

## DIVISION 170

## FIREFIGHTER CRIMINAL DEFENSE EXPENDITURES

629-170-0001

## Title, Scope and Effective Date

(1) OAR 629-170-0001 through 629-170-0040 are known as the Firefighter Criminal Defense Expenditure rules.

(2) As provided in ORS 477.128, the scope of this division is limited to firefighters employed by the State Forestry Department or a forest protective association. This division does not apply to firefighting contractors or their employees; employees or members of rangeland protection associations; or other cooperating individuals, companies, agencies or their employees; even if they conducted fire suppression activities under the direction of the forester; except that it may apply to employees of other jurisdictions that are members of the Northwest Wildland Fire Protection Agreement pursuant to ORS 477.200, Article VI.

(3) The procedures described in this division shall apply to any circumstance where criminal charges result from fire suppression actions alleged to have occurred on or since January 1, 2012; effective July 1, 2016.

629-170-0005

## Definitions

(1) Terms used in OAR Chapter 629, Division 170 have the meaning given in ORS 477.001.

(2) In addition, as used in this division,

(a) “Firefighter” means an employee of the State Forestry Department or of a forest protective association, employed at the time of the alleged incident, whose duties included the abatement of uncontrolled fire as described in ORS 477.064.

(b) “Fire suppression activities”, “fire suppression actions” or “fire abatement duties” mean any of the myriad actions carried out as responsibilities of employees of the State Forestry Department or forest protective associations relating to suppressing fire including, but not limited to, attacking fires by building line or spraying water, using fire to burn out control lines or back fire, operating firefighting equipment, directing or planning the attack, operating or directing aircraft, dispatching resources and supporting firefighters logistical needs.

(c) “Under the direction and control of the forester” means and includes, in addition to fire suppression activities on lands provided fire protection directly by the State Forester pursuant to ORS 477.210 (4) and (5), any firefighter assignments to fire suppression activities authorized by the forester pursuant to agreements with cooperating fire protection jurisdictions authorized under ORS 477.200 or 477.406.

629-170-0010

#### Purpose

(1) OAR 629-170-0001 through 629-170-0040 are intended to provide procedures to guide the exercise of authority granted in ORS 477.128 for the State Forestry Department to pay costs and reasonable attorney fees for defense of a firefighter charged with a crime resulting from actions or omissions occurring in the course of fire abatement duties.

(2) Moreover, these rules and ORS 477.128 are intended to demonstrate to agency and association personnel that, if they make a dedicated effort to train and gain the critical experience required to be placed in positions of authority for fire suppression activities, and carry out their responsibilities in a conscientious manner, the department will support and assist in defending them.

629-170-0015

#### Request for Reimbursement of Defense Costs

(1) Prior to any consideration by the State Forester to authorize expenditures under ORS 477.128, at the earliest practicable time after the firefighter reasonably suspects or has been informed of criminal charges being sought against the firefighter, the firefighter must make a written request to the State Forester.

(2) The request in section (1) above must:

(a) Seek a determination by the State Forester as to the eligibility of the firefighter for expenditures related to costs and reasonable attorney fees to defend against criminal charges in a specific instance; and

(b) Provide a description of the events leading to the possibility of criminal prosecution with sufficient specificity to allow the State Forester to initiate an investigation of those events.

(3) The request required by this rule is not intended to require the firefighter to provide information of a nature that would be construed to violate the firefighter's right to avoid self-incrimination guaranteed under the Constitutions of the State of Oregon or the United States.

629-170-0020

#### State Forester's Investigation

(1) Upon receipt of a request pursuant to OAR 629-170-0015, the State Forester may initiate an investigation into the events and circumstances leading to criminal charges against a firefighter.

(2) The State Forester's investigation must be focused on answering the following questions:

(a) At the time of the alleged actions underlying the charge, was the firefighter performing fire suppression activities under the direction and control of the forester?

(b) Did the alleged actions underlying the charge actually occur, and if so, were they directly related to the firefighter's duties or performance of fire suppression activities?

(c) Were the alleged actions of the firefighter within the range of reasonable fire suppression actions?

(3) The State Forester may include in the investigation evidence from any credible source including, but not limited to, evidence gathered by other investigating entities. The State Forester has the sole responsibility to determine the validity and weight to be given any and all evidence.

629-170-0025

#### Determination of Eligibility for Reimbursement

(1) If the State Forester finds affirmative answers to the questions in OAR 629-170-0020 (2) (a) and (c); and relative to (2) (b) finds that the underlying actions leading to charges did not actually occur as charged, or finds that they did actually occur but were directly and appropriately related to the firefighter's performance of fire suppression activities, the State Forester may authorize expenditures as provided in ORS 477.128.

(2) The State Forester shall strive to make a determination under this rule in as timely a fashion as possible to aid the firefighter in responding to the charges.

(3) Notwithstanding ORS 183.480, the firefighter has no right to a hearing or appeal of the State Forester's determination under this rule, as specified in ORS 477.128 (3).

629-170-0030

#### Funding

Prior to authorizing expenditures for costs and reasonable attorney fees pursuant to ORS 477.128, the State Forester must determine the source of funding to be used and the amount that may be available for such expenditures.

629-170-0035

#### Written Agreement; Terms of Reimbursement

(1) As a condition of authorizing expenditures for costs and reasonable attorney fees pursuant to ORS 477.128, the State Forester may request the firefighter, the firefighter's legal counsel or both, enter into a written agreement with the State Forester to establish the terms under which expenditures will be made that may include, but are not limited to:

(a) Designation of a department employee to act as the main point of contact in carrying out the terms of the agreement;

(b) Limits on the funds to be made available by the State Forester;

(c) Documentation that may be required to support expenditures and ensure appropriate fiscal procedures;

(d) Timing of expenditures;

(e) Means of recovering funds paid out upon a determination that the employee misrepresented any material facts in the course of making the request for reimbursement required by OAR 629-170-0015, the State Forester's investigation, or at trial; and

(f) Clauses to protect the State of Oregon from any additional liabilities that might arise as a result of these actions.

(2) Upon final determination by the State Forester to authorize expenditures under ORS 477.128 and enter into an agreement described in this rule, the firefighter's cost, if any, of development or legal review of the agreement may be included in the expenditures authorized by the State Forester.

(3) The State Forester may consult with legal counsel from the Department of Justice with regard to the form and content of the agreement described in this rule, provided that no information directly related to the facts of the criminal case be revealed.

629-170-0040

#### Special Case

If the firefighter seeking reimbursement of legal costs under this division is the State Forester, all authorities and responsibilities of the State Forester under ORS 477.128 and this division must be delegated to a management service employee of the department, knowledgeable in firefighting organization, tactics and procedures, to be carried out under the supervision of an ad hoc committee of the Board of Forestry.