply. However, this practice may negatively impact a fishery. The tradeoff must be examined with ODFW or other appropriate state agencies before approving a modification or waiver of the rule.

RELATED RULES AND STATUTES:

- OAR 629-605-0170(6) and (7) Written Plan Content
- OAR 629-605-0173 Plans for an alternate practice
- ORS 527.750 Exceeding harvest type 3 size limitation; conditions

REFERENCES:

- Forest Practice Note #9, "*Written Plans Guidance*"; Oregon Department of Forestry, December, 1994
- Oregon Forest Protection Laws, an Illustrated Manual

COMPLIANCE**629-605-0100**

- (3) *When the State Forester's 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 approving the alternate practices.*

APPLICATION:

This section is not used for enforcement.

ADMINISTRATION:

The SF has final authority to approve a plan for an alternate practice.

If a representative from a consulting agency does not support approvals, waivers, or modifications allowed or required by the rules, the SF should request that they provide written recommendations and supporting reasons. When specific written recommendations from another agency are not followed in granting approval of alternate practices, the SF shall:

- a. Place the written recommendations in the operation file.
- b. Provide information about the conflict and the reasons for allowing the alternate practice to the District Forester for review. The District Forester is expected to discuss the conflict with their counterpart in the other agency.
- c. If the District Forester approves of the plan, include the reasons for the decision in the operation file.

COMPLIANCE**629-605-0100**

- (4) *The State Forester may approve a plan for an alternate practice 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.*

APPLICATION:

This section is not used for enforcement.

ADMINISTRATION:

This rule allows waiver or modification of protection rules for "resource sites" if protection of the site will prevent an allowed and approved non-forest use. Non-forest uses must be approved under the county comprehensive plan and the resource site must have been evaluated under the planning process established by the statewide land use program.

An example of the application of this rule is when a harvest operation is proposed on a county approved gravel mine that includes a heron rookery. The land use planning process requires the county to evaluate the heron rookery and gravel mine and adopt resource protection standards. If the county determines that the gravel resource is more important than rookery protection, the SF should consult with ODFW and the county planning department, then approve the plan for an alternate practice to waive or modify the rookery protection requirements.

RELATED RULES AND STATUTES:

- OAR 629-605-0100 Compliance
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-610-0090 Exemption from reforestation for land uses not compatible with forest tree cover
- 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
- OAR 629-680-0400 Biological Sites
- OAR 629-680-0100 Process for board evaluation of threatened and endangered fish and wildlife species that use resource sites on forest lands

- OAR 629-680-0200 Process for board listing and de-listing species that use sensitive bird nesting, roosting and watering sites
- OAR 629-680-0300 Significant wetlands on forest land; purpose
- OAR 629-680-0400 Significant wetlands on forest land; definition
- OAR 660-016-0005 Identify Conflicting Uses
- OAR 660-016-0010 Develop Program to Achieve the Goal
- ORS 527.730 Conversion of forestland to other uses
- ORS 527.760 Reforestation exemptions for land use changes

COMPLIANCE**629-605-0105**

Compliance of the forest practices rules does not substitute for or ensure compliance with the federal Endangered Species Act. Nothing in these rules imposes any state requirement to comply with the federal Endangered Species Act. Landowners and operators are advised that federal law prohibits a person from taking certain threatened or endangered species which are protected under the Endangered Species Act.

APPLICATION:

This section is not used for enforcement.

ADMINISTRATION:

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.

Before an operation starts near "occupied habitat" of a federally listed species that is inventoried by the department, the SF should write on an inspection report:

“For threatened or endangered species, protection standards beyond the Forest Practices Act may be required by federal authorities under the Endangered Species Act. An incidental take permit may be needed where an action could result in a taking.”

Normally, any operation that requires a written plan for resource sites used by threatened or endangered species, or that is within one-half mile of occupied habitat, should be considered "near."

Structural or temporal exceptions for the resource site are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act

RELATED RULES AND STATUTES:

- OAR 629-665-0210(5) Northern Spotted Owl Nesting Sites
- OAR 629-665-0220(3) Bald Eagle Nesting Sites
- OAR 629-665-0230(3) Bald Eagle Roosting Sites

REFERENCES:

- Forest Practice Note #8, “*Spotted Owl*”; Oregon Department of Forestry, December, 1994

ANNUAL REVIEW**629-605-0110**

The State Forester shall, at least once each year, meet with the 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.

APPLICATION:

This rule is not used for enforcement.

ADMINISTRATION:

Separate annual meetings are offered with the following agencies at the agency director's level to discuss program coordination and rule sufficiency:

1. Oregon Department of Fish and Wildlife (ODFW)
2. Department of Environmental Quality (DEQ)
3. Oregon Department of Agriculture (ODA)
4. Oregon Parks and Recreation Department (OPRD)
5. Department of Land Conservation and Development (DLCDD)
6. Department of State Lands (DSL)
7. Department of Human Services Health Division (Drinking Water Program)
8. Department of Geology and Mineral Industries (DOGAMI)
9. Columbia Gorge Commission
10. Water Resources Department (WRD)
11. Oregon Dept. of Transportation (ODOT)
12. Governor's Assistant for Natural Resources and staff

Before each annual meeting staff will inform field personnel of the planned meetings (using DF, FP, and SL distributions) and request input on interagency coordination issues. Staff will ask the agencies for their issues of interest, with the final agenda items agreed by both agencies.

A copy of the minutes of these meetings will be made available to the Board with any recommendations.

RELATED RULES AND STATUTES:

ORS 527.710 Duties and powers of board; rules to protect resources; inventories for resource protection; consultation with other agencies required.

CONSULTATION**629-605-0120**

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.

APPLICATION:

This rule is not used for enforcement.

ADMINISTRATION:

While OAR 629-605-0100(2) and other rules require consultation with other agencies, this rule establishes a Board policy for consultation with other state agencies with useful or necessary expertise. Consultation is an ongoing educational process as well as a source of information for problem solving. Agencies the department may consider for consultation and their areas of expertise include:

1. Oregon Department of Fish and Wildlife (ODFW) - fish and wildlife habitat; stream enhancement; fish passage
2. Department of Environmental Quality (DEQ) - air and water quality standard compliance; hazardous materials; surface mining; discharge permits
3. Oregon Department of Agriculture (ODA) - chemical label compliance; pesticide use
4. Oregon Parks and Recreation Department (OPRD) - State Scenic Waterways, Willamette Greenway, and archaeological and historical sites
5. Department of Land Conservation and Development (DLCD) - land use changes; local government regulation of forest practices in urban growth boundaries
6. Department of State Lands (DSL) - fill and removal in streams, wetlands
7. Department of Human Services Health Division (Drinking Water Program)
8. Department of Geology and Mineral Industries (DOGAMI) - surface mining
9. Columbia Gorge Commission - Columbia Gorge National Scenic Area
10. Water Resources Department (WRD) - water rights; dam safety; forest operation water use, such as heli-ponds
11. Department of Revenue - forest and timber taxation
12. Oregon Dept. of Transportation (ODOT) - scenic highways
13. Oregon Occupational Safety and Health Division (OR-OSHA) - logging worker safety and hazard trees

Required Consultation

Some situations require consultation, including: (1) joint enforcement responsibility such as enforcement of DEQ requirements in ORS 527.724 and OAR 629-605-0130; (2) scenic highways under ORS 527.755; (3) waiving or modifying practices to improve soil, water quality, or fish and wildlife habitat under OAR 629-605-0100; (4) rules for sensitive resource sites under OAR 629-665-0000; (5) water classification and fish presence under OAR 629-635-0200(6); site-specific plans under OAR 629-640-0400; and (7) stream improvement projects under OAR 629-640-0110.

Optional Consultation

In some cases consultation is desirable when the other agency has useful expertise for problem solving, or when the operator may benefit from the other agency contact. **The SF should secure the landowner's permission for entry of the whole group when inviting other agencies to enter the property.**

Other Agency Authority on Forest Lands

The FPA establishes the department as the lead agency for regulating forest management activities on non-federal forestland. When consulting with other agencies, the State Forester and the Board retain exclusive authority to interpret, apply, and enforce the FPA. While it may be necessary and appropriate for the department to consult with experts from other agencies, the department should not relinquish its decision authority related to the FPA.

In some cases other agencies share regulatory authority. These agencies may take the regulatory lead on particular situations. For example, the DEQ normally takes enforcement for chemical spills on forestlands and ODA takes the lead on chemical label violations. When violations occur in these areas of joint responsibility, the SF must consult with the other agency staff to determine which agency takes the regulatory lead.

RELATED RULES AND STATUTES:

- OAR 629-605-0100 Compliance
- OAR 629-605-0130 Compliance with the rules and regulations of the Department of Environmental Quality
- OAR 629-635-0200 Water classification
- OAR 629-640-0110 Live tree retention credit for improvement of Type F streams
- OAR 629-640-0400 Site specific vegetation retention prescriptions for streams and riparian management areas
- OAR 629-665-0600 Specified resource sites on forestlands; purpose
- ORS 527.710 Duties and powers of board; rules to protect resources; inventories for resource protection; consultation with other agencies required
- ORS 527.724 Forest operations to comply with air and water pollution rules and standards; effect of violation
- ORS 527.755 Scenic highways; visually sensitive corridors; operations restricted
- ORS 527.765 Best management practices to maintain water quality
- Memorandum of Agreement Between the Oregon Department of Agriculture and the Oregon Department of Forestry, July 6, 1995, regulating the use of pesticides on forestlands.

COMPLIANCE WITH THE RULES AND REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

629-605-0130

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.

APPLICATION:

This rule is not used for enforcement. Enforcement related to the DEQ regulations is done by the DEQ through its applicable protection rules.

ADMINISTRATION:

This rule requires all forest operations to be conducted in compliance with the DEQ regulations, but it does not require or authorize the State Forester to directly administer any DEQ regulations.

The DEQ has authority to pursue enforcement through its regulations in addition to, or in conjunction with, any enforcement taken by the State Forester. In most situations when an operator violates both the FPA and the DEQ's rules, the DEQ relies on the enforcement under the FPA. However, the DEQ is the state's lead agency for environmental protection and it reserves the right to enforce its rules when FPA enforcement is unable to adequately address a problem.

Water Quality Protection

The relationship of the FPA to DEQ regulations is clear regarding water quality protection. ORS 527.770 was modified in 1991 stating that "A forest operator conducting, or in good faith proposing to conduct, operations in accordance with best management practices currently in effect shall not be considered in violation of any water quality standards." If there is no FPA violation, there is no operator liability through the DEQ rules. There is one exception: operators may be required to obtain water discharge permits from certain rockpits (see OAR 629-625-0500).

Temporarily Exceeding Water Quality Standards

Operators may propose a plan for an alternate practice that has the potential to temporarily exceed a water quality standard. For example, an operator may want to remove a beaver dam with a backhoe, resulting in a short term rise in stream turbidity. The SF should contact the local DEQ office, if needed, for clarification of acceptable levels of temporary disturbance. The operator may need to obtain a 401 certification for the project. It is important that the SF understands the water quality standards. The SF should not approve a plan for an alternate practice that violates a water quality standard. Pre-operation coordination with DEQ will serve as a guard against interagency conflict.

Federal Clean Water Act-Section 401 Certification

Section 401 of the federal Clean Water Act provides that an applicant for a federal permit to conduct an activity that may result in a discharge to waters of the State must provide the permitting agency with a water quality certification issued by the State from which the discharge originates. A water quality certification is the mechanism by which the State evaluates whether an activity may proceed and meet water quality standards. Certifications may be denied if there is no configuration by which the activity can proceed and meet standards. It may be approved if the activity may be conducted as proposed and meet standards, or it may be approved with conditions, which if met, will ensure that water quality standards are met.

This section of the Clean Water Act is a direct delegation from Congress to the States to ensure that federally approved activities will meet water quality standards established by the State under the Clean Water Act. In the State of Oregon, DEQ is the designated agency for issuing certifications.

Other Environmental Concerns

Where water quality is not the issue, DEQ has direct authority to administer their regulations on forest operations. However, in practice the department is the lead agency, involving DEQ and other agencies in advisory roles or as problems arise.

Enforcement Coordination

This rule allows joint enforcement of FPA violations that also violate DEQ rules or standards. When regulations of both agencies are violated, the proper enforcement should be carefully considered and consultation among district staff, PF staff, and DEQ staff is necessary. One agency may take the lead and take sole enforcement, or joint action may be appropriate. Criteria to determine enforcement strategy include expertise resident in each agency, applicability of regulations, and the possibility of greater penalties with joint enforcement.

When an operator violates DEQ regulations, but has not violated the FPA, the department will not take enforcement. Department personnel should notify DEQ of potential violations. For example, a SF observes a burning pile of tires outside the fire protection district. The SF should notify the DEQ, but not apply enforcement.

RELATED RULES AND STATUTES:

- OAR 629-625-0500 Surface mining practices
- ORS 527.620(12) Definitions for ORS 527.610 to 527.770
- ORS 527.770 Good faith compliance with best management practices not violation of water quality standards, subsequent enforcement of standards

NOTIFICATION TO THE STATE FORESTER - TYPES OF OPERATIONS**629-605-0140**

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, including reconstruction or replacement of crossing structures on any streams.*
- (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.*

APPLICATION:

The specific requirements in this rule are used for enforcement, but enforcement action is taken under ORS 527.670(6).

COMPLIANCE:

Operators comply with this rule and ORS 527.670(6) when a notification of operations is filed as specified under OAR 629-605-0150 before any of the listed activities are started.

Unsatisfactory Condition: There is an unsatisfactory condition when an operator fails to obtain a notification of operation before starting an activity listed in the rule.

Damage: Resource damage is not a prerequisite for enforcement. The operator, by not submitting a notification, denies the SF the opportunity to review and comment on the operation in order to prevent potential damage.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125, a written statement of unsatisfactory condition may be issued instead of a citation for certain procedural violations such as failure to notify.

Citation: A citation for failure to notify should be issued as a violation of the statute ORS 527.670(6) because it is the highest level of authority requiring notification.

15 Day Waiting Period Violation: Take enforcement under OAR 629-605-0150(1) when operators correctly file notifications, but violate the 15 day waiting period requirement.

ADMINISTRATION:**Subsection (1)(b)**

Notification is required for reconstruction or replacement of crossing structures on any streams. This requirement was added in 2002.

Subsection (1)(c)

Site preparation for reforestation or afforestation that applies either chemical treatment or scarification with heavy equipment requires notification as an operation, a “commercial activity relating to the establishment or forest tree species” (OAR 629-600-0100 (46)).

Subsection (1)(e)

Notification is required for clearing forestland for conversion to other uses. This applies only to clearing operations that involve the commercial harvest of forest products. See the guidance on the definitions of “commercial” and “operation” in OAR 629-600-0100 and the guidance on land use conversions under OAR 629-610-0090.

Special situation

A utility wants to file one notification for removal of merchantable danger trees from a long stretch of right-of-way. The operator has arranged to cut individual and clumps of hazard trees from multiple landowners’ properties adjacent to the right-of-way.

Question 1: Is this an operation under the jurisdiction of the FPA?

Answer: Yes, to the extent that some forestland outside the edges of the right-of-way is included in the operating area. The right-of-way became non-forest land once it was initially cleared of merchantable trees (that was an operation). Keeping the right-of-way itself clear of trees is not a forest operation, although sale of the trees requires notification for Revenue purposes.

Question 2: Can the utility be considered one landowner filing one notification, even if the operator has arranged to cut hazard trees from multiple landowners’ adjacent properties?

Answer: Yes, since the utility is the easement holder, we can consider them the same as a landowner for such an operation. Taking single hazard trees from across the line, off the right-of-way, will not jeopardize the purpose of the notification process. The Department of Revenue will be notified since the operator is also the timber owner. The SF will have a contact person to deal with site specific resource protection issues. No reforestation obligation will result from the operation because the right-of-way was converted to a non-forest use.

Question 3: How should RMAs for streams in the right-of-way be treated? What about basal area leave tree requirements if all the trees within the RMA will be cut for the width of the right-of-way?

Answer: For the initial clearing of a right-of-way, a plan for an alternate practice (combined with a statutory written plan if near a Type F or D stream) must be used, listing each stream and how trees in the RMAs will be managed when the forest practice rules are modified. The utility must obtain for the SF, written approval from DEQ (perhaps in consultation with ODFW). In this case hazard trees are cut for safety related to a land use conversion. The trees felled in the RMA may be removed or retained as downed wood under a utility company's agreement with ODFW and DEQ. The department will not approve the plan until these agreements are documented.

Subsection (1)(i)

Surface mining activities located on forestland that produce rock for surfacing forest access roads, or for other supporting forest management activities such as culvert bedding, require notification. See also the guidance under OAR 629-625-0500 "Rock Pits and Quarries". Operators who file notifications for surface mining operations that are not solely for forest operations, or that will excavate more than 5,000 cubic yards, should be informed of their responsibility to comply with Department of Geology and Mineral Industries (DOGAMI) and county permitting requirements.

SFs should be aware of the subtle differences between the requirements for notification under the FPA (ORS 527.670), the permit to operate power driven machinery (ORS 477.625) and the notification required under ORS 321.550, administered by the Oregon Department of Revenue. Enforcement actions for each are separate, but often occur simultaneously.

RELATED RULES AND STATUTES:

- OAR 629-605-0150 (1),(5), & (6) Notification to the State Forester - when, where and how
- OAR 629-625-0500 Rock pits and quarries
- OAR 629-670-0125 Using the Written Statement of Unsatisfactory Condition for Certain Procedural Violations
- OAR 629-610-0090 Exemption from Reforestation for Land Uses Not Compatible with Forest Tree Cover
- ORS 321.550 Notice of intent to harvest; rules; effect of failure to file notice
- ORS 477.625 Permit to use fire or power-driven machinery; exception; conditions
- ORS 527.670(6) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan

NOTIFICATION TO THE STATE FORESTER - TYPES OF OPERATIONS**629-605-0140**

- (2) *Notification to the State Forester shall not be required for the following types of activities, which may or may not be operations:*
- (a) *The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.*
 - (b) *Routine road maintenance, such as grading, ditch cleaning, culvert cleaning, cross drain installation that is not in a stream, or 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 after starting an emergency road reconstruction operation, the operator shall contact the State Forester and report the operation. When asked by the State Forester, the operator shall be able to demonstrate that an emergency actually existed.*
 - (g) *The establishment, management, or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:*
 - (A) *Grown on land that has been prepared by intensive cultivation methods and that 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 that is 12 or fewer years after planting; and*
 - (D) *Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.*
 - (h) *The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.*
 - (i) *The establishment, management or harvest of ornamental, street, or park trees within an urbanized area, as that term is defined in ORS 221.010.*
 - (j) *The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.*
 - (k) *The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.*
 - (l) *The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.*
- (3) *Exemption from notification of certain types of operations does not relieve the operator's responsibility for complying with the applicable forest practice rules.*

APPLICATION:

Sections (2) and (3) of OAR 629-605-0140 are not used for enforcement. Section (2) lists activities that do not require notification. Section (3) requires compliance with relevant forest practices rules on operations for which notifications are not required.

ADMINISTRATION:

Even though the listed activities do not require notification, the operator must still comply with applicable forest practice rules when these activities are 'operations'. This guidance may assist the SF in determining whether an activity is an 'operation' or not. The guidance for the definition of an "operation", OAR 629-600-0100(46) provides additional detail.

Subsection (2)(a)

Under ORS 571.505(2), Christmas tree means "...a cut evergreen tree: (a) Of a marketable species; (b) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service of the United States Department of Agriculture; and (c) Evidencing periodic maintenance practices of shearing or culturing, or both, for all Christmas tree species; weed and bush control and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation and irrigation."

When Christmas trees are grown on land used solely for that purpose a notification is not required. When the land supports a mixture of trees to be used for Christmas trees and other forest tree species in a "natural timber stand" to be used for other forest products, such as posts, poles, and lumber, then activities should be considered "operations" that require notification. ORS 571.505(6) defines "natural timber stand" to mean any site where Christmas trees are growing with a spacing greater than 9.5 feet by 9 feet (~500 trees per acre).

Subsection (2)(b)

Routine road maintenance activities do not require a notification, but these activities are regulated by the rules. Because the rule reads "such as", activities other than those listed can be considered routine road maintenance. Mechanical roadside brushing is an example.

SFs may find operators uncertain about the difference between road maintenance and road reconstruction. Discerning the difference between road reconstruction and routine road maintenance can be a matter of judgment. When raveling cut slopes and slumps require ditch cleaning, that is routine road maintenance. When clearing large slumps from roads involves relocating the road prism or rebuilding it, that is road reconstruction requiring a notification. Road reconstruction includes stream crossing replacement, sidecast pullback, road relocation, reconstruction or realignment of bridges, and removal of trees growing in a road surface. These are not routine activities and require notification.

Subsection (2)(c)

Tree planting and seed applications are "operations" even though notification is not required. On-site use of pesticides in the process will require notification, while pre-treating seedlings does not.

Subsection (2)(d)

Firewood cutting for personal use does not require a notification. Since the activity is not "commercial" as that term is defined in OAR 629-600-0100, there is no operation and no other FPA rules apply. However, trees and logs that are retained as part of a previous commercial operation, for example RMA trees or wildlife trees, cannot be cut for personal use firewood or lumber. See also the guidance for ORS 527.620 or OAR 629-600-0100(46), where the term "operation" is defined.

Subsection (2)(e)

In addition to the minor forest products listed, others include pruned limbs, cascara bark, yew bark, mushrooms, ferns, and moss. Activities associated with the harvest of minor forest products do not require a notification but still are operations and must comply with the rules. Cedar salvage and small diameter alder cut for "pot poles" for the aluminum manufacturing process are also activities that require notification.

Subsection (2)(f)

Emergency road reconstruction is needed when a road cut or fill slope fails, or a culvert is likely to fail or has failed, creating an immediate risk to users of the road or to downstream or downslope improvements. It is not an emergency if only road access is blocked and there is no risk to life or property.

Subsection (2)(g)

Activities related to managing hardwood fiber plantations, because of the intensive agricultural practices used, are not operations. No notification is required and no other forest practice rules apply. However, if such hardwood plantations on agricultural lands are abandoned or otherwise allowed to grow past the 12 year fiber rotation age to a timber rotation age, any subsequent harvest would be considered a forest operation requiring notification for Department of Revenue for tax collection purposes. Unless it is reforested with the intent to produce different forest products, without intensive agricultural practices, the land will continue to be considered agriculture land and not forestland. Consequently, forest practices regulations will not be applied to such lands.

Subsection (2)(i)

An urbanized area means territory within three miles of a city. See also the guidance for ORS 527.620 or OAR 629-600-0100(46), where the term "operation" is defined.

Subsection (2)(k)

Establishment and management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources is not an operation and is excluded from notification. However, harvest of such trees is subject to notification and rule requirements.

Subsection (2)(1)

Timber harvesting in preparation for land use conversion is generally considered to end when yarding is complete. Work directly on the nonforest use is not subject to forest practices regulations.

SFs should be aware of the subtle differences between the requirements for notification under the FPA (ORS 527.670), the permit to operate power driven machinery (ORS 477.625), and the notification required by the Department of Revenue (ORS 321.550). Enforcement actions for each are separate, but often occur simultaneously.

RELATED STATUTES:

- ORS 321.550 Notice of intent to harvest; rules; effect of failure to file notice
- ORS 477.625 Permit to use fire or power-driven machinery; exception; conditions
- ORS 527.620 Definitions for ORS 527.610 to 527.770
- ORS 527.670(6) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan
- ORS 571.505 Christmas Tree Growers; Definitions
- ORS 221.010 Urban Area

REFERENCE:

- Interagency Memorandum of Agreement regarding forestland use conversions

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW**629-605-0150**

(1) The operator, landowner or timber owner shall notify the State Forester as required by ORS 527.670(6), at least 15 days before starting an operation.

APPLICATION:

This section is used for enforcement. Section (1) is violated when an operation is started on or before the 15th calendar day following submission of a properly completed notification, unless the 15 day waiting period has been waived by the SF.

COMPLIANCE:

An operator is in compliance with this rule when operations begin after the 15th calendar day following notification or after the requirement has been waived. Except when pre-empted by statute, SFs may waive the remainder of the 15 days at any time during that period.

Unsatisfactory Condition: There is an unsatisfactory condition when the operator fails to wait 15 days following proper notification and begins operating without a waiver of the remaining waiting period.

Damage: Resource damage is not a prerequisite for taking enforcement action. The operator, by failing to wait the 15 days, denies the SF the opportunity to review and make damage prevention comments or recommendations on the operation.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation.

When an operator fails to complete the 15-day waiting period, take enforcement action under OAR 629-605-0150(1). When an operator fails to notify the State Forester before starting an operation, take enforcement action under ORS 527.670(6).

ADMINISTRATION:

The Board of Forestry adopted the 15-day waiting period to provide the SF time to evaluate resources that may be impacted by the operation, determine if written plans are required, conduct pre-operation inspections, and make recommendations. The waiting period also allows other agencies with programs regulating forest operations to have opportunity to communicate with the operator before the operation starts. Agencies may include the Oregon Parks and Recreation Department (Scenic Rivers and Willamette Greenway Programs), the Columbia Gorge Commission and Forest Service (Columbia Gorge National Scenic Area Program), the Department of Fish and Wildlife, the Department of Environmental Quality, and for land use changes the county planning department.

When the operator fails to wait 15 days, the SF is denied the chance to conduct a pre-operation evaluation. The 15 calendar days are measured from the date a properly completed notification application is received at the district or unit office responsible for the geographic area in which the operation will take place. To determine the date operations may begin, barring a waiver, add 15 days to the date of the notification's receipt, and the operator may begin the day after that. For example, if the properly completed notification is received on May 1, the operator may start the operation on May 17, the day after 15 days have passed. This calculation is consistent with the waiting periods required for non-statutory written plans in OAR 629-605-0170(5)(b), and for statutory written plans in ORS 527.670(10)(c). Both of these allow operations to begin any time after the specified number of days following the date the written plan was received.

Section (6) of this rule defines when a properly completed notification is considered "received".

RELATED RULES AND STATUTES:

- OAR 629-605-0140 Notification to the State Forester - types of operations
- OAR 629-605-0170(5)(b) Non-Statutory Written Plans
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-670-0125 Using the Written Statement of Unsatisfactory Condition
- ORS 527.620(12) Definition of "Operation"
- ORS 527.670(6) and ORS 527.670(10)(c) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan

REFERENCES:

- FACTS Manual, Chapter 3-3 Multiple Landowner Notifications

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW
629-605-0150

(2) The State Forester may waive the 15 day waiting period required in section (1) of this rule, except as prohibited in ORS 527.670 (9) for aerial applications of chemicals and ORS 527.670 (10) for operations requiring a written plan under ORS 527.670 (3)(a) and (b). 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. Waivers shall be made in writing, and on an individual notification basis.

APPLICATION:

Section (2) is not used for enforcement. Take enforcement under section (1) of this rule if operators violate the 15-day waiting period.

ADMINISTRATION:

Administrative Rule Limits on Granting Waivers

The department is not obligated to waive the 15-day waiting period when a request is submitted. SFs should apply the waiver authorization in the context of local conditions and workloads to efficiently apply the FPA. Section (2) authorizes the State Forester to waive the 15-day waiting period for operations under certain conditions. Before a waiver is granted one of the following conditions must exist:

1. The site has been inspected by the SF; or
2. The SF has determined there is low potential for resource damage on the operation site. To determine the potential for resource damage, the SF should consider type, size, and location of the operation; the proximity of protected resources; and the past performance of the operator.

Waiver of all or part of the 15-day waiting period need not be delayed by the requirement in ORS 527.722(6) to supply local governments with copies of notifications.

This section also describes the statutory limits placed on granting waivers. Department policy further limits granting waivers.

Statutory Limits on Granting Waivers

Waivers of the 15 day waiting period **cannot** be granted if an operation:

1. Involves the aerial application of chemicals under ORS 527.670(9) ; or
2. Requires a written plan under ORS 527.670(3)(a) or (b) (and the plan has not already been submitted and satisfied the required 14-day review period) for:
 - a. Operations within 100 feet of Type F or D streams; or
 - b. Operations within 300 feet of sensitive resource sites under ORS 527.710 (Resource sites used by threatened or endangered species; sensitive bird nesting, roosting and watering sites; biological sites; and significant wetlands).

In cases where a statutorily required written plan is received prior to the notification, the written plan must be sent to any subscribers within three days (ORS 527.670(8)). This starts the comment period required by ORS 527.670(10). The 15 day waiting period may be waived when the applicable 14-day review period is already completed. When a written plan is submitted prior to a notification being submitted, additional information (landowner information, legal description, etc.) may be required on the written plan to allow the State Forester and interested parties to evaluate and comment on the operation.

Department Policy Further Limits Granting Waivers

Department policy limits granting waiting period waivers in these situations:

1. Waivers shall not be granted if the operation is within the Willamette Greenway, within 1/4 mile of State Scenic Waterways (SW), or Within the Special Management Area (SMA) of the Columbia Gorge National Scenic Area. The only exception is if the operator has already consulted with, and obtained required permits from, agencies responsible for these programs. See the guidance for "Other Agency Programs".
2. Waivers shall not be granted if the operation involves harvesting or road building on or near high landslide hazard locations above public roads or inhabited dwellings unless it has been determined by SF that there is no likely public safety issues.
3. Waivers shall not be granted when a subscriber has requested copies of notifications and written plans under ORS 527.670(6) (water users downstream from chemical applications) or ORS 527.670(8) and OAR 629-674-0100 (Access to Notifications and Written Plans), unless:
 - (a) The SF confirms that subscriber(s) have had copies of the notification and any required written plans for at least 24 hours; or
 - (b) The notification and written plans have been sent by 1st class mail and four working days have passed (this allows for adequate mail delivery and review by the applicant); or
 - (c) The water user or subscriber states on their subscription application that they do not need to be informed before operations begin.

Diskette Services

Limitations on granting waivers of the 15 day waiting period do not apply to persons who receive only diskette services. The diskette service does not provide copies of notifications or written plans.

Notice of Waiver on Notification

The FACTS User Manual in section 3.8 describes the process of how subscribers and operators are notified of the status of a requested waiver. If a waiver is requested for an operation and there are subscribers or water users, the SF or office staff should write "Subscriber-No Waiver" in the waiver approval box on the original notification form. The copy of the notification sent to the subscriber or water user will say "15 Day Waiting Period Required; Waiver Requested".

Partial Waivers

The SF may waive the 15 day waiting period on portions of the area in an operation. For example, the SF may grant a waiver on the upland part of a harvest unit, but maintain the review period for the area within 300 feet of a significant wetland. This allows for a pre-operation inspection, time for the operator to submit a written plan, and time to provide the plan to the subscriber. When waivers are granted for portions of an operation area, the conditions of the

waiver, including a clear description of where the waiver applies, must be documented in an inspection report.

RELATED RULES AND STATUTES:

- OAR 629-605-0170(1) Written plans
- OAR 629-674-0100 Procedures for requesting copies of notifications and written plans; fees
- ORS 527.670(6), (8) and (10) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan
- ORS 527.710 Rules to protect resources

REFERENCES:

- FACTS USER MANUAL section 3.8

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW**629-605-0150**

- (3) *Once an operation is actually started following proper notification of the State Forester, the operation may continue into the following calendar year without further notification under ORS 527.670(6), provided:*
- (a) *There are no changes to the information required on the notification;*
 - (b) *The operator gives written notice to the State Forester of their intent to continue the operation within the first two months of the following calendar year; and*
 - (c) *The operation actively continues within the first six months of the following calendar year.*
- (4) *No notification is valid after the second calendar year, unless:*
- (a) *The landowner or operator submits a written request to extend the notification before the end of the second calendar year;*
 - (b) *There are no changes to the information submitted on the original notification; and*
 - (c) *The State Forester approves the request.*

APPLICATION:

Sections (3) and (4) are not used for enforcement. If operators continue operations past the end of the calendar year and do not meet the conditions of section (3), they have failed to notify. The SF should base enforcement on ORS 527.670(6). Enforcement of that statute is discussed in the guidance under OAR 629-605-0140.

Note: If the operation is located within the boundaries of a fire protection district, the operator may have also violated ORS 477.625, which requires a permit to use fire or power-driven machinery (see OAR 629-605-0150(5)).

ADMINISTRATION:

When is an Operation “Started”?

Operations may be continued if they have “started” in some logical sense that need not be limited to the physical presence of equipment. We are really checking whether the operator and the SF know where the operation boundaries are and what sensitive resources are of concern and must be protected. For example, we would consider an operation started if the landowner has signed a contract, even though the operator has not moved in. If the unit boundaries have been marked, the RMAs flagged, inventoried sites mapped, or the roads staked, the operation has “started”. In contrast we might choose to require re-notification if the landowner hasn’t done any needed planning, protected resource mapping or marking, or arranging for the operation since notifying.

The decision whether to allow an operation to continue should not be based solely on whether the operator is an industrial landowner or a small non-industrial landowner, although that may be a consideration in evaluating the criteria in the rule. The flexibility we have to allow continuation or require re-notification should be applied fairly and consistently.

Why the Change to the Criteria for Continuations?

This rule was amended in 2002 to reduce the number of notifications that continue into following years without updating the SF on the location of activity within the operating area and proximity to sensitive resources. It was also edited because of the changes to the Permit to Use Fire or Power-Driven Machinery, ending their annual renewal.

Historically, about 25% of the operations continue into a new year. Although this makes sense from an operational standpoint, several problems arise when operations span more than two years. Problems include addressing resources or protection standards that may change and the lost opportunity for the landowner to be notified; tracking old notification numbers and creating accomplishment reports becomes difficult; the completion of harvest date that triggers the reforestation clock may be delayed; or Department of Revenue harvest tax issues are compounded with old notification numbers.

Section (3): One-Year Extensions

Section (3) of this rule clarifies the notification requirements of ORS 527.670 and allows for one-year extensions. For operations that meet all the conditions described in subsections (a)-(c), operators may continue operations into the second year without filing a new notification under ORS 527.670(6). An operation may continue into the second year when:

- (a) There are no changes on the original notification. Conditions include:
 - 1. Proper notification was originally made under ORS 527.670 the first year of the operation, and operation activities were conducted that year; and
 - 2. No additions were made to the geographic location, either by legal description or addition to the map location; and
 - 3. No additions or changes were made to the type of operation, such as timber falling, harvesting, chemical application, or road construction; and
 - 4. No changes were made to the timber owner once logs have been delivered to a mill; and
- (b) The operator notifies the SF in writing by the end of February of their intent to continue the operation; and
- (c) Operations are conducted in the first six months of the next year. Interruptions in the operation do not matter as long as the operator continues the operation before June 30.

Permit to Use Power-Driven Machinery (PDM)

Administrative rules related to these permits were changed in 1998. PDMs are no longer renewed annually. As long as an operator properly notifies the State Forester of an operation, the Notification of Operation and the Permit to Operate Power-Driven Machinery are valid. When an operator notifies the State Forester that an operation will continue under the conditions in section (3), the PDM is also valid, unless the estimated operation completion date has passed. This latter situation requires completion of a new PDM. (Note: The burning permit is a separate permit and is not issued simultaneously with acceptance of the Notification of Operation.)

Written Notice Under Section 3(b)

The operator may submit, before the end of February, a letter, email or fax to the State Forester to document their intent to continue an operation. An original signature is not necessary.

Section (4): Two-Year Extensions

Operations that continue past the second calendar year should be rare. There are cases where operators start late in the first year and, due to weather or operational issues, are not able to complete the operation during the second year. The SF may grant an extension as long as there are no changes to the original notification information.

RELATED RULES AND STATUTES:

- OAR 629-605-0140 Notification to the State Forester - types of operations
- OAR 629-043-0076 Permits to Use Fire or Power-Driven Machinery
- ORS 477.625 Permit to use fire or power-driven machinery; exception; conditions
- ORS 477.630 Information in permit
- ORS 527.670(6) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan

REFERENCES:

- FACTS User Manual 3.12, Renewal of Permit to Operate Power-Driven Machinery
- FACTS User Manual 5.1.3, Renewals

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW
629-605-0150

(5) Notwithstanding sections (3) and (4) 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 use fire or power-driven machinery; or ORS 321.550 requiring notification of intent to harvest provided to the Department of Revenue through the department for tax collection purposes.

APPLICATION:

This section is not used for enforcement. SFs or other designated department personnel should take enforcement action under the appropriate ORS Chapter 477 statute if operators fail to obtain the proper permit. Oregon Department of Revenue will take enforcement action, as appropriate, under ORS 321.550 for failure to notify of the intent to harvest timber. Revenue can do this in addition to enforcement by ODF.

ADMINISTRATION:

This section informs operators that even if they meet the criteria in section (3) of this rule, they must still comply with other referenced applicable permit or notification requirements. Each of these requirements is discussed in the guidance under section (7) of this rule.

RELATED RULES AND STATUTES:

- ORS 321.550 Notice of intent to harvest; rules; effect of failure to file notice
- ORS 477.625 Permit to use fire or power-driven machinery; exception; conditions

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW**629-605-0150**

- (6) *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.*

APPLICATION:

Section (6) is not used for enforcement. Pursue enforcement under ORS 527.670(6) for failure to notify (see guidance under OAR 629-605-0140), or section (1) of this rule for failure to wait 15 days before commencing an operation.

ADMINISTRATION:

Section (6) of this rule serves as clarification of ORS 527.670(6). Notifications should be examined for completeness and adequacy soon enough so that the three-day processing standard will be met. Department personnel assisting people filling out notifications in the office are encouraged to check notifications immediately upon submission to determine if there are obvious omissions. Section (7) of this rule describes what constitutes adequate detail on notifications.

All timeframes regarding sending subscribers copies of notifications, 15-day waiting periods, etc. start when the notification is "received." When notifications are examined and determined to be complete, they are considered "received" on the date they are submitted at or arrive at the department office with responsibility for the area. When department offices forward properly completed notifications to the correct department office, the notification is considered "received" only when the notification reaches the correct office. **To ensure good customer service, an office that has a notification submitted to it that is for an operation outside its administrative area should fax it to the correct office as soon as possible.**

Notifications submitted without adequate detail must be promptly returned (within three working days of the submission date) to the applicant. If the applicant is not present, the notification should be returned by mail. The applicant should be informed what additional information is necessary and told that until adequate information is provided, the Department of Forestry will not consider the notification "received."

The department **may** refuse to "receive" a notification when a landowner has requested that notifications not be issued for specific tracts owned by that landowner. This type of request may occur when a landowner is concerned that unauthorized activity may occur. These situations often involve confusing disputes. The basis for not receiving notifications in this situation is that we know the information submitted is incorrect since the landowner has told us there are no authorized operators. SFs should clearly state to all involved parties that the department's

authority to act in such cases is strictly limited to enforcement of forest practice and fire prevention statutes and rules. SFs should not get involved with issues about rights to harvest or timber trespass. These are civil matters between the landowner and whoever else is submitting a notification. Refer landowners to the county sheriff if they report an unauthorized harvest notification. Upon such reports, notification by another party will be returned to them as incomplete and “not received” or invalidated by the new information.

RELATED RULES AND STATUTES:

- OAR 629-605-0140 Notification to the State Forester - types of operations
- ORS 527.670(6) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW
629-605-0150

(7) *Notifications required by ORS 527.670(6) shall be completed in detail, on forms provided by the State Forester. The notification shall include a map to scale, or aerial photograph that is corrected for distortion, on which the boundary of the operation unit is clearly marked. When more than one type of operation activity or more than one unit is submitted on a single notification, each operation unit shall be identifiable as to the type of operation activity, by legal subdivision, and drawn on a map to scale, aerial photograph corrected for distortion, or other appropriate means. Operations involving harvesting in more than one county may not be combined on the same notification because of tax collection requirements.*

APPLICATION:

Section (7) of this rule is not used for enforcement. Incomplete notification forms will not be considered “received”, and are therefore invalid. When operators commence operations without submitting adequately completed notification forms, pursue enforcement under ORS 527.670(6) for failure to notify (see guidance under OAR 629-605-0140).

ADMINISTRATION:

Section (7) clarifies the notification requirements of ORS 527.670(6). Applicants must complete the notification application in detail; each operating unit must be described with complete detail, including legal subdivision and type of operation.

A notification should be considered complete when:

1. All appropriate sections of the notification form are completed, and
2. A map to scale or an aerial photo that is corrected for distortion is provided which shows the location of each unit in enough detail to guide the SF to the unit in the field, and to allow the SF or other personnel to determine the proximity of the planned operations to protected resources.

The person signing the notification is attesting that all of the information presented is true. It is not necessary for the SF to verify that all the information is true before considering a notification received. If false information is found on the notification, the notification will no longer be considered “received” and enforcement action may be taken for a violation of ORS 527.670(6) for failure to notify. Here are some examples encountered. Occasionally, a landowner will contact ODF reporting that the operator on the notification is not authorized to harvest on their land. In such a case, the field office should contact the operator, informing them that the notification is no longer valid because it is not complete and accurate. In another example, frequently operators or landowners will fail to indicate that they are harvesting in order to clear an area for a land use conversion to non-forest use. This often occurs due to the landowner’s inexperience with the purpose and administration of the notification process, so this omission

can usually be overlooked. However, if the omission hinders the Stewardship Forester in preventing, or leads to, substantial resource damage, the Stewardship Forester and local program supervisors should consider taking enforcement action for a violation of ORS 527.670(6) for failure to notify.

The notification form can serve to meet as many as three different notification and permit requirements relating to forest operations. Applicants check the appropriate boxes under item number 2 on the form. A brief description of each of the requirements follows:

- a. "Notice to the State Forester that Operations will be Conducted...." This refers to the Notification of Operations required under ORS 527.670(6); such notification is required so that the State Forester can track operations and determine which rules and protection requirements apply to the operation.
- b. "Application for Permit to Operate Power Driven Machinery," under ORS 477.625. This is a revocable permit with associated operator responsibilities for fire prevention and suppression. The permit also allows the State Forester to track operations and notify operators of changing fire prevention requirements. The permit is required only within ODF and forest protection associations' fire protection districts.
- c. "Notice to the State Forester and the Department of Revenue of the Intent to Harvest Timber," under ORS 321.550. The State Forester receives this notice and forwards the information to the Department of Revenue, which uses it to track timber taxes that may be due, and to notify timber owners of their obligation to pay such taxes.

OAR 629-605-0140 exempts some operations and activities from the "Notice to the State Forester that Operations will be Conducted". However this does not relieve the appropriate party from any other applicable requirements.

Notifications filed with the department are considered public records. Consistent with Directive 0-5-1-301 "Department Public Records", every person has the right to inspect notifications. Requests for copies of notifications shall be filled at the cost of the labor and materials to complete the request. Social Security and Tax Identification Numbers should be marked out on such copies.

RELATED RULES AND STATUTES:

- OAR 629-605-0140 Notification to the State Forester - types of operations
- ORS 321.550 Notice of intent to harvest; rules; effect of failure to file notice
- ORS 477.625 Permit to use fire or power-driven machinery; exception; conditions
- ORS 527.670(6) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan

REFERENCES:

- Oregon Department of Forestry Directive 0-5-1-301- "*Department Public Records*"

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW
629-605-0150

(8) *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.*

APPLICATION:

Section (8) is not used for enforcement. Notifications involving chemical applications will not be considered complete and received if the information listed in the section is not provided. If operations begin before this information is provided, pursue enforcement under ORS 527.670(6) for failure to notify.

ADMINISTRATION:

ORS 527.670(6) requires the board to specifically describe in rule the additional information that will be required on a complete notification when an operation involves the use of chemicals.

The definition of “chemicals” includes pesticides (including animal repellants) fertilizers, petroleum carriers, and additives (e.g., surfactants or defoamers). Applicants must list all materials that will be used in the application mix. The brand name for each product must be listed if it is known at the time of the notification; however, if this information is not included, but the rest of the notification is complete, the department will “receive” and process the notification. The common name of each chemical to be used must always be shown on the notification. In some instances, operators have listed all the chemicals they think they might use in a spray project. For multi-unit aerial spray projects, this can lead to a long list of chemicals. Although a more specific list would be more useful for subscribers, this “long list” practice is allowable under the forest practice rules.

In the 1996 process to adopt the current chemical rules, the Board of Forestry committed to providing subscribers or other parties making public information requests with specific information about forest chemical applications.

For this reason, specifically **when the herbicides 2,4-D or triclopyr are listed on the notification and the brand name is not included, the common name must specify whether the amine or ester formulation will be used.** Ester formulations are more toxic to fish than are the amine formulations.

In addition, the surfactant in some glyphosate formulations increases the toxicity to fish. The surfactant may be part of the herbicide formulation or a separate additive to the spray mixture.

For this reason, it is particularly important to have the operator list the brand name whenever possible if glyphosate is to be used.

The application method must specify if the application will be done aurally, from the ground using a pressurized, broadcast method, or will use another type of ground method. The record-keeping requirements of OAR 629-620-0600 vary by method.

On the notification, application rate information is required for fertilizers because fertilizer product labels do not specify allowable application rates. Application rate information is not required for pesticides because this information can be obtained from product labels. Actual application rates must be shown on the daily application records for all chemicals, as described in OAR 629-620-0600 Daily Records of Chemical Applications.

The pesticide information required to be maintained by department field offices is available at ODF's website, under Private Forests, Chemical Use. SFs may contact Private Forests program staff to ask questions about label interpretation or to make contact with the Oregon Department of Agriculture Pesticide Division. SFs may contact the Pesticides Division directly with label questions, but should coordinate with Private Forests program staff to help ensure that issues applicable on a regional or statewide scale are considered.

RELATED RULES AND STATUTES:

- OAR 629-620-0600 Daily records of chemical application
- ORS 527.670 Commencement of operations; when notice and written plan required; notice of chemical operation; appeal of plan

REFERENCES:

- Forest Practices Chemical Use (at the ODF website)

NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW
629-605-0150

- (9) *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.*

APPLICATION:

The requirements in section (9) of this rule are used to trigger enforcement, but enforcement should refer to ORS 527.670(7).

COMPLIANCE:

An operator is in compliance with this rule when the department is notified in writing of any changes to the notification information before the changes have been implemented on the ground.

Unsatisfactory Condition: An unsatisfactory condition exists when the department is not notified of changes to the notification information and those changes have been implemented on the ground.

Damage: Resource damage is not a prerequisite to enforcement. Damage occurs when the unsatisfactory condition results in:

- (1) Resource protection requirements not being met;
- (2) The intent of the subscription process not being met; or
- (3) Some other preventive or protective rule intent not being achieved.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation. The best method of achieving a behavioral change should be a consideration if the conditions qualify for a written statement as an alternative to a citation.

This section establishes that the person who originally filed the notification will be held responsible for noncompliance.

Changes to the information contained in the original notification can be made (without creating a new notification number) anytime before or during the operation except for the following three situations:

- 1. Additions to the geographic area always require a new notification and cannot be accommodated through a notice of change.**

- 2. Additions or changes to the type of operation may require a new notification.** Changes or additions to the type(s) of operations always require at least written notice to the SF. When determining if a new notification is required, an evaluation of the general operation type is necessary (such as harvesting, road construction/reconstruction or chemical application). If the addition is from one general operation type to another general operation type a new notification is required. If the addition or change is within the same general operation type a new notification is not required **except that** additions or changes between ground or aerial application of chemicals always require a new notification. A few examples which clarify this include:
- a. A change from a clear cut to a partial cut does not require a new notification.
 - b. A change from clear cut to road construction does require a new notification.
 - c. A change from aerial application of chemicals to ground application of chemicals does require a new notification.
 - d. Changes or additions to the list of chemicals to be used do not require a new notification.
 - e. Road construction cannot be added to a notification which indicates a clear cut harvest. The road construction would require a new notification.
 - f. Adding a change of land use will require a new notification or at least adding a required plan for an alternate practice to allow for modification of the reforestation requirement. The SF will need to determine if there are other agencies (parties to the Memorandum of Agreement for land use conversions) that need to be notified of a proposed land use over which they have regulatory authority.
- 3. Changes to the timber owner may not be made once the operation has started, and logs have been delivered to mills under the initial timber owner's account.** If this has occurred, a new notification number is needed to establish the second timber owner's account at the Department of Revenue. When changes are made to the timber owner after the operation has commenced and a new notification number is not assigned, it becomes unclear who is responsible for the taxes due on the timber harvest. Requiring new notifications in this situation makes it possible for the Department of Revenue to properly list the notices for which the timber owners are responsible on their tax forms and also prevents unscrupulous timber owners from using this situation to their advantage. This timber owner identification procedure is necessary to establish auditor-approved tax records at Revenue.

If the operator, landowner and/or timber owner have made changes in or additions to the geographic location of the operation or the types of activities and no new notification is filed, failure to notify has occurred. In this case, pursue enforcement under ORS 527.670(6) (see guidance under OAR 629-605-0140.)

ADMINISTRATION:

Section (9) of this rule restates 527.670(7). The statute requires the operator, timber owner or operator to notify the State Forester (at the appropriate department office) of any changes to the

information submitted on the notification. For enforcement, the statute and the rule place the responsibility on the party who filed the notification. However, compliance is achieved if the information is provided by the timber owner, landowner, operator, or their representative.

Here are some examples of situations in which this rule should be enforced.

1. Changes to the operator, timber owner or landowner information that are likely to effect resource protection. For example, the landowner has replaced the original operator with a new operator and the type of operation requires close supervision by the SF.
2. Existence of a protected resource site or change in the proximity of the planned activities to the location of waters of the state or sensitive resource sites. For example, the original notification indicated that no streams were present and the operator found a channel on subsequent inspection.
3. Change in the type of system or equipment used. For example, the original notification indicated that a cable system was going to be used and instead a ground-based system is used.
4. Evidence of slope instability is found. For example, during felling operations the operator becomes aware of evidence of old slides when no evidence was reported on the original notification.
5. Change of the activity planned to include changing land use to a non-forest use. When this occurs, the SF may need to require a plan for an alternate practice if the reforestation requirement is to be modified, and alert other agencies (parties to the Memorandum of Agreement for land use conversions) that have regulations applying to the converted land use.

Because some changes in information may be of very little consequence, SFs should use discretion in taking enforcement action. Whenever reasonable, issue a written statement that allows the notification to come back into compliance by submitting the changes in notification information. If, however, failure to update notification information results in resource protection requirements not being met, plan for alternate practice requirements not being met, the intent of the subscription process not being met, or some other rule intent not being achieved, the consequences of noncompliance cannot be avoided, and a violation of ORS 527.670(7) exists; a citation should be issued under that statute.

Notification of changes in information must be in writing. Department personnel must document the time and date of receiving the notification of change. The written notification of change should be placed in the operation file. A corrected copy of the notification should then be made and routed to the same distribution as for a new notification. **Subscribers should be included in this distribution.**

Changes to the timber owner (before the delivery of logs begins), operator, or landowner do not require a new notification, but do require a written notification of change. An operator's use of a subcontractor is not considered a change in operator (so long as the activity conducted by the subcontractor was included within the original notification). In some cases, landowners file

notifications early and contractors have not been selected. Adding the operator when they are determined is a change that may be made to an existing notification; no new notification is required.

RELATED RULES AND STATUTES:

- ORS 527.670(6) and (7) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan

FOREST PRACTICES REGIONS**629-605-0160**

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.*

APPLICATION:

This rule is not used for enforcement.

ADMINISTRATION:

Forest practice regions were developed to facilitate the development of rules that address site-specific needs unique to these regions. There is a nine-member Regional Forest Practice Committee for each Region. Committee membership is designed to provide operational and technical expertise in helping the Board and Department evaluate protection issues and develop protection methods. The Board's use of the Regional Committees in assisting with the development of rules is discretionary. Protection issues with broader scope may require the use of other advisory committees in addition to or in place of the Regional Committees.

The Regional Forest Practice Committees also provide a subcommittee to select the winners of operator recognition awards from the nominations made by Stewardship Foresters in each region.

RELATED STATUTES:

- ORS 527.640 Forest Regions
- ORS 527.650 Forest practice committees; members; qualifications; appointment; terms.
- ORS 527.660 Committees to review rules.

WRITTEN PLANS**629-605-0170*****Statutory Written Plans***

- (1) ***Operators must submit to the State Forester, a written plan as required by ORS 527.670(3) before conducting any operations requiring notification under OAR 629-605-0140, which are within:***
- (a) ***100 feet of a stream classified as Type F or Type D. Written plans for Type F and Type D streams 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 Forest Lands), OAR 629-665-0200 (Threatened and Endangered Species that use Resource Sites on Forest Lands), 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.***

APPLICATION:

This section is used for enforcement. Existence of damage is not a prerequisite for enforcement action.

COMPLIANCE:

An operator is in compliance with this rule when a written plan is submitted prior to forest operations within the distances described in this rule.

Unsatisfactory Condition: An unsatisfactory condition exists when an operator does not submit a written plan prior to operations within the distances described in this rule.

Submitting these statutory written plans is not something the SF can waive. There is no alternative in the statute.

Damage: Resource damage is not a prerequisite for taking enforcement action. An unsatisfactory condition is a violation.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation for certain administrative violations. Because the statute requires these written plans, a written statement will rarely be appropriate. One such situation is described here.

It is the State Forester's responsibility to inform the operator of the requirement to submit a written plan for the sites listed in this rule. For these sites, if the State Forester fails to inform the operator specifically that a written plan is required, the operator **cannot** be held responsible for compliance to this rule (see section (2) of this rule). However, this does not relieve the operator of the responsibility, required by OAR 629-665-0020(4), to stop operations and inform the State Forester if a site listed under subsection (1)(c) [bald eagle, spotted owl, blue heron and osprey sites] is found by the operator. There is shared responsibility between ODF and operators to recognize, identify, and plan to protect specified resource sites.

If the operator has been properly notified of the requirement for a written plan, an unsatisfactory condition may be regarded as a violation. If the operator has **not** been properly notified of the requirement for a written plan, a written statement should be given directing that the operation cease within the area to be addressed by the plan until a written plan is submitted. If the **operator's failure to complete the notification properly** prevents ODF from requesting a written plan for a protected resource affected by the operation, enforcement action may be taken under OAR 629-605-0170 (written plans) and/or under ORS 527.670(6) (failure to notify).

If the operator has failed to submit a written plan (after being informed of the requirement) and a specific forest practice is not in compliance, multiple violations exist. For example, a written plan is not submitted for activities with 100 feet of a Type F stream and an operator constructs a landing in the RMA. If construction of the landing also resulted in damage to the Type F stream because the landing was poorly drained, a violation of the rule requiring proper drainage of landings would exist, as well as a violation of the requirement to submit a written plan. Two citations should be issued.

In the previous example, if the operator was informed of the Type F stream, but had **not** been informed of the requirement for a written plan and built a landing in the RMA, they would be cited for the landing in the RMA, but not failure to submit a written plan. It is a reasonable expectation that operators who are informed of the classification of a water of the state on the notification, even if a written plan was not requested, should know to apply the required protection measures for the specified waters. In cases where an operator may not have been informed on the notification of the classification of a water, it may still be reasonable to expect the operator to apply protection measures. However, such situations should be thoroughly investigated, discussed throughout the district management hierarchy, and referred to Salem staff if necessary.

ADMINISTRATION:

Effective August 29, 2003, the passage of HB 3264 removed the authority of the State Forester to require prior approval and to approve written plans. This legislation also changed the procedures for review and comment periods on written plans. Rule revisions to implement the change brought about by this legislation became effective August 1, 2005.

Written Plans

The purpose of written plans is to encourage communication between the SF and the operator. In requiring a written plan the SF is informing the operator that a proposed practice has potential to put a resource at risk. The operator is expected to submit a plan that includes a description of protection measures implemented during and after the operation that are designed to protect the resource. The SF will review the plan and provide comments, when appropriate, regarding the

likelihood of the practice, if conducted as described in the plan, complying with the applicable FPA standards. Further discussion may take place in response to the review and comment.

Preparing Written Plans

Operators or landowners, not the SF, are responsible for preparing the plan. At the same time, it is reasonable for an operator to ask and expect the SF to respond to what specific concerns will need to be addressed in the plan. To facilitate the preparation of a written plan, the SF should provide the operator a copy of the most current guidance to operators on preparing written plans. The *Oregon Forest Protection Laws, an Illustrated Manual* is another source for information on written plans and the Forest Practices Act and rule requirements.

Written Plan Content

All written plans, regardless of whether required by statute or rule, must describe how the operation is planned to be conducted in sufficient detail to allow the State Forester to evaluate and comment on the likelihood that the operation will comply with the applicable standards in the Forest Practices Act or administrative rules. Only documents that contain the information listed in OAR 629-605-0170(7) will be considered written plans. Written plans must contain:

- (1) A map showing protected resource(s) and the harvest area;
- (2) The specific resource(s) that require protection;
- (3) The practices that may affect the protected resource(s);
- (4) The specific techniques and methods employed for resource protection;
- (5) Additional written plan content required in individual rules.

Refer to the guidance under OAR 629-605-0170(7) for more information on written plan content.

Submitting Written Plans

Once a document is submitted and received by the department, the applicable comment period starts. Only written plans that contain the information listed in OAR 629-605-0170(7) will be considered complete written plans. If a plan is submitted and does not contain the required information, it will be returned to the person who submitted the plan and it will not be considered “received.” When written plans are submitted that demonstrate a good faith effort but still need some “fine tuning”, the SF may consider the plan complete and provide comments during the 7-day department comment period to explain what “fine tuning” is necessary.

No comment period may start until a written plan is submitted and “received” by the department.

Statutory Written Plan Comment and Review Periods

ORS 527.670(10) provides a comment period to allow the SF and any interested parties to review statutory written plans. This statutory comment period consists of a 14 calendar day general comment period followed by a 7 calendar day department comment period. Interested parties must submit comments to the department within the 14-day period for the comments to be considered by the SF. The SF may not provide official comments to the operator until the 14-day period has expired. However, informal communication related to the written plan is allowed at any time. At the conclusion of the 14-day period, the SF has a 7-day period in which to provide official comments to the operator. All SFs are expected to use a standard form that has been designed jointly by SFs and Salem staff for these comments. Provided a notification of operations has been submitted and the 15-day waiting period as required by OAR 629-605-0150(1) has expired or been waived, the operator may start operations described in the plan upon

receipt of the official comments from the SF. If the SF does not provide official comments during the prescribed 7-day period, the operations may begin on the 22nd day after the plan was submitted and received.

ORS 527.670(10)(a) requires the SF to review every statutory written plan. Department policy is that SFs should place a high priority on providing official comments to the operator during the 7-day comment period.

If comment from interested parties is received during the 14-day period, the SF must provide the comments to the landowner, timber owner and the operator. The SF must also give the interested parties the official comments that were sent to the landowner, timber owner and the operator along with copies of the revised written plans, if any.

Purpose of Written Plan Comments by ODF

Comments provided by the department or the board under ORS 527.700(6) are for the sole purpose of providing advice to the landowner, timber owner and the operator about whether the practice described in the plan will comply with the statutes and rules of the Forest Practices Act.

Comments provided by the department or the board do not constitute an approval of the written plan or operation. If comments are not provided by the department or the board on the written plan, the failure to provide comments does not constitute a rejection of the written plan or operation. In the event that the department or the board determines that enforcement action is appropriate, the department or the board may consider, but are not bound by, comments that were provided on the plan.

Comments from Interested Subscribers or Others

If these comments are received within the 14 days, they will be evaluated by the SF for consistency with ORS 527.700(6). The SF will send to anyone who comments a copy of ODF's comments on the written plan. The SF will also send the comments of interested subscriber or others to the operator, timber owner, and landowner along with a copy of the written plan

Public Records

Written plans filed with the Department are public records. Consistent with Directive 0-5-1-301 "Department Public Records," and OAR 629-674-0100, every person has the right to inspect written plans. Public subscribers who do not submit comments or other members of the public may request copies of written plans. Requests for copies of written plans shall be filled at the cost of the labor and materials to complete the request (see OAR 629-010-0200).

Appeals and Hearings

ORS 527.700 and OAR 629-672-0100 to -0310 describe the procedures for any affected or aggrieved person appealing comments made by the State Forester with regard to written plans.

The appeals and hearings procedures have very strict time requirements. **If the SF receives a request for hearing, alert Salem staff immediately.** Please try to ensure contact with an actual person, as opposed to electronic or voice mail, to prevent critical time loss. Refer to OAR 629-605-0170(3).

ORS 527.700 allows persons who have commented on a statutory written plan and who believe they are adversely affected or aggrieved by the actions in the plan to request a hearing within 14 days after either the State Forester issues comments or the 21 days for comments has lapsed

(ORS 527.670(9)). Unless a waiver is granted by all parties, the hearing on a valid request must be held with 21 days, with final comments issued by the Board in 45 days of receiving the request. The SF and other district personnel may be called to testify at the hearing. Valid requests for appeal of written plans are rare. Refer to OAR 629-672-0210.

Persons entitled to a hearing under OAR 629-672-0210 may also apply for a Stay of Operations (OAR 629-672-0300), but unless the request is accompanied by a bond of at least \$15,000, a stay will not be considered. Always consult Salem staff immediately if a request for stay is received to determine if the request is valid. Salem staff will take appropriate action on the request.

RELATED RULES AND STATUTES:

- OAR 629-010-0200 Charges for copying and purchasing public records
- OAR 629-605-0170(3)
- OAR 629-635-0130 Written plans for streams, lakes, wetlands and riparian management areas
- OAR 629-672-0100 to 0310 Appeal of other orders
- OAR 629-674-0100 Procedures for requesting copies of notifications and written plans; Fees
- ORS 527.670 Commencement of operations; when notice and written plan required; notice of chemical operation; appeal of plan
- ORS 527.700 Appeals from orders of State Forester; hearings procedures; stay of operation

REFERENCES:

- “*Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984*” **Note: Confidential document**
- Resource Inventory Date Base Summaries **Note: some are confidential documents**
- Forest Practice Note #9, “*Written Plans Guidance*”; Oregon Department of Forestry, December, 1994
- Oregon Department of Forestry Directive 0-5-1-301 - “*Department Public Records*”

WRITTEN PLANS**629-605-0170*****Statutory Written Plans***

- (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.***

APPLICATION:

This section is not used for enforcement.

If the operator fails to notify the State Forester prior to conducting an operation, the State Forester is relieved of the responsibility to notify the operator of the requirement to submit a written plan. In this case, failure to submit a written plan should be cited under section (1) of this rule.

ADMINISTRATION:

There are two administrative requirements of this section of rule. The first is the requirement to notify an operator of the presence of a site listed in section (1), and the second is the requirement to inform the operator of the responsibility to prepare and submit a written plan.

While this rule requires the State Forester to inform only operators of the presence of a site and the requirement to submit a written plan, OAR 629-605-0180(1)(a) requires the State Forester to notify both the operator and landowner of the presence of a site listed in subsections (1)(b) or (d) requiring a written plan. Thus, as described below, **both** operators and landowners should be notified of the presence of these sites and their written plan requirements.

To ensure proper notification of the presence of a site, it is important that field offices maintain an up-to-date inventory of sites. Operators are not obligated under any of the rules to inventory sites.

For sites listed in subsection (1)(a) (Type F or D streams), determination of the classification of waters is an ongoing action. The interim guidelines for stream classification should be used as one basis for determining the presence of fish use. Landowners can assist with the classification of waters and it is not unreasonable to expect operators and landowners to share information about waters with the SF as part of the operation planning process.

["Large lakes" was removed from 1(a) because it is not a resource that requires a written plan in ORS 527.670(3)]

For all sites, if the operator or another party informs the SF of the presence of a new site, or the SF identifies a site through a pre-operation inspection, the SF can then immediately use that information to require a written plan. For example, if an SF discovers through a pre-operation inspection a band-tailed pigeon watering site even though not listed in the ODF/ODF&W Cooperative Agreement, the SF can then immediately require a written plan. However, with the

exception for sites listed in subsection (1)(c), until the operator is informed of the site and the written plan is requested, the operator does not have an obligation to prepare and submit a written plan.

The written plan is one key to site and resource protection. The SF must stress the importance of the written plan to protect the identified site(s) based upon the specifics of the site and operation. For operators or landowners unfamiliar with written plan requirements, the SF should provide written direction to the person filing the notification, for example:

"This operation involves activities that may affect resources within 100 feet of Leopold Creek, which is a medium Type D stream. You must submit a written plan to the State Forester before operating within 100 feet of the stream. Once the plan is submitted, there is a mandatory 14- to 21-day comment period before the operation may begin. The written plan must contain..."

It is important that the SF notify the operator(s) and landowner (listed on the notification) when a written plan is required. The SF should notify each of these parties through an inspection report, or other written communication which:

1. Indicates that a notification has been submitted for an operation that requires a written plan;
2. Describes the statutory comment period following the filing of the plan, if applicable;
3. States that the operation cannot start within the area addressed by the written plan requirement until ODF comments are made or the comment period is complete. ODF comments, if any, will be provided within 7 calendar days following the 14-day general comment period (ORS 527.670(11));
4. States that copies of the final written plan will be mailed to any person providing timely comments and to the operator, timber owner, and landowner; and
5. Reminds the landowner and operator of record to inform all sub-contractors of the written plan requirement because many operations may have several "operators" working or directing work on the site.

For example, a standard letter might read:

"Dear Operator:
ABC Logging has submitted a notification to the State Forester for Operation #07-01. A written plan is required to address the protection measures needed along Leopold Creek, which is a medium Type D stream that runs through your property. After the Department receives the plan, it is subject to a 14-day comment period. The operation addressed in the plan may not begin until comments are provided by the SF or the additional 7-day comment period has ended (21 days total). The plan must adequately address the protection requirements for a Type D stream. Any sub-contractors must be notified of the provisions in the written plan. "

If an operator is **not informed** of the presence of a site listed in section (1), and the operator fails to submit a written plan or protect the site according to rules, the ability to enforce the protection rules may be substantially weakened. In this case the operator **cannot** be held responsible for not submitting a written plan. However, depending upon circumstances, the operator may still be responsible for protection of the site under the specific rules that require site protection. A thorough investigation should be done and district supervisors should be consulted in these situations. Salem staff may be consulted as necessary.

If the State Forester does not notify the operator and landowner of the presence of the sites listed **only** under subsections (1)(b) or (d) of this rule, the Department may not be able to hold the operator responsible to protect the site. This is because there are no specific rules that would apply protection.

However, if an operator discovers a resource site described in OAR 629-605-0170(1)(c), (bald eagle, spotted owl, great blue heron, osprey, significant wetlands, etc.), the operation must be stopped and the site protected under OAR 629-665-0020(4), even if the operator was not informed of the site by the department. It is reasonable to expect that operators should be able to visually identify osprey, eagle and heron nest sites and significant wetlands that are obviously wetlands and greater than 8 acres in size.

RELATED RULES AND STATUTES:

- OAR 629-605-0170(1)(a)(b)(c)(d) Written plans
- OAR 629-605-0180(1)(a) Interim process for protecting sensitive resource sites requiring written plans
- OAR 629-665-0020(4) Application of protection
- ORS 527.670 Commencement of operations; when notice and written plan required; notice of chemical operation; appeal of plan

WRITTEN PLANS**629-605-0170*****Statutory Written Plans***

- (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(10), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.***

APPLICATION:

This section is not used for enforcement.

ADMINISTRATION:

This section does not impose additional regulation on operators but it makes clear how the provisions of ORS 527.670 and ORS 527.700 apply to certain written plans.

Written plans submitted under (1)(a) through (d) are subject to the appeals and hearings procedures listed in ORS 527.700. ORS 527.700 outlines the appeals and hearings procedures referred to in this rule, and OAR 629-672-0100 through 0310 more specifically define this process. It is important that SFs be familiar with these procedures and understand that only written plans submitted under subsection (1)(a) through (d) are subject to appeals from the public.

There are very strict time frames and administrative requirements associated with the hearings referred to in this rule. **If you receive a request for a hearing, alert Salem staff immediately. Please try to ensure contact with an actual person, as opposed to electronic or voice mail, to prevent critical time loss.**

ORS 527.700 allows persons who have commented on a statutory written plan and who believe they are adversely affected or aggrieved by the actions in the plan to request a hearing within 14 days after either the State Forester issues comments or the 21 days for comments has lapsed (ORS 527.670(9)). Unless a waiver is granted by all parties, the hearing on a valid request must be held within 21 days, with final comments issued by the Board in 45 days of receiving the request. The SF and other district personnel may be called to testify at the hearing. Valid requests for appeal of written plans are rare. Refer to OAR 629-672-0210.

Persons entitled to a hearing under OAR 629-672-0210 may also apply for a Stay of Operations (OAR 629-672-0300), but unless the request is accompanied by a bond of at least \$15,000, a stay will not be considered. Always consult Salem staff immediately if a request for stay is received to determine if the request is valid. Salem staff will take appropriate action on the request.

Other requirements identified in this section refer to statutory responsibilities of the State Forester in the written plan process:

1. ORS 527.670(10) requires (a) the State Forester to review written plans submitted under (1)(a) - (d) of this rule and after review, may provide comments to the person who submitted the written plan; and (b) the State Forester's comments may be made no earlier than 14 calendar days after the plan was received and no later than 21 calendar days after the plan was received; and (c) provided a notification of operation was received, the operation may commence on the date the State Forester provides comments or, if no comments are provided, at any time after 21 calendar days after the written plan was received.
2. ORS 527.670(11) states: (a) that comments provided by the State Forester or the board are for the sole purpose of providing advice to the operator regarding whether the operation described in the plan is likely to comply with the Forest Practices Act. Comments provided by the State Forester or the board do not constitute approval of the plan or the operation; and (b) that if the board or the State Forester does not comment on a written plan, the failure to do so does not mean that the operation, if carried out in conformance with the written plan complies with the Forest Practices Act nor does failure to comment on the written plan constitute a rejection of the written plan or operation; and (c) that in the event enforcement action is necessary, that the State Forester or the board shall consider, but are not bound by, comments provided by the State Forester or the board..
3. ORS 527.670(12) – Lists the responsibilities of the State Forester when timely comments are filed on written plans. First the State Forester must send a copy of the review and comments, if any to persons who submitted comments within the 14-day comment period. Second, the State Forester must send to the operator, timber owner and landowner, a copy of the written plan, the State Foresters review and comments, if any, along with any public comments.

There should be no administrative fees or copying fees required to meet the above obligations. If other interested parties request copies, copying fees consistent with the public records directive and public record rule are appropriate.

RELATED RULES AND STATUTES:

- OAR 629-672-0100 through OAR 629-672-0310 Orders of the State Forester; hearings for operators, landowners or timber owners; hearings for persons adversely affected by an operation for which a written plan is required under ORS 527.670(3); hearings generally; final orders; stay of operation; actual damages resulting from a stay; attorney's fees
- ORS 527.670(10), (11), (12) Commencement of operations; when notice and written plan required; notice of chemical operation; appeal of plan
- ORS 527.700 Appeals from orders of State Forester; hearing procedures; stay of operation

REFERENCES:

- *"General Intent Statement Regarding Proposed Draft Interim Written Plan Rules"* - May 20, 1988 memo to Board of Forestry, James E. Brown, State Forester
- Oregon Department of Forestry Directive 0-5-1-301 - *"Department Public Records"*

WRITTEN PLANS**629-605-0170*****Non-Statutory Written Plans***

- (4) ***Unless waived by the State Forester, the operator must submit a written plan as required by ORS 527.670(2) and the rules listed below. 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).***
- (a) ***629-605-0190(1) - Operating near or within sites that are listed in the “Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984” or sites designated by the State Forester;***
 - (b) ***629-605-0190(2) - Operating near or within habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered;***
 - (c) ***629-623-0700(1) - Conducting timber harvesting or road construction operations with intermediate or substantial downslope public safety risk;***
 - (d) ***629-623-0700(2) - Constructing a stream crossing fill over a debris torrent-prone stream with intermediate or substantial downslope public safety risk;***
 - (e) ***629-623-0700(3) - Locating a waste-fill area within a drainage containing debris torrent-prone streams with intermediate or substantial downslope public safety risk;***
 - (f) ***629-625-0100(2)(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;***
 - (g) ***629-625-0100(2)(c) - Constructing a road within the riparian management area of a medium or large Type N stream;***
 - (h) ***629-625-0100(3) - Constructing a road on high landslide hazard locations;***
 - (i) ***629-625-0100(4) - Placing woody debris or boulders in the stream channel of a Type N stream for stream enhancement;***
 - (j) ***629-625-0320(1)(b)(B) – Constructing a permanent stream crossing fill over 15 feet deep in a Type N stream;***
 - (k) ***629-630-0200(3) - Locating a landing within the riparian management area of a medium or large Type N stream;***
 - (l) ***629-630-0700(3) - Yarding across streams classified as medium or large Type N;***
 - (m) ***629-630-0800(4)(c) - Constructing a temporary stream crossing fill over 8 feet deep in a Type N stream;***
 - (n) ***629-635-0130(1)(c) - Operating within 100 feet of a large lake;***
 - (o) ***629-660-0050(1) - Removing beaver dams or other natural obstructions located farther than 25 feet from a culvert in a Type N stream;***
 - (p) ***629-665-0020(2) - Operating near a resource site requiring special protection; and***
 - (q) ***629-665-0210(1) - Operating near a Northern Spotted Owl resource site.***

APPLICATION:

This rule section is not used for enforcement. Enforcement action should be taken under the specific rule requiring a non-statutory written plan.

Unless the SF grants the waiver, a non-statutory written plan is required and must be submitted before the practice or operation begins. The requirement for a non-statutory written plan referred to in this rule may be waived if the stewardship forester (SF) determines that the formal plan process is not needed to help ensure resource protection. Consideration of the waiver begins when the operator requests the waiver.

ADMINISTRATION:**Non-statutory Written Plans**

Non-statutory written plans are required by rule. Unlike statutory written plans that are required by law and mandatory, non-statutory plans may be waived, do not have a required comment period for interested parties (although written plans are public information), and are not subject to hearings and appeals. Non-statutory written plans require a 14 calendar day department comment period. Any or all of this comment period may be waived by the SF.

Requiring a Non-statutory Written Plan

Non-statutory written plans are required for practices described in this rule unless this requirement is waived by the SF. It is the operator's responsibility to either submit a plan or request a waiver of the plan requirement. Unlike statutory plans, there is no requirement for the SF to advise the operator of a non-statutory plan requirement. While it is reasonable to expect the operator to know what practices or operations require written plans, the SF should inform the operator of the written plan requirement whenever possible.

Waiving the Non-statutory Written Plan Requirement

Factors the SF may apply when considering waiving this requirement include site specific characteristics of the operation area and the knowledge, skills, and abilities of the operator. Any waiver of the requirement for a written plan must be done in writing. Many times this can be done during processing on the notification form in the State Forester's comment block. If this is not possible, an inspection report should be sent to the operator to document the waiver.

Written Plans

The purpose of written plans is to encourage communication between the SF and the operator. In requiring a written plan, the rule is informing the operator that a practice has potential to put a resource at risk. The operator is expected to submit a plan that includes a description of protection measures implemented during and after the operation that are designed to protect the resource. The SF will review the plan and provide comments, when appropriate, regarding the likelihood of the practice, if conducted as described in the plan, complying with the applicable FPA standards. Further discussion may take place in response to the review and comment.

Preparing Written Plans

Operators or landowners, not the SF, are responsible for preparing plans. At the same time, it is reasonable for an operator to ask and expect the SF to identify specific concerns that need to be

addressed in the plan. To facilitate the preparation of a written plan, the SF should provide the operator any available program information on written plan development.

Written Plan Content

All written plans, regardless of whether required by statute or rule, must contain certain information. The operator is required to describe the operational activities in sufficient detail to allow the State Forester to evaluate and comment on the likelihood that the operation will comply with the applicable standards. Only documents that contain the information listed in OAR 629-605-0170(7) will be considered complete written plans. Written plans must contain:

- (1) A map showing protected resource(s) and the harvest area
- (2) The specific resource(s) that require protection
- (3) The practices that may affect the protected resource(s)
- (4) The specific techniques and methods employed for resource protection
- (5) Additional written plan content required in individual rules

Refer to the guidance under OAR 629-605-0170(7) for more information on written plan content

Submitting Non-statutory Written Plans

Only documents that contain the required information will be considered complete written plans. If a written plan does not contain the required information it will be returned to the person who submitted the plan and it will not be considered “received.” The applicable comment period starts once a complete written plan is received by the department.

When written plans are submitted that demonstrate a good faith effort but still need some “fine tuning”, the SF may consider the plan complete and provide comments during the 14-day department comment period to explain what “fine tuning” is necessary.

Non-statutory Written Plan Review and Comment Period

HB 3264 removed the authority of the State Forester to approve written plans. To ensure the SF an opportunity to review and comment on written plans, effective August 1, 2005, rule revisions in OAR 629-605-0170(5)(b) instituted a 14-day comment period to provide an opportunity for the SF to review and comment on non-statutory written plans. The 14-day department comment period may not start until a written plan is submitted and received by the department. Any or all of this comment period may be waived by the SF. It is expected that when the appropriate communication has taken place that the SF will waive the remainder of the comment period.

Department policy is that SFs strive to comment on every written plan, but priorities may have to be set because of workloads.

Note: the 15-day waiting period for the notification also must be taken into consideration before operations may begin. The 14-day mandatory statutory comment period, the 14-day non-statutory comment period, and the 15-day waiting period may overlap to varying degrees.

Completion of the Non-statutory Written Plan Comment Period

Providing notice has been given and the 15-day waiting period required by OAR 629-605-150(1) has been waived or has concluded, the operator may commence operations described in the plan upon receipt of the SF comments. If no comments are provided by the SF, the operation may commence following the passage of the 14 days after the plan was submitted. When

commenting on the plan the SF is expected to use the standard department *Written Plan Comment Form*.

Purpose of Written Plan Comments

Comments provided by the department or the board under ORS 527.700(6) are for the sole purpose of providing advice to the landowner, timber owner and the operator of whether the practice described in the plan will comply with the statutes and rules of the Forest Practices Act.

Comments provided by the department or the board do not constitute an approval of the written plan or operation. If comments are not provided by the department or the board on the written plan, the failure to provide comments does not constitute a rejection of the written plan or operation. In the event that the department or the board determines that enforcement action is appropriate, the department or the board may consider but are not bound by comments that were provided on the plan.

Public Records

Written plans filed with the Department are public records. Consistent with Directive 0-5-1-301 "Department Public Records," and OAR 629-674-0100 Procedures for Requesting Copies of Notifications and Written Plans; Fees, every person has the right to inspect written plans. Public subscribers who do not submit comments or other public may request copies of written plans. Requests for copies of written plans shall be filled at the cost of the labor and materials to complete the request (see OAR 629-010-0200).

Compliance

If an operator fails to submit a non-statutory written plan prior to beginning the operation or practice that requires one, and has not requested or received a waiver, a violation of the individual rule requiring a plan exists. If an operator fails to submit a non-statutory written plan and a specific forest practice is not in compliance, multiple violations may exist. For example, a non-statutory written plan is not submitted for road construction in the riparian management area of a large or medium Type N stream and an operator constructs a road in the RMA. If construction of the road results in damage to the Type N stream because the road was poorly drained, a violation of the rule requiring proper drainage of roads would exist, as well as a violation of the requirement to submit a non-statutory written plan. Multiple citations may be issued.

RELATED RULES AND STATUTES:

- OAR 629-605-0170(5) Non-statutory written plan review and comment
- OAR 629-605-0170(6) and (7) Written Plan Content
- OAR 629-605-0190(1) and (2) Written plans for operations near resource sites
- OAR 629-623-0700(1),(2) and (3) Written Plans
- OAR 629-625-0100 Written Plans for Road Construction
- OAR 629-625-0320(1) Stream Crossing Structures
- OAR 629-630-0200 (3) Landings
- OAR 629-630-0700 (3) Yarding; cable equipment near waters of the state
- OAR 629-630-0800 Yarding; ground based equipment near waters of the state
- OAR 629-660-050(1), (2) Beaver dams or other natural obstructions
- OAR 629-665-0020(2) Operations near resource sites requiring special protection

- OAR 629-665-0210 (1) Operating near a Spotted Owl resource site
- ORS 527.670(2) The Board shall determine what rules require written plans

REFERENCES:

- *Oregon Forest Protection Laws, an Illustrated Manual*
- Forest Practices Note No. 9
- Oregon Department of Forestry Directive 0-5-1-301 - “*Department Public Records*”

WRITTEN PLANS**629-605-0170*****Non-statutory Written Plans***

- (5) *If an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subsection (4) of this section:*
- (a) *The State Forester shall review the written plan and may provide comments to the person who submitted the written plan;*
 - (b) *Provided that notice has been given as required by 527.670 (6), the operation may commence on the date the State Forester provides comments. If no comments are provided the operation may commence at any time after 14 calendar days following the date the written plan was received;*
 - (c) *Comments provided by the State Forester under paragraph (a) of this subsection, to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester do not constitute an approval of the written plan or operation;*
 - (d) *If the State Forester does not comment on a written plan, the failure to comment does not mean an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation;*
 - (e) *In the event that the State Forester determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted thereunder, the State Forester shall consider, but is not bound by, comments that the State Forester provided under this section.*

APPLICATION:

Subsection 5(b) of this rule is used for enforcement. Existence of damage is not a prerequisite for taking enforcement action.

COMPLIANCE:

An operator is in compliance with subsection 5(b) of this rule when, prior to commencing an operation or a practice requiring a non-statutory written plan under subsection (4) of this section, the operator:

- (a) receives comments from the Forester; or
- (b) complies with the 14-day department comment period addressed in subsection (5)(b) of this rule.

Unsatisfactory Condition: An unsatisfactory condition exists when the operator submits a written plan and does not comply with the 14-day comment period addressed in subsection 5(b) of this rule.

Damage: Existence of damage is not a prerequisite for taking enforcement action. Under this rule, an unsatisfactory condition is a violation. The operator, by not waiting the 14 days, denies the SF the opportunity to review and comment on the written plan.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation.

ADMINISTRATION:

Non-statutory written plans are required for those practices listed in subsection (4) of this rule. This requirement may be waived by the SF. Refer to the Guidance under OAR 629-605-0170(4)

RELATED RULES AND STATUTES:

- OAR 629-605-0170(4) Non-statutory written plans
- OAR 629-670-0125 Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules

REFERENCES:

- Forest Practices Enforcement and Civil Penalty Rules

WRITTEN PLANS**629-605-0170*****Written Plan Content For All Written Plans***

- (6) *Written plans required under OAR 629-605-170 must contain a description of how the operation is planned to be conducted in sufficient detail to allow the State Forester to evaluate and comment on the likelihood that the operation will comply with the Forest Practices Act or administrative rules.*

APPLICATION:

This rule is not used for enforcement.

ADMINISTRATION:

This rule provides a general description of the desired content of all written plans whether they are required by rule or statute. It requires written plans to contain enough information regarding the operation to allow an accurate assessment of the likelihood of compliance with the applicable resource protection standards. If a written plan is submitted and does not contain sufficient information for this assessment, it will be returned to the person who submitted the plan and will not be considered “received.”

RELATED RULES AND STATUTES:

- OAR 629-605-0170(6) Written Plan Content

REFERENCES:

- Forest Practices Note #9 – Written Plans
- Oregon’s Forest Practices Laws, an Illustrated Manual

WRITTEN PLANS**629-605-0170*****Written Plan Content For All Written Plans***

- (7) ***Written plans required under OAR 629-605-170 will be considered received when complete with the following information:***
- (a) ***A map showing protected resource(s) and the harvest area; and***
 - (b) ***The specific resource(s) that require protection; and***
 - (c) ***The practices that may affect the protected resource(s) such as road and landing location, disposal of waste materials, felling and bucking and post operation stabilization measures; and***
 - (d) ***The specific techniques and methods employed for resource protection such as road and landing design, road construction techniques, drainage systems, buffer strips, yarding system and layout; and***
 - (e) ***Additional written plan content required in individual rules.***

APPLICATION:

This rule section is not used for enforcement.

ADMINISTRATION:

When any written plan is required to be submitted, sufficient information is required to allow the SF to make an assessment of whether or not the operation, if conducted according to the plan will comply with the FPA. This rule states five elements that are required for any written plan.

Map

A map showing the area of operation and any known protected resources must be included in the plan. The map must be of sufficient scale to show the proximity of the operation to any protected resources. A typical scale is 1:12000 (1"=1000') but other scales may be appropriate. Aerial photographs that are corrected for distortion and annotated with the required elements are also acceptable. Tax lot maps may be acceptable if detail is added to display the required elements. The required elements of the map are the operation area boundary, protected resources, haul routes and access roads, a scale, a north arrow and at least one section corner. Leave tree areas, when applicable, must also be identified on the map.

Identification of Protected Resources

When known resources are present in or near the operation area, they need to be identified on the map and in the plan. For example, if a stream is near the operation area, the written plan must identify the classification and size of the stream (e.g., a small Type F stream runs along the south harvest boundary). Consultation with the SF is recommended prior to developing a written plan to identify protected resources.

Identification of Practices

The written plan must identify the practices that may affect the protected resources. This may include road construction in or near waters of the state, yarding over or through RMAs, haul routes passing near an active resource site, or other activities that may affect protected resources. To continue the example above, if the operator planned a stream crossing on the Type F stream, the crossing site must be indicated on the map and described in the written plan.

Techniques Used

The written plan must describe how the practices will be conducted to comply with protection standards of the FPA. Specific information that describes the practice and how that practice will be conducted are required for this written plan component.

Statute or Rule Required Content

When written plan content is specified in rules and statutes, written plans must contain this information.

A non-statutory written plan has the same required content as statutory written plans. The SF should review the plan to determine if the plan addresses protection standards and then may provide comments at any time. Verbal comments are acceptable but should be followed up with written documentation. If the submitted plan demonstrates a good faith effort (e.g., most of the resource protection is addressed but the plan is unclear on some detail) the SF should “receive” the plan and recommend in comments the additional attention to key practices needed to ensure rule compliance. If a non-statutory written plan is submitted that is grossly inadequate in the required elements, the SF should return the plan as incomplete. When doing this, the SF should provide written comments to the operator explaining what is needed in the plan to make it complete.

When assessing the plan for completeness, the SF shall consider the adequacy of protection as well as the detail about how protection will be provided. Comments should be provided on written plans if they do not adequately address how the operator will achieve rule compliance. A restatement of the rules is not adequate to ensure compliance. For example, the written plan needs to explain what techniques will be used to directionally fell conifer trees away from a stream, providing more than a statement that trees will be fallen away from the water.

RELATED RULES AND STATUTES:

- OAR 629-605-0170 Written plans

REFERENCES:

- Forest Practice Note #9, "*Written Plans Guidance*"; Oregon Department of Forestry, December, 1994

WRITTEN PLANS**629-605-0170**

- (8) *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 reviewed, the State Forester determines the written plan no longer addresses compliance with applicable forest practice rules. 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 written plans.*

APPLICATION:

This rule section is not used for enforcement

ADMINISTRATION:

A modified written plan is required when the SF determines, based on new information, that a plan is not adequate to meet the applicable rules or resource site protection goals.

The SF can require a modification only when new information is discovered which indicates that, if the operation is conducted in conformance to the written plan, the specific resource will not be adequately protected. The operator must cease those activities affecting the resource until a modified plan is received by the department.

When the plan must be modified to address newly-identified resource protections, the SF should inform the operator, direct the operator to cease the operation near the site, and require a revised plan. The SF's sources of input include their supervisor, District Forester, Salem staff, ODF&W, or other appropriate agency.

The operation may continue immediately upon receipt of a suitably modified plan, without a new comment period, if one was applicable. Copies of the modified written plan should be sent to subscribers and those commenting.

A comment period is always required when a new statutory written plan is subject to formal public comment and appeal [see section (1) of this rule]. For example, if a previously submitted written plan includes constructing a temporary crossing over a Type F stream and the operator later wishes to construct a permanent crossing, different rule requirements apply. A new written plan (and comment period) is required before construction of the permanent crossing can begin. All other aspects of the operation may continue without a comment period. (In some cases a new notification may also be required, as discussed in the guidance for OAR 629-605-0150(9).)

RELATED RULES AND STATUTES:

- OAR 629-605-0170 Written plans

REFERENCES:

- Forest Practice Note #9, "Written Plans Guidance"; Oregon Department of Forestry, December, 1994

PLANS FOR AN ALTERNATE PRACTICE**629-605-0173**

- (1) *Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting forest practices utilizing protection standards or methods different than those specified in rule or statute.*
- (2) *Plans for an alternate practice must include sufficient information to allow the State Forester to assess the plan to determine that the practices described in the plan will yield results consistent with ORS 527.610 to 527.770 and administrative rules adopted thereunder.*
- (3) *Plans for alternate practices proposed as part of a written plan required by ORS 527.670(3) 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(10), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.*
- (4) *An operator must comply with all provisions of an approved plan for an alternate practice.*

APPLICATION:

This rule is used for enforcement. When forest practices utilizing protection standards or methods different than those specified in rule or statute are proposed, the operator must submit for approval a plan for an alternate practice before those practices are implemented. Plans for alternate practices are also required to describe protective practices and document alternate practices that are specifically allowed by statute or rules. Examples are: a) ORS 527.750(3), harvest type 3 operations exceeding 120 acres but less than 240 acres; b) ORS 527.755(3), modification of visually sensitive corridor restrictions; and c) OAR 629-640-0300, alternative vegetative retention prescriptions.

COMPLIANCE:

An operator is in compliance with this rule when, prior to implementing alternate practices, the operator obtains approval of a plan for an alternate practice from the SF. **An operator is required to comply with a plan for an alternate practice or the standards in the applicable rules or statutes.**

Unsatisfactory Condition: There is an unsatisfactory condition when an approved plan for an alternate practice is not obtained as appropriate. The plan for an alternate practice may be required specifically in rule or statute, or because the operator wishes to depart from required protection standards, methods or outcomes.

Damage: Resource damage is not a prerequisite for taking enforcement action. An unsatisfactory condition is a violation. Resulting resource damage should be sanctioned through enforcement under the appropriate resource protection rule or statute.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation.

ADMINISTRATION:

2003 HB 3264 set the precedent for approval of plans for an alternate practice in its amendment to ORS 527.750(3). The State Forester retains approval authority only in the case of plans for alternate practices. Where appropriate, some of the rules modified to implement HB 3264 specify when a plan for an alternate practice is required.

Background

When an operator proposes in a plan for an alternate practice, a standard for protection which is site specific, the plan in effect creates a new standard that is specific to the operation for which it was proposed. The operator is in compliance when the operation is conducted within the parameters of the proposed standard. For example, an operator obtains approval to retain only 20 live conifer trees per 1000 feet of Type F stream. The standard for live tree retention in this case is 40 live conifer trees per 1000 feet. If the operator leaves 25 live conifer trees per 1000 feet, the operation is still in compliance. While the residual retention is below what is required by rule, it is still greater than what was approved in the plan.

Purpose of Plans for an Alternate Practice

The purpose of a plan for an alternate practice is to allow an operator to propose practices or protection standards different than those described in rule or statute. This rule recognizes that an alternate practice can achieve the purpose of a rule or standard in a manner different than prescribed. An alternate practice may be proposed for any rule or standard in the FPA. If an operator wishes to propose an alternate practice, a plan for an alternate practice must be submitted and approved by the State Forester prior to implementing the practice. If an operator does not obtain approval of a plan for an alternate practice, the operator must comply with the applicable standards as described in rule or statute.

Preparing Plans for an Alternate Practice

Operators or landowners, not the SF, are responsible for preparing the plan. At the same time, it is expected that an operator and the SF will work together to address resource protection concerns. When a viable plan is developed and approved in writing by the SF, the operation may begin. This is the only plan approval preserved by the 2003 HB 3264 that otherwise eliminated prior approval and approval of written plans. To facilitate the preparation of a written plan, the SF should provide the operator a copy of Forest Practices Note No. 9 on written plans.

Plan Content

Plans for an alternate practice must contain a description of how the operation is planned to be conducted in sufficient detail to allow an evaluation by the State Forester. The evaluation must determine if the operation will provide equal or better results or meet the same purpose of the applicable standards in the Forest Practices Act or administrative rules. The SF may require any specific content but most plans for an alternate practice will generally have the same content as a written plan. Refer to the guidance under OAR 629-605-0170(7) for more information on written plan content.

Plan Approval

The State Forester has the authority to interpret the administrative rules, but is restricted to following more closely the wording in statute. One way this is done is through approving a plan for an alternate practice.

A plan for an alternate practice is the only pre-operation document that requires approval prior to conducting the practice or operation. Except as described in subsection (3) of this rule, plans for an alternate practice are not be subject to the hearings provisions of ORS 527.700 or the provisions of ORS 527.670 prescribing certain waiting periods and procedures. Those plans that propose alternate practices where there is a parallel requirement for a statutory written plan are subject to the hearings provisions waiting periods and procedures required in the FPA.

For example, an operator proposes to construct a road within a Type F RMA and to reduce basal area in the RMA below the standard target. The operator would be required to submit a statutory written plan for road construction in an RMA. Included in this plan would be the proposed alternate practice to reduce basal area below the standard target. One plan would be required. The portion of the plan addressing the reduction of basal area requires approval; the entire plan would require a statutory comment period.

Equal or Better

In the approval process, the SF should consider if the proposed practice will result in “equal or better” condition at the conclusion of the operation or a future desired condition will be met sooner than if the standard in rule were applied. An example of equal or better results is found in OAR 629-625-0320(3). This rule requires a plan for an alternate practice to allow an exception to subsection 2(a) of that rule, requiring stream crossing structures to pass a 50-year peak flow. By approving a plan for an alternate practice, a stream crossing structure can be built in a wide floodplain with less impact (less fill material in the streambed) than if the rule were followed. The alternate practice results in a crossing that passes the required peak flow and is “better” than one built according to the standards in rule. There are some circumstances where the standards of “equal or better” do not apply. These circumstances are discussed below and under 629-605-0100(2) – Compliance.

Meet the Same Purpose

A practice or practices that are partially or completely different from the normal prescription may produce a different outcome, but fit the purpose of the resource protection prescribed as stated or implied in rule or statute. Site specific plans for RMA management that depart from the rules’ retention standards in an effort to move the stand toward the desired future condition more rapidly are an example.

Results in the Same Effect

A practice or practices may be partially or completely different from the normal rule prescription, but provide the desired resource protection effect. An example is the use of a ford as a stream crossing instead of constructing a temporary crossing structure

Not Equal or Better

Some alternate practices are allowed in the rules and statutes to modify or waive protection requirements. In these rules and statutes, approval of the alternate practice may not be based on

providing "equal or better" results. For example, modifications of the protection standards are allowed under OAR 629-605-0500 for forest health and public safety. The operator may wish to remove a hazard tree in an RMA which would otherwise be required to be retained. Because of the public safety hazard that leaving this tree poses, the rules allow for this modification even though the result is not "equal or better."

RELATED RULES AND STATUTES:

- OAR 629-605-0100 Compliance

REFERENCES:

- Oregon Forest Practices Laws, an Illustrated Manual

629-605-0173***Plans for an Alternate Practice***

- (5) ***The following rules require a plan for an alternate practice to be submitted and approved by the State Forester prior to commencing the practice or operation:***
- (a) ***629-625-0100(2)(a) – Modifying, exempting or suspending the rules or statutes for a bona fide research project conducted by a federal or state agency, a college or university, or a private landowner;***
 - (b) ***629-605-0100(2)(b) – Waiving or modifying a specific practice that will result in less environmental damage than if the practice is applied;***
 - (c) ***629-605-0100(2)(c) – Waiving or modifying a specific practice that will improve soil, water quality, fish habitat, or wildlife habitat;***
 - (d) ***629-605-0100(2)(d) – Waiving or modifying rules to provide for public safety or to accomplish a land use change;***
 - (e) ***629-605-0100(4) – Waiving or modifying rules for resource sites when a county has an adopted program under OAR 660-016-0005 and OAR 660-016-0010 that has evaluated the resource sites;***
 - (f) ***629-605-0173(1) – Conducting forest practices utilizing protection standards or methods different than those specified in rule or statute;***
 - (g) ***629-605-0175(2) – Conducting operations that result in a single harvest type 3 unit, or combinations of harvest type 3 units, that exceed the contiguous 120 acre limit on a single ownership;***
 - (h) ***629-605-0175(7) – Waiving the harvest type 3 acreage limitations for conversions or disasters described in ORS 527.740(4);***
 - (i) ***629-605-0500 – Modifying the protection requirements for streams, lakes, wetlands and riparian management areas for reasons of forest health or because of hazards to public safety or property;***
 - (j) ***629-610-0020(3) – Waiving or modifying the reforestation requirements following a stand improvement operation where the residual stand conditions will result in enhanced long-term tree growth;***
 - (k) ***629-610-0030(3) – Utilizing natural reforestation methods when an operation results in a reforestation requirement;***
 - (l) ***629-610-0040(3) – Extending the time allowed for reforestation when natural reforestation methods are utilized;***
 - (m) ***629-610-0050(2) – Utilizing more than 20% hardwood stocking when an operation results in a reforestation requirement;***
 - (n) ***629-610-0060(1) – Utilizing non-native tree species when an operation results in a reforestation requirement;***
 - (o) ***629-610-0070(1) – Suspending the reforestation rules for the salvage or conversion of low value forest stands when participating in a forest incentive program;***
 - (p) ***629-610-0090(1) – Exempting the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover;***
 - (q) ***629-615-0300(5) – Modifying the protection requirements for riparian areas, aquatic areas and wetlands when the need for prescribed burning outweighs the benefits of protecting components required to be left;***

- (r) *629-620-0400(7)(d) – Modifying the protection requirements for aerial application of fungicides;*
- (s) *629-625-0320(3) – Modifying the culvert sizing requirements of 629-625-0320(2)(a) to reduce the height of fills where roads cross wide flood plains;*
- (t) *629-640-0100(13) – Modifying the retention requirements in a Type F RMA for the removal of roadside trees which pose a safety hazard;*
- (u) *629-640-0200(14) – Modifying the retention requirements in a Type D or N RMA for the removal of roadside trees which pose a safety hazard;*
- (v) *629-640-0400(1)(a) – Utilizing site specific vegetation retention prescriptions for streams and riparian management areas;*
- (w) *629-645-0020(1) – Utilizing site specific vegetation retention prescriptions for significant wetlands;*
- (x) *629-645-0050(3) – Modifying the retention requirements for significant wetlands for reasons of forest health;*
- (y) *629-650-0040(3) – Modifying the retention requirements for lakes for reasons of forest health;*
- (z) *629-665-0020(1)(b)(C) – Structural or temporal exceptions when proposed forest practices conflict with a resource site;*
- (aa) *629-665-0110(3) – Structural replacement of an osprey site;*
- (bb) *629-665-0110(4) – Temporal exceptions near an osprey site;*
- (cc) *629-665-0120(3) – Structural exceptions of a great blue heron site;*
- (dd) *629-665-0120(5) – Temporal exceptions near a great blue heron site.*

APPLICATION:

This section is not used for enforcement

ADMINISTRATION:

This section is for information only. An operator may choose a practice that requires a plan for an alternate practice but is not required to. If the operator chooses not to employ a practice that requires a plan for an alternate practice, the protection standards provided for in administrative rule and guidance apply.

RELATED RULES AND STATUTES:

- OAR 629-605-173(1) – Plans for an alternate practice

629-605-0175***Harvest Type 3 Units Exceeding 120 Acres***

- (1) The purpose of this rule is to describe the process that operators shall follow to gain approval of a plan for an alternate practice for a harvest type 3 unit that is between 120 and 240 acres in size.***
- (2) Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting operations that result in a single harvest type 3 unit, or combinations of harvest type 3 units, that exceed the contiguous 120 acre limit on a single ownership.***
- (3) For each unit on which a harvest type 3 is proposed to exceed the contiguous 120 acre limit, the plan for an alternate practice shall:***
 - (a) Describe the planned harvest including, but not limited to, the elements of a written plan listed in OAR 629-605-0170(7);***
 - (b) Include a detailed map of the planned harvest that shows the specific unit boundaries; and***
 - (c) Demonstrate that the larger harvest size will result in increased protection of, or reduced adverse impact on, any or all of the resources and values protected by the Oregon Forest Practices Act. For the purposes of this rule, resources and values includes:***
 - (A) Air quality, water resources, soil productivity, and fish and wildlife resources as described in ORS 527.710(2);***
 - (B) The resource sites needing protection as listed in ORS 527.710(3);***
 - (C) Scenic resources within visually sensitive corridors as provided in ORS 527.755; and***
 - (D) Public safety related to landslides.***
- (4) The State Forester shall review the operator's compliance with the Oregon Forest Practices Act and deny approval of the plan for an alternate practice submitted under this rule when the operator has:***
 - (a) Received citations for violating a forest practice rule or statute within the past year; or***
 - (b) Failed to comply with an order to cease further violation, an order to repair damage, or an order to correct an unsatisfactory condition under ORS 527.680(2).***
- (5) Plans for an alternate practice submitted under this rule shall not be subject to appeal under ORS 527.700(3).***
- (6) Single harvest type 3 units or combinations of harvest type 3 units may not exceed 240 contiguous acres on a single ownership, except when the units have been reforested as described in ORS 527.750(1)(a), (b) and (c).***
- (7) The harvest type 3 acreage limitations do not apply for conversions or disasters described in ORS 527.740(4) when the operator obtains approval from the State Forester of a plan for an alternate practice before conducting operations.***

APPLICATION:

This rule is used for enforcement. The Board was directed to establish this rule by ORS 527.750. Enforcement actions for exceeding the 120 acre limit should cite the statute unless the unsatisfactory condition occurring was specifically detailed only in this rule.

COMPLIANCE:

An operator is in compliance with this rule when approval of a plan for an alternate practice is obtained prior to conducting a type 3 harvest operation exceeding 120 acres.

Unsatisfactory Condition: An unsatisfactory condition exists when a type 3 harvest operation exceeds 120 acres without approval of a plan for an alternate practice.

Damage: Resource damage is not a prerequisite for taking enforcement action. An unsatisfactory condition alone may be a violation.

Written Statement of Unsatisfactory Condition: A written statement may be used when a type 3 harvest unit marked or mapped to exceed 120 acres has begun without approval of a plan for an alternate practice, but has not yet extended beyond 120 acres. Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation.

ADMINISTRATION:

Exceptions to the unit size limitations may be approved for some salvage and conversion operations. Other situations where a larger unit size will provide better overall resource protection than existing statutory limitations may be considered. An approved plan for an alternate practice is required for this exception. It is the landowner's responsibility to submit evidence of a better overall resource protection outcome that is convincing to the SF. SFs may encourage or require landowner consultation with ODFW to obtain their support of such exceptions. Supervisory consultation is required prior to approval of plans under this section.

See guidance under 527.750 for additional information.

RELATED RULES AND STATUTES:

- OAR 629-605-0100 Compliance
- OAR 629-605-0173 Plans for an alternate practice
- ORS 527.740 Harvest type 3 limitations; exceptions
- ORS 527.750 Harvest type 3 limitations; conditions

REFERENCES:

- Summary of Harvest Unit Size Limitations Forest Practices News Note
- Oregon Forest Protection Laws, an Illustrated Manual

INTERIM PROCESS FOR PROTECTING SENSITIVE RESOURCE SITES REQUIRING WRITTEN PLANS

629-605-0180

- (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 must 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, submitting a plan for an alternate practice, 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.*

APPLICATION:

This rule is not used for enforcement. Where operators do not submit written plans after being advised such plans are necessary under this rule, take enforcement under the appropriate section of OAR 629-605-0170 "Written plans".

The process in OAR 629-605-0180 only applies to sensitive resource sites that:

- a. are listed in OAR 629-605-0170(1)(b) (sites in the 1984 ODF/ODFW Agreement); or
- b. are listed in OAR 629-605-0170(1)(d) (nesting or roosting sites used by threatened or endangered species); and
- c. are **not** listed in OAR 629-605-0170(1)(c) which refers to sites in OAR 629-665-0100 (Sensitive Bird Sites) or 0200 (Threatened or Endangered Species Sites). This rule applies only to sensitive resource sites **other** than those in Division 665, which lists the osprey, great blue heron, bald eagle, and Northern spotted owl. Examples of species that this rule applies to are the marbled murrelet and peregrine falcon.

It is critical that sensitive site inventories be maintained and that operators are notified of resource sites and written plan requirements since there is no enforcement avenue through 629-605-0170 if operators are not so notified. If the operator is **not** notified of a site as required by this rule, enforcement may only be taken as follows:

1. Enforcement can only be taken if it can be established that the operator knew or was aware that the operation was near or within sites:
 - a. listed in the 1984 ODF/ODFW agreement; or
 - b. used by wildlife or aquatic species listed as threatened or endangered under the **state** endangered species act.
2. OAR 629-605-0190 requires operators to submit written plans to the State Forester before operating near or within the two types of sites described above. Thus, enforcement can be taken through this rule for failure to submit a written plan. This enforcement avenue does not exist for sites that are only on the federal list of threatened or endangered species.

ADMINISTRATION:

This rule provides protection for resource sites that are not yet listed in OAR 629-665-0100 (Sensitive Bird Sites) and 0200 (Threatened or Endangered Species Sites) until such listings can be made and associated protection practices developed. As species are added to OAR 629-665-0100 and 0200, they will be protected under those rules, not OAR 629-605-0180 or section (2) of OAR 629-605-0190.

The interim process to evaluate sites subject to OAR 629-605-0180 is basically the same that SFs follow when evaluating conflicts between an operation and a specified resource site under OAR 629-665-0000 through OAR 629-665-0020. The process begins by the SF notifying the landowner of the presence of a site requiring a written plan when the completed notification is received. The SF should inspect the site and the operation area with the landowner or landowner's representative, operator, ODFW biologist and other appropriate specialists.

The purpose of the field review is first to develop a thorough understanding of the proposed operation and determine how the site may be affected. The SF, with input from all involved parties must then determine if the operation will conflict with the site. "Conflict" is defined in OAR 629-600-0100(13). If there will be a conflict, the operator must describe in the written plan the measures that will be taken to avoid the conflict; these measures should be discussed during the site inspection. If the SF determines the proposed operation will not conflict with the site, the written plan must describe how the operation will be conducted to comply with applicable forest practice rules. In a case determined not to conflict with the site, no special protection measures for the resource site are required.

The SF must attempt to include all parties in the review and discussion, with the goal of protecting the resource site while meeting the objectives of the proposed operation. Management techniques coupled with data gathering on wildlife response to activities is

generally to be favored over excluding forest activities outright. Nonetheless, any conflict must be resolved in favor of the resource site.

Review of some operations may yield reasonably certain determinations of "conflict" or "no conflict." However, in other cases the determination may be very uncertain; in such a case the SF should recommend that the operation include monitoring as a first step to determine if the operation does conflict with the site. If through analysis of monitoring results the SF determines that the operation does conflict with the site, the SF must either gain voluntary cessation of the operation or take enforcement action to stop damage to the resource.

The SF should consult with the ODFW biologist to determine if monitoring is an appropriate alternative and how the monitoring should be conducted. Monitoring can be time consuming and require expertise the operator doesn't have. Thus, the operator will need to contract the monitoring work. Regardless of who actually does the physical monitoring, the SF is responsible to observe proper execution of the monitoring plan.

The monitoring program, if accepted, must be described in the written plan. The plan should include a clear description of specific monitoring activities and their timing. The plan should also describe criteria for determining conflict and describe the conditions for cessation or modification of the operation if a conflict is found; for example, a plan might include "All log hauling on Pasture Fence Road will cease if birds are flushed off the nest site when log trucks pass."

NOTE: Operators remain responsible to comply with the federal Endangered Species Act, regardless of any state regulations.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 Definitions - (13) "Conflict"
- OAR 629-605-0170 Written plans
- OAR 629-605-0190 Written plans for operations near critical, threatened, or endangered wildlife habitat sites
- OAR 629-665-0000 through 0020 Specified resource sites on forestlands
- OAR 629-665-0100 Species using sensitive bird nesting, roosting and watering sites
- OAR 629-665-0200 Resource sites used by threatened and endangered species

REFERENCES:

- "General Intent Statement Regarding Proposed Draft Interim Written Plan Rules" - May 20, 1988 memo to Board of Forestry, James E. Brown, State Forester

**WRITTEN PLANS FOR OPERATIONS NEAR CRITICAL, THREATENED, OR
ENDANGERED WILDLIFE HABITAT SITES**

629-605-0190

Operators must submit a written plan to the State Forester before operating near or within:

- (1) *Critical wildlife or aquatic habitat sites that are listed in a 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.*

APPLICATION:

This rule is used for enforcement.

The requirement for a **non-statutory** written plan under this rule may be waived after the SF determines that the formal plan process is not needed to help ensure resource protection. Consideration of the waiver begins when the operator requests the waiver. Unless the department grants the waiver, a **non-statutory** written plan is required and must be submitted before the practice or operation begins.

COMPLIANCE:

Operators comply with this rule when a written plan is submitted prior to conducting forest operations within or near sites listed in this rule.

Unsatisfactory Condition: An unsatisfactory condition exists when an operation is commenced within or near any of the sites listed in this rule and a written plan has not been submitted.

Damage: Resource damage is not a prerequisite for taking enforcement action. An unsatisfactory condition alone may be a violation.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation.

If the presence of a site is discovered during the operation, activity which could affect the site should cease until the Salem staff is consulted.

ADMINISTRATION:

This rule requires operators to submit a written plan for operations near or within critical habitat sites listed in the 1984 Cooperative Agreement between the Board of Forestry and the Fish and

Wildlife Commission. The rule also includes additional sites which have been added by the Department of Forestry since the original agreement was signed.

The section also requires a written plan for operations near or within the habitat sites of any state-listed threatened or endangered wildlife or aquatic species.

SFs must maintain lists of the known habitat sites described in this rule. The 1984 Cooperative Agreement includes the original list of sites. Over time, sites for the species in the agreement have been added, and some sites that are no longer in use have been deleted. This has been done at the local field level. SFs and ODFW biologists must work together to keep this information as current as possible.

All operations within one-half mile of a site should be considered "near" the habitat site.

This does not mean that all such operations will pose conflicts with the habitat site, but rather all such operators must submit a written plan unless waived by the SF. This assures that these operations will be evaluated by the SF to identify whether a particular operation will require special protection measures to resolve any conflicts between the operation and the habitat site.

When a notification is submitted to ODF, it should be checked against the local inventory of habitat sites to determine if the operation is located within one-half mile of a site. If the operation is within one-half mile, the operator, landowner and timber owner must be notified of the existence of the site and any written plan requirements.

It is critical that sensitive site inventories be maintained, and that operators are notified of resource sites and written plan requirements, since there is no enforcement avenue through OAR 629-605-0170 if operators are not so notified. If the operator is **not** notified of a site as required by this rule, enforcement may only be taken as described in the guidance for OAR 629-605-0180. The process SFs must follow in determining if conflicts exist between operations and habitat sites, and subsequent protection measures, are described in both OAR 629-605-0170 and -0180.

The rules for Specified Resource Sites On Forest Lands are found in Division 665; they provide specific protection for Osprey, Great Blue Herons, Northern Spotted Owls and Bald Eagles. For these species take enforcement action under Division 665 and not under this rule.

RELATED RULES AND STATUTES:

- OAR 629-605-0170 Written plans
- OAR 629-605-0180 Interim process for protecting sensitive resource sites requiring written plans
- OAR 629, Division 665 Specified resource site protection rules

REFERENCE:

- *“Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984”* **Note: Confidential Document**

COMPLIANCE WITH STATUTORY REQUIREMENTS**629-605-0200**

- (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.*

APPLICATION:

By policy, this rule is not used for enforcement. Enforcement action for violations of any of the listed provisions should be taken under the appropriate statute.

ADMINISTRATION:

When ORS 527.740; ORS 527.750; ORS 527.755; and Section 9, Chapter 9, Oregon Laws 1996 Special Session (formerly referred to as Section 5, Chapter 919, Oregon Laws 1991 and ORS 527.675 **and now designated ORS 527.676**) were adopted, these new provisions were not included under the enforcement umbrella and penalty provisions provided by ORS 527.990 and ORS 527.992. Therefore, this rule was promulgated to allow enforcement and penalties to be applied to violations of the new sections of state law through this rule.

House Bill 3485, passed in the 1996 special session of the Legislature, corrected this problem. Since the bill's passage, enforcement should be through citation of the appropriate statute. This rule is being kept on the books to alert landowners and operators that specific resource protection requirements exist in statute form as well as in the rules.

RELATED RULES AND STATUTES:

- ORS 527.740 Harvest type 3 limitations; exceptions
- ORS 527.750 Harvest type 3 limitations; conditions
- ORS 527.755 Scenic highways; visually sensitive corridors; operations restricted
- OAR 629-605-0180 Interim process for protecting sensitive resource sites requiring written plans
- OAR 629, Division 665 Specified resource site protection rules

REFERENCE:

- Section 9, Chapter 9, Oregon Laws 1996 Special Session (ORS 527.676)

HARVEST TYPE 3 UNITS WITHIN SINGLE OWNERSHIPS**629-605-0210**

- (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.*

APPLICATION:

This rule is not used for enforcement. House Bill 3485, enacted in the 1996 legislative special session, provides for enforcement through ORS 527.740. Enforcement actions will be taken under ORS 527.740.

The guidance under OAR 629-605-0210 does not discuss the requirements related to "harvest type 3" cuts. A full understanding of related elements requires a section-by-section look at ORS 527.620(4), .740, and .750. Therefore, the comprehensive guidance related to this topic resides under the statutes.

ADMINISTRATION:

1996 House Bill 3485 altered the statutes that describe harvest size restrictions. The definition in ORS 527.620 for "clear-cut" was deleted. "Harvest type 3," defined in ORS 527.620(4), is now used in place of "clear-cut" to denote a harvest where residual stocking is low enough to invoke the harvest unit size limit requirement.

Complete guidance for harvest unit size restrictions is provided under ORS 527.740 and 527.750. Rule 629-605-0210 is very important since it contains Board of Forestry intent statements that are not in the statutes.

"Single ownership" is narrowly defined by ORS 527.620(14). The direction in section (1) of this rule shall be used to prevent the circumvention of the intent of ORS 527.740 by those parties owning an interest in parcels under a variety of ownership instruments. If SFs believe that such circumvention is taking place they should contact the Salem staff.

Section (2) is a statement of board intent meant to clarify the statute and guide administration of harvest size restrictions.

RELATED RULES AND STATUTES:

- OAR 629-605-0175 – Harvest Type 3 Units Exceeding 120 Acres
- ORS 527.620(4), (14) Definitions for ORS 527.610 to 527.770

- ORS 527.740 Harvest type 3 limitations; exceptions
- ORS 527.750 Exceeding harvest type 3 size limitation; condition

JUDICIAL DETERMINATIONS OF RULE VALIDITY**629-605-0220**

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.

APPLICATION:

This rule is not used for enforcement.

ADMINISTRATION:

This rule was adopted by the Board following passage of House Bill 3485 in the 1996 special session of the legislature. Included in the bill was a new provision that allows forest landowners to file an appeal with the Court of Appeals if they believe the Board of Forestry has adopted a rule that requires new or increased resource protection, but has not followed the rule adoption process outlined in Section 16, Chapter 9, Oregon Laws 1996 Special Session (1996 HB3485).

OAR 629-605-0220 anticipates that there may be cases where a **rule section** is amended to require increased resource protection, but the rest of the **rule** is not. If the adoption of just a section of a rule is appealed and the plaintiff prevails, this rule expresses the board's intent that the other sections of the rule not relevant to the court's ruling will continue to be administered and enforced.

REFERENCES:

- Section 16, Chapter 9, Oregon Laws 1996 Special Session Types of rules; procedures; findings necessary; rule analysis
- Section 17 and 18, Chapter 9, Oregon Laws 1996 Special Session

FOREST ACTIVITY SAFETY**629-605-0400**

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.

APPLICATION:

This rule is not used for enforcement.

Important Note: In circumstances where a hazard immediately threatens the safety of operators and their employees, actions to respond to and mitigate the hazard would not be considered an “operation” under the Oregon Forest Practices Act. Thus, in these limited circumstances, the Forest Practices Act would not apply on forest land. After the hazard has been mitigated, any subsequent activities related to growing and harvesting of forest tree species would be forest practices and subject to the protection standards and administrative requirements of the Act.

ADMINISTRATION:

If conflicts between protection requirements and safety requirements are raised by an operator, the SF should consult with OR-OSHA personnel and/or OR-OSHA safety references listed below. Prior to modifying rule requirements, SFs need to consider the discretion available to operators in achieving compliance. For example, retention of in-unit green trees/snags may pose some safety problems. Considerable discretion is provided to operators about the location for retaining trees and snags to address safety issues. If the available discretion is not adequate to resolve the conflict, the applicable rule must be modified to the extent necessary to mitigate the conflict. This section should not be used for public safety. (see OAR 629-605-0500)

When snags and trees felled under this section were required to be retained, they must be left in place for the purpose originally intended or moved only as necessary to abate the hazard.

RELATED RULES AND STATUTES:

- OAR 437, Division 6, Forest Activities; Oregon Department of Insurance and Finance; Oregon Occupational Safety and Health Code

REFERENCES:

- “*Falling and Bucking Safety Guide*”; OR-OSHA, Oregon Department of Insurance and Finance; January 1, 1992 (As amended through September 30, 1994)
- “*Oregon Guidelines for Selecting Reserve Trees*”; Oregon OSHA, et al, 1995
- “*Yarding and Loading Handbook*”; OR-OSHA, Oregon Department of Insurance and Finance; June, 1993

MODIFICATION OF REQUIREMENTS FOR FOREST HEALTH AND PUBLIC SAFETY

629-605-0500

Protection requirements for streams, lakes, wetlands and riparian management areas may be modified by approval of a plan for an alternate practice by 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.

APPLICATION:

This rule is used for enforcement. Modification of a forest practice rule **relating to the listed waters and their RMAs**, to allow compliance with forest health or public safety concerns requires a plan for an alternate practice.

COMPLIANCE:

An operator is in compliance with this rule when approval of a plan for an alternate practice is obtained prior to implementing a modification to mitigate a hazard or address a forest health concern involving streams, lakes, wetlands, and their RMAs. Exceptions are made when a hazard immediately threatens life or improved property.

Unsatisfactory Condition: An unsatisfactory condition exists when an operator fails to obtain approval of a plan for an alternate practice prior to implementing a modification to mitigate a hazard or address a forest health concern involving streams, lakes, wetlands, and their RMAs.

Damage: Resource damage is not a prerequisite for taking enforcement action. An unsatisfactory condition may be a violation.

Written Statement of Unsatisfactory Condition: Under specific conditions listed in OAR 629-670-0125 (Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules), a written statement of unsatisfactory condition may be issued instead of a citation.

ADMINISTRATION:

This rule only allows the reduction of protection requirements (not an increase or more restrictive requirements). It does not relax administrative requirements for notifications, written plans or their waiting periods.

Important Note: In circumstances where a hazard immediately threatens life or improved property such as homes and public roads (an emergency), actions to respond to and mitigate the

emergency would not be considered an “operation” under the Oregon Forest Practices Act. Thus, in these limited circumstances, the Forest Practices Act would not apply on forestland. After the emergency has passed, any subsequent activities related to growing and harvesting of forest tree species would be forest practices and subject to the protection standards and administrative requirements of the Act.

The SF must use his/her best professional judgment in determining if there is a legitimate forest health or public safety hazard involving streams, lakes, wetlands, and their RMAs. In making this determination, consult with appropriate other agencies or Salem staff. One objective of this rule is to improve forest health by allowing removal of diseased or infested trees that pose a substantial risk to upland stands. This objective of the rule does not extend to salvaging all dying trees from the RMA.

Modification, if necessary, should be accomplished in such a way that the objective of the protection rules is accomplished as much as possible. The vegetation retention rules already provide tremendous flexibility to resolve many problems without reducing the overall level of protection. OAR 629-640-0300 provides a mechanism to address the management of RMAs when there has been broad scale mortality from insects, disease or fire.

One possible example of the use of this rule is an RMA in eastern Oregon where there is very poor site productivity. If maintaining the required basal area in an RMA will place the retained trees at risk to beetle infestation, the basal area requirement can be modified to a level that will better maintain the overall long-term health of the stand. However, in this situation, the larger trees should be retained to best meet the desired future condition in the RMA.

In public safety situations, often individual trees or groups of trees will need to be harvested to protect improvements. In those situations, if the basal area target can be met by other trees in the RMA then there is no need to modify the basal area requirements.

An example of an acceptable modification would be where unstable woody debris in a stream directly threatens a culvert or bridge. In this situation, the woody debris can be approved for removal from the aquatic area.

Nothing in this rule allows the department to suspend the mandatory comment period required before approving a plan for an alternate practice that is part of a statutory written plan as discussed in 629-605-0173(3).

RELATED RULES AND STATUTES:

- OAR 629-605-0140(2)(f) Notification to the state forester—types of operations
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-640-0300 Alternative vegetation retention prescriptions