Amend and renumber OAR 629-060-0000 as follows:

629-160-0000

Administrative Rule Notification

Prior to the adoption, amendment, or repeal of any rule, the Emergency Fire Cost Committee shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State’s Bulletin referred to in ORS 183.335(1)(b) 183.360 at least 21 days prior to the effective date of the proposed rule.

(2) By mailing or e-mailing a copy of the notice to persons on the Emergency Fire Cost Committee’s mailing list established pursuant to ORS 183.335(7)(8), at least 28 days prior to the effective date of the rule.

(3) By e-mailing a copy of the notice to the legislators specified in ORS 183.335 (15) at least 49 days prior to the effective date of the rule; and

(4) By mailing or e-mailing, or furnishing a copy of the notice to the following persons, organizations, and publications at least 28 days prior to the effective date:

(a) [Associated Oregon Industries] Oregon Forest Industries Council;
(b) Associated Oregon Loggers;
(c) Association of Oregon Counties;
(d) Oregon Forest Resource Institute;
(e) [Louisiana Pacific Corporation - LaGrande] [[(f)] Oregon Cattlemen’s Association;
[(g)] (f) Oregon Farm Bureau Federation;
[(h)] (g) Oregon Sheep Growers Association;
[(i)] (h) Oregon Small Woodlands Association;
[(j)] (i) Oregon State Grange;

Adopted new language is in Bold - Language to be deleted is shown in brackets with italics and strikethrough.
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[j] Clackamas-Marion Forest Protective Association;

[k] Coos Forest Protective Association;

[l] Douglas Forest Protective Association;

[m] East Oregon Forest Protective Association;

[n] Eastern Lane Forest Protective Association;

[o] Klamath Forest Protective Association;

[p] Linn Forest Protective Association;

[q] **Northwest** Oregon Forest Protective Association;

[r] Rogue Forest Protective Association;

[s] Walker Range [*Patrol*] Forest Protective Association;

[t] Western Lane Forest Protective Association;

[u] West Oregon Forest Protective Association;

[v] Western Oregon Livestock Association;

[x] Boise Cascade Corporation — LaGrande — Medford;

[y] Georgia-Pacific Corporation — Portland;]

[z] Weyerhaeuser Company — Springfield & Klamath Falls];

(aa) Willamette Industries, Inc. — Albany ;

(bb) Forestry, Oregon Department of;

(cc) Governor’s Office, [Assistant on Natural Resources ] Natural Resource Advisor;

(x) Legislative Fiscal Office;

(y) Oregon Department of Administrative Services (Risk Management & BAM);

(z) Oregon Department of Revenue;

(dd) Revenue, Oregon Department of;

(aa) The Associated Press[—Salem]; and

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11-12-13
Amend and renumber OAR 629-060-0005 as follows:

**629-160-0005**

**Model Rules of Procedure**


OREGON FOREST LAND PROTECTION FUND

Amend and renumber OAR 629-061-0000 as follows:

**629-165-0000**

**Definitions**

The definitions set forth in ORS 477.001 are made a part of this division by this reference; and further the following special definitions also apply:

(1) “Administrator” means a staff member of the State Forestry Department designated by the State Forester to act as secretary of the committee and to carry out the provisions of ORS 477.440 to 477.460 in such manner as the committee shall direct.

(2) “Committee” means the Emergency Fire Cost Committee established pursuant to ORS 477.440.

(3) “District” means a forest protection district pursuant to ORS 477.225.

(4) “Emergency fire” means a fire that due to the specific circumstances of the fire, requires more suppression resources to control and extinguish than the district can reasonably provide within the approved district budget, based on declared fire season resource levels, whether or not the fire occurs during a declared fire season (see also OAR 629-165-0005).

(5) “Emergency fire suppression costs” means those fire suppression costs attributable to an emergency fire that exceed:

(a) The costs of the fire suppression response provided by the approved district budget as further described in OAR 629-165-0005; and

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(b) An additional per fire or per day cost of suppression further defined in OAR 629-165-0010.

(6) “Fiscal year” means the period beginning July 1 of any year and ending June 30 of the next year.

(7) "Oregon Forest Land Protection Fund (OFLPF or the fund)” means that account established in the State Treasury as a trust fund for the purpose of equalizing emergency fire suppression costs and other listed purposes pursuant to [Chapter 524, Oregon Law, 1969] ORS 477.750 to 477.775.[\]

(8) "Regular Fire Suppression Costs" means those fire suppression costs which are regularly annually budgeted for and incurred by a forest protection district pursuant to ORS 477.205 to 477.281.[294].

(3) "Emergency Fire Suppression Costs” means those fire suppression costs in excess of $25,000 in any single day which are incurred in an forest protection district in excess of the regular fire suppression costs, which costs shall include, but not limited to labor, services, transportation, supplies, reconditioning and rental equipment, contingency forces costs and expenses incurred for the recovery of emergency fire suppression costs; such emergency fire suppression costs, where applicable, to be based upon the wage rates and equipment rental rates approved by the State Forester.

(4) "District” means a forest protection district organized under ORS 477.255.

(5) "Fiscal Year” means the period beginning July 01 of any year and ending on June 30 of the next year.

(6) "Association” means any forest protective association under contract or agreement with the Forester or Board pursuant to ORS 477.406.

(7) "Administrator” means the administrator appointed pursuant to ORS 477.455(2).

(8) "Contingency Forces” means fire suppression resources added to a district regular forces during time of high fire hazard and/or risk. Such forces may be resources moved from other protection districts, or local forces placed on standby for initial fire attack.

(9) An "Emergency Fire” is a fire that requires greater fire suppression action than a district can reasonably provide at a given time and place under closed fire season suppression resource levels. The following are examples of "emergency fire”:

(a) A fire occurs in a unit of a district during August, when the district is at full strength. The dispatch plan on the fire at this time and place specifies a dispatch of two engines, six persons and a district cat. If these forces are inadequate to suppress the fire and additional forces must be hired, it becomes an emergency fire;

(b) If the same fire occurs in February, when the readiness resources are substantially less, the district must still suppress the fire. Hired resources from cooperators will normally be used to supplement limited district resources. The fire becomes an emergency fire when hired and

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Adopted new language is in **Bold** - Language to be deleted is shown [*in brackets with italics and strikethrough*]

(c) An emergency fire situation may occur when there are multiple fires in a district, although none of the fires may escape initial attack stage. This situation generally occurs during and after severe lightning storms. Extra resources hired to supplement regular forces in the multiple fire situation are emergency fire resources eligible for payment from emergency fire funds.

Adopt 629-165-0005 as follows:

**629-165-0005**

**Emergency Fires**

As defined in OAR 629-165-0000 (4), an emergency fire is a fire that due to the specific circumstances of the fire, requires more suppression resources to control and extinguish the fire than the district can reasonably provide within the approved district budget based on declared fire season resource levels, whether or not the fire occurs during a declared fire season. The following are examples of emergency fires:

(1) A fire occurs in August, when the district is at full strength. The pre-planned dispatch for the fire at this time and place (as an example) specifies two engines, six persons and a district dozer. If these forces are inadequate to suppress the fire and additional forces must be hired, it becomes an emergency fire;

(2) If a fire in the same location as in section (1) occurs in February, when the readiness resources are substantially less, the district must still suppress the fire. Hired resources from cooperators will normally be used to supplement limited district resources. The fire becomes an emergency fire when hired and regular district resources exceed the resources equivalent to the fire season pre-planned dispatch of two engines, six persons and a dozer;

(3) An emergency fire situation may occur when there are multiple fires in a district, even though none of the fires individually have exceeded the planned dispatch level, if the total effort of all the fires exceeds the district’s budgeted resource level. This situation most frequently occurs during and after widespread lightning events. Additional resources, hired to supplement regular forces in the described multiple fire situation, are emergency fire resources eligible for payment from the OFLPF.

Adopt 629-165-0010 as follows:

**629-165-0010**

**Additional Amount Not Considered Emergency Fire Suppression Costs**

(1) Notwithstanding OAR 629-165-0005, it is a policy of the committee that a district is expected to pay an amount of fire suppression costs in addition to the pre-planned

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dispatch, before any costs are considered emergency fire suppression costs. This additional amount in most cases will be $25,000 per day or per fire as follows:

(a) If multiple fires occur on the same day within a district, only one additional amount of $25,000 may be applied to the sum of the costs of all the fires that began on that day.

(b) If any individual fire or group of fires that began on the same day (or from the same lightning storm that continues into a second day, at the discretion of the committee) burns past midnight, or the suppression action continues for multiple days, only one additional amount of $25,000 may be applied to the sum of the costs of those fires.

(c) If one fire or a group of fires begin on one day and suppression action continues for multiple days, and then a new fire or group of fires begin on a different day, an additional amount of $25,000 may be applied to each day that new fires are ignited.

(2) The additional amount described in section (1) may be modified or waived by the committee if conditions so warrant. Conditions that may warrant modification or waiver include, but are not limited to:

(a) The unencumbered balance of the fund is determined to be in excess of the reserve base established in ORS 477.760.

(b) A district requesting waiver has over-expended the regular protection budget for the year in which the waiver request is made.

(3) If the additional amounts described in section (1) of this rule directly result in an increase in a district’s annual budget greater than fifteen cents per acre on timberland or six cents on grazing land, the committee may waive that part in excess of these amounts. It is the committee’s intent that the maximum effect of section (1) of this rule on a district budget will be limited to an additional fifteen cents per acre on timberland and six cents per acre on grazing land.

DEDUCTIBLES

Amend and renumber OAR 629-061-0005 as follows:

629-165-0100

Deductible Amount per Acre

Emergency fire suppression costs are subject to a deductible amount based on protected acres in the district. The [Emergency Fire Cost Committee] committee shall establish the deductible amount for each district on or before January 15 of each year. The deductible amount shall be an amount for each acre covered by the timber budget and an amount for each acre covered by the grazing budget established under ORS 477.230, but may not exceed the limit established under ORS 477. 770.

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(1) Payment for activities that may be included in meeting the deductible amount shall include, but are not limited to labor, services, transportation, supplies and rental of equipment other than those of the claiming district when incurred in:

(a) Emergency fire suppression, or

(b) Contingency forces costs not to exceed an amount equal to the deductible specified in this rule; provided that the costs were approved by the State Forester before they were incurred and that they were expended on emergency fires.

(2) The requirement in OAR 629-061-0000 that $25,000/fire/day be expended before emergency fire suppression costs may be paid may be waived by the Committee if conditions so warrant. Conditions that may warrant waiver of the requirement include, but are not limited to one or more of the following:

(a) The unencumbered balance of the fund is determined to be in excess of the reserve base established in ORS 477.760.

(b) The district requesting waiver has over expended the regular protection budget for the year in which the waiver request is made.

(3) If the requirement in OAR 629-061-0000, defining Emergency Fire Suppression Costs, directly results in an increase in any District Annual Protection Budget in excess of 15 cents per acre on Timber Land or six cents on Grazing Land, the Committee will waive that part of the requirement in excess of this level. It is the intent of the Emergency Fire Cost Committee that the maximum impact of OAR 629-061-0005(2) be limited to an additional 15 cents per acre on Timber Land and six cents per acre on Grazing Land in any District Annual Protection Budget.

FUND BALANCES

Adopt OAR 629-165-0200 and 629-165-0210 as follows:

629-165-0200

Unencumbered Balance

(1) ORS 477.760 (1) requires the committee, on or about the last day of February of each year, to meet and determine the unencumbered balance of the fund as of February 16 of the same year.

(2) The meeting to determine the unencumbered balance will normally occur at the regularly scheduled meeting of the committee prior to the Board of Forestry meeting in early March.

(3) The unencumbered balance of the fund shall be calculated as the actual cash balance in the state treasury on February 16; less the best available estimate of eligible suppression cost claims for fires occurring before February 16, but not yet paid; less

Adopted new language is in Bold - Language to be deleted is shown [in brackets with italics and strikethrough]}
estimated administrative expenses through February 16, but not yet paid; less any other anticipated payments known to the committee at that time due for expenses committed prior to February 16, but not yet paid.

629-165-0210

Transfer of Funds from State Treasurer

(1) Pursuant to ORS 477.760 (2), the committee is authorized to request a transfer of funds from the State Treasurer to the OFLPF at any time and in any amount that does not cause the fund to exceed the reserve base specified in ORS 477.760 (1).

(2) To minimize the effect of repayment of transfers on the landowner community, it is the committee’s intent that the amount of transfer requested should be limited to an amount by which known and anticipated claims will exceed the sum of the cash balance in the fund and the anticipated revenues for the remainder of the fiscal year.

(3) If the monies in the OFLPF are inadequate to ensure repayment of the transfer and the interest thereon, the State Forester must increase the assessments, surcharge and harvest tax in equal proportions for the ensuing fiscal and calendar years, respectively, adequate to make repayment of the transfer:

(a) The increase in assessments in the next fiscal year will apply to:

(A) The surcharge on improved lots referred to in ORS 477.277;

(B) The OFLPF portion of the minimum assessment referred to in ORS 477.295; and

(C) The acreage assessments referred to in ORS 477.880.

(b) The increase in taxes in the next calendar year will apply to the forest products harvest tax referred to in ORS 321.015(2).

(4) Negotiations for and approval of any transfer should be completed as soon as practicable after February 16 of any year that a transfer is necessary, to allow the State Forester sufficient time to meet the requirements of ORS 477.760, requiring increases to assessment, surcharge and harvest tax rates for the ensuing fiscal and calendar years, respectively.

CLAIMS PROCESSES

Amend and renumber OAR 629-061-0015 as follows:

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Evidence of Necessity

[Each district shall, when] When payment is claimed from the fund for emergency fire suppression costs incurred on a fire where [Oregon Forest Land Protection Fund, provide Administrator with evidence acceptable to Administrator of the necessity for district to incur emergency fire suppression costs in which an owner, or operator has obligations to pay for controlling and extinguishing fire pursuant to provisions of] an owner, operator or other person has an obligation to pay those costs pursuant to ORS [477.062, 477.068, 477.085 and 477.120, the district warden must provide evidence to the administrator supporting the necessity of advancing payment, pending ultimate resolution. Evidence which may be acceptable to [Administrator shall] the administrator must include, but is not limited to:

1. A statement signed by the district [forester or district manager] warden stating the entity responsible for fire suppression costs has refused to accept responsibility or is unable to pay fire costs[;]

2. A notification to [Administrator] the administrator that fire cost recovery proceedings have been initiated against an owner, [or] operator or other person that has [obligations] an obligation to pay fire suppression costs[;]

3. A statement from an authorized State Forester's staff member or by an assistant attorney general that fire suppression costs are deemed uncollectible. This statement [shall] must include the reason for the decision[;]

4. A statement by a district [forester] warden that recovery of fire costs appears to be assured, but delays in the recovery process will make it necessary to support the [district] district's financial resources until costs can be processed, [and] the responsible party is billed and payment is received.

Amend and renumber OAR 629-061-0020 as follows:

629-165-0305 [629-061-0020]

Qualifications for Payment

[Administrator shall pay only those emergency fire suppression costs as defined in section 629-061-0000(3) incurred by any district during the fiscal year if district has first expended for similar or other fire emergency costs the deductible amount described in OAR 629-061-0005, provided, however, when a fire originates in one fiscal year and continues burning in fiscal year next following, all emergency fire suppression costs for said fire shall be included in the expenditures for the fiscal year in which the fire started.]

1. The administrator must pay only those emergency fire suppression costs as described in this rule, incurred by a district during the fiscal year, if the district has first

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expended for similar or other emergency fire suppression costs the deductible amount described in OAR 629-165-0100.

(2) When a fire originates in one fiscal year and continues burning in a subsequent fiscal year, all emergency fire suppression costs for that fire shall be included in the expenditures for the year in which the fire started.

(3) Emergency fire suppression costs eligible for payment by the OFLPF include, but are not limited to labor, services, transportation, supplies, reconditioning and rental equipment, and expenses incurred for the recovery of fire suppression costs.

(4) Emergency fire suppression costs, where applicable, are based on the wage rates and equipment rental rates approved by the State Forester.

(5) Notwithstanding section (3) of this rule, the committee may further limit qualifying emergency fire suppression costs, by publishing its qualifications in a form readily available to the districts, prior to the beginning of the fiscal year in which expenses are incurred.

Repeal OAR 629-061-0025.

Claim Forms

Any claim for emergency fire suppression costs shall be submitted on forms supplied or approved by Administrator. "Current claims" shall be those claims covering such costs for the current fiscal year.

Amend and renumber OAR 629-061-0035 as follows:

629-165-0310 [629-061-0035]

Payments for Fire Suppression Costs

(1) [Administrator shall] The administrator must pay to any district an amount from the Oregon Forest Land Protection Fund equal to the emergency fire suppression costs such district has qualified for under OAR 629-061-0020, hereof; the OAR 629-165-305. The payment shall be 100 percent of the itemized certified costs unless otherwise determined by the Emergency Fire Cost Committee committee.

(2) In the event the administrator makes a payment under section (1) of this rule that is less than 100 percent of the itemized and certified emergency fire suppression costs, final payment must not be made until all emergency fire suppression cost claims against the fund have been submitted for the subject fiscal year.

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(3) Each payment under section (1) of this rule is a conditional payment until:

(a) All emergency fire suppression cost claims against the fund have been submitted for the subject fiscal year;

(b) The administrator has audited the claims; and

(c) The committee has approved the audited claims.

(4) The district must reimburse the fund for any conditional payments that are disapproved by the committee.

(5) In addition to sections (1) to (3) of this rule, any payment made by the administrator to a claimant, shall be conditioned on proceedings being brought to recover fire suppression costs from parties liable thereto under ORS Chapter 477 or other law.

Repeal OAR 629-061-0040, 629-061-0045 and 629-061-050.

[629-061-0040]

Percentage Payment

In the event Administrator makes a payment under rule 629-061-0035, hereof, less than 100 percent of the itemized and certified emergency fire suppression costs, no final payment of said costs shall be made until all emergency fire suppression cost claims against the Oregon Forest Land Protection Fund have been submitted for the current fiscal year.

629-061-0045

Payments Conditional -- Audits

Any payment made under OAR 629-061-0035 shall be a conditional payment until:

(1) All emergency fire suppression cost claims against the Oregon Forest Land Protection Fund have been submitted for the current fiscal year; and

(2) The Administrator has audited each claim; and

(3) The Emergency Fire Cost Committee has approved each audit.

(4) The district shall reimburse the Oregon Forest Land Protection Fund for any conditional payments that are not approved by the Emergency Fire Cost Committee.

629-061-0050

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Proceedings -- Recovery of Costs

In addition to OAR 629-061-0045, any payment made by Administrator to a claimant, shall be conditioned upon proceedings being brought to recover fire suppression costs from any party or parties liable thereof under ORS Chapter 477, or other law.

Amend and renumber OAR 629-061-0060 as follows:

629-165-0315 [629-061-0060]

Collection -- Approval

If [an Association or the State Forester institutes] a district warden or other representative of the State Forester initiates collection of fire suppression costs from a responsible party under [OAR 629-061-0050] ORS 477.068 477.085 or 477.120, prior to acceptance of any payment [thereunder] for such suppression costs, [Association or the State Forester whichever the case may be] the district warden or forester must first secure the approval of the [Administrator] administrator, if:

1. Such fire suppression costs include moneys which have been advanced by [Administrator] the administrator to a district from the [Oregon Forest Land Protection Fund] fund; [or]

2. Such settlement will affect the amount otherwise payable from the [Oregon Forest Land Protection Fund] fund to a district; or

3. Such settlement will affect the amount otherwise reimbursable by a district to the [Oregon Forest Land Protection Fund] fund.

Amend and renumber OAR 629-061-0065 as follows:

629-165-0320 [629-061-0065]

Reimbursement to Account

Whenever [an Association or the State Forester] a district or the forester receives payment pursuant to [OAR 629-061-0060, hereof, they] ORS 477.068, 477.085 or 477.120, the district shall retain an amount equal to the emergency fire suppression costs not paid by [Administrator from the Oregon Forest Land Protection Fund] the administrator from the OFLPF, but eligible for payment, and reimburse the [Oregon Forest Land Protection Fund] fund with the remainder, if any; however, any such reimbursement shall in no event exceed the amount paid [from said Account] by the respondent.

Repeal OAR 629-061-0075

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11-12-13
Transfer of Funds From State Treasurer

(1) The Emergency Fire Cost Committee is authorized by ORS 477.760(2) to request a transfer of funds from the State Treasurer to the Oregon Forest Land Protection Fund at any time and in any amount that will not cause the fund to exceed the reserve base specified in ORS 477.760(1). In the event a transfer of funds is made from the State Treasurer, the Emergency Fire Cost Committee shall notify the State Forester of the amount of the transfer.

(2) The State Forester shall increase taxes and assessments as specified in ORS 477.760(4) in an amount adequate to assure repayment of the transfer and the interest charged thereon. The increase in taxes and assessments specified in ORS 477.760(4)(a) shall be added to the taxes and assessments made under 321.015(2), 477.277(1), 477.295(1), 477.750(1), (2), 477.760(4) and 477.880(2) for the following fiscal year. The amount of transfer will be limited to the amount of money by which known and anticipated claims will exceed the cash balance in the fund, plus anticipated revenues for the remainder of the fiscal year. Negotiations for and approval of the transfer shall be completed before March 1 of each year to allow the State Forester to meet the requirements of 477.760, which requires setting of tax and assessment rates by March 1 of the ensuing year.]