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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 629  
DEPARTMENT OF FORESTRY

**FILED**

03/27/2024 4:45 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Post-disturbance harvest rulemaking directed by Senate Bill 1501 (2022).

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/01/2024 11:55 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
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HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 04/22/2024

TIME: 1:00 PM

OFFICER: Oregon Department of Forestry Representative

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-444-9171

CONFERENCE ID: 97210033893

SPECIAL INSTRUCTIONS:

To testify or listen within the Zoom platform, click the meeting URL above, select the "register and join" button and complete the required steps. Zoom registration is now open. To testify or listen by phone, dial the number listed and enter the conference ID. If you plan to testify by phone, you will need to provide your first and last name, your affiliation (if any) and your address. You can email the required information to the email listed in this notice at least 24 hours before the hearing or provide it during the hearing.

The hearing will close no later than 3 PM and may close earlier if no one has joined in the first 15 minutes or if all individuals wishing to testify have had the opportunity to enter their comments into the record.

NEED FOR THE RULE(S)

Section 6 of Senate Bill 1501 (2022) directed the Board of Forestry to initiate rulemaking concerning the post-disturbance harvest of trees pursuant to the board's rulemaking authority in ORS 527.710 and subject to the provision of ORS 527.714. In January 2023, the board initiated rulemaking. In February 2024, the board made determinations relevant to the provisions of ORS 527.714 including a determination that degradation of resources is likely to occur if forest practices continue under the existing rule.

## DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 1501 (2022)- <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1501>

Private Forest Accord Report- <https://www.oregon.gov/odf/aboutodf/documents/2022-odf-private-forest-accord-report.pdf>

Meeting Materials for the February 23, 2024 Board of Forestry Meeting-

<https://www.oregon.gov/odf/board/Pages/bofmeetings.aspx>

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## STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These rules will apply to forestlands under the jurisdiction of the Forest Practices Act. Generally, this includes all non-federal forestlands in Oregon. However, Section 50 of Senate Bill 1501 (2022) states that this rulemaking will not impact specific lands.

This rule does have provisions specific to different regions of the state as well as a provision specific to small forestland owners. When considering the potential impact of this rule to racial equity the department sought demographic level data regarding forestland ownership in Oregon. This data is not currently available. There are no known adverse consequences regarding racial equity.

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## FISCAL AND ECONOMIC IMPACT:

Post-disturbance harvest refers to the removal of forest products after catastrophic events such as wildfire, wind, ice, insect or disease damage. The proposed rule includes provisions that increase tree retention requirements and creates a different threshold that, depending on site-specific conditions, could increase or decrease the ability to harvest. By nature, catastrophic events are unpredictable in their type, frequency, severity, and impact on the landscape. For these reasons, the fiscal and economic impact is uncertain.

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## COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

1) These rules will apply to forestlands under the jurisdiction of the Forest Practices Act, this includes lands owned by state, county, city or private individuals or entities. As explained in the Fiscal and Economic Impact section it is uncertain whether there will be an economic impact.

2) These rules will apply to forestlands rather than to businesses, however businesses can be affected by being either landowners or working within related sectors including primary forest products, secondary forest products, forestry support, or a forestry-dependent industry. For the purpose of this notice, statute defines small business to mean entities formed for the purpose of making a profit, which are independently owned and operated from all other businesses and have 50 or fewer employees.

The 2023-2024 Edition of Oregon Forest Facts, produced by the Oregon Forest Resources Institute, reports that 34% of forestlands in Oregon are owned by private landowners. The number of ownerships within that acreage and how many would meet the definition of a small business is unknown, however small businesses are likely to be represented amongst this acreage. The Oregon Employment Department reports the following number of private sector establishments with 0 to 50 employees in the forest sector based on 2022 annual averages; 634 in forestry & logging, 347 in support activities for forestry, 314 in wood products manufacturing, 252 in wood kitchen cabinet & countertop manufacturing and 43 in paper manufacturing. The proposed rule does not establish increased reporting, recording

keeping, or administrative duties and increased costs are not anticipated related to compliance.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not explicitly engaged in the development of this rule; however, they had equal access to the opportunities to engage in the rulemaking process described below.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

ODF chose to use other means to obtain public views related to this rulemaking effort. In January 2023, the board initiated rulemaking and ODF began working on the literature review, which was presented at the February 23rd, 2024, Board of Forestry meeting. The public was invited to submit articles for consideration as part of the literature review process.

The draft rules, presented at the February 23rd, 2024, Board of Forestry meeting, were developed based on the findings of the literature review and were informed by discussions with representatives of landowners, conservation, and industry. The public also had the opportunity to provide written comment and/or live testimony on the draft rules at the February 23rd, 2024, Board of Forestry meeting.

Additionally, ODF solicited public input on the economic impact of the proposed rule and within that opportunity provided an open text box for any additional comments or feedback on the rule. A total of 344 individuals responded.

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RULES PROPOSED:

629-643-0000, 629-643-0300

AMEND: 629-643-0000

RULE SUMMARY: This rule establishes the purpose of the Division 643: Water Protection Rules: Vegetation Along Streams. Proposed changes are technical in nature including the deletion of a reference to this rulemaking effort, subsequent renumbering, deletion of a reference to tables that are proposed to be deleted, and a correction for accuracy.

CHANGES TO RULE:

629-643-0000

Vegetation Retention Goals for Streams; Desired Future Conditions

(1) The purpose of this rule is to describe the vegetation retention measures for streams, the measures' purposes, and how the measures shall be implemented. The vegetation retention requirements for streams, as described in OAR 629-643-0100 through 629-643-0500, are designed to produce desired future conditions for the wide range of stand types, channel conditions, and disturbance regimes that exist in Oregon's forestlands. ¶

~~(2) Sections (3) through (6) of this rule, including tables in OAR 629-643-0300, are effective until replaced by the Board of Forestry as part of the post-disturbance harvest rulemaking directed by section 6(2)(a), chapter 33, Oregon Laws 2022 that is to occur no later than November 30, 2025. ¶~~

~~(3)~~ The desired future condition for streamside areas that require forested buffers is to grow and retain vegetation so that, over time, average conditions across the landscape become similar to the conditions of mature streamside stands. Oregon has a tremendous diversity of forest tree species and stand density along waters of the state. The age of mature streamside stands varies by tree species. Mature stands generally occur between 80 and 200 years of stand age. Hardwood stands and some conifer stands may become mature at an earlier age. Mature forests provide ample shade over the channel, an abundance of large wood in the channel, channel-influencing root masses along the edge of the high-water level, and regular inputs of nutrients through litter fall. Mature forests are generally composed of multi-aged trees of appropriate and varied density, native tree species well suited to the site, a mature understory, snags, and downed wood. ¶

~~(4)~~ For the forests specified in (2) above, the rule standards for desired future conditions and located in Western Oregon or the inner zone in Eastern Oregon can be developed by using normal conifer yield tables for the average

upland stand consistent with the geographic region to estimate the conifer basal area for average unmanaged mature streamside stands (at age 120). ~~For alternative vegetative prescription basal area targets for catastrophic events, see the tables in OAR 629-643-0300.~~ For site specific vegetation retention prescriptions basal area targets, see the table in OAR 629-643-0400. These rule standards provide guidance for operators to implement site specific alternate plans, ~~described in OAR 629-643-0300,~~ and to develop site specific vegetation prescriptions, described in OAR 629-643-0400.¶¶

(54) The desired future condition for streamside areas that do not require tree retention areas, as defined in OAR 6429-643-0130, is to have sufficient streamside vegetation to support the functions and processes important to downstream fish use waters and domestic water use, and to provide habitat for amphibians and other wildlife across the landscape. Such functions and processes include but are not limited to:¶¶

(a) Maintaining downstream cool water temperature and other water quality parameters; ¶¶

(b) Influencing sediment production; ¶¶

(c) Stabilizing banks; and¶¶

(d) Contributing nutrients and organic matter.¶¶

(65) In many cases, the operator may achieve the desired future condition for streams by applying the standard vegetation retention and small forestland owner minimum option prescriptions as described in OAR 629-643-0100, 629-643-0105, 629-643-0120, 629-643-0125, 629-643-0130, 629-643-0135, 629-643-0141, 629-643-0142, 629-643-0143, and 629-643-0145. In other cases, the existing streamside vegetation may not be able to develop into the desired future condition in a timely manner. In these cases, the operator may apply an alternative vegetation retention prescription as described in OAR 629-643-0300 or develop a site-specific vegetation retention prescription as described in OAR 629-643-0400. For the purposes of these water protection rules, "in a timely manner" means that the trees within the riparian management area will substantially move towards the desired future condition more quickly than if the trees are left untreated.

Statutory/Other Authority: ORS 527.710, Section 2(1), Chapter 33, Oregon Laws 2022

Statutes/Other Implemented: ORS 527.765, 527.620, Section 2(2), Chapter 33, Oregon Laws 2022

RULE SUMMARY: This rule is the alternative vegetation retention prescription that can be applied in lieu of the standard practice or small forestland owner minimum option when applicable conditions are met. The proposed changes replace the existing rule text with new provisions that establish the conditions of when and how alternative prescriptions can be applied after catastrophic events.

CHANGES TO RULE:

629-643-0300

Alternative Vegetation Retention Prescriptions

~~(1) Alternative prescriptions are intended to apply to situations where the existing streamside stand is too sparse or contains too few trees. The purpose of this rule is to prescribe an alternative vegetation retention prescription for harvest units experiencing stand level mortality. This alternative prescription maintains fish, wildlife, and water quality resources over time. Future desired streamside stand conditions are achieved through immediate manipulation of vegetation, including reforest intended to contribute to desired future conditions, provide tree retention, woody debris, bank stability and result in the riparian management area with conifer.~~

~~(2) Section (3) and (4) of this rule are alternative vegetation retention prescriptions described for the geographic areas in Figure 1, that the operator may apply if the basal area in the establishment of live trees.~~

~~(2) For the purposes of this rule only, "stand level mortality" means a riparian management area is no more than one-half of the standard target indicated in either Table 5 or Table 6, as may be applicable, and conditions described in the alternative prescription are applicable.~~

~~[Figure 1. Geographic Areas, OAR 629-643-0300]~~

~~[Table 5. Alternative Prescription Basal Area Table for Type F/SSBT Streams]~~

~~[Table 6. Alternative Prescription Basal Area Table for Type D and Type N Streams]~~

~~(3) Alternative vegetation retention prescription 1 (catastrophic events). This alternative prescription applies to streamside stor harvest unit with 50% or more dying or recently dead trees due to a catastrophic event such as wildfire, wind, ice, insect or disease damage.~~

~~(3) For the purposes of this rule only, "soil disturbance" means that soil has been damaged by wildfire or by catastrophic windthrow, or by insect or disease mortality. Such mortality must occur at the stand level and may not include normal endemic mortality. This alternative prescription is intended to provide adequate stream shade, woody debris, and bank stability for the future while creating conditions in the streamside area that will result in quick establishment of a new and healthy stand. Tmoved in a manner that alters water drainage patterns so that a new channel is formed within which water flows or is confined and has potential to move loosened or exposed soil or debris toward the stream.~~

~~(4) For harvest units in Western Oregon the operator shall may:~~

~~(a) Retain trees that have fallFor Type F and Type SSBT stream riparian management areas experien-cin the stream. The operator may onlyg stand level mortality, harvest portions of these trees that are outside the high-water levels and do not contribute to the abilitydying or recently dead trees outside 75 feet slope distance from the edge of the active channel ofr the downed tree to withstand movement during high flows.channel migration zone (CMZ).~~

~~(b) Retain all live and dead trees within 20The operator shall apply an ELZ at a distance of 75 feet ofrom the high-water level of large and medium streams and 10 feet of the high-water level of small streams.~~

~~(c) For Type F and Type SSBT streams, retain live trees, dying or recently dead trees, and downed logs sufficient to satisfy the active management target shown in Table 5.~~

~~(d) For Type D and N streams, retain live trees, dying or recently dead trees, or downed logs sufficient to satisfy the standard target shown in Table 6.~~

~~(e) Retain live conifers first to meet the target. If live conifers are too few to satisfy the target, the operator shall meet the target as much as possible by including windthrown trees within the channel and dying or recently dead treesedge of the active channel or the channel migration zone (CMZ) to the outer edge of the riparian management area.~~

~~(i) Soil disturbance from cabled logs shall not exceed 20 percent of the total area of the ELZ.~~

~~(ii) Soil disturbance from ground-based equipment shall not exceed 10 percent of the total area of the ELZ. Operators shall take corrective action(s) for soil disturbance from ground-based equipment. Corrective action(s) shall be designed to replace the equivalent of lost functions and be consistent with Forest Practices Technical Guidance.~~

~~(f) For purposes of this prescription, the basal area of a windthrown tree in the channel or a retained dying or recently dead tree contributes two times its basal area toward meeting the target.~~

~~(4) Alternative vegetation retention prescription 2 (hardwood dominated sites). This alternative prescription~~

applies to streamside sites that are capable of growing conifers, and where conifer stocking is currently low and unlikely to improve in a timely manner because of competition from hardwoods and brush. If portions of such riparian management areas currently contain abundant conifer basal area, it is intended to encourage hardwood sprouting, the operator shall not apply chemicals within 75 feet slope distance from the edge of the active channel or the channel migration zone (CMZ) unless needed to address invasive species or noxious weed infestations and shall apply chemicals using targeted ground-based application. Chemical application in the remainder of the riparian management area is to be minimized so that these areas of good conifer basal area be segregated and managed to the greatest extent possible. ¶

(C) To encourage less dense spacing, the standard practice vegetation retention prescription while the remainder is managed according to this alternative prescription. This alternative prescription is intended operator may apply the minimum stocking standard described below rather than the productivity-based standard to provide adequate stream shade, some woody debris, and bank stability for the future while creating conditions in the streamside banking standards described in OAR 629-610-0020(4) within the riparian management area. ¶

(i) 130 free to grow seedlings per acre. The operator shall: ¶

(a) Submit to the State Forester a written plan that describes how the operator will meet these requirements to grow seedlings per acre; or ¶

(ii) 75 free to grow saplings and poles per acre; or ¶

(iii) 50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or ¶

(iv) An alternative prescription and that demonstrates that the conversion will substantially improve the likelihood and timeline to reach the desired future condition. ¶

(b) Evaluate the stand within the optimal combination of seedlings, saplings and poles, and larger trees as calculated in OAR 629-610-0020(7). ¶

(b) For small Type Np stream riparian management area and, where they exist, segregate segments 200 feet or more in length that are well-stocked with conifer, as identified from an aerial photograph, from the ground, or through an on-site stand level mortality, harvest dying or recently dead trees within the riparian management area. The operator shall apply an R-ELZ from the edge of the appropriate means. The standard practice vegetation retention prescription for vegetation retention shall be applied to these segments. ¶

(c) For the remaining portion of the riparian management area that has lower conifer basal area, divide the riparian management area into conversion blocks and retention blocks. ¶

(d) Include no more than half the total stream length in the harvest unit within conversion blocks. Conversion blocks shall be no more than 500 feet long and shall be separated from each other by at least: ¶

(A) 200 feet of retention block; or ¶

(B) A 200-foot active channel in any area where tree removal occurs consistent with OAR 629-630-0700(6) and OAR 629-630-0800(8). ¶

(c) For units experiencing stand level mortality that contain slope retention areas identified under OAR 629-630-0910(3), harvest dying or recently dead trees in the slope retention areas, if the slope retention area is not directly adjacent to designated debris flow traversal areas or Type F stream, Type SSBT stream, large or medium type Np stream riparian management areas. If the harvest unit contains one or more designated sediment where the standard practice vegetation retention prescription is applied. ¶

(e) Within conversion blocks source areas adjacent to a riparian management area or designated debris flow traversal area, the operator shall retain: ¶

(A) All trees growing in the stream, or within 10 feet of the stream's high-water level, in at least one of the slope retention areas. ¶

(B) For large streams, all trees leaning over the channel within 20 feet of the high-water level of the stream. ¶

(f) Within retention blocks the operator shall retain: ¶

(A) For large streams: ¶

(i) All conifer trees within 50 feet of the high-water level of the stream units containing Terminal Type Np stream riparian management areas experiencing stand level mortality in Eastern Oregon, the operator may harvest dying or recently dead trees within the outer zone of the riparian management area. ¶

(ii) All hardwood trees within 30 feet of the high-water level of the stream. ¶

(B) For medium streams: ¶

(i) All conifer trees within 30 feet of the high-water level of the stream. ¶

(ii) All hardwood trees within 20 feet of the high-water level of the stream. 6) The State Forester shall exempt small forestland owner harvest units experiencing stand level mortality from the watershed cap described in OAR 629-643-0140. ¶

(C) For small streams, all trees within 20 feet of the high-water level. Except as explicitly stated in this rule, all of the stream forest practice rules apply.

Statutory/Other Authority: ORS 527.710, Section 2(1)6, Chapter 33, Oregon Laws 2022

Statutes/Other Implemented: ORS 527.715, ORS 527.765, Section 2(2), Chapter 33, Oregon Laws 2022

