

***DIVISION 605***  
***PLANNING FOREST OPERATIONS***

Updates made to this guidance document since published on June 3, 2020:

- June 18, 2020. OAR 629-605-0170(10)(n) Corrected reference to 629-650-0005, Operating within 100 feet of a large lake.

***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 (FPA), while it recognizes the need for flexibility by establishing the “plan for an alternate practice” (PFAP). A PFAP 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 an approved plan for an alternate practice.

Approval of a PFAP to modify a statute is allowed only for these statutes that specifically allow modifications: ORS 527.676 (snags and down logs and green trees), ORS 526.745 (reforestation of Harvest Types 1 and 3), ORS 527.750 (exceeding size limitation on Harvest Type 3), and ORS 527.755 (Scenic Highways).

**ADMINISTRATION:****Purpose**

A PFAP 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. A PFAP may be proposed for any rule or standard in the FPA. If an operator wishes to propose a PFAP, the PFAP must be submitted and approved by the State Forester prior to implementing the practice. If an operator does not obtain approval of a PFAP, 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 Stewardship Forester (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 PFAP, the SF should provide the operator a copy of the most current guide to preparing written plans.

### Plan Content

A PFAP 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 FPA or administrative rules. The SF may require specific content but most PFAP will have the same content as a written plan. Refer to the guidance under OAR 629-605-0170(12) and (13) 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 PFAP.

A PFAP is the only pre-operation **document** that requires approval before beginning the practice or operation. Except as described in OAR 629-605-0173(3), FPAP 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 PFAPs 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.

### Documentation for Approval

SF indicate that the PFAP is approved by making a FERNS Formal Comment referencing the dated PFAP version. Example: An operator adequately justifies constructing a road within a significant wetland's riparian management area (RMA) and proposes reducing leave tree numbers in the RMA below the usual one-half of the existing number by species and diameter class. A statutory written plan is also required for road construction within 100 feet of a significant wetland, that is not an estuary. 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. The portion of the plan addressing the reduction of leave tree numbers requires approval; the entire plan would require a statutory comment period.

### 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. Example: Tethered logging equipment operating on steep or erosion-prone slopes within 100 feet of a stream channel may provide a similar outcome as conventional ground based equipment being excluded from within 100 feet of a stream channel on steep or erosion-prone slopes, if unit-specific best management practices are followed. These best management practices, outlined in a PFAP, would be developed to result in the same effect as the standard requirement in OAR 629-630-0150(5), which is to reduce the potential of erosion from steep or erosion-prone slopes entering waters of the state.

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. Examples: 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)). See also the example in “Results in the Same Effect.”

Equal or Better

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. Example: OAR 629-625-0320(3) requires a PFAP 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 PFAP, 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, described in 629-605-0100(2).

Not Equal or Better

Some alternate practices are allowed in the rules and statutes to modify or waive protection requirements that may not be based on providing “equal or better” results. Example: Modifications of the protection standards are allowed under OAR 629-605-0500 for forest health and public safety. The operator may request 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 may be modified even though the result is not “equal or better.”

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0100(2)(b) Plan results in less environmental damage than standard practice
- OAR 629-605-0100(2)(c) Waive or modify FPA rules after other agency consultation
- 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 Modify for forest health and public safety
- OAR 629-610-0020(3) Modify for timber stand improvement project
- OAR 629-610-0020(3) Modify reforestation stocking standards
- OAR 629-610-0020(10) Modify of reforestation stocking levels
- 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, forest incentive program
- OAR 629-610-0090(1) Reforestation exemption for LUC
- OAR 629-615-0300(5) Modify when benefits of burning outweighs protecting RMA
- OAR 629-620-0400(7)(d) Modify for aerial applications of fungicides

- OAR 629-625-0320(3) Exception to 629-625-0320(2)(a) road crosses a wide flood plain
- OAR 629-635-0100(6) Water protection rules; purpose and goals
- OAR 629-642-0100(13) To remove trees on upland side of road in Type F
- OAR 629-642-0105(15) To remove trees on upland side of road in Type SSBT
- OAR 629-642-0300(8) Basal area credit for Type F and Type SSBT stream improvement
- OAR 629-642-0400(14) To remove trees on upland side of road in Type D or N RMA
- OAR 629-642-0700(1) Site specific vegetative retention plans for streams or RMAs
- OAR 629-645-0020 Site specific vegetation retention plans for significant wetlands
- OAR 629-650-0040(3) Modify retention requirements for lakes for forest health reasons
- OAR 629-665-0020(1)(b)(C) Structural or temporary exception for resource sites
- 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 629-670-0100 Inspections, compliance determination
- ORS 527.676(3) Leaving snags and down logs in harvest type 2 or type 3 units; green trees retained near certain streams
- ORS 527.740(4) and (5) Exceptions to harvest Type 3 limitations
- ORS 527.750 Exceeding harvest type 3 size limitations
- ORS 527.755(3) and (4)(c) Scenic highways and visually sensitive corridors
- ORS 527.760 Reforestation exemptions for land use changes
- Forest Practices Notes # 9, “*Written Plans Guidance*”; ODF, 1994
- Other Agencies’ Program Guidance, ODF, 2000

**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 PFAP 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). The proposed plan should (1) define management objectives, (2) describe how the management objectives are incompatible with the required practices, (3) address specific activities that will be achieved, and (4) describe the need to waive or modify the rules.

**Section (2)(a) Research Projects**

The SF must consult with the Monitoring Unit Manager when a federal or state agency, college or university, or private landowner submits an application for a research project, prior to approving such a plan. The Monitoring Unit 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.

**Section (2)(b) Less Environmental Disturbance**

The SF may determine a modification or waiver of a specific practice will result in less environmental disturbance than if the practice were applied. 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. The SF must approve a PFAP.

#### Section (2)(c) Other Agency Consultation to Improve Soil, Water or Habitat

The SF must consult with other state agencies that have expertise or shared management responsibility before approving the PFAP. 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. Example: A municipal water supplier request the removal of hardwoods from the first twenty feet of a RMA to reduce organic matter and leaves in its water supply. However, the 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.

#### Section (2)(d) Provide for Public Health or Land Use Changes

The SF may approve a plan for practices necessary to provide for public safety or accomplish land use changes. Nothing in the FPA precludes a landowner from accomplishing a land use change; however other agencies' regulations may apply. Example: Removal of trees required to be retained by other rules may be approved through a PFAP when those trees pose a public safety hazard. A PFAP is not required to waive the FPA reforestation requirement when ODOT identifies hazard trees within or adjacent to state highway rights-of-ways, see the Interagency Agreement between ODF and ODOT. Example: An exemption from the reforestation rules may be allowed to complete a land use change not compatible with forest tree cover, conditioned on authorization by the county assessor and local planning department, and possibly by other appropriate state agencies. Refer to the guidance for OAR 629-610-0090.

#### Not Equal or Better

Some alternate practices are allowed in the rules and statutes to modify or waive protection requirements that may not be based on providing "equal or better" results. Example: Modifications of the protection standards are allowed under OAR 629-605-0500. The operator may request 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 may be modified even though the result is not "equal or better."

#### **RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0170(12) and (13) Written Plan Content
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-605-0500 Forest health and public safety
- ORS 527.750 Exceeding harvest type 3 size limitation; conditions
  
- Forest Practice Note #9, "*Written Plans Guidance*"; ODF, December, 1994
- *Oregon Forest Protection Laws, an Illustrated Manual*, Third Edition, OFRI

**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 PFAP.

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 a PFAP, the SF shall:

- a. Upload documents with written recommendations to FERNS as "other document".
- 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 PFAP, include the reasons for the decision in a document upload to FERNS as "other document".

**RELATED RULES AND STATUTES:**

- OAR 629-665-0020 Specified resource site, protection and exception

**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.

Example: A harvest operation is proposed on an approved county 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 PFAP 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 Reforestation exemption for land uses not compatible with forest trees
- 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 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 FPA may be required by federal authorities under the Endangered Species Act (ESA). Example: An incidental take permit may be needed where an action could be 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, are 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 ESA. See OAR 629-665-0130 (3) for corresponding language for bald eagle nesting sites. These sites have similar exceptions allowed if the operator has a take permit under the Bald and Golden Eagle Protection Act.

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-665-0130(3) Bald eagle nesting sites
- OAR 629-665-0210(1) Northern spotted owl nesting sites, conflicts
- OAR 629-665-0210(5) Northern spotted owl nesting sites, exceptions
- Forest Practice Note #8, “*Spotted Owl*”; ODF, 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. Oregon Department of Environmental Quality (DEQ)
3. Oregon Department of Agriculture (ODA)
4. Oregon Parks and Recreation Dept. (OPRD) and State Historic Preservation Office (SHPO)
5. Oregon Department of Land Conservation and Development (DLCD)
6. Oregon Department of State Lands (DSL)
7. Oregon Health Authority (OHA)
8. Oregon Department of Geology and Mineral Industries (DOGAMI)
9. Columbia River Gorge Commission
10. Oregon Water Resources Department (WRD)
11. Oregon Department of Transportation (ODOT)
12. Oregon Governor's Assistant for Natural Resources and staff

Before each annual meeting staff will inform field personnel of the planned meetings (using District Forester, Forest Practices and State Forests 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 to consider for consultation and their areas of expertise include:

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

**Required Consultation**

Some situations require consultation, including:

1. Joint enforcement responsibility, i.e., DEQ in ORS 527.724 and OAR 629-605-0130;
2. Waiving or modifying practices to improve soil, water quality, or fish and wildlife habitat under OAR 629-605-0100(2)(c);
3. Scenic highways under ORS 527.755; OAR 629-605-0100(2)(d) land use change
4. Water classification and fish presence under OAR 629-635-0200;
5. Stream improvement projects under OAR 629-642-0200 and 0300;
6. Site-specific plans under OAR 629-642-0700; and
7. Rules for sensitive resource sites under OAR 629-665-0000.

The department has entered into formal and informal agreements with other agencies and local governments, in response to the Board requiring the department to coordinate with other agencies and local governments which are concerned with the forest environment, ORS 527.630(3).

Agreements include:

1. Columbia River Gorge Commission, Columbia River Gorge National Scenic Area;
2. DEQ, water quality standards;
3. ODA, pesticide use on forestland;
4. ODA, DSL, ODFW, OPRD, DLCD, conversion of forestland;
5. ODFW, fish passage;
6. ODOT, scenic highways, hazard trees and reforestation;
7. ODOT, ODFW, ODA, DSL, Federal Highway Administration, fish passage;
8. OPRD, scenic waterways;
9. PARC, pesticide issues; and
10. SHPO, recorded below ground archaeological and historic ruins.

Optional Consultation

In some cases consultation is desirable when another 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 to enter the property with another state representative, including an ODF representative from outside the SF's district.**

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. 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.

Other Agency Coordination Examples:

- SHPO. The SF sends a letter to the landowner and operator when a ground disturbance operation is within a SHPO section of recorded archaeological sites. The ODF letter explains that the operation may impact an archaeological site protected by state laws and recommends the landowner contact SHPO for more information.
- OPRD. Landowners are informed about Oregon scenic waterways protection regulations and ODF notifies OPRD of operations **within ¼ mile** of the scenic waterway;
- Columbia River Gorge Scenic Area. Landowners are informed of CRCSA regulations and ODF notifies the CRGSA Commission, USFS, and Counties of affected operations.
- See also guidance for "Other Agency Programs"

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0100 Compliance
- OAR 629-605-0130 Compliance with the rules and regulations of the DEQ
- OAR 629-610-0090 Exemption from reforestation for conversion of forestland
- OAR 629-635-0200 Water classification
- OAR 629-642-0300 Basal area credit for Type F and Type SSBT stream improvement
- OAR 629-642-0700 Site specific vegetative retention plans for streams or RMAs
- OAR 629-665-0600 Specified resource sites on forestlands; purpose
- ORS 527.710 Consultation with other agencies required
- ORS 527.724 Compliance with air and water pollution rules and standards
- ORS 527.755 Scenic highways and visually sensitive corridors
- ORS 527.765 Best management practices to maintain water quality
- Memorandum of Agreement, ODF and DEQ, April 16, 1998
- Memorandum of Agreement, ODF and DSL, June 1, 2004
- Memorandum of Agreement, ODF and ODA, July 6, 1995
- Memorandum of Agreement, ODF and ODA, DSL, ODFW, OPRD, DLCD, July 11, 2006
- Memorandum of Agreement, ODF and ODFW, June 7, 2000; pending revision 2019
- Memorandum of Agreement, ODF and ODOT, March 9, 2016
- Memorandum of Agreement, ODF and ODOT, ODFW, ODA, DSL, Federal Highway Administration, January 13, 1997
- Memorandum of Agreement, ODF and PARC, December 21, 2005
- Memorandum of Agreement, ODF and SHPO, June 12, 2002
- Other Agencies Programs, ODF 2000 [ODF's guidance]

**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 rock pits, OAR 629-625-0500.

**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, Private Forest 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. Example: An SF observes a burning pile of tires outside the fire protection district. The SF should notify the DEQ, but not apply FPA enforcement.

#### **RELATED RULES AND STATUTES:**

- OAR 629-625-0500 Surface mining practices
- ORS 527.620 Definitions for ORS 527.610 to 527.770
- ORS 527.724 Compliance with air and water pollution control rules and standards
- ORS 527.770 Good faith compliance with best management practices

**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: A written statement of unsatisfactory condition may be issued instead of a citation for certain procedural violations, such as failure to notify, OAR 629-670-0125,

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. ODF should notify the DOR if harvest occurred without notification and forest practices enforcement action was not initiated.

Unsatisfactory Condition statement for the Citation: *“Deprived the State Forester of the opportunity to review the planned operation and communicate with the operator regarding compliance with Oregon’s forest practice regulations.”*

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)(a)

Historically, the department hasn’t required a written plan for truck hauling over Type F, Type SSBT or Type D streams. Notification requirement for salvage operations resulting from flood events are not required for processed logs, which are free of limbs and have been bucked on both ends. Downed wood, not void of limbs and/or not bucked on both ends, are under the FPA jurisdiction. A PFAP may be approved to remove downed wood from an RMA when there is a definite safety or fire hazard, OAR 629-605-0500.

ODF no longer accepts an open-ended "sort yard" notification, which represents acquiring logs from multiple landowners for delivery to a mill at a later time. Notifications for harvests on any lands in Oregon is required by DOR, but FPA notifications is only required on forestlands. Refer to guidance on “forestland” under the definition of operations in OAR 629-600-0100.

Notifications to use a tailhold on an adjacent non-federal landowner property is required as an operation activity, but FPA enforcement action is conditioned on an associated unsatisfactory condition or resource damage for failure to follow the standard practices in the applicable rules or statutes. A Permit to Use Fire or Power-Driven Machinery (PDM) may be required by the local ODF district, when there is not a commercial forest operation.

Example 1: A summer time harvest operation using cable yarding positions a machine tailhold on the adjacent non-federal landowner’s dirt road, which reroutes road drainage to a headwall. The SF could take enforcement action by issuing a written statement of unsatisfactory condition to the operator for failure to provide proper road drainage. The SF would instruct the operator to immediately stabilize and correct the unsatisfactory condition prior to sediment threatening or beginning to enter the headwall or waters of the state. Enforcement action could be taken for failure to notify for the tailhold.

Example 2: The SF receives a complaint from a landowner that the operator had not been given permission to anchor on their large tree, which is now likely going to die. The tree was designated as a conservation tree that the landowner receives financial compensation for not harvesting it. The SF determines there was no notification for the tailhold on the adjacent landowner. Enforcement action could be taken for failure to notify for the tailhold, but the damage to the landowner’s tree is a civil matter between landowner and operator.

#### 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 (52).

Subsection (1)(d)

Applications of chemical require a separate notification for each landowner, regardless if the roadside spray operation includes road easements for various landowners.

Subsection (1)(e)

Notification is required for clearing forestland for conversion to other uses, when the clearing operations involves the commercial harvest of forest products. ODF will take enforcement action for failure to notify only when forest resources are damaged in the process of converting forestland to non-forest uses. See the guidance definitions for “commercial” and “operation” in OAR 629-600-0100 and the guidance on land use conversions under OAR 629-610-0090. A Permit to Use Fire or Power-Driven Machinery (PDM) may be required by the local ODF district, when there is not a commercial forest operation.

Example, special situation: *A utility wants to submit 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.*

- Utility rights-of-way, such as power line or gas pipeline corridors, where commercial trees have already been harvested are considered by ODF as already converted to non-forest use.

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

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?*

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 DOR 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?*

For the initial clearing of a right-of-way, a PFAP (combined with a statutory written plan if near a Type F, SSBT, 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)(g)

In addition to notification for precommercial thinning, notification is required for chainsaw cutting of big leaf maple clumps or other unwanted vegetation to release or protect desired conifers, because it has similar outcome of stand improvement as precommercial thinning. If an herbicide application is planned to control the maple sprouts, notification is required under 629-605-0140(1)(d).

#### 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. Operators who submit notifications for surface mining operations that are not solely for forest operations should be informed of their responsibility to comply with DOGAMI and county permitting requirements. There is no quantity limit on the DOGAMI permit exemption as long as the rock is **only** used for forest management purposes **by the landowner on whose land the rock pit is located**. The rock may NOT be sold or traded to another forest landowner, unless permitted by DOGAMI. See also the guidance under OAR 629-625-0500 "Rock Pits and Quarries."

The SF 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 DOR (ORS 321.550). Enforcement actions for each are separate, but often occur simultaneously.

### **RELATED RULES AND STATUTES:**

- OAR 629-605-0140(3) Exemption from notification compliance requirements
- OAR 629-605-0150 (1),(5), (6) Notification to the State Forester
- OAR 629-625-0500 Rock pits and quarries
- OAR 629-670-0125 Written statement of unsatisfactory condition, procedural violations
- OAR 629-610-0090 Exemption from reforestation for forestland conversion
- 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) Notice of operations; written plan required; notice of chemical application

**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." The guidance for the definition of an "operation," OAR 629-600-0100(52) 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 U.S. 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 (such activity is not an "operation," per the exception in OAR 629-600-0100(52)). 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.

Notification is not required for routine road maintenance that involves the road surface and ditches, removal of debris in culverts, debris jams in streams or landslide deposits within 25 feet of a culvert, OAR 629-660-0050(1). See also guidance for Subsection (2)(f), emergency road reconstruction. Written plans are not required for routine road maintenance within these bounds when a road crosses a stream within a riparian management area. Maintenance outside these bounds, such as brush control with herbicides requires notification and statutory written plans for stream protection. Application of dust abatement material on forest road surfaces is a regulated practice requiring a notification, because the surface stabilizing material could potentially enter waters of the state, OAR 629-625-0600(5).

Operations not requiring a notification must still comply with the applicable FPA rules, OAR 629-605-0140(3).

**Routine road maintenance examples, not requiring a notification:** Routine infers an on-going activity that involves the road surface and ditches and minor debris removal from culverts and streams. Mechanical roadside brushing, ditch cleaning from raveling cut slopes and slumps, cross drain installation (for structures that are not in stream channels), road surface rocking that doesn't significantly change the road prism, and grading road surface.

**Road reconstruction examples, requiring a notification:** Road relocating, road widening, re-opening or re-establishing roads that have become impassable, stream crossing replacement, sidecast pullback, reconstruction or realignment of bridges, and removal of trees growing in a road surface, significant changes in the road prism width or height by adding rock.

#### Subsection (2)(c)

Tree planting and seed applications are "operations" even though notification is not required. On-site use of pesticides 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(12), there is no operation and no other FPA rules apply. Example: Retention of RMA trees or wildlife trees (trees and logs) that are part of a previous commercial operation, cannot be cut for personal use firewood or lumber. See also the guidance for ORS 527.620 or OAR 629-600-0100(52), definition of "operation".

#### 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. Example: 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 generally not an emergency if only road access is blocked and there are other reasonable road access routes for evacuation or rescue when there is risk to life or property. Within 48 hours after starting an emergency road reconstruction operation, the operator must report to the State Forester the operation and justification for taking emergency action, then complete the formal notification requirement, OAR 626-605-0140(2)(f).

#### 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 DOR 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(52), definition of “operation”.

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)(l)

Timber harvesting in preparation for land use conversion is generally considered to end when yarding is complete. Work directly on the non-forest 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 use fire or operate power driven machinery (ORS 477.625), and the notification required by the DOR (ORS 321.550). Enforcement actions for each are separate, but often occur simultaneously.

**RELATED RULES, STATUTES AND REFERENCE:**

- OAR 629-660-0050 Beaver dams and other natural obstructions
- ORS 221.010 Urban area
- ORS 321.550 Notice of intent to harvest; rules; 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) Notice of operations; written plan required; notice of chemical application
- ORS 571.505 Christmas tree growers; definitions
- Interagency Memorandum of Agreement, Conversions of Forestland, 2006

**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 15<sup>th</sup> 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: A written statement of unsatisfactory condition may be issued instead of a citation, under specific conditions listed in OAR 629-670-0125.

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 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 OPRD (Scenic Rivers and Willamette River Greenway Programs), the Columbia River Gorge Commission and Forest Service (Columbia River Gorge National Scenic Area Program), the ODFW, DEQ, and in the case of 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 notification is successfully submitted. 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.

Example: An operator submits the notification on May 1 and request to begin operating May 2.

- The operator may start the operation on May 17, the day after 15 days have passed from submitting the notification.
- This calculation is consistent with the waiting periods required for statutory written plans in ORS 527.670(10) and non-statutory written plans in OAR 629-605-0170(11). Both of these allow operations to begin any time after the specified number of days following the date the written plan was received.

**15-day Waiting Period, Guidance 629-605-0150**

May 1 <sup>st</sup>	May 2 <sup>nd</sup> through 16 <sup>th</sup>	17 <sup>th</sup>
E- Notification submitted in FERNS and is “received” as complete	15-day waiting period unless ODF grants written waiver for designated areas of the operation or all areas of the operation.  <b>Note:</b> Exceptions to granting waivers are in guidance for 629-605-0150(2).	Operation may begin if ODF does not grant a waiver of the 15-day waiting period

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

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0140 Notification to the State Forester - types of operations
- OAR 629-605-0150(2) Restrictions on waiver of 15-day waiting period
- OAR 629-605-0170(11) 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 Definition of “operation”
- ORS 527.670(6) Chemical application, surface water right user within 10 miles downstream
- ORS 527.670(9) Aerial application of chemicals
- ORS 527.670(10) Statutory written plan comment periods
- Forest Practices Technical Note No. 10, “*Waiver of Statutory Written Plan*, July, 2017”
- FERNS Policy Manual, Multiple Landowner NOAPs

**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 required 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 when one of the following conditions 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.

**Exceptions to Granting Waivers of the 15-day waiting period**

**A. Regulatory Restrictions, if an operation:**

1. Involves the aerial application of chemicals under ORS 527.670(9) ; or
2. Requires a statutory written plan under ORS 527.670(3)(a), (b) and (c) for:
  - a. Operations within 100 feet of Type F, SSBT, or D streams; or
  - b. Operations within 100 feet of a resource site inventoried under ORS 527.710(3) as a significant wetland that is not an estuary.
  - c. Operations within 300 feet of a sensitive resource sites under ORS 527.710(3), including resource sites used by threatened or endangered species; sensitive bird nesting, roosting and watering sites; biological sites; and significant wetlands.

3. Requires a statutory written plan under OAR 629-605-0170(5) for:
  - a. Operations within 300 feet 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 ODF titled "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984."
  - b. Operations within 300 feet of a significant wetland that is classified as an estuary, identified in OAR 629-645-0000.

The written plan will not be considered received prior to notification. The notification and written plan must be sent to any non-electronic paying or water rights subscribers or any requesting party within 6 full business days, excluding Sunday and government holidays, ORS 527.670(8). This starts the statutory written plan comment period, ORS 527.670(10), and the non-statutory written plan comment period, OAR 629-605-0170(11).

**B. Department Policy Restrictions, when:**

1. The operation is within the Willamette River Greenway (*if the SF has awareness through local governments*), **within 1/4 mile** of State Scenic Waterways (SW), or within the Special Management Area (SMA) of the Columbia River Gorge National Scenic Area.  
**Exception:** The operator has already consulted with, and obtained required permits from, agencies responsible for these programs. See the guidance for "Other Agency Programs."
2. 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 are no likely public safety issues.
3. A subscriber has requested copies of notifications and written plans under ORS 527.670(6) (water users **within 10 miles downstream** from chemical applications) or ORS 527.670(8) and OAR 629-674-0100 (Access to Notifications and Written Plans),

**Exceptions to Policy: A waiver of the 15-day waiting period may be granted if:**

- (a) FERNS subscribers: 24 hours have passed since the day the notification was received as complete within the E-Notification system; or
- (b) Non-electronic subscriptions: The SF confirms that subscriber(s) have had copies of the notification and any required written plans for at least 24 hours since the day the notification was submitted; or
- (c) ODF has received written correspondence from the downstream water user or subscriber to not require the waiting period after notification.
- (d) The subscriber is known to be a log buyer or utility subscriber, and ODF has confirmed with the subscriber that they do not or did not intend to provide resource protection comments on the operation. See also OAR 629-670-0125(3)(e).

**E-Notification to FERNS Subscriber**

- E- Notification submitted in FERNS and is "received" as complete
- Subscriber provided 24 hours to review the notification
- ODF may grant waiver of 15-day waiting period for the operator to begin work on the first full day after the subscriber has had 24 hours to review the notification.

**First-Class Mail mailed to Non-electronic Subscribers:**

- ODF mails subscriber the “received” E-Notification by First-Class Mail, within 6 full business days of NOAP receipt, excluding Sundays and holidays
- ODF provides 3 days for mailing and 24 hours to review the notification, beginning on the first full business day after ODF mailed it to the subscriber, excluding Sundays and holidays.
- ODF may grant the waiver of 15-day waiting period for the operator to begin work on the first day after 4 full business days have passed from the mailing, excluding Sundays and holidays.

Request for Waiver of 15-day waiting period

The operator must contact the SF to request a waiver of the 15-day waiting period.

Documentation for Granting Waiver

SF or office staff should indicate if a waiver is granted in the FERNS Formal Comments.

Partial Waivers

The SF may waive the 15-day waiting period on portions of the area in an operation not affected by a written plan. The SF may waive the 15-day waiting period when the subscriber has had 24 hours to review the notification. Example: The SF may grant a waiver on the upland part of a harvest unit, but maintain the review period for the area within 100 feet of a significant wetland that is not an estuary. 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 the FERNS Formal Comments.

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0170 Written plans
- OAR 629-674-0100 Requesting copies of notifications and written plans
- ORS 527.670(6), (8) and (10) Notifications, written plans, written plan comment periods
- ORS 527.710 Rules to protect resource sites
- Forest Practices Technical Note No. 10, “Waiver of Statutory Written Plan, July, 2017”
- FERNS Policy Manual

**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), see discussion in OAR 629-605-0140 guidance.

**Note:** If the operation is located within the boundaries of a forest 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:**

FERNS subscribers automatically receive notification when there is an approved change or continuation of an operation. For non-electronic subscribers, ODF is required to send copies of notification documents by First-Class Mail when there is an approved notification change or continuation of operation, OAR 629-674-0100(4).

**When has an Operation “Started”?**

Operations may be continued if they have “started” in some reasonable sense that need not be limited to the physical presence of equipment. The SF determines if the operator knows the location of the operation boundaries and evaluates what resources may require protection.

**Example:** An operation is 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. Contact the Forest Practices Field Coordinator for further clarification.

#### 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 the activity within the operating area and proximity to sensitive resources. Administering continuations for notifications and PDMs at the same time was allowed by the 1997 Legislature in SB 110, which dropped the words “for the calendar year” from ORS 477.625(1), effectively ending the annual renewal requirement for PDMs.

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 completion of the harvest date that triggers the reforestation clock; or DOR 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) Any substantive changes to the original notification must occur within the year of the original notification but not included in the process to request continuation into the second year, with the following conditions:
  - 1. Proper notification was originally made under ORS 527.670 the first year of the operation, operation activities were conducted that year, and
  - 2. No additions were made to the geographic location of the operation area; 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 active in the previous year are active 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.

Examples, not limiting continuation into the second year: A change in operator would provided the operator complied with the FPA; addition of an approved PFAP; changing the emergency contact person; or changes to the timberowner, provided logs have not been sent to the mill; changes from clear cut harvest to partial cut; or change of chemicals.

### Permit to Use Power-Driven Machinery (PDM)

Administrative rules related to these permits were changed in 1998. PDMs are no longer required to be 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. The PDM is also valid when an operator notifies the State Forester that an operation will continue under the conditions in section (3). Stand-alone PDMs for powerline maintenance may be continued as a one-year extension. (**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. A notification approved for continuation into the second year may not be approved for new changes to the notification. Examples for two-year extension: Rock pit development / management; a multi-year timber sale contract on either federal or state public lands.

### **RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0140 Notification to the State Forester - types of operations
- OAR 629-605-0150(9) Notification changes
- 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
- FERNS Policy Manual, Continuation of Notifications

**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. The DOR will take enforcement action, as appropriate, under ORS 321.550 for failure to notify of the intent to harvest timber, if ODF does not issue a civil penalty.

**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. 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. The PDM is also valid when an operator notifies the State Forester that an operation will continue under the conditions in section (3). 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 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 office will be forwarded to the correct office.*

**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) clarifies ORS 527.670(6) and Section (7) describes notification details.

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 originally submitted as an E-Notification or on the date they resubmit the notification to make corrections, as directed by the SF. Example: A notification is not "received" as complete when the SF has knowledge that the notification does not list the legal landowner, but instead list the purchasing landowner, even though the property is in escrow. This is generally a rare situation.

When the SF is informed by the landowner of an unauthorized operations, the SF should make a Formal Comment on a notification, such as, "*The landowner has informed ODF that they have not authorized the notification for the forest operation,*". The Formal Comment acknowledges the information submitted is incorrect since the landowner has told ODF 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, which 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, the E-Notification by another party should include a Formal Comment, "The county sheriff has informed ODF that the landowner did not provide the operator approval for the notification or the operation."

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0140 Notification to the State Forester - types of operations
- ORS 527.670(6) Commencement of operations
- FERNS Policy Manual

**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).

“Notifications...shall be completed...on forms provided by the State Forester” means the electronic form in the E-Notification system, aka, FERNS. The notifier must be either the landowner, operator, or timber owner, or the representative of one of those three. Prior to submitting an E-Notification, the notifier must select “yes,” which represents an electronic signature that all information entered is true to the best of their knowledge. The notifier must be registered in FERNS as an individual person, as opposed to a corporation, per 2007 DOJ consultation.

**ADMINISTRATION:**

Section (7) clarifies the notification requirements of ORS 527.670(6). Applicants must complete the E-Notification application in detail, digitizing the operation by activity type, which could be a polygon, line or point feature.

A notification should be considered complete when:

1. All appropriate sections of the notification form are completed, and
2. If a written plan with map or other document with map, ensure the a map scale, 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.

Example: 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 (See “Administration” in guidance for OAR 629 605 0150(6)).

Example: Frequently operators or landowners will fail to indicate that they are harvesting in order to clear an area for a forestland 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 SF in preventing, or leads to, substantial resource damage, the SF and local program supervisors should consider taking enforcement action for a violation of ORS 527.670(6) for failure to notify.

The E-Notification can serve to meet as many as three different notification and permit requirements relating to forest operations. Applicants select the appropriate notification type, as describe below:

- a. "Notify the State Forester of operations on lands described in this NOAP (ORS 527.670), such notification is required so that the State Forester can track operations and determine which rules and protection requirements apply to the operation.
- b. "Apply for Permit to Use Fire or Power Driven Machinery (PDM) (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 for operations inside or **within one-eighth of one mile** of a forest protection district. 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. The PDM is also valid when an operator notifies the State Forester that an operation will continue under the conditions in section (3).
- c. "Notify the State Forester and the DOR of the intent to harvest timber," under ORS 321.550. FERNS will separate harvest units by counties under one notification. A separate notification is not required for harvest units separated by one or more miles

OAR 629-605-0140 exempts some operations and activities from the Notice to the State Forester for forest operations. However this does not relieve the appropriate party from any other applicable federal, state or local government requirements. Although notification is required to the State Forester for forest practices within Oregon, ODF is not authorized to enforce notification or FPA requirements when there are forest practices on federal land.

### Public Records

Notifications filed with the department are considered public records, which can be access through FERNS, E-Notification for the registered user or subscriber. 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.

Exception to Public Records: Social Security and Tax Identification Numbers are exempt from public laws. Protected bird sites for species listed as threatened or endangered should not be identified on a written plan map, but on a separate map, uploaded to FERNS as an "Other Document," to protect the location of the bird site. Sensitive information, such as the location of threatened or endangered species, are conditionally provided under a restrictive agreement established by the ODF Wildlife Biologist.

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 150-321-0020 Timber subject to forest products harvest tax
- OAR 150-321-0064 Timber subject to small tract forestland severance tax
- OAR 150-321-0520(4) Penalty for Failure to Obtain Notification of Operations
- 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
- Department of Forestry Directive 0-5-1-301- "*Department Public Records*"
- Interagency Memorandum of Agreement - Conversions of Forestland, 2006

**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 and rodent bait) fertilizers, petroleum carriers, and additives (e.g., surfactants or defoamers). However, the definition of “chemicals” does not include marker dyes/spray indicators. Thus, marker dyes do not need to be listed on a notification for chemical applications.

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.

Multi-unit aerial spray projects may 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 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. *Some other formulations have materialized, e.g., 2,4-D acid formulation.*

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.

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.

SFs may contact Private Forests Division staff to ask questions about label interpretation or to make contact with the DOA Pesticide Division. SFs may contact the Pesticides Division directly with label questions, but should coordinate with Salem staff to help ensure that issues applicable on a regional or statewide scale are considered.

#### **RELATED RULES, STATUTES AND REFERENCES:**

- 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
- Herbicide Use in Forestry, Forestry Fact Sheet

**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 for failure to provide the State Forester with updated notification information should be under ORS 527.670(7). Enforcement for failure to file a separate notification for additions to the geographic area when required to do so would be under ORS 527.670(6).

**COMPLIANCE:**

An operator is in compliance with this rule when the department has written notification of any changes to the notification 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: An unsatisfactory condition under section (9) is automatically a violation, regardless of whether resource damage has occurred or whether a subscriber has been deprived of notification information. See definition of “violation,” OAR 629-670-0010(10).

Written Statement of Unsatisfactory Condition: A written statement of unsatisfactory condition may be issued instead of a citation, under specific conditions listed in OAR 629-670-0125. 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 (submitted) the notification will be held responsible for noncompliance.

All notification changes must be requested in **writing to the SF**. Otherwise, a new notification is required, as described below.

**New notification is not required, examples:**

- Changes from a clear cut to a partial cut.
- Changes or additions to the list of chemicals.
- Change is within the same general operation type, **except chemical applications**.
- Change of operator or landowner.
- Change of timber owner **before** log delivery.

**New notification is required, examples:**

- Changes from one general operation type to another general operation type, such as timber falling, harvesting, road construction, etc.
- Changes from clear cut to road construction.
- Changes from partial cut to clear cut.
- Changes from aerial application of chemicals to ground application of chemicals, or ground to aerial.
- Addition of an operation unit with a new geographic area separate from the original geographic area
- Addition of the operation area that makes substantive edits to the unit boundary, with the inclusion of FPA resources that require a new notification review.
- Addition of road construction activity to a notification which indicates a harvest activity, even if the road construction is inside the notified harvest area.
- Addition of a change of land use (conversion of forestland), to ensure alignment with interagency coordination per the Interagency Agreement for forestland conversion.
- Continuation but no written request; requested on/after March 1; or not active by June 30.
- Change in the operator if resource damage is determined.
- Changes to the timber owner once the operation has started and logs have been delivered to the mill under the initial timber owner's account.
  - DOR must establish an account for the second timber owner for auditor-approved tax records.
  - **Exception**, when DOR and a landowner have an agreement about a land ownership change and tracking forest products, e.g., major land ownership acquisitions. The landowner must provide ODF written acknowledgement from DOR explaining the agreement with the landowner to change the timber owner.

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, landowner, or timber owner 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.

Examples, where enforcement of this rule is supportable.

1. Changes to the operator, timber owner, or landowner information that are likely to affect resource protection. 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. The original notification indicated that no streams were present and the operator found a channel on subsequent inspection.
3. Change of the activity planned to include conversion of forestland to a non-forest use and there is resource damage. When this occurs, the SF may need to require a PFAP if the reforestation requirement is to be modified, and alert other agencies (parties to the Memorandum of Agreement for conversion of forestland) 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, PFAP 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.** Add a Formal Comment indicating the notification change, which will send an email alert to the notifying parties and E-subscribers. **Subscribers not registered in FERNS must be sent the corrected notification via First-Class Mail.**

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 submit notifications before contractors have 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. Changing the operator after resource damage has been determined requires a new notification.

#### Change in landowner, post operation

To improve reforestation tracking and communication with the new landowner after harvest:

- Save and upload the summary sheet of the original notification as an archived document
- Edit the landowner in the notification to the new landowner, using the “Contact” tab
- Add a Formal Comment that the original landowner requested the change or sold the property to the new landowner and that the original notification has been uploaded as an archived document.

#### **RELATED RULES, STATUTES AND REFERENCES:**

- ORS 527.670(6) and (7) Commencement of operations
- Interagency Memorandum of Agreement - Conversions of Forestland, 2006

**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 SF 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) Definition of “Directly Affect” and “Physical Components” For the purpose of section (4) of this rule:
  - (a) “Physical components” means materials such as, but not limited to, vegetation, snags, rocks and soil; and***
  - (b) “Directly affect” means that physical components will be moved, disturbed, or otherwise altered by the operation.******
- (2) Statutory Written Plans for Operations near Type F, Type SSBT and Type D Streams. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a Type F, Type SSBT or Type D stream.***
- (3) Statutory Written Plans for Operations near Wetlands larger than Eight Acres, Bogs or Important Springs in Eastern Oregon. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a significant wetland that is a wetland larger than eight acres (not an estuary), a bog, or an important spring in Eastern Oregon as identified in 629-645-0000 (Riparian Management Areas and Protection Measures for Significant Wetlands).***
- (4) Waiver of Statutory Written Plans. The State Forester may waive, in writing, the requirement for a written plan described in sections (2) and (3) if the operation activity will not directly affect the physical components of the riparian management area. Further direction of when a waiver will be granted is described in Technical Note FP10 dated July 1, 2017.***
- (5) Statutory Written Plans for Operations near Wildlife Sites and Estuaries. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 300 feet of any:
  - (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."***
  - (b) Resource site identified in OAR 629-665-0100 (Species Using Sensitive Bird Nesting, Roosting and Watering Sites), 629-665-0200 (Resource Sites Used By Threatened and Endangered Species).***
  - (c) Significant wetland that is classified as an estuary identified in OAR 629-645-0000 (Riparian Management Areas and Protection Measures for Significant Wetlands).***
  - (d) 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 statutory 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 statutory 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, 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.

**The FERNS E-Notification summary page and PDF printout document provide legal notice that a written plan is required based on the presence of protected resources.** The SF should make a Formal Comment that a written plan is required for the identified FPA resources. The operator is required by OAR 629-665-0020(4) to stop operations and inform the State Forester when a resource site is discovered. A resource site is defined as T&E bird species; sensitive bird nesting, roosting and water sites; and significant wetlands, OAR 629-600-0100(60); see also OAR 629-665-0000(2). 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 statutory 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 statutory written plan (after being informed of the requirement) and a specific forest practice is not in compliance, multiple violations exist.

Example: A statutory 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 procedural violation of the requirement to submit a written plan. There are two violations.

Example: In rare cases, if the operator was informed of the Type F stream, but had **not** been informed of the requirement for a statutory 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.

As of 2020, species covered under OAR 629-605-0170(5)(a) include the band-tailed pigeon (only specific mineral springs listed in the 1984 ODF/ODFW Agreement) and golden eagle (only certain nest trees listed in the 1984 ODF/ODFW agreement) and species covered under OAR 629-605-0170(5)(d) include the marbled murrelet (state- and federal-listed threatened species); Additional species may warrant written plans in the future if additional forest-associated species are added to the state or federal endangered species lists.

### 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 described in the plan of complying with the applicable FPA standards. Further discussion may take place in response to the review and comment.

### Waiver of Statutory Written Plan

[Forest Practices] Technical Note FP[No.] 10 dated July 1, 2017 provides written documentation of an **automatic waiver** of the statutory written plan requirement for operational activity that **does not directly affect the physical components of the RMA**, as described in the Forest Practices Technical Note No. 10, July 1, 2017.

**To determine written plan requirements and waivers, measure the 100-foot RMA width (or 300-foot RMA width for significant wetlands that are estuaries) and the stream type RMA widths as strict RMA widths.**

Only RMA widths for vegetation retention requirements can be measured as an average width, OAR 629-635-0300(3)(b).

### 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 FPA 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 FPA or administrative rules. Only documents that contain the information listed in OAR 629-605-0170(13) will be considered written plans. Written plans must contain:

- (1) A map showing protected resource(s) and the operation 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.

### 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(13) 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. Interested parties must submit comments to the department within the 14-day written plan general comment period for the comments to be considered by the SF. The SF may not provide official comments to the operator until the 14-day written plan general comment period has expired. However, informal communication related to the written plan is allowed at any time. At the conclusion of the 14-day written plan general comment period, the SF has a 7-day period in which to provide official comments to the operator. The SFs must post a FERNS Formal Comment when providing official comments to the operator.

**Statutory Written Plan Comment Periods, Guidance 629-605-0170**

May 1	May 2 through May 14	May 15 through May 21	May 22
Written Plan “Received,” complete and uploaded to FERNS	<ul style="list-style-type: none"> <li>• 14-day public comment period</li> <li>• ODF may have informal conversations with the operator about the plan</li> </ul>	<ul style="list-style-type: none"> <li>• ODF sends the notifying parties public comments made within the 14-day comment period</li> <li>• Operation may begin when ODF makes a Formal Comment, provided the 15-day waiting period has expired or been waived</li> </ul>	Operation may begin if ODF made no formal comments

Standardized Formal Comment text may be found on the Private Forests SharePoint site.

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.

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 FPA. 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 comment from interested parties is received during the 14-day written plan general comment 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 ODF comments that were sent to the landowner, timber owner, and the operator, along with copies of the revised written plans, if any.

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 statutory written plans.

#### **If the SF receives a request for hearing, alert Salem staff immediately.**

The appeals and hearings procedures have very strict time requirements. 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.

Typically, ODF would consider a written plan to be active while the notification associated with the plan is in its first year, or its second or third continued year. With FERNS in operation, operators are not allowed to submit a written plan not associated with a notification.

### **RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-010-0200 Charges for copying and purchasing public records
- OAR 629-605-0170(2) Written plan for streams
- OAR 629-605-0170(3) Written plans: wetlands, bogs or important springs in eastern Oregon
- OAR 629-605-0170(13) Written plan content
- 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
- *“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”*; ODF, December, 1994
- ODF Directive 0-5-1-301 - *“Department Public Records”*
- Forest Practices Technical Note No. 10, *“Waiver of Statutory Written Plan, July, 2017”*

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

- (6) Statutory Written Plans and Stewardship Agreements. The written plan requirements in section (2), (3) and (5) of this rule do not apply to operations that will be conducted pursuant to a stewardship agreement entered into under ORS 541.423.***
- (7) Statutory Written Plan Requirements and Notification of Protected Resource Sites. The State Forester shall notify the operator of the presence of any site listed in section (2), (3) or (5) of this rule at any time the State Forester determines the presence of those sites.***
- (8) The State Forester shall notify the operator that a written plan is required if:***
- (a) The operation will be within 100 feet of any sites listed in sections (2) or (3) of this rule and the operation will directly affect the physical components of a riparian management area associated with any of those sites; or***
  - (b) The operation will be within 300 feet of any site listed in section (5) of this rule.***

**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 statutory written plan. In this case, failure to submit a statutory written plan should be cited under section (2), (3), or (5) 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 (2), (3), or (5), and the second is the requirement to inform the operator of the responsibility to prepare and submit a statutory 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 statutory 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 (5)(a) 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 ODF maintains an up-to-date inventory of sites. Field offices play an important role to communicate with local ODFW Wildlife Biologist and to notify the ODF Wildlife Biologist of any new sites so that the inventory can be updated. Operators are not obligated under any of the rules to inventory sites.

For sites listed in subsection (2) (Type F, Type SSBT, or Type D streams), determination of the classification of waters is an ongoing action. 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. See also stream classification in OAR 629-635-0200(11).

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 statutory written plan.

With the exception of species with specific protection rules under Division 665, 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. For species protected under Division 665, operators have an obligation to protect sites and submit a statutory written plan if a new site is discovered during an active operation, even if ODF did not notify the operator of the site. See guidance for Division 665 (OAR 629-665-0020(4)).

Example, exception: If an SF discovers through a pre-operation inspection a band-tailed pigeon watering site or a golden eagle nest site not listed in the 1984 ODF/ODFW Agreement, the SF cannot require FPA protection, but the SF should encourage voluntary protection. Only specific sites listed in the 1984 ODF/ODFW Agreement are protected under the FPA rules.

The written plan is a key communication tool for resource protection. Use the Formal Comments to indicate the written plan requirement..

Example, Formal Comment: "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...".

The SF should notify each of these parties by making a statement in notification Formal Comments and send an inspection to non-registered E-notification parties. A phone call to the operator or landowner also ensures awareness of the requirements:

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 written plan 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 (ORS 527.670(12); 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.

Example: An inspection report might read: "A written plan is required to address the protection measures needed along Leopold Creek, a medium Type D stream. The written plan is subject to a 14-day written plan 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(5)(b),(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, STATUTES AND REFERENCES:**

- OAR 629-605-0170(2) and (5)(a)(b)(c)(d) Written plans
- OAR 629-605-0180(1)(a) Interim process for protecting sensitive resource sites requiring written plans
- OAR 629-635-0200(11) Stream classification
- 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
- "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984" **Note: Confidential document**

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

- (9) 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.

Statutory Written plans submitted under (2) and (5)(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 (2) and (5)(a) through (d) are subject to appeals from the public.

**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.** There are very strict time frames and administrative requirements associated with the hearings referred to in this rule.

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.

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 FPA. 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 FPA 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, 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 written plan general 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. Timely comments are defined in ORS 527.670(9).

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, STATUTES AND REFERENCES:**

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

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

**(10) *Non-Statutory Written Plans. An operator must submit a written plan as required by ORS 527.670(2) and the rules listed below unless the State Forester waives the written plan requirement. Written plans required by the rules listed below are not subject to the provisions of 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) *629-650-0005 - 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 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 indicated in FERNS Formal Comments.

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(13) 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 in OAR 629-605-0170(13) 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 written plan general 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(11)(b) instituted a 14-day written plan general comment period to provide an opportunity for the SF to review and comment on non-statutory written plans. The 14-day written plan general 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 for a non-statutory written plan. The SF should waive the remainder of the comment period after appropriate communication has taken place with the operator.

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 written plan general comment period, the 14-day non-statutory written plan general comment period, and the 15-day waiting period may overlap to varying degrees.

Completion of the Non-statutory Written Plan General Comment Period

Providing notice has been given and the 15-day waiting period required by OAR 629-605-0150(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 post comments in the FERNS Formal Comment, using the appropriate or similar text in the FERNS Formal Comment template on the Private Forests SharePoint site.

**Non-statutory Written Plan Comment Periods, Guidance 629-605-0170**

May 1	May 1 through May 14	May 15
Written Plan "Received," complete and uploaded to FERNS	<ul style="list-style-type: none"> <li>• Operation may begin after ODF makes a Formal Comment, provided the 15-day waiting period has lapsed or been waived</li> <li>• There is no public comment period</li> </ul>	Operation may begin if ODF made no formal comments, provided the 15-day waiting period has lapsed or been waived

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 proposed practices will comply with the FPA and rules. 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, ORS 527.670(11)(c).

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. 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 for failure to submit a non-statutory written plan. Multiple citations may be issued.

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0170(10) and (11) Non-statutory written plan; review and comment
- OAR 629-605-0170(12) and (13) 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
- ORS 527.670(11) The Board determines appropriate enforcement action
- *Oregon Forest Protection Laws, an Illustrated Manual, Third Edition, OFRI*
- Forest Practices Note # 9, "Written Plans Guidance"; ODF, December, 1994
- ODF Directive 0-5-1-301 - "Department Public Records"
- "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984" **Note: Confidential document**

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

- (11) *If an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subsection (10) 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 11(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 11(b) of this rule when, prior to commencing an operation or a practice requiring a non-statutory written plan under subsection (10) of this section, the operator:

- (a) receives comments from the SF; or
- (b) complies with the 14-day written plan general comment period addressed in subsection (11)(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 written plan general comment period addressed in subsection 11(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, 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 (10) of this rule. This requirement may be waived by the SF. See Guidance under OAR 629-605-0170(10)

### **RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0170(10) Non-statutory written plans
- OAR 629-670-0125 Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules
- Forest Practices Enforcement and Civil Penalty Rules

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

- (12) *Written plans required under OAR 629-605-0170 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, STATUTES AND REFERENCES:**

- OAR 629-605-0170(13) Written Plan Content
- Forest Practices Note # 9, "*Written Plans Guidance*"; ODF, December, 1994
- *Oregon's Forest Practices Laws, an Illustrated Manual*, Third Edition, OFRI

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

- (13) *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. The rules do not require an operator signature on the written plan, though signatures on written plans (and plans for alternate practices) are recommended as an appropriate business practice. SFs are recommended to review complex plans with the operator, which may include on-site discussions.

**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. SF can encourage landowners to identify leave tree areas, when applicable, 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.

**Exception:** Protected bird sites for species listed as threatened or endangered should not be identified on a written plan map, but on a separate map, uploaded to FERNS as an "Other Document," to protect the location of the bird site. **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.

Example: If the operator planned a stream crossing on the Type F stream, the crossing site must be indicated on the map and a 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 is 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. Any verbal comments 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. In FERNS, the incomplete/returned written plan should be “archived.”

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. Example: The written plan describes the practices how to directionally fell conifer trees away from a stream, providing more than a statement that trees will be felled away from the water.

#### **RELATED RULES AND STATUTES AND REFERENCES:**

- OAR 629-605-0170 Written plans
- Forest Practices Note # 9, "*Written Plans Guidance*"; ODF, December, 1994

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

- (14) *In addition to the other requirements in this rule, written plans for operations within 100 feet of domestic water use portions of Type F, Type SSBT or Type D streams must contain a description of the practices and methods that will be used to prevent sediment from entering waters of the state.*

**APPLICATION:**

This rule is not used for enforcement.

**ADMINISTRATION:**

This rule requires written plans to contain enough information regarding the operation to allow an accurate assessment of the likelihood of compliance with the vegetation retention requirements and protection of waters of the state. 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, STATUTES AND REFERENCES:**

- OAR 629-605-0170(13) Written plan content
- OAR 629-635-0200(6) Water classification, domestic water use
- OAR 629-642-0100 General vegetation retention prescription for Type F streams
- OAR 629-642-0105 General vegetation retention prescription for Type SSBT streams
- OAR 629-642-0400 General vegetation retention prescription for Type D and N streams
- Forest Practices Note # 9, "Written Plans Guidance"; ODF, December, 1994
- *Oregon's Forest Practices Laws, an Illustrated Manual*, Third Edition, OFRI

**WRITTEN PLANS****629-605-0170**

- (15) *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 plan needs to address all the items listed in OAR 629-605-0170(12), (13), and (14), and other applicable rules, but does not need to demonstrate that the plan will actually result in compliance with resource protection rules. If the SF thinks the plan does not so demonstrate, the SF documents such in FERNS Formal Comments.

An active operation may continue immediately upon receipt of a suitably modified plan, without a new comment period, if one was applicable. The modified written plan should be uploaded to FERNS as “Written plan with map” and mailed to subscribers that are not E-subscribers.

A comment period is always required when a new statutory written plan is subject to formal public comment and appeal [see section (9) of this rule]. 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, STATUTES AND REFERENCES:**

- OAR 629-605-0170 Written plans
- Forest Practices Note # 9, "Written Plans Guidance"; ODF, 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:**

The rules do not require an operator signature on the plan for an alternate practice, though signatures from operators and landowners on plans for alternate practices (and written plans) are recommended as an appropriate business practice. SFs are recommended to review complex plans with the operator, which may include on-site discussions.

Only sections (3) and (4) 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 PFAP before those practices are implemented. A PFAP is also required to describe protective measures and document alternate practices that are specifically allowed by statute or rules.

A PFAP is not required when the rule or statute addresses an alternative practice, but does not state a PFAP may be approved by ODF, for example, OAR 629-642-0600, alternative vegetative retention prescriptions.

Approval of a PFAP to modify a statute is allowed only for these statutes that specifically allow modifications: ORS 527.676 (snags and down logs and green trees), ORS 526.745 (reforestation of Harvest Types 1 and 3), ORS 527.750 (exceeding size limitation on Harvest Type 3), and ORS 527.755 (Scenic Highways).

**COMPLIANCE:**

**An operator is required to comply with a PFAP or the standards in the applicable rules or statutes.**

Unsatisfactory Condition: There is an unsatisfactory condition when an approved PFAP is not *followed*

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: A written statement of unsatisfactory condition may be issued instead of a citation, under specific conditions listed in OAR 629-670-0125.

### **ADMINISTRATION:**

2003 HB 3264 set the precedent for approval of PFAPs in its amendment to ORS 527.750(3). The State Forester retains approval authority only in the case of PFAPs. Where appropriate, some of the rules modified to implement HB 3264 specify when a PFAP is required. Time to determine if the PFAP can be approved or denied approval may follow the 14-day period used to evaluate statutory written plans, though there is no required time period in statute or rule.

#### Background

When an operator proposes in a PFAP 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. 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. Example: A plan for an alternate practice is not required to waive the FPA reforestation requirement when ODOT identifies hazard trees within or adjacent to state highway rights-of-ways, see the Interagency Agreement between ODF and ODOT.

#### Purpose of Plans for an Alternate Practice

The purpose of a PFAP 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 most rules in the FPA. If an operator wishes to propose an alternate practice, a PFAP must be submitted and approved by the State Forester prior to implementing the practice. If an operator does not obtain approval of a PFAP, 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 # 9 on written plans.

### Plan Content

The PFAPs 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 FPA or administrative rules. The SF may require any specific content, but most PFAPs will generally have the same content as a written plan. See guidance under OAR 629-605-0170(13) for more information on written plan content.

### Plan Approval

A PFAP 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, PFAPs 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. However, those PFAPs 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. 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. Example: In OAR 629-625-0320(3), a PFAP is required 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 PFAP, 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).

### 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. Example: 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.

### 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. Example: Tethered logging equipment operating on steep or erosion-prone slopes within 100 feet of a stream channel may provide a similar outcome as conventional ground based equipment being excluded from within 100 feet of a stream channel on steep or erosion-prone slopes, if unit-specific best management practices are followed. These best management practices, outlined in a PFAP, would be developed to result in

the same effect as the standard requirement in OAR 629-630-0150(5), which is to reduce the potential of erosion from steep or erosion-prone slopes entering waters of the state.

#### 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 need not be based on providing "equal or better" results. 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."

#### Better

At least one alternate practice requires "better" overall results, not simply "equal or better." ORS 527.676(3)(a)(B) allows wildlife leave trees to be moved from one harvest unit to another under certain conditions, provided that the new wildlife leave tree location provides "better overall benefits for wildlife."

#### **RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0100 Compliance
- *Oregon Forest Practices Laws, an Illustrated Manual*, Third Edition, OFRI

**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) ***629-605-0180(3) – Describing reasonable measures to resolve conflicts between an operation and protection of a resource site requiring a written plan under OAR 629-605-0170(1)(b) or (d);***
  - (j) ***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;***
  - (k) ***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;***
  - (l) ***629-610-0020(10) – Modifying or waiving reforestation stocking levels if the purposes of the reforestation rules will be achieved or for a research project conducted by a public agency or educational institution;***
  - (m) ***629-610-0030(3) – Utilizing natural reforestation methods when an operation results in a reforestation requirement;***
  - (n) ***629-610-0040(3) – Extending the time allowed for reforestation when natural reforestation methods are utilized;***
  - (o) ***629-610-0050(2) – Utilizing more than 20% hardwood stocking when an operation results in a reforestation requirement;***
  - (p) ***629-610-0060(1) – Utilizing non-native tree species when an operation results in a reforestation requirement;***
  - (q) ***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;***

- (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:*
- (r) *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;*
  - (s) *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;*
  - (t) *629-620-0400(7)(d) – Modifying the protection requirements for aerial application of fungicides;*
  - (u) *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;*
  - (v) *629-642-0100(13) – Modifying the vegetation retention requirements in the riparian management area along a Type F stream to allow the removal of roadside trees which pose a safety hazard;*
  - (w) *629-642-0105(15) — Modifying the vegetation retention requirements in the riparian management area along a Type SSBT stream to allow the removal of roadside trees which pose a safety hazard;*
  - (x) *629-642-0400(14) – Modifying the vegetation retention requirements in the riparian management area along a Type D or N stream to allow the removal of roadside trees which pose a safety hazard;*
  - (y) *629-642-0500(4) — Placing wood in a Type F or Type SSBT stream or conducting other activities to meet the same purpose as leaving green trees and snags along small Type N streams subject to rapidly moving landslides.*
  - (z) *629-642-0700(1)(a) – Utilizing site specific vegetation retention prescriptions for streams and riparian management areas;*
  - (aa) *629-645-0020(1) – Utilizing site specific vegetation retention prescriptions for significant wetlands;*
  - (bb) *629-645-0050(3) – Modifying the vegetation retention requirements for significant wetlands for reasons of forest health;*
  - (cc) *629-650-0040(3) – Modifying the vegetation retention requirements for lakes for reasons of forest health;*
  - (dd) *629-665-0020(1)(b)(C) – Structural or temporal exceptions when proposed forest practices conflict with a resource site;*
  - (ee) *629-665-0110(3) – Structural replacement of an osprey site;*
  - (ff) *629-665-0110(4) – Temporal exceptions near an osprey site;*
  - (gg) *629-665-0120(3) – Structural exceptions of a great blue heron site;*
  - (hh) *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 propose to modify a practice through a PFAP, but is not required to. If the operator chooses not to employ a practice that requires a PFAP, the protection standards provided for in administrative rule and guidance apply.

The list of potential rules that allow a PFAP is incomplete, but includes subsection (f), reference to 629-605-0173(1), to authorize conducting forest practices utilizing protection standards or methods different than those specified in rule or statute;

**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 PFAP 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 PFAP.

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 PFAP, but has not yet extended beyond 120 acres. Under specific conditions listed in OAR 629-670-0125, 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 PFAP is required for these exceptions. 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.

**RELATED RULES, STATUTES AND REFERENCES:**

- 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
- Summary of Harvest Unit Size Limitations, ODF Forest Practices News Note
- *Oregon Forest Protection Laws, an Illustrated Manual*, Third Edition, OFRI

**INTERIM PROCESS FOR PROTECTING SENSITIVE RESOURCE SITES  
REQUIRING WRITTEN PLANS**

**629-605-0180**

*Protection practices for sites requiring written plans under OAR 629-605-0170(5)(a) or (d) shall be determined for each site as follows:*

- (1) *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.*
- (2) *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.*
- (3) *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.*
- (4) *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 statutory 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 are:

- a. Listed in OAR 629-605-0170(5)(a) (sites in the 1984 ODF/ODFW Agreement); or
- b. Listed in OAR 629-605-0170(5)(d) (nesting or roosting sites used by threatened or endangered species); and
- c. **Not** listed in OAR 629-605-0170(5)(b) 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 (nesting sites of the osprey, great blue heron, bald eagle, and northern spotted owl). As of the last revision of this document, this rule applies to nesting sites of marbled murrelets and specific sites for band-tailed pigeon mineral springs and nesting sites of golden eagles listed in the 1984 ODF/ODFW Agreement. There is no FPA protection for peregrine falcons, which are no longer included on federal or state ESA lists.

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 if it can be established that the operator knew or was aware that the operation was near or within sites covered under this rule:

### **ADMINISTRATION:**

This rule describes written plan requirements 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 OAR 629-605-0190.

As of 2020, species covered under OAR 629-605-0180 include the marbled murrelet (state- and federal-listed threatened species), and band-tailed pigeon (only specific mineral springs listed in the 1984 ODF/ODFW Agreement) and golden eagle (only certain nesting sites listed in the 1984 ODF/ODFW agreement). Additional species may warrant written plans in the future if additional forest-associated species are added to the state or federal endangered species lists.

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, ODF Wildlife Biologist, ODFW biologist or 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(14). 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 within 300 feet of the site to comply with applicable forest practice rules. In a case determined not to conflict with the site, no special protection measures are required beyond 300 feet of the resource site.

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 actions that may avoid or minimize the risk of a conflict occurring.

Examples how to avoid or minimize conflict include, but are not limited to:

- Voluntary retention of additional habitat near the site
- Conduct work that may pose a conflict (e.g., felling, yarding) only during certain times of day when the species is likely to be less active or less likely to flush from a nest site, details in guidance for OAR 629-665.
- Ground spray rather than aerial spray the portion of a unit closest to an active nest site
- Conduct surveys to determine and document when a site is no longer being used by the species so that seasonal restrictions may be lifted earlier than the end date of the critical use period
- Conduct monitoring during an active operation to determine if the activities are acutally causing a disturbance (e.g., resulting from birds flushing from a nest). For this option, the SF must either gain voluntary cessation of the operation or take enforcement action to stop damage to the resource if it is determined that continued work is causing a disturbance.

The SF should consult with the ODF Wildlife Biologist or an ODFW Wildlife Biologist to determine if special actions, surveys, or monitoring are appropriate to avoid or minimize conflict. Monitoring and surveys can be time consuming and require expertise the operator may not have. Thus, the operator may need to find a qualified contractor to conduct this work. Regardless of who actually does the physical monitoring, the SF is responsible to observe proper execution of the monitoring plan.

Any special actions to avoid or minimize conflict must be described in the written plan. The plan should include a clear description of the specific actions to be taken, 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. Example: A plan might include details such as "All yarding will cease if birds are flushed off the nest site during these activities."

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

### **RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-600-0100 Definitions "*Conflict*"
- OAR 629-605-0170 Written plans
- OAR 629-605-0190 Written plans for operations near critical, T & E 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
- "*General Intent Statement Regarding Proposed Draft Interim Written Plan Rules*" - May 20, 1988 memo to Board of Forestry, James E. Brown, State Forester
- "*Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984*" **Note: Confidential document**

**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.

Although this rule references operations “near” or “within” protected sites, administration should be limited to operations beyond 300 feet from a protected resource site. For operations within 300 feet of a protected resource site, use the statutory written plan requirements in OAR 629-605-0170 (5). **All operations within one-half mile of a site should be considered "near" the habitat site.** Application of this rule applies to operations beyond 300 feet but within one-half mile of a site.

The requirement for a **non-statutory** written plan under this rule may be waived if 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 non-statutory written plan is submitted prior to conducting forest operations 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, 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 does not address sites which are not part of the original signed agreement. Golden eagle nesting sites and band-tailed pigeon mineral springs listed in the 1984 ODF/ODFW Agreement require statutory written plans under OAR 629-605-0170(5)(a).

The section also requires a non-statutory written plan for operations near the habitat sites of any state-listed threatened or endangered wildlife or aquatic species. Only state-listed species are covered under OAR 629-605-0190(2); species listed on the federal ESA list but not on the Oregon ESA list would not be covered under this rule (but operations within 300' of a species protected under only the federal ESA would still be protected under OAR 629-605-0170 (5)(d)). Currently, operations near nesting sites used by marbled murrelets require non-statutory written plans under OAR 629-605-0190(2). ODF interprets nesting site to include locations of occupied detections for this species.

OAR 629-605-0190 requires operators to submit written plans to the State Forester before operating near or within the types of sites described above. Thus, enforcement can be taken through this rule for failure to submit a complete written plan. There is no enforcement avenue for failure to follow the written plan or for resource damage for operations more than 300 feet from a site covered under OAR 629-605-0190. OAR 629-605-0170(5) would be applicable for operations within 300 feet of a site for failure to submit a statutory written plan and/or if resource damage occurs.

**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 (**Note:** The written plan requirement for those habitat sites requiring a statutory written plan cannot be waived). 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 629-605-0190 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 provide specific protection for nesting sites of 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, STATUTES AND REFERENCES:**

- OAR 629-605-0170 Written plans
- OAR 629-605-0180 Interim process for protecting sensitive resource sites, written plans
- OAR 629-665 Specified resource site protection rules
- *“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, STATUTES AND REFERENCES:**

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

A full understanding of "harvest type 3" cuts is found in ORS 527.620(4), .740, and .750, rather than in guidance under OAR 629-605-0210.

**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(10), 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 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(10), (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 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. For public safety use OAR 629-605-0500.

**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 FPA. Thus, in these limited circumstances, the FPA 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 Oregon OSHA personnel and/or Oregon OSHA safety references listed below. Prior to modifying rule requirements through a PFAP, SFs need to consider the discretion available to operators in achieving compliance.

**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.

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

**RELATED RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0173 Plans for alternate practice
- OAR 437, Division 7, Forest Activities; Oregon Occupational Safety and Health Division
- *Oregon Occupational Safety and Health Standards, Forest Activities, Oregon OSHA website*
- “*Yarding and Loading Handbook*,” Oregon OSHA website

**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 629-642-600. 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 not used for enforcement. A PFAP is required to modify a forest practice rule **relating to the listed waters and their RMAs**, to address forest health or public safety concerns. The operator must comply with the standard practice unless there is an approved PFAP. Without such a plan, ODF takes enforcement action under that rule for failure to follow the standard practice.

**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.

**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 FPA. Thus, in these limited circumstances, the FPA 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 629-642-0600 provides a mechanism to address the management of RMAs

when there has been broad scale mortality from insects, disease or fire. Example: An RMA in eastern Oregon has 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 through a PFAP 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. Example: Unstable woody debris in a stream directly threatens a culvert or bridge. An acceptable PFAP would allow the woody debris to 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 PFAP that is part of a statutory written plan as discussed in OAR 629-605-0173(3).

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”, OAR 629-605-0173.

#### **RELATED RULES AND STATUTES:**

- OAR 629-605-0100(2)(d) Plan for alternate practice to address public safety
- OAR 629-605-0140(2)(f) Notification to the state forester—types of operations
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-642-0600 Alternative vegetation retention prescriptions