

***DIVISION 610***  
***REFORESTATION RULES***

**PURPOSE**

***629-610-0000***

- (1) Timely reforestation of forestland following operations that reduce tree stocking below established standards is an essential factor in assuring continuous growing and harvesting of forest tree species, considering landowner objectives and consistent with the sound management of timber and other forest resources. Reforestation or other forms of revegetation are also important for continued productivity and stabilization of soils exposed as a result of operations.***
- (2) OAR 629-610-0000 through 0090 shall be known as the reforestation rules.***
- (3) The purpose of the reforestation rules is to establish standards to ensure the timely replacement and maintenance of free to grow forest tree cover following forest operations at or above stocking levels that will use the tree growth potential of forestlands in Oregon.***
- (4) The reforestation rules are designed to:***

  - (a) Define forestland subject to reforestation requirements;***
  - (b) Describe the conditions under which reforestation shall be required;***
  - (c) Specify the minimum number of trees per acre;***
  - (d) Specify the maximum time period allowed for establishment of such trees after an operation reduces stocking;***
  - (e) Describe the acceptable species for reforestation;***
  - (f) Describe the conditions under which revegetation shall be required in lieu of reforestation; and***
  - (g) Specify the conditions under which an exemption from the reforestation requirements may be approved.***

**APPLICATION:**

This section is not used for enforcement action; it is the rule purpose statement. Enforcement action should be taken as appropriate under OAR 629-610-0010 through 0090.

**ADMINISTRATION:**

The purpose of the reforestation rules is to continuously maintain healthy, growing tree cover on operated forestland, occupying the site to a large degree, but not necessarily with the most economically and biologically optimum species or stocking levels. The Stewardship Foresters (SF) needs to be aware that bona fide land use conversions are valid compliance with these rules along with reforestation. Administering conversions is discussed in the guidance for OAR 629-610-0090.

**Free to Grow.**

Whether an individual tree or stand of trees is “free to grow” is a key decision in determining compliance with the reforestation requirements. OAR 629-600-0100 defines “**free to grow**” as a tree or a stand of well-distributed trees, of acceptable species and good form, having a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation . . .” It is useful to examine these criteria individually and combine them to determine compliance.

**Well-distributed.**

OAR 629-600-0100 Defines “Well-distributed trees” as 80 percent or more of the area containing at least the minimum per acre tree stocking required for the site, and not more than 10 percent of the operation area containing less than one-half the minimum. The well-distributed concept is to be applied only when evaluating efforts to reforest after harvesting. In that context, it is a prerequisite that a bona fide effort has been made to reforest 100 percent of the area that is capable of forest production. The well-distributed concept is intended to recognize that in spite of reasonable efforts to reforest an entire harvest unit, small portions of the unit may not meet the reforestation stocking standards.

The intent is not to allow a landowner to simply write off 10 percent of the unit and make no effort to reforest that area.

Example: The "well-distributed" criteria would be met if a 50-acre unit was fully planted but 40 acres are stocked with 200 or more seedlings per acre, as required for that site, 5 acres average 80 seedlings per acre, and 5 acres average over 100 seedlings per acre.

If stocking levels vary from under stocked to overstocked in different parts of the harvest unit, evaluate sub-units to prevent overstocked portions of an operation area from skewing the overall unit stocking determination.

Overstocking may lead to a less productive stand that may eventually thin itself through tree mortality. Precommercial thinning is a tool to manage stand density and tree quality, usually taking place 10 to 15 years after planting. See OAR 629-610-0030 guidance for consideration of stump sprouts as free to grow trees.

Stocking within Riparian Management Areas is considered separately from the rest of the harvest unit. See OAR 629-610-0020 (9).

**Acceptable species.**

In nearly all cases, native species will be considered "ecologically suited" and are the preferred reforestation species. An exception may exist where a species exhibits poor productivity, health, and vigor, or is not capable of producing a product, or is not now or nor can be foreseen to be marketable. See OAR 629-610-0050(1) guidance.

**Good form, vigorous, healthy, and dominant.**

Seedlings, saplings, pole-sized trees, and trees over 11 inches DBH meeting the following standards are considered free to grow:

1. At least one-third of the tree height in full, live crown, not suppressed beyond recovery;
2. Potential for continued height growth consistent with the site's productivity;
3. Free from damage by insects, disease, fire, wildlife, weather, or logging that would prevent growth to site potential; and
4. Likely to out-compete the surrounding grass, shrubs, and young trees to reach site potential growth.

These general criteria may be modified on a case-by-case basis, following on-site evaluation by the SF. Decisions about free to grow trees and stands should be heavily weighted by the SF's knowledge of local conditions.

The SF might be able to evaluate any nearby sites that were logged 10 to 20 years ago, where similar residual trees were left and determine if the resulting stand remained free to grow. Comparison will help predict if the trees will "release," put on acceptable height growth, and remain vigorous or if they will "go into shock," and either continue to be stagnant or die.

Example: A well-stocked ponderosa pine plantation is overtopped with ceanothus. Controlling the ceanothus without also damaging the pine is very difficult and the shrubs usually re-establish themselves very quickly. The pine trees will eventually grow through the shrubs and become the dominant vegetation. Overtopped seedlings could still be considered free to grow in this case.

**Knowledge of local growing conditions is essential in modifying the free to grow criteria.**

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

- OAR 629-600-0100 Definition - "*Free to grow*"
- OAR 629-610-0020 Reforestation stocking standards
- OAR 629-610-0030 Natural reforestation methods
- Forest Practices Notes No. 2, *Reforestation*, ODF, 1994.
- *Oregon Forest Protection Laws, an Illustrated Manual*, Oregon Forest Resource Institute, Third Edition

**PURPOSE****629-610-0000**

- (5) *Except as described below, the reforestation rules shall become effective on January 1, 1995 and shall be applied as follows:*
- (a) *Operations completed after January 1, 1995 must comply with the reforestation rules;*
  - (b) *Except as provided in subsection (c) operations completed before January 1, 1995 must comply with the applicable reforestation requirements of ORS 527.745 and OAR 629-24-400 to 404, OAR 629-24-500 to 503, and OAR 629-24-600 to 604 as they existed on September 6, 1994;*
  - (c) *Landowners subject to subsection (b) may request to have the reforestation rules apply to an operation at any time following January 1, 1995. The State Forester shall approve such requests so long as the landowner will fully apply the reforestation rules on the operation.*

**APPLICATION:**

This section is no longer applicable to current operations. There are a few pending reforestation enforcement cases on harvest units completed prior to January 1, 1995.

**This rule will be suspended in a future administrative rule edit.**

**FORESTLANDS SUITABLE FOR REFORESTATION****629-610-0010**

- (1) *Any forestland which is capable of annual wood production of at least 20 cubic feet per acre at culmination of mean annual increment (Cubic Foot Site Class VI or better) shall be subject to the requirements of the reforestation rules.*
- (2) *Potential site productivity is determined directly by tree growth and stocking measurements throughout the operation area or determined indirectly using applicable USDA Natural Resources Conservation Service soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other information determined by the State Forester to be of comparable quality.*

**APPLICATION:**

These sections are not used for enforcement. These sections establish the lower limit of productivity below which reforestation is not required, and provide guidance on sources of productivity information.

**ADMINISTRATION:**

Twenty cubic feet per acre per year at culmination of mean annual increment is the dividing point between Cubic Foot Site Class VI and Site Class VII forestlands. Significant islands of Site VII land within units will not require reforestation and should be deducted from the acreage factor in calculations.

The SF will monitor whether an operation area is above the 20 cubic foot per acre per year threshold based on the best available information and may provide this information to landowners. Generally, landowners are responsible for determining if their lands are subject to reforestation requirements, and stand data provided by the landowner may be used to determine site productivity. Though SF is not responsible for collecting stand data to determine site productivity, they play an important role in eastern Oregon to determine site class for reforestation after fire salvage.

Other sources of site productivity information are:

- USDA Natural Resources Conservation Service (NRCS) soils survey.
- Oregon Department of Revenue (DOR) western Oregon site maps. **These maps are only applicable to Site V and better forestlands.** Revenue site class codes FA, FB, FC, and FD correspond to Cubic Foot Site Class III and better lands. Lands coded as FE site class lands may be either low Cubic Foot Site Class III or high Site Class IV. Soil survey information may be needed to differentiate between the two. Revenue codes FF and FG correspond to Cubic Foot Site Class IV and V.
- USDA Forest Service Plant Association guides. In some parts of the state, particularly low elevation areas in western Oregon, plant associations on private lands may not be represented in these Forest Service guides. A site visit or first-hand knowledge of the tree, shrub, and forbs species present is needed. A 1994 summary of the general plant associations in eastern Oregon that correspond to site class is available from the Salem staff. Eastside plant association guides may be more useful than soil survey data.

It is important to note that the "productivity index" ratings in these guides will differ from the cubic foot productivity calculated from site indices ("productivity index" ratings will generally be lower). Cubic foot productivity calculated from site indices are biological maximums, but can result in overstocked, stagnant stands, particularly on poorer sites. The Forest Service productivity indices tend to be lower to reflect stocking levels that are less likely to stagnate.

Exceptions:

Consultation with Oregon Department of Transportation (ODOT) may determine that state highway roadside forest cover is not compatible to maintain motorist safety and to protect highways, bridges and utility lines, which constitutes a waiver of the reforestation requirement, ORS 527.745(6).

The 2012 legislature passed SB 1546, which gave ODF the authority to waive reforestation requirements for portions of harvest operations along state highways where ODOT informed the ODF that roadside forest cover is not compatible with motorist or infrastructure safety.

- The basic process, per the intergovernmental agreement between ODF and ODOT:
  - ODF informs ODOT foresters of harvest operations near highways, through a FERNS subscription or otherwise.
  - ODOT informs SF in writing with a map showing the smallest portion of operations where reforestation waivers are to be issued.
  - SF inform landowners in writing of that portion of the operation where reforestation is waived. ODOT reforestation assessment and ODF reforestation waiver should be uploaded to the NOAP in FERNS.
    - ODOT reforestation assessment and map as "Other Document."
    - ODF reforestation waiver as "Formal Comment."
  - A Plan for Alternate Practice (PFAP) is not required.
  - The Landowners are not required to honor these waivers and may still reforest.

The above process would apply to ODOT, a written ODOT reforestation assessment, and SF's formal comment that issued the reforestation waiver.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-610-0020 Reforestation stocking standards
- ORS 527.745(6) Reforestation of certain harvest types (state highways)
- USDA Soil Conservation Service. June 1986. "*Culmination of Mean Annual Increment for Commercial Forest Trees of Oregon*". Technical Note No. 2. Portland Oregon.
- Site Class – Plant Associations in Eastern Oregon. ODF. October 6, 1994.
- USDA Natural Resources Conservation Service, soil survey website
- USDA plant associations, website
- Major Indicator Shrubs and Herbs on National Forests in Eastern Oregon, R6-TM-190-1985, photos
- Interagency agreement, reforestation waivers in state highway rights-of-ways, ODF and ODOT, March 2016

**REFORESTATION STOCKING STANDARDS****629-610-0020**

- (1) *The landowner shall increase tree stocking to a level that meets the applicable productivity-based stocking standards described in sections (4), (5), and (6) of this rule within the time limits established by OAR 629-610-0040 whenever post-operation free to grow tree stocking in all or a portion of the operation area is below the applicable stocking standards and:*
- (a) *Trees or snags of acceptable species are harvested; or*
  - (b) *Free to grow tree stocking is reduced as a result of the operation.*

**APPLICATION:**

This section is used for enforcement. Use this section if a landowner takes action within the time limits, but the resulting free to grow stocking is below standards. Use OAR 629-610-0040 if the landowner has not taken action within the time limits.

**COMPLIANCE:**

The landowner complies with this section when they provide for prompt regeneration, either planted or natural, to return the stand to the applicable standard in the prescribed time.

Unsatisfactory Condition: There is an unsatisfactory condition for **all** of the following:

1. An operation was conducted harvesting trees or snags of acceptable species or reducing free to grow stocking.
2. Post-operation tree stocking is below the site-based standards listed in Sections (3) through (6) or alternative standards set through an approved PFAP under (10).
3. An exemption has not been granted for development of forestland for uses not compatible with forest tree cover, OAR 629-610-0090.
4. The reforestation requirements have not been suspended, OAR 629-610-0070.
5. A free to grow stand has not been established that meets or exceeds the site-based standards listed in sections (3) through (6) or alternative standards approved under (10).
6. The compliance deadline and any granted extension, has passed, OAR 629-610-0040.

Damage: There is damage when the landowner takes action before the compliance deadline but the resulting free to grow stocking is inadequate. (Take enforcement action under OAR 629-610-0040 if the landowner fails to take adequate action within the required time limits.)

Written Statement of Unsatisfactory Condition: A Written Statement may be issued when stocking is within 90 percent of being adequate or where adequate stocking is not entirely free to grow.

**ADMINISTRATION:**

Salvage and conversion harvests are not exempt from the reforestation requirements even if stocking was below the standards prior to the operation. Below-standard pre-operation stocking levels do not exempt the operation from the reforestation requirement.

**Stewardship Forester Responsibility:**

Determine whether or not reforestation is required after the harvest operation. The "reforestation required" courtesy landowner letter is automatically sent to the landowner registered in FERNS when the SF posts the reforestation reminder dates. Send the courtesy letter with map to landowners not registered in FERNS. Provide technical advice to landowners or refer landowners to extension foresters or qualified consulting foresters.

Determine operational area requiring reforestation.

Determine whether an adequately stocked stand has been planted and remains free to grow within the time limits set in the rules. The SF may visually evaluate post-operation stands for compliance. When necessary, conduct a stocking survey to determine compliance with plant and free to grow standards.

In cases of unsatisfactory reforestation, repair orders shall require the needed actions, such as site preparation, replanting, inter-planting, animal protection, or management of competing vegetation, to achieve an adequately stocked, free to grow stand in a timely manner.

Inform county assessors' offices of forest operations in violation of the reforestation rules, ORS 321.367. In addition, send the landowner a copy of the letter sent to the county assessor. Such violations may result in higher property taxes on affected parcels under a forestland tax deferral program.

Inform the landowner with a reforestation requirement when it is known they intend to sell the property before completing the reforestation requirements, of ORS 527.665, which requires the potential seller with a reforestation requirement to inform the potential buyers of the reforestation requirement. Inform real estate agents of ORS 527.665, which will help reduce compliance issues. The department does not enforce ORS. 527.665.

**Landowner Responsibility:**

Based upon Department of Justice (DOJ) advice, in cases where a timber harvesting or timber ownership agreement exists between a timber owner and a landowner, only the current legal landowner is held responsible for reforestation, even if the timber owner has a contractual responsibility for reforestation. The landowner must fulfill any agreements with others.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-610-0040 Time allowed for reforestation
- OAR 629-610-0070 Suspension of the reforestation rules
- OAR 629-610-0090 Exemption from reforestation for forestland conversions

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- (2) *Reforestation is not required on those portions of the operation area:*
- (a) *Where adequate free to grow tree stocking remains after the completion of the operation;*
  - (b) *That are not disturbed by operation activities; or*
  - (c) *On soils or sites not meeting the minimum productivity requirements of OAR 629-610-0010.*

**APPLICATION:**

This section is not used for enforcement. It simply describes areas that need not be reforested.

**ADMINISTRATION:**

If necessary, the SF should stratify harvest units after completion and determine areas requiring reforestation using the rule criteria. Under stocked areas smaller than one acre need not be recorded and tracked as a matter of workload efficiency, although they should be reforested they may be subject to compliance inspection.

Judgment must be used in determining areas “that are not disturbed by operation activities.” This does not allow repeated thinning or “high-grading” until the unit is below minimum stocking, upon which trees are planted only where the last trees removed were harvested. Rather, the entire unit must be returned to minimum stocking standards. Treat harvested patches larger than one acre as individual units for reforestation rather than being averaged in with surrounding well-stocked areas.

Patch reforestation limited to planting only around where individual trees or clumps were harvested has been accepted by the SF in very unique circumstances where harvesting was limited to isolated trees and clumps of trees. This will probably be proposed infrequently by some landowner, but the question has come up. The acceptability of such patch reforestation should depend upon the history of the patchy stand being such that there is not already someone who should have responsibility for reforesting the entire area. Such situations should be rare.

The SF may visually evaluate post-operation stands for compliance. When necessary, conduct a stocking survey to determine compliance with plant and free to grow standards.

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- (3) *The State Forester shall approve a plan for an alternate practice to waive or modify the reforestation requirements following a stand improvement operation such as a pre-commercial thinning, commercial thinning, overstory removal, or other partial cut harvest if the State Forester determines that the residual stand conditions after such an operation will result in enhanced long-term tree growth and there is a high probability that the purpose of the reforestation rules will be achieved.*

**APPLICATION:**

This section is not used for enforcement. It authorizes thinning and partial cuts too temporarily below-standard stocking.

**ADMINISTRATION:**

It is consistent with the purpose of the reforestation rules, developed under ORS 527.745(2), to allow temporary stand stocking reduction below the stocking standards in order to enhance tree growth and site production. Operations such as pre-commercial thinning, commercial thinning, or other partial cuts can be conducted under an approved PFAP. By design, these operations should increase long-term tree growth and value. If the SF determines that, in the long term, free to grow stocking will fully occupy the site, reforestation is not necessary and such PFAPs should be approved.

Example: The SF approves a PFAP for a landowner to pre-commercial thin a stand of 6-inch DBH trees on a steep slope on Site II land down to 110 trees per acre, because future entries are not practical until final harvest. The retained trees should quickly grow to reach the 80 square foot basal area standard for 11-inch DBH and larger trees on high site land. No additional reforestation would be required in this case.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0173 Plans for an alternate practice

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- (4) *For Cubic Foot Site Class I, II and III forestlands (capable of producing at least 120 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:*
- (a) *200 free to grow seedlings per acre; or*
  - (b) *120 free to grow saplings and poles per acre; or*
  - (c) *80 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or*
  - (d) *An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.*
- (5) *For Cubic Foot Site Class IV and V forestlands (capable of producing between 50 and 119 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:*
- (a) *125 free to grow seedlings per acre; or*
  - (b) *75 free to grow saplings and poles per acre; or*
  - (c) *50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or*
  - (d) *An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.*
- (6) *For Cubic Foot Site Class VI forestlands (capable of producing between 20 and 49 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:*
- (a) *100 or more free to grow seedlings per acre; or*
  - (b) *60 free to grow saplings and poles per acre; or*
  - (c) *40 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or*
  - (d) *An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.*
- (7) *In both even-aged and uneven-aged stands, the stocking of residual seedlings, saplings and poles, and larger trees shall be weighted to determine stand stocking and potential reforestation requirements. For this purpose, seedlings, saplings and poles, and trees 11-inches DBH and larger are proportionally equivalent in the following ratios: 100 free to grow seedlings are equivalent to 60 free to grow saplings and poles, which are equivalent to 40 square feet of basal area of free to grow trees 11-inches DBH and larger.*

**APPLICATION:**

These sections are not used for enforcement. Enforcement actions for failure to adequately restock should reference OAR 629-610-0020 (1).

**ADMINISTRATION:**

These sections describe the site productivity-based stocking levels that must exist after an operation for compliance without reforestation and the stocking conditions that must exist by the free to grow timeline set in OAR 629-610-0040.

These stocking requirements may be relaxed or waived if the conditions in subsection (2), undisturbed or unproductive areas, or subsection (3), stand improvement operations, are met.

The information sources for determining cubic foot site productivity are listed in the guidance for OAR 629-610-0010. All trees counted toward meeting stocking requirements must be free to grow or likely to soon become free to grow. The criteria for determining if a tree is free to grow, is provided in the guidance for OAR 629-600-0100 definition of free to grow.

When an operation area contains more than one site productivity range in distinct, manageable islands, The SF should stratify the operation area and require different stocking levels on the different sites. If small areas of differing site productivity ranges are too intermingled to stratify easily, reforestation should be required at the level required for the predominant site productivity range present. In no case will landowners be required to reforest Site VII (<20 cubic feet per acre per year) lands.

The SF should inform the landowner that the number of planted seedlings usually needs to be higher than the applicable seedling levels listed, in anticipation of the mortality that will likely occur between planting and the free to grow timeline.

Section (7) This equation expresses proportionally equivalent trees to seedlings:

**New Trees = Rule Standard – [#Seedlings + (#Saplings & Poles /0.6) + (Basal Area/0.4)]**

“New Trees” means the minimum additional free to grow seedlings per acre required

“Rule Standard” means the seedling stocking standard per acre for the site class

“Seedlings” means the number of free to grow seedlings per acre present

“Sapling & Poles” means the number of free to grow saplings & poles per acre present

“Basal Area” means the basal area per acre of free to grow trees 11 inches DBH or larger present

**RULES, STATUTES AND REFERENCES:**

- OAR 629-600-0100 Definitions - “Free to grow”, “Saplings and poles” and “Seedlings”
- OAR 629-610-0010 (2) Forestlands suitable for reforestation
- OAR 629-610-0040 Time allowed for reforestation
- Forest Practices Notes No. 2, Reforestation, ODF, 1994.

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- (8) *Live conifer trees 11-inches DBH and larger left standing in harvested areas to meet the green tree and snag retention requirements of Section 5, Chapter 919, Oregon Laws 1991 [now ORS 527.726] shall be counted towards meeting the tree stocking standards if the trees are free to grow.*

**APPLICATION:**

This section is not used for enforcement.

**ADMINISTRATION:**

This section is intended to provide additional incentive for landowners to retain conifers, rather than hardwoods, as wildlife trees by allowing only conifers to be double counted.

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- (9) *For the purposes of determining compliance with the tree stocking requirements of the reforestation rules, tree stocking in riparian management areas within an operation area will be considered separately from stocking in the rest of the operation area.*

**APPLICATION:**

This section is not used for enforcement.

**ADMINISTRATION:**

The intent of this section is to emphasize restoration of full stocking in riparian management areas (RMAs) that have harvested areas from an operation.

Adequate stocking of riparian management areas after harvesting is essential to achieving the desired future conditions required by the water protection rules. Units will not be acceptable if under stocked areas due to harvesting (otherwise allowed under the definition of free to grow) are concentrated within the RMA.

Even under ideal conditions, it is likely that rampant competing vegetation near water may make achieving adequately stocked, free to grow stands more difficult in RMAs than in uplands. The SF may consider accepting a slightly below-standard level of free to grow stocking in portions of an RMA to be preferable to repeated entries into these sensitive RMAs with chemical or mechanical methods to establish or reestablish a fully stocked free to grow stand. The SF must determine by investigation and judgment if the landowner has made a reasonable effort to comply with the reforestation rules.

Free to grow trees retained in the **undisturbed portions** of the RMA are not to be included in an average stocking calculation that would offset the need to restock harvested areas. Conversely, reforestation cannot be required in portions of the RMA that were not disturbed by the operation, even if they are under stocked, (see OAR 629-610-0020(1) and (2)).

**RULES, STATUTES AND REFERENCES:**

- OAR 629-642-0000 Vegetation retention goals for streams; desired future conditions

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- (10) *Landowners may submit plans for alternate practices that do not conform to the reforestation stocking levels established under these rules. A plan for alternate practices may be approved if the State Forester determines that there is a high probability that the purpose of the reforestation rules will be achieved, or if the plan carries out an authorized research project conducted by a public agency or educational institution.*

**APPLICATION:**

This section is not used for enforcement. Take enforcement action under OAR 629-605-0173(4).

**ADMINISTRATION:**

A PFAP should be submitted before the operation is begun. The SF will evaluate such plans to determine whether they ensure the replacement and maintenance of free to grow forest tree cover that will use the tree growth potential of the site.

**Reforestation After Fire Salvage**

Reforestation after fire salvage in eastern Oregon area has been challenging, most notably since the late 1990s on harsh environmental sites and transitional lands between Site Class VI and VII. In 2016, guidance for reforestation after fire salvage in eastern Oregon area was created, based on a related 2013 document, and then updated in 2019 to provide further clarity. The guidance gives SFs discretion to:

- Identify areas with low probability of reforestation success using reasonable reforestation efforts and
- Identify areas with high probability of reforestation success, at full and lower tree stocking standards, using reasonable reforestation efforts.

Low probability areas include some Site Class VI lands under certain conditions that would likely have reforestation failure, even with lower tree stocking standards, extended time, and reasonable reforestation efforts.

The guidance document clarifies the landowner's reasonable reforestation effort in an approved PFAP where there is a high probability of reforestation success. The rules do not authorize approval of a PFAP for areas determined to have a low probability of reforestation success, even though there could be a lower tree stocking level and extended time frame.

When Site Class VI is likely not capable of being fully stocked, but has a high probability of reforestation success at a lower stocking level to match the productivity of the forestland, the SF may approve a PFAP that identifies:

- A lower tree stocking level,
- Extended time for stand reestablishment, and
- Reasonable reforestation efforts for site preparation, vegetation management, animal protection, and follow-up actions, which the landowner must complete.

**The PFAP should be validated by an experienced SF or supervisor prior to approval** and sent to the FP Field Coordinator to inform future policy or rule development.

### Oregon White Oak

Some landowners wish to manage stands to favor and maintain a particular species and its associated habitat, such as, Oregon white oak in below-standard-stocked open stands. Often the operation involves cutting the competing conifers and the remaining stand is below threshold reforestation stocking levels. However, these oak stands are naturally of low stocking, and replanting with conifers or hardwoods is not the landowner's objective.

These stands may be unique ecosystems, and the department supports the landowners' objectives but is obligated to ensure that there are solid management activities supporting such PFAPs. Approval of such PFAPs will be predicated on the following criteria.

1. The landowner must submit for SF approval a PFAP describing a schedule of activities necessary to create and maintain such a below-standard-stocked stand.
2. The PFAP must have written approval of a credible academic forest management advisor, probably a Forestry Extension representative, or a wildlife management agency representative such as Oregon Department of Fish and Wildlife (ODFW), the U.S. Fish and Wildlife Service, or the like.
3. ODF may determine that a landowner or landowner representative has sufficient expertise and experience to take the place of organizations or personnel listed in item 2 above.

The SF should advise the landowner to check with their county assessor to determine if the county will continue to recognize such below-standard-stocked stands as forestland if they are interested in retaining any forestland tax deferral status they may have.

### Research Projects:

Research projects by public institutions such as the College of Forestry at OSU, community college forestry programs, state forests, and county forests that will result in lower stocking levels may be approved if part of a formally designed and conducted project. The approved PFAP should specify full compliance with reforestation stocking levels will be provided should the research project be discontinued or abandoned for any reason.

Although not specifically permitted by this rule, private landowners with professional research programs will also be allowed to conduct research projects that result in alternative stocking levels, under these same guidelines.

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

- OAR 629-605-0173 Plans for an alternate practice
- 2016 Eastern Oregon Area Reforestation Guidance for after Fire Salvage, ODF, updated in 2019.

**NATURAL REFORESTATION METHODS****629-610-0030**

- (1) *Natural reforestation methods may be the best means to meet a variety of resource management objectives on some forestlands. Successful natural reforestation requires careful, flexible, site-specific pre-harvest planning and post-harvest monitoring.***
- (2) *Reforestation may be difficult on Cubic Foot Site Class VI forestlands due to factors such as poor soils, harsh climate, and competing vegetation. Reforestation in wetland areas may be difficult because of high water tables, competing vegetation, and inaccessibility. Careful reforestation planning is needed before operations are conducted on these sites. On Cubic Site Class VI forestlands and in wetlands, the use of silvicultural systems that promote natural regeneration and the retention of good quality residual trees after operations often have a higher probability of success than artificial reforestation methods.***

**APPLICATION:**

These sections are not used for enforcement.

**ADMINISTRATION:**

Natural reforestation methods require additional planning prior to harvesting to ensure success. On harsh Site VI lands and in forested wetlands, reforestation is often difficult. On all harvest units, but particularly on these types of sites, the SF should encourage pre-operation planning to prevent post-operation problems, although the PFAP is not required to be submitted for twelve months following harvest. (See section (4) below.) Often on marginal sites, retaining some trees to provide natural seed sources and a favorable microclimate for new trees can increase the chances of reforestation success and lower reforestation costs. The required plan may include flexibility in meeting the free to grow timeline.

**NATURAL REFORESTATION METHODS****629-610-0030**

- (3) *When an operation will result in a reforestation requirement and natural reforestation methods are planned, the landowner shall obtain written approval from the State Forester of a plan for an alternate practice which describes how reforestation will be accomplished. Information in the plan shall include:*
- (a) *A description of the seed sources that will be used;*
  - (b) *Site preparation and vegetation competition control methods;*
  - (c) *An estimate of the time needed to obtain an adequately stocked free to grow stand;*
  - (d) *How progress towards natural reforestation will be evaluated; and*
  - (e) *Alternative strategies that will be used if natural reforestation does not progress as planned.*
- (4) *The plan for an alternate practice required in section (3) of this rule must be submitted no later than twelve months after tree stocking is reduced.*
- (5) *Plans for an alternate practice for the use of natural reforestation methods shall be approved by the State Forester if a determination is made that the information provided accurately indicates there is a high probability that the purpose of the reforestation rules will be achieved.*

**APPLICATION:**

These sections are not used for enforcement. Failure to submit an approved PFAP will result in the landowner being held to the compliance requirements for artificial reforestation (OAR 629-610-0040, i.e. planting or seeding within 24 months and a free to grow stand within 6 years of completion of the operation). An SF approved PFAP for natural reforestation may be one way for a landowner to come back into compliance after violating the planting requirement. The citation, repair order, and penalty would stand, though.

**ADMINISTRATION:**

The SF approved PFAP must describe how natural reforestation will be achieved. The intent of this is to both force the landowner to plan reforestation early in the operation, and to increase the probability of successful natural reforestation. Section 3 lists five topics that must be addressed in the PFAP. To fully address these topics the following information needs to be provided:

(a) Seed Sources: The species, size, condition and locations of trees that will be used as seed sources must be described. Landowners cannot rely on an adjacent landowner's trees as a seed source unless the PFAP includes a written and signed statement from the adjacent landowner that the trees will not be harvested during the life of the PFPA. The basal area of retained in-unit seed trees may also be counted toward the stocking requirement if they are free to grow.

**(b) Site Preparation:** For successful seed germination, a favorable seedbed is needed. Site preparation methods must be described along with the time within which site preparation will be completed. If hardwood sprouts will be used, the PFAP must describe how excess sprouts will be controlled and cultured.

**(c) Time:** The PFAP must include an estimate of how long it will take to establish an adequately stocked free to grow stand using the proposed natural reforestation methods.

**(d) Evaluation:** The PFAP must describe how stocking success will be assessed.

**(e) Alternate Strategy:** Each PFAP must also describe what actions the landowner will take to achieve an adequately stocked stand before the free to grow deadline if natural reforestation is not succeeding as anticipated.

When evaluating natural reforestation success, little weight should be given to the presence of first-year germinants. Most germinants do not survive the first year. Seedlings at least one-year old have a much higher probability of continued survival.

Natural reforestation PFAPs which rely on hardwood species required close review before approval. In some cases, such as cottonwood and quaking aspen groves, natural reforestation with the same hardwood species is probably the best option. PFAPs proposing natural reforestation with red alder or madrone on sites suited for growing conifers, should not be approved unless the PFAP thoroughly addresses site preparation and stocking control. The quality and specificity of the PFAP submitted by the landowner may provide an indication of whether they are serious about managing for hardwoods or if they are attempting to avoid reforestation costs. Landowners are responsible for demonstrating in their PFAP that they have the knowledge and ability to successfully use natural reforestation methods to comply with the rules. If the SF determines this is not the case, especially where technical information is limited on how to obtain successful natural regeneration of hardwoods from seed or sprouts, natural reforestation PFAP relying on these methods should generally not be approved.

It is not possible to discuss natural reforestation methods for hardwoods generically. Instead each species must be considered separately. Excellent summaries of current site preparation, natural reforestation, and vegetation management guidelines for the most commonly encountered hardwood species in Oregon are available and listed in the reference section.

The following are some very general guidelines for evaluating natural reforestation PFAP involving common hardwood species. These guidelines identify potential problems with a proposed PFAP, but a more in-depth evaluation of the PFAP and the site, as well as your local knowledge is needed before a PFAP is approved or not approved.

**Bigleaf maple, California black oak, California-laurel (myrtle), Giant chinquapin:** Natural reforestation using managed sprouts\* is an acceptable practice. Natural reforestation using seeds is unreliable and unacceptable. Fire can encourage sprouting of chinquapin.

Limited research indicates for bigleaf maple sprout clumps, a better stem quality is produced if all stems are retained until the clump canopies begin to close upon one another; removing all but

the best-form stem from each clump at this point encourages continued straight-form growth. The time to culture the clumps seems to be 8-10 years after severing of the original tree stems.

**Black cottonwood:** Natural reforestation using seeds or managed sprouts\* should be considered an acceptable practice only in wet bottomlands where the species was present before harvesting. Control of competing vegetation is important.

**Oregon ash:** Natural reforestation using seeds or managed sprouts\* should be considered an acceptable practice only in wet bottomlands where the species was present before harvesting.

**Oregon white oak:** Regeneration from seed is difficult. In the absence of fire and grazing, soil disturbance is needed for seed germination. Shoot growth is very slow the first few years. Ensure protection from rodents and other predators. Use of managed sprouts\* is a more viable option.

**Pacific madrone:** Natural reforestation using managed sprouts\* in clear-cuts with control of competing vegetation is an acceptable practice.

**Red alder:** Natural reforestation from seeds is an acceptable practice in areas where site preparation has exposed mineral soil. Alder establishment (both natural and artificial) is likely to be unsuccessful on south aspects in the valley side of the Coast Range and in the Cascades. Using stump sprouts is not considered a viable alternative.

**Tanoak:** Natural reforestation using seeds is an acceptable practice in areas with a partial canopy and a duff layer over mineral soil. Seed survival is poor in clear-cuts. Using managed sprouts\* is also a viable alternative. Fire helps to trigger vigorous sprouting.

*\*"Managed sprouts" means the landowner thins the sprout clumps prior to the free to grow date set in the PFAP to suppress all but one to four of the most desirable stems. For the purpose of determining free to grow stocking, only one stem per clump may be counted.*

When evaluating PFAP for natural reforestation, the SF is encouraged to consult with Salem staff or their local extension forester, and to use their knowledge of local conditions. Over time, successful PFAPs can be referenced as guides for evaluating new PFAPs on similar sites.

Overstocking of acceptable tree species (both naturally and artificially regenerated) may lead to conditions that may not be considered free to grow. However, pre-commercial thinning usually takes place at least 10 to 15 years after planting, not within the four-year free to grow compliance period after planting under the rules. Therefore, overstocking does not disqualify a stand from being considered free to grow.

Landowners should be encouraged to manage tree stocking. When evaluating stocking, remember the criteria requires that for free to grow trees to be counted they should generally be 10 feet from undesirable trees and not overtopped by grass or brush. This partially addresses overstocking and prevents grossly overstocked portions of an operation area from skewing the overall unit stocking.

Landowners who intend to use natural reforestation methods should be encouraged to submit the required PFAP as early in the operation as possible. The deadline is set at 12 months after felling begins because, on some eastern Oregon and interior southwest Oregon partial cuts, it may not be evident that reforestation will be required until after the operation is completed.

In some cases, natural reforestation has been approved after repeated failure of planted seedlings on harsh sites or where vegetative competition is hard to control. On harsh sites, the pre-fire or pre-harvest stand of trees indicates sufficient soil productivity to support a stand, but only with the necessary combination of weather conditions that allow seedling establishment. On brush-dominated sites, vegetative control costs can be so high that economic feasibility is beyond the landowner's means. Instead of requiring the landowner to continue investing in planting, a PFAP using natural reforestation and an extended free to grow compliance date may be approved. See guidance discussion in OAR 629-610-0020(10).

If the SF becomes aware that ownership has changed during the period of an approved natural reforestation PFAP, the new landowner should be contacted to ensure they are aware of the provisions of the PFAP. They may choose to continue under the PFAP, seek approval of an amended PFAP, or abandon the PFAP and use artificial reforestation methods.

(f) Enforcement, Recommended Repair Order Text:

- Complete site preparation to control competing vegetation by [Date] and before planting seedlings.
- Plant at least [xxx] seedlings per acre of acceptable species by [Date].
- Ensure that at least [xxx] trees are free to grow on the site by [Date]. You will likely need to monitor the site, replant seedlings, and control competing vegetation to meet the free to grow standard.
- “Acceptable species” and “Free to grow” are defined in OAR 629-600-0100.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-600-0100 Definitions - “*Artificial reforestation*”; “*Acceptable species*”; “*Free to grow*”; “*Natural reforestation*”
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-610-0040 Time allowed for reforestation
- Ahrens, G.R., et al.. June 1992. Red Alder: Guidelines for Successful Regeneration. Special Publication 24. Forest Research Laboratory, OSU, Corvallis, Oregon.
- Burns, R.M. and B.H. Honkala. December 1990. Silvics of North America: Volume 2, Hardwoods. Agriculture Handbook 654, USDA Forest Service
- Niemiec, S.S., et al. March 1995. Hardwoods of the Pacific Northwest. Research Contribution 8, Forest Research Laboratory, OSU, Corvallis, Oregon.
- Campbell, Bruce H. 2004. Restoring Rare Native Habitats in the Willamette Valley. Defenders of Wildlife. West Linn, Oregon.
- Deal, Robert L.; Harrington, Constance A., eds. 2006. Red Alder—a state of knowledge. Gen. Tech. Rep. PNW-GTR-669.
- Vesely, David. G. Tucker. 2005. A Landowner’s Guide for Restoring and Managing Oregon White Oak Habitats. BLM. Salem, Oregon.

**TIME ALLOWED FOR REFORESTATION****629-610-0040**

- (1) *The time period for compliance with the reforestation rules begins at the completion of the operation or 12 months after tree stocking has been reduced, whichever comes first.*
- (2) *The landowner shall begin reforestation, including any necessary site preparation, within 12 months when reforestation is required.*
- (3) *The landowner shall complete planting or seeding within 24 months unless a plan for an alternate practice for natural reforestation has been approved by the State Forester.*
- (4) *By the end of the sixth full calendar year, the landowner shall have established a free to grow stand of trees which meets or exceeds the minimum stocking level required by OAR 629-610-0020.*
- (5) *When natural reforestation methods are planned, the time limits for evidence of successful germination and for establishing a free to grow stand of trees which meets or exceeds the minimum stocking level required for the site shall be established in the approved plan for an alternate practice required for such methods.*

**APPLICATION:**

These sections are used for enforcement. These sections establish the timeline for carrying out the reforestation obligation. Section (1) starts the "compliance clock" that determines the compliance dates for sections (2) through (4). These sections are used if the landowner does not meet the compliance dates. If the planting completion date is met, but stocking is inadequate, use OAR 629-610-0020(1) for enforcement.

**COMPLIANCE:**

The landowner complies with these sections when they:

- (a) Begin reforestation efforts within 12 months after the compliance period has started. "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by yarding activities, OAR 629-600-0100(13). "Post-operation" is generally considered completion of yarding, which designates the date when reforestation if required, OAR 629-610-0020(1). The SF should consider the 12 month check a low priority for determining reforestation compliance.
- (b) Plant or seed to the minimum stocking level required for the site within 24 months after the compliance period has started. The SF should consider the 24 month plan check a medium to high priority for determining reforestation compliance.
- (c) Establish a free to grow stand of trees which provides at least the minimum stocking level required by OAR 629-610-0020 by December 31 of the 6th full calendar year after the

compliance period has started. The SF should consider the free to grow check a medium to high priority for determining reforestation compliance.

(d) Meet the timeline established through an approved PFAP for natural reforestation methods.

Unsatisfactory Condition: There is an unsatisfactory condition when the landowner fails to meet any of the requirements of sections (a) through (d).

Damage: There is damage when the landowner fails to take the rule-referenced action before the planting or free to grow compliance deadlines because there is loss of productivity from delaying subsequent compliance dates and a loss of growing seasons. There is also damage when the landowner takes action before the free to grow compliance deadlines but the resulting free to grow stocking is inadequate. In such cases, the landowner's planting actions (such as planting during the summer or using non-viable seedlings), and not the site conditions after planting (such as competing vegetation or frost damage), are the primary factors leading to non-compliance. Such cases may be more logically enforced on the basis of the stocking standards, OAR 629-610-0020(1), rather than this rule. Consult Salem staff to discuss rule reference.

Written Statement of Unsatisfactory Condition: The SF may issue a Written Statement when a landowner fails to begin reforestation actions, including any necessary site preparation, with time to complete planting within 12 months of completion of the operation, OAR 629-670-0120.

Enforcement dates:

Our counsel at the DOJ advises to use the free to grow due date, the end of the 6 years following the operation's completion, when stocking is within 90 percent of being in full compliance or when adequate stocking is not entirely free to grow.

## **ADMINISTRATION:**

Special Cases and Enforcement:

If planting has not been completed and a natural regeneration PFAP has not been approved, **but** there is a viable, well-distributed stand of natural reproduction of acceptable species on the operation area, enforcement action depends on the circumstances. Procedurally the landowner has failed to plant or to obtain approval of a natural reforestation plan. However, they have a stand of natural reproduction that meets the intent of the rules. There is no requirement in the rules that the trees evaluated at the free to grow deadline be only those that were planted. If an adequate number of well-distributed, naturally-regenerated trees of acceptable species (conifer or hardwood) has supplemented or replaced the planted trees at the compliance deadline and the trees are free to grow, rule compliance is achieved.

If the natural reproduction will mature into a productive, well-distributed, adequately-stocked stand at some time beyond the normal free to grow compliance date, it is acceptable. It is not ODF's place to dictate that the landowner's objectives be to produce an optimum stand in the shortest period, just one that achieves the purposes of the reforestation rules.

If there is some natural reproduction but there are also under stocked areas large enough that the definition of "well-distributed" is not met, the repair order can take into account those areas that

have viable natural reproduction. The landowner may plant the whole area, or plant the under stocked areas and obtain approval of a PFAP for the rest.

#### Determining Whether Reforestation is Required:

The SF will make the decision on whether or not reforestation is required. The rules do not require the SF to inform every landowner on every harvest operation of this decision. However, FERNS automatically sends a "reforestation required" form letter to the landowner when the SF enters the reforestation required dates for plant and free to grow. Otherwise, the SF should be send the landowner the courtesy letter that reforestation is required. Regardless of whether they receive a letter, landowners also have a responsibility for determining if, and to what level, their lands must be reforested. The SF should assist landowners with technical advice, but can also do so by referring landowners to extension foresters or qualified consulting foresters.

The SF may visually evaluate post-operation stands for compliance. Conduct a stocking survey when plant and free to grow standards are difficult to clearly determine. To the extent workload allows, each district will seek to conduct planting and free to grow compliance inspections and enforcement on all possible non-industrial operation areas larger than one acre.

Spot-checking non-industrial landowners with a record of past reforestation compliance will be sufficient. Planting and free to grow compliance field inspections should be made on at least five percent (by landowner) of industrial forestland operations. These operation areas should be randomly selected. Company records may be used for determining compliance on up to 95 percent of industrial lands.

Where zoning will likely result in development to a non-forest use during the next ten years, such as within urban growth boundaries and areas zoned for "rural residential" development, districts may place a low priority on inspections on one to ten-acre operation areas.

Field offices must inform the county assessors' offices of forest operations in violation of the reforestation rules, as required by ORS 321.367. The county assessor will send the landowner a letter warning of 5 years back taxes owed to the county if the property does not meet the standards of the county's forest deferral tax program. This county action serves as a financial incentive to complete the required reforestation.

#### Compliance Dates:

Section (1) permits the SF to require reforestation on a logical portion of a harvest unit even if other portions of the operation are not finished. Usually the completion of yarding will be equivalent to completion of the operation. In rare cases an operation may consist of only felling and bucking. Yarding is completed as a second operation. This may occur due to fluctuating markets or occasionally to avoid new regulations. To prevent long delays in reforestation, section (1) also allows the reforestation compliance time period to begin no later than 12 months after stocking has been reduced, that being when the trees were felled.

When the actual completion date (the month) is known, it should always be used. In many cases, the SF may not know the exact completion date. There is some opportunity for confusion because the planting preparation and planting completion time periods are measured in months after operation completion (OAR 629-610-0040(1)), and free to grow compliance is measured in "full

calendar years” (OAR 629-610-0040(4)). Furthermore the reforestation threshold used for compliance with the unit size limitation in ORS 527.750(1)(c) is measured in months “since the stand was created”, meaning it was planted or seeded. An exact determination of these compliance dates is mainly needed when landowners do not take advantage of the first available preparation and planting seasons. When that happens, use the best available determination of the compliance dates, and document how they were set. An estimated completion date of the next July 1 or December 31 may be used.

**Artificial Reforestation:**

Planting or seeding must be completed within 24 months after completion of the operation. Visual observation should be sufficient to make this determination in most cases. If the planting completion date falls in the middle of a planting season, and planting has not taken place, issue a written statement directing the landowner to complete planting by the end of that season.

Reforestation timing is critical if the harvest is completed in the fall. If a harvest is completed in October, the site preparation, such as burning or spraying, may not be possible due to fall and winter wet weather. In this case, the first planting season would be lost. Site preparation would have to be completed before the second planting season and planting must be completed during the second planting season.

The PFAP utilizing natural reforestation should contain the following:

- Operation-specific time limits for site preparation, evidence of reforestation success, and establishment of a free to grow stand. (Typically the approved deadline for establishing a free to grow stand should not be shorter than 6 years and rarely longer than ten years.)
- Control methods for competing vegetation that will be used.
- Monitoring and evaluation methods that will be used; and
- Alternative strategies (including time lines) that will be used if natural reforestation does not progress towards a free to grow status as planned.

On some very harsh Site VI lands, harvesting may have changed the microclimate to the extent that repeated reforestation efforts may result or have already resulted in one or more failures. A PFAP that provides for natural regeneration over an extended time period may be considered in place of continued failure of plantings. In some rare cases, the SF may eventually waive the reforestation requirements. If such waivers are granted, the SF should document the site conditions, harvest design, and reforestation practices that led to the failure in order to prevent similar results in the future. Consult with Salem staff in such cases.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-600-0100 Definitions - “Artificial reforestation”; “Completion of the operation”
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-610-0020 Reforestation stocking standards
- *FERNS Policy Manual*; ODF;
- ODF, October 31, 1994. Reforestation stocking survey procedures.

**TIME ALLOWED FOR REFORESTATION****629-610-0040**

- (6) *If reforestation cannot be accomplished within the specified time due to circumstances determined by the State Forester to be beyond the landowner's control, the State Forester shall extend the time to accomplish reforestation. Such circumstances may include, but are not limited to:*
- (a) *Nursery failure;*
  - (b) *Inadequate seedling availability following salvage harvesting;*
  - (c) *Extreme drought;*
  - (d) *Insect infestation;*
  - (e) *State smoke management restrictions on the burning of slash;*
  - (f) *Wildfire or disease damage; or*
  - (g) *Severe wildlife damage that could not be reasonably anticipated or controlled by the landowner.*
- (7) *Extensions shall be made only upon a determination by the State Forester, based on timely written evidence provided by the landowner, that documents the landowner made reasonable attempts to comply with the reforestation requirements of the rules.*

**APPLICATION:**

These sections are not used for enforcement.

**ADMINISTRATION:**

Extension requests should be submitted by landowners as soon as they realize they may not meet a compliance deadline. Once a compliance deadline has passed, a landowner is in violation. A violation cannot be reversed by requesting an extension after the fact.

Landowners accept a risk of poor seed crops when using natural reforestation methods, and extensions should not be allowed for this reason.

Extensions may be appropriate on very small units (generally less than 10 acres) where the number of needed seedlings is so small that a non-industrial landowner is unable to contract with a nursery for the trees prior to the operation and, cannot obtain them on the speculative market. The SF may be flexible in granting extensions for such cases, weighing the landowner's efforts and evidence of seedling scarcity against the landowner's report.

Example: A reforested stand from a previously-harvest operation was destroyed by wildfire – does the FPA require the landowner to reforest the stand a second time. Enforcement depends if the initial planting had met the planting and FTG time requirements:

1. If the stand had been harvested, but not yet planted before the wildfire: Reforestation (planting and achievement of free-to-grow) is required.

2. If the stand had been harvested and planted, but had not yet reached free-to-grow before the wildfire: Reforestation (planting and achievement of free-to-grow) is required.
3. If the stand had been harvested and planted, and had already reached free-to-grow before the wildfire: Reforestation is not required.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-610-0040 (8) Extensions for reforestation after failure of initial efforts

**TIME ALLOWED FOR REFORESTATION****629-610-0040**

- (8) *Where an extension is granted for reforestation failure on land suitable for reforestation or in cases where a violation of the reforestation rules is cited, the landowner shall be required to take remedial action to achieve the required stocking standards within a time prescribed by the State Forester using recognized stand establishment methods.*

**APPLICATION:**

This section is not used for enforcement.

**ADMINISTRATION:**

This section requires the landowner to continue to make reforestation efforts after an initial reforestation failure.

A failed attempt at reforestation does not satisfy the reforestation requirements. Reforestation failures prior to the compliance deadline for establishing a free to grow stand may be granted an extension of the compliance time limit if the reasons for the failure are beyond the landowner's control. If a landowner notifies the SF that reforestation efforts have not been successful, the SF will investigate the causes and direct the landowner to take reasonable actions to correct the problem. This may involve release from competing vegetation, inter-planting or possibly complete site preparation and replanting of the operation area.

When citing under an enforceable section of this rule, issue a repair order instructing the landowner on how to bring the operation area into compliance. The free to grow compliance date should be extended to December 31 of the fourth year after artificial reforestation unless natural regeneration is approved in a PFAP.

On some very harsh Site VI lands, harvesting may have changed the microclimate to the extent that repeated reforestation efforts may result or have already resulted in one or more failures. A PFAP that provides for natural regeneration over an extended time period may be considered in place of continued failure of plantings. In some rare cases, the SF may eventually waive the reforestation requirements. If such waivers are granted, the SF should document the site conditions, harvest design, and reforestation practices that led to the failure in order to prevent similar results in the future. Consult with Salem staff in such cases.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-610-0040(7) Extensions for reforestation

**ACCEPTABLE SPECIES FOR REFORESTATION AND  
RESIDUAL STAND STOCKING**  
**629-610-0050**

- (1) *The State Forester shall determine if tree species are acceptable for artificial reforestation, natural reforestation, and as residual seedling, sapling and pole, or larger tree stocking based on all of the following criteria:*
- (a) *The species must be ecologically suited to the planting site;*
  - (b) *The species must be capable of producing logs, fiber, or other wood products suitable in size and quality for the production of lumber, sheeting, pulp or other commercial forest products; and*
  - (c) *The species must be marketable in the foreseeable future.*

**APPLICATION:**

This section is not used for enforcement.

**ADMINISTRATION:**

In nearly all cases, native species will be considered "ecologically suited" and are the preferred reforestation species. An exception may exist where a species exhibits poor productivity, health, and vigor, or is not capable of producing a product, or is not now or potentially marketable. If there is substantial evidence that a species cannot meet all the criteria in this section, the department may determine that landowners may not count the species toward the stocking standards as residual stocking, natural regeneration, or artificial reforestation. Such proposals should be referred to Salem staff for evaluation.

Examples: White fir may have become established during the last century in ponderosa pine/Douglas-fir forests on low productivity sites; however, poor stand health and vigor may indicate white fir is not best suited to such sites. Northeast Oregon District's grand fir is native but doesn't grow well on pine sites with low site productivity.

A conifer or hardwood species that has any commercial value as a forest product will meet the requirement of subsection (b). This includes products such as commercial firewood and medicinal substances such as those extracted from Pacific yew bark. The fact that such products may not be the most profitable from a given site is not relevant.

The rules generally do not differentiate between hardwoods and conifers as acceptable species.

Exceptions:

1. The rules and guidance require close scrutiny of natural reforestation plans relying on hardwood regeneration for sites capable of growing conifers.
2. The rules limit the amount of required stocking that can be supplied by residual hardwood trees without a PFAP (see guidance for section (2) of this rule).

Alternative Vegetation Retention Prescription 2 (Hardwood Dominated Sites), OAR 629-642-0600(4), allows the department to be more restrictive on acceptable species in this special situation. This alternative prescription should only be used if site conditions are such that the plan is likely to lead to the establishment of **conifer** reproduction.

Tree species that are not currently marketable or marketable in the foreseeable future cannot be used for tree stocking, even though they may have some undiscovered potential to become marketable.

Juniper markets develop from time to time. However, current information indicates this species is not continuously marketable in the foreseeable future. Juniper species management in units of less than 120 acres is specifically exempt from the definition of an “operation” by OAR 629-600-0100(52). Juniper should not normally be considered an acceptable species for reforestation. Furthermore, juniper-only stands are more likely on sites of such low productivity, frequently lower than site class VI, that reforestation is not required anyway. Additionally, juniper harvest and privilege taxes area exempted from taxes, per ORS 321.005(6) and 321.805(7). Notification to DOR is not required for commercial harvest of any juniper product on any amount of juniper acreage. See additional juniper guidance in OAR 629-600-0100(52) definition of “operation”.

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

- OAR 629-600-0100 Definition – “Operation”
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-610-0030 Natural reforestation methods
- OAR 629-642-0600 Alternative vegetation retention prescriptions
- Oregon Board of Forestry and ODF. 2011. *Forestry Program for Oregon*.
- Emmingham, W., P. Oester, S. Fitzgerald, G. Filip, and Edge, W. 2005. Ecology and Management of Eastern Oregon Forests: A Comprehensive Manual for Forest Managers. OSU, Corvallis, Oregon.

**ACCEPTABLE SPECIES FOR REFORESTATION AND  
RESIDUAL STAND STOCKING**

**629-610-0050**

- (2) *Up to 20 percent of the site-based stocking levels required by 629-610-0020 may be met by using free to grow hardwood trees remaining after harvest if the trees are of species meeting the requirements of section (1) of this rule. An approved plan for an alternate practice is required before more than 20 percent of the required stocking may be met with residual, post-operation hardwood trees. Approval for the use of higher levels of hardwood residual stocking shall be based on a determination by the State Forester that there is a high probability that the purpose of the reforestation rules will be achieved.*

**APPLICATION:**

This section is not used for enforcement. If the landowner does not obtain approval of a PFAP residual hardwoods may be counted for no more than 20 percent of the required stocking. Enforcement action would use OAR 629-610-0020, Reforestation Stocking Standards.

**ADMINISTRATION:**

The intent of this rule section is to require the landowners to obtain approval of a PFAP before meeting more than 20 percent of the required stocking with residual hardwood trees.

Example: Oak stands, managed under an approved PFAP that allows for reduced stocking to encourage savannah habitat. Approval of a PFAP for hardwood management is discussed in the guidance for OAR 629-610-0020(10).

This is the only reforestation rule section that differentiates between conifer and hardwood species (the guidance for OAR 629-610-0030 (3) through (5) also requires close scrutiny of PFAPs utilizing natural reforestation involving hardwoods).

To be counted toward the required stocking, all conifer and hardwood residual trees after an operation must be free to grow.

Approval of a PFAP will be granted if the hardwood trees under consideration are an acceptable species, free to grow, and the landowner demonstrates the stands will be managed to use the tree growth potential of the site.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-610-0020 (1) Reforestation stocking standards
- OAR 629-610-0030 Natural reforestation methods

**ACCEPTABLE SPECIES FOR REFORESTATION AND RESIDUAL STAND  
STOCKING**  
**629-610-0050**

- (3) *Landowners are encouraged to reforest with a mixture of acceptable tree species where appropriate to reduce the risk of insect and disease losses and to promote stand diversity. Seedlings or seeds used for artificial reforestation should be from seed sources that are genetically adapted to the growing site.*

**APPLICATION:**

This section is not used for enforcement.

**ADMINISTRATION:**

Maintaining a mixed species stand, particularly in eastern Oregon, may reduce the risk and severity of future insect and disease problems.

If a landowner plans to use an inappropriate species or off-site seed source, the landowner should be advised that to do so could result in poor stand survival and future growth. A delay for more appropriate seedlings or seeds may be preferable to planting off-site stock that may not survive to free to grow status, or rotation age. A compliance extension is not appropriate if the landowner could have anticipated the situation and obtained seedlings in time to meet the planting compliance date. Refer to the guidance for OAR 629-610-0040 (6) and (7) for information on when extensions may be granted.

Questions on acceptable species may be referred to a department insect and disease specialist or silviculture specialist, a county extension forester, qualified consulting forester, or forest tree nursery.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-610-0040 (6) and (7) Time allowed for reforestation
- Emmingham, W., P. Oester, S. Fitzgerald, G. Filip, and Edge, W. 2005. Ecology and Management of Eastern Oregon Forests: A Comprehensive Manual for Forest Managers. OSU, Corvallis, Oregon.

**USE OF NON-NATIVE TREE SPECIES****629-610-0060**

- (1) *When an operation will result in a reforestation requirement, and the landowner intends to plant or seed a tree species not native to the operation area, the landowner shall submit for approval a plan for an alternate practice to the State Forester which describes the tree species and how it will be used to meet the reforestation requirements. Information in the plan shall include:***
  - (a) *The tree species that will be used;***
  - (b) *Evidence that the species is ecologically suited to the planting site;***
  - (c) *Evidence that the species is capable of producing commercial forest products that will be marketable in the foreseeable future; and***
  - (d) *Available research or field test findings which demonstrate the tree species has been successfully used in reforesting sites similar to the operation area.***
- (2) *A plan for an alternate practice for the use of non-native tree species must be submitted for approval no later than twelve months after tree stocking is reduced and prior to planting. Plans for the use of non-native tree species shall be approved by the State Forester if a determination is made that the information provided indicates there is a high probability that the purpose of the reforestation rules will be achieved.***
- (3) *For the purpose of this rule, any tree species that the State Forester determines has naturally existed and reproduced in the operation area or on similar sites will be considered a native species.***

**APPLICATION:**

These sections are not used for enforcement. Failure to obtain approval of a PFAP will result in the landowner being held to the compliance requirements for artificial reforestation using only native trees species.

**ADMINISTRATION:**

If a tree species is not present on the operation area but occurs naturally on similar sites, it can be considered native. A species, such as western white pine, where individual trees are scattered widely over a broad geographic range, may be considered native to many sites where that species does not currently exist.

If stocking requirements are met with native species, the landowners may plant any non-native species in addition to the native species without an approved PFAP.

The PFAP should only be approved if there is sufficient evidence to indicate a high likelihood that the stand will remain free to grow and reach commercial maturity. The criteria for acceptable species apply. Previous research or test findings should be cited in the PFAP. If such

findings are not available, PFAPs may still be approved based on the merits of other evidence provided by the landowner.

If a non-native species is planted without an approved PFAP, compliance determinations will be based only on the number and condition of the native species that are present.

Landowners are permitted to conduct small scale (generally less than five acres) field trials of non-native species. A PFAP is required to explain the purpose and scope of such trials.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0173 Plans for an alternate practice

**SUSPENSION OF THE REFORESTATION RULE REQUIREMENTS FOR CERTAIN TYPES OF HARVEST AREAS****629-610-0070**

- (1) *A landowner must submit to the State Forester a plan for an alternate practice to suspend reforestation rules for the salvage or conversion of low value forest stands, to establish forest stands that are adequately stocked and free to grow.*
- (2)
  - (a) *The State Forester may approve the a plan for an alternate practice when the harvest area is a conversion of underproducing forestland or a salvage of forest stands where the merchantable trees are dead or dying due to wildfire, insects, diseases or other factors beyond the landowner's control and the State Forester determines:*
    - (A) *The landowner is approved for funding from a forest incentive program, for which the State Forester is the technical advisor; and*
    - (B) *The gross harvest revenues will not exceed the total costs of harvest, taxation, and reforestation.*
  - (b) *For the purposes of this rule, "conversion of underproducing forestland" means an operation conducted on forestland subject to the reforestation requirements that does not currently support the minimum number of free to grow trees required with the objective of removing undesirable competing vegetation, including the incidental harvest of forest products, and establishing an adequately stocked, free to grow forest stand.*
- (3) *To determine whether subsection (2)(b) of this rule is met on a harvest operation that has not started, the State Forester shall make a field observation of the harvest area to determine:*
  - (a) *The estimated merchantable volume;*
  - (b) *The value of the merchantable volume by applying current local market values; and*
  - (c) *The estimated harvest, taxation, and reforestation costs.*
- (4) *When the State Forester is not able to determine the projected revenues and projected costs from the field observation described in subsection (3) of this rule, the State Forester may require the landowner to submit one or more of the following:*
  - (a) *A third party estimate, by species and grade, of the volumes and values of logs to be delivered to the mill;*
  - (b) *The projected costs of harvesting the forest products, including, but not limited to, harvest planning and administration, road construction and maintenance, felling and bucking, yarding, and loading and hauling;*
  - (c) *The projected severance, harvest, and income taxes;*
  - (d) *The projected costs of reforestation, including planning and administration, site preparation, trees, tree planting, tree protection, and moisture conservation; or*
  - (e) *The projected costs of any other measures necessary to establish a forest stand in an adequately stocked and free to grow condition, as specified in the reforestation rules.*

- (5) *To determine whether subsection (2)(b) of this rule is met on a harvest operation that has started, but is not yet complete, the landowner shall submit to the State Forester one or more of the following:*
- (a) *The contracts executed to sell and harvest forest products, including but not limited to, all logging costs and receipts;*
  - (b) *All the forest products scaling summaries showing gross and net volumes, by species and corresponding mill receipts showing payment; or*
  - (c) *Any tax forms, records, or reports submitted by the landowner that detail the gross and net volumes of forest products harvested, by species, plus the logging and management cost used to determine harvest and severance taxes.*
- (6) *Operations that are complete are not eligible for a suspension of the reforestation rules.*
- (7) *The State Forester shall revoke the suspension of the reforestation rules at any time within six years of completing the operation if the landowner fails to establish a forest stand:*
- (a) *According to the specifications and time lines required under the applicable forest incentive program; or*
  - (b) *In an adequately stocked and free to grow condition, as specified in the reforestation rules.*

### **APPLICATION:**

This rule is not used for enforcement. Enforcement action should be taken under OAR 629-610-0020 or -0040 if adequate and timely reforestation is not accomplished.

### **ADMINISTRATION:**

The intent of this rule is to suspend the reforestation requirements under very specific conditions to allow landowners to fully qualify for federal cost-share funds and state incentive programs. The section allows the SF to reinstate the rule requirements for reforestation if the landowner fails to follow the incentive program reforestation plan.

Stands comprised primarily of hardwoods do not automatically qualify as “underproducing forestlands.” If a harvest is planned in a stand that contains at least the required stocking of free to grow hardwoods and/or conifers required by the reforestation rules, then that harvest cannot be considered a "conversion of underproducing forestlands."

Further consultation for administering this section is available from the Forest Resource Trust Program representative in Salem. The SF will determine which operation areas meet the criteria for incentive programs. Reforestation will be required unless the SF approved PFAP states that the operation has qualified for reforestation rule suspension. Particular attention should be paid

to making sure landowners do not mix the harvest of adequately-stocked free to grow areas with harvest from areas of underproductive stocking.

If the landowner has failed to follow the incentive program reforestation PFAP within 6 years after the reforestation rule compliance period would have started, the landowner may be required to reforest according to the rules. Salem staff should be informed if a landowner attempts to circumvent reforestation requirements by manipulating this suspension process. Take enforcement action under OAR 6290605-0173(4) for failure to follow the PFAP.

**RULES, STATUTES AND REFERENCES:**

- ORS 527.740 (4) Harvest type 3 limitations; exceptions
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-610-0020 Reforestation stocking standards
- OAR 629-610-0040 Time allowed for reforestation
- ODF. September 1994. *Forest Resource Trust: Sharing in Tomorrow's Forests.*

**REVEGETATION WHEN REFORESTATION IS NOT REQUIRED****629-610-0080**

*When reforestation is not required or planned, the landowner shall ensure sufficient revegetation of the site to provide continuing soil productivity and stabilization within 12 months of the completion of the operation. Revegetation required by this rule may be planted or naturally established, and shall consist of trees, shrubs, grasses, or forbs suitable for soil stabilization and productivity protection. Landowners are encouraged to revegetate the operation area with native plants.*

**APPLICATION:**

This section is used for enforcement.

**COMPLIANCE:**

The landowner complies with this section when sufficient vegetative cover to provide continuing soil productivity and stabilization has been established and maintained within 12 months following the completion of an operation (as defined in rule) where reforestation is not required or planned.

Unsatisfactory Condition: An unsatisfactory condition exists when the landowner fails to establish or maintain the required vegetation within 12 months following the completion of an operation where reforestation is not required or planned and this failure is likely to result or does result in erosion and/or sediment entering the waters of the state.

Damage: There is damage when the unsatisfactory condition results in visible entry of sediment into waters of the state. This occurs when a visible increase in turbidity from the water conditions 100 feet upstream of the entry site (a 10% or more increase over background turbidity), continues for two or more hours in a twenty-four hour period. There is also damage when any change in stream channel morphology occurs which could have been prevented by appropriate and complete re-vegetation.

Written Statement of Unsatisfactory Condition: A written statement of unsatisfactory condition should be issued when corrective action is feasible and practical prior to sediment entering the waters of the state.

**ADMINISTRATION:**

This requirement should be made known to the operator and landowner as soon as the nature of the post-operation land use is known. Landowners should be encouraged, but are not required, to use native plant species.

**EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER****629-610-0090**

- (1) *A landowner, through a plan for an alternate practice may request all, or portions of, an operation area be exempted from the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover. Approval of a plan for an alternate practice shall be obtained for such an exemption from the State Forester and shall only be granted for the smallest land area necessary to carry out the intended change in land use. Reforestation shall be required on the portions of operation areas not directly involved in the land use change.*

**APPLICATION:**

This rule is not used for enforcement. Compliance is enforced using: a) ORS 527.670(6) as a failure to notify for all planned activities; b) a resource protection rule; or c) OAR 629-610-0020(1), a failure to reforest.

**ADMINISTRATION:**

A land use change or conversion of forestland to non-forest use requires the landowner, prior to any conversion work, to obtain an SF approved PFAP to exempt the converted land from the reforestation requirement.

Because it can withhold approval of PFAP beginning such conversion operations, the department has accepted the role of a “gatekeeper” for other natural resource regulatory agencies in order to ensure the continuous protection of natural resources. When a conversion operation proceeds beyond forest management activities, department’s jurisdiction ends, and as ORS 527.730 reads “Nothing in the FPA shall prevent the conversion of forestland to any other use.” The department participates in an interagency review procedure that maintains some protection of the natural resources that are guarded by forest practices regulations.

To coordinate with other agencies, in November 2006, ODF completed an interagency memorandum of agreement (MOA) for forestland conversion with the Departments of Agriculture (ODA), State Lands (DSL), ODFW, Parks and Recreation (OPRD), Land Conservation and Development (DLCD), and Environment Quality (DEQ) seeking a smooth transition of jurisdiction between agencies to protect water quality and other resources throughout the conversion process. The SF must be familiar with this memorandum of agreement and the obligations of ODF and each of the participating agencies.

The landowner should be encouraged to retain as much land in forest use as possible. The exemption should apply for only that area being converted to a land use not compatible with forest tree cover. A typical home site might receive an exemption of no more than one acre unless the landowner wishes to convert surrounding land to a bona fide non-forest use.

**RULES, STATUTES AND REFERENCES:**

- OAR 629-605-0120 Consultation with other agencies
- ORS 527.730 Conversion of forestland to other uses is not prohibited
- ORS 527.630 Coordinate with other agencies
- Interagency Memorandum of Agreement, Conversions of Forestland, Nov. 2006.

**EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER****629-610-0090**

- (2) *In seeking approval of a plan for an alternate practice, the landowner shall provide written documentation to the State Forester which establishes:*
- (a) *The specific portion of the operation area necessary for the proposed change in land use;*
  - (b) *The intended change in land use and the incompatibility of the land use with forest tree cover;*
  - (c) *The intended change in land use is authorized under local land use and zoning ordinances, and all necessary permits and approvals have been obtained, or will be obtained within 12 months following the reduction in tree stocking; and*
  - (d) *The county assessor and local planning department have been notified in writing of the proposed change in land use.*

**APPLICATION:**

This section is not used for enforcement. This section lists the information required in a PFAP for an exemption from the reforestation requirements.

**ADMINISTRATION:**

When a PFAP for an exemption from the reforestation requirements is submitted, it must contain sufficient information to allow the SF to evaluate the operation to determine compliance with the FPA. This section lists the information that must be included in the PFAP required under this rule. Other information that should be required in the PFAP are the timelines in subsections (3) and (4) of this rule.

To qualify for an exemption from the reforestation requirements, the landowner must show the location of the planned land use change and evidence that the new land use is not compatible with forest tree cover if this is not obvious.

Only the area necessary to meet the landowners objectives should be exempted from the reforestation requirements. The SF should use discretion to avoid exempting land that will not be actually converted to non-forest use such as draws, steep slopes or areas where the landowner simply wants to circumvent the reforestation rules.

The landowner will need to notify the appropriate county planning department and the county assessor and provide a record of their approval to the SF.

The 2019 form, Plan for an Alternate Practice – Conversion of Forestland to a Non-forest Use may be provided to landowners requesting an exemption. Fully completing the form provides the required information to obtain the acknowledgements and signatures of the appropriate county planning and assessor's office representatives. This form has been developed for the landowner's convenience. The landowner can choose to provide other documentation that

satisfies the rule requirements. If county officials do not sign the form, the landowner must provide alternative written documentation before an exemption will be granted.

Background:

ORS 527.760 directed the 1991 Board of Forestry to adopt or amend its rules “as necessary to assure that only bona fide, established and continuously maintained changes from forest uses are provided an exemption from reforestation requirements.” To accomplish this purpose, the 1995 reforestation rules, OAR 629-610-0090, require pre-operation approval for a PFAP for exemption from the reforestation requirements. All land use conversions require an approved PFAP for the exemption. Often land use conversions involve activities that are not in compliance with the resource protections required by the Forest Practice rules. ODF is committed to coordinating with other agencies to ensure that unacceptable resource disturbance does not occur. To this end, ODF and DEQ have led the development of the interagency memorandum of agreement for ensuring continuous protection for recognized resource values.

The PFAP approval process for both exemptions from reforestation and for alternate practices serves to ensure coordination and continuity of resource protection among agencies. The 2019 form, PFAP – Conversion of Forestland to a Non-forest Use may be used by landowners requesting an exemption for alternate practices to document review and approval by other state agencies. The landowner is responsible to obtain such approvals as part of the PFAP.

Other agencies with jurisdiction over the effects of the non-forest land use should be informed of any activity with potential effects that may be of concern to them.

The SF should send the notification and PFAP to the appropriate agencies, when aware of a proposed or current land use change, and the SF should make a FERNS Formal Comment in the notification. This may result in joint inspections with the other agencies.

**Obtain landowner permission for joint inspections with agency representatives prior to entry on their property.**

Approval from other agencies with resource protection jurisdiction over proposed land use changes will be required. These agencies may include:

- **Local Jurisdictions** – City and County governments must protect water quality during any forestland conversions within their city limits or urban growth boundaries if they have assumed the responsibility of regulating forest operations. All land use changes must obtain written approvals from the local jurisdiction (city and/or county planning department) and the County Assessor, stating that the proposed land use change is authorized under local land use and zoning ordinance and all necessary state, federal, and local land use and construction permits and approvals have been obtained by the landowner or will be obtained within the twelve months;
- **DEQ** – Protects Oregon’s surface water and ground water through water quality standards and permitting.
  - Reviews all notifications for conversions, unless if under one acre for a construction development, (no reforestation required). DEQ may require a National Pollutant Discharge Elimination System, NPDES, 1200-C storm water permit for construction activities if one or more acres of land will be disturbed for construction.
  - Approves FPA modifications, waiver or exemption of the Water Protection Rules.

- Regulates open and backyard burning but not slash or stump burning.
- **ODA** – Addresses water pollution from agricultural land and activities through water quality management plans.
  - Reviews forestland conversions to agricultural use, no minimum acreage.
  - Approves FPA modifications other than reforestation.
  - Regulates field burning but not stump burning.
- **ODFW** – Protects and enhances fish and wildlife resources, manages fishery and wildlife resources, and prevents the serious depletion of any indigenous species.
  - Reviews conversions that impact specified resource sites, OAR 629-665-0000 and RMAs.
- **DSL** – Protects waters of the state through Oregon’s Removal-Fill permitting
  - Approves wetland conversions through a removal/fill permit for more than 50 cubic yards of inorganic material within the bed or banks of waters of the state.
  - Approves conversions of forestland impacting a navigable waterways, ODFW designated essential Salmon habitat, or scenic water, no cubic yard limit.
- **OPRD** – Protects and enhances scenic, aesthetic, natural recreation, scientific, and fish and wildlife values along state scenic waterways.
  - Approves forestland conversions within one quarter mile of a state scenic waterway.
- **DLCD** – The DLCD ensures that any county comprehensive land use plans or zone changes comply with state planning goals.
  - Approval of a forestland conversion not required because the local county or city planning department usually addresses land use issues adequately.

The landowner who intends to convert some or all of their forestland to a non-forest use should indicate that by selecting the *Change of Land Use to a Non-forest Use* activity code in the e-notification, FERNS. The SF cannot detect the landowner’s conversion intent unless it is indicated on the notification or seen on the ground, consequently, many conversions are small operations that don’t get a pre-operation inspection and are done without a PFAP to exempt reforestation.

To manage the enforcement workload and to recognize that conversions are permitted by the FPA, ODF will take enforcement action for failure to notify against only those landowners who damage forest resources in the process of converting forestland to non-forest uses. Based on the interagency agreement for conversion of forestland, the ODF should report land disturbances exceeding one acre to DEQ, even if ODF is not taking enforcement action. If a landowner causes a water quality violation in a stream during a harvest and land conversion, they will be cited for failure to notify because they did not fully disclose the activities associated with their operation as well as for the resource protection rule violated.

Example: *A landowner submits a notification for a clear-cut of less than one acre without mentioning planned construction, conducts the operation, and constructs a shop next to his house. The operation area is not near any stream or other protected resource and no damage occurred.*

- Despite there being no PFAP and approved exemption from required reforestation, no enforcement action need be pursued in this situation.

Example: Landowner submitted a notification for a 5 acre clear-cut without indicating a conversion to non-forest use. After forestry related disturbance was completed, stumps were pulled to develop an orchard. The Stewardship forester determined the harvested area extended into the RMA to the edge of a large Type F stream.

- The resource damage supports citations for removing riparian functions for a Type F stream vegetation and for failure to notify ODF for the forestland conversion.
- ODF sends the NOAP and inspection report to City or County Planner, County Assessor, DEQ and ODA. DEQ and ODA are the agencies “receiving jurisdiction” and may take additional enforcement action, besides FPA enforcement. ODF jurisdiction ends with completion of the repair order for the citation that failed to retain the required Type F stream vegetation.

Example: Landowner submitted a notification for a 30 acre clear-cut, slash treatment, and a conversion to non-forest use for a residential subdivision. ODF’s notification review indicates a wetland within the operation area and plans to harvest all trees, including the wildlife leave trees.

- ODF informs the landowner a PFAP is required, approved by the city or county planner/assessor, other state agencies and ODF prior to any activity. ODF sends the notification to DEQ, DSL and ODFW. The landowner provides ODF the other agencies approval and comments.
- ODF conditionally approves the PFAP and directs landowner to not harvest the wildlife leave trees until after completion of the forestland conversion. ODF regulates slash treatment within 1/8 mile of the ODF protection district, up to the point of stump removal. ODF determines the monitoring dates for completion of the forest operation and start/progress/end stages for the forestland conversion.

Example: A mineral extraction permit under the Department of Geology and Mineral Industries (DOGAMI) includes a reclamation plan to reforest the excavated area and a bond to ensure the reclamation plan is completed.

- The landowner does not need an approved PFAP when the DOGAMI permit includes a bonded reclamation plan to reforest.

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

- ORS 527.730 Conversion of forestland to other uses is not prohibited
- ORS 527.745 Reforestation of certain harvest types.
- ORS 527.760. Reforestation exemptions for land use changes.
- Interagency Memorandum of Agreement, Conversions of Forestland, Nov. 2006.
- Conversion of Forestland to a Non-forest Use, ODF, July 2019
- Form - Plan for an Alternate Practice – Conversion of Forestland, ODF, Feb 2019

**EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER**

**629-610-0090**

- (3) *Reasonable progress towards the change in land use, as determined by the State Forester, shall be made within 12 months of the completion of the operation. Evidence of reasonable progress towards a change to an agricultural use may include activities such as stump removal, cultivation, fencing, and planting or seeding of crops or pasture. Evidence of reasonable progress towards a change to use involving building a structure may include activities such as stump removal, excavation, and construction.*

**APPLICATION:**

This rule is used for enforcement.

**COMPLIANCE:**

A landowner is in compliance with this rule when reasonable progress towards the change in land use is made within 12 months of the completion of the operation. The 24 month compliance check is more important than the 12 month compliance date.

Unsatisfactory Condition: An unsatisfactory condition exists when there is remaining time and opportunity, but reasonable progress has not been made towards the change in land use after 12 months following the completion of the operation.

Damage: Damage occurs when there is loss of productivity in the land intended to be converted because the 12 month compliance period for reasonable progress is not being used and no opportunity for progress remains.

Written Statement of Unsatisfactory Condition: A written statement of unsatisfactory condition should be issued if, in the judgment of the SF, the conversion could be achieved within the timelines allowed in rule, but progress is lacking. The landowner may be directed to reforest or submit a revised PFAP that proposes how the land use change will be completed within the 24 months allowed in subsection (4) of this rule

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

**ADMINISTRATION:**

If the timeline in this rule were required to be addressed in the PFAP, enforcement could be taken under OAR 629-605-0173(4). Requiring a timeline of anticipated progress requires the landowner to go through a thought process of how the land use change will be accomplished.

The FERNS-generated letter or a similar courtesy letter should be sent to landowners after operations are completed to remind them of their obligations under this section.

**RULES, STATUTES AND REFERENCES:**

- ORS 527.730 Conversion of forestland to other uses is not prohibited
- ORS 527.745. Reforestation of certain harvest types.

**EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER**

**629-610-0090**

- (4) *The change in land use shall be completed and continuously maintained within 24 months of the completion of the operation.***

**APPLICATION:**

This rule is used for enforcement.

**COMPLIANCE:**

A landowner is in compliance with this rule when the change in land use is complete and continuously maintained within 24 months of the completion of the operation.

Unsatisfactory Condition: An unsatisfactory condition exists when the change in land use is not progressing toward completion, or is not being maintained within the 24 months after the completion of the operation.

Damage: Damage occurs when the unsatisfactory condition exists and there is insufficient time to complete the land use conversion within the 24 months after completion of the operation, resulting in loss of productivity in the land intended to be converted.

**ADMINISTRATION:**

If the timeline in this rule were required to be addressed in the PFAP, enforcement could be taken under OAR 629-605-0173(4). Requiring a timeline of anticipated progress requires the landowner to go through a thought process of how the land use change will be accomplished.

If the land use change cannot be completed and/or maintained within the time prescribed in this rule, enforcement action should be taken under OAR 629-610-0020 or -0040, or OAR 629-605-0173(4). The landowner may be directed to reforest or submit a revised PFAP that proposes how the land use change will be completed within the 24 months.

**RULES, STATUTES AND REFERENCES:**

- ORS 527.730 Conversion of forestland to other uses is not prohibited
- ORS 527.745 Reforestation of certain harvest types.

**EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER**

**629-610-0090**

- (5) *If the change in land use cannot be accomplished within the specified time due to circumstances beyond the landowner's control, the State Forester shall extend the time to accomplish the change in land use. Such circumstances may include, but are not limited to, governmental delays in reviewing and processing permits and approvals, but do not include delays where a landowner is appealing the denial of a permit or approval if the State Forester does not have reason to believe the landowner will prevail on appeal. Extensions shall be made only upon a determination by the State Forester, based on written evidence provided by the landowner, that the landowner made reasonable attempts to comply. Landowners who need extensions are encouraged to contact the State Forester as soon as possible after the circumstances occur.*

**APPLICATION:**

This rule is not used for enforcement. It allows the SF to extend the time to accomplish the change in land use.

**ADMINISTRATION:**

Complex land use changes, such as subdivision developments, may take longer than two years to complete and should be documented in the approved PFAP.

Landowners may request extension of compliance deadlines if the change in land use cannot be accomplished due to circumstances beyond the landowner's control, such as local government delays in reviewing and processing permits and approvals. Delay resulting from a landowner appeal of the denial of a permit or approval does not justify an extension.

Discretion should be used when granting extensions. If it appears that the land use change cannot or will not be completed, the landowner should be required to reforest.

Pending Measure 49 claims or any other plans to change land use to nonforest are not sufficient reason to extend reforestation timelines. Unless a landowner can bring the SF written confirmation from a county planning department that they are approved to convert the land use and will obtain all necessary permits within a year, the SF will not approve the PFAP (waive reforestation), or extend deadlines.

There is some room for flexibility in this policy. Local judgment is appropriate within the following perspective.

1. The reforestation requirement should be brought to the landowner's attention as soon as notification of intent to harvest is filed. Districts are encouraged to send to landowners,

along with their NOAP copy, a letter advising them of the associated reforestation obligation, its substantial costs, and offering to provide technical assistance.

2. Current guidance states our policy that all previously-forested area, not necessary to the land use change, should be held for reforestation. If successful in getting their claims and permits, landowners will only lose their investment in reforestation on the area actually occupied by the nonforest use. The remaining reforested area will often enhance property values.
3. It is department's position that landowners contemplating conversion should have considered the reforestation requirements and timeline and scheduled harvesting to be completed just as the conversion claims or permits are approved.
4. There are numerous hurdles between submitting a Measure 49 claim to be able to develop forestland for nonforest uses and completing all the financial and permitting requirements to complete the conversion. Some of these are the following:
  - With waivers from both local and state government, the landowner must obtain all appropriate development permits, access permits, and building permits from the county.
  - The landowner must also determine and finance all the improvements.
  - The financing and general contracting involved will be complex.

In summary then, ODF cannot extend reforestation deadlines on the tenuous chance that the landowner will successfully navigate all these steps while years of land productivity are lost and the competing vegetation gets a foothold that will make reforestation increasingly difficult and expensive. Number 3 above applies.

Alternatively, landowners may convert their operation area to a bona fide land use that is consistent with local zoning and that is not compatible with forest cover. Alternatively, landowners may convert their operation area to a bona fide land use that is consistent with local zoning and that is not compatible with forest cover.

Examples of non-forest uses:

- Maintaining fence with pasture for livestock; stumping for horse pasture and maintaining fence with pasture; crossed fenced goat pasture with water source for small acres; and potentially creating open space, in which weeds and brush are mowed and erosion-control vegetation is maintained;
- Home site development involving, stumping, land grading, wide road construction and/or utility line installation.

**RULES, STATUTES AND REFERENCES:**

- ORS 527.730 Conversion of forestland to other uses is not prohibited

**EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER****629-610-0090**

- (6) *The State Forester shall determine if the change in land use has been completed by:*
- (a) *The presence or absence of improvements necessary for use of the land for the intended purpose; and*
  - (b) *Evidence of established and continuously maintained use of the land for the intended purpose.*

**APPLICATION:**

This section is not used for enforcement.

**ADMINISTRATION:**

This rule states the process by which the SF determines a completed land use change.

Construction projects need not be checked, once it is clear development has begun. Changes to grazing or other agricultural use should be monitored more closely, since a failure to complete and maintain such uses can result in the area reverting to a brush field.

The SF should schedule inspections to determine if all land use changes are maintained 6 years after completion of the operation. If the SF becomes aware that a change in land use has not been maintained, enforcement action should be taken under subsection (4) of this rule, or under OAR 629-605-0173(4). A repair order, with a time line for complying, should be issued along with the citation.

**RULES, STATUTES AND REFERENCES:**

- ORS 527.730 Conversion of forestland to other uses is not prohibited
- ORS 527.745. Reforestation of certain harvest types.

**EXEMPTION FROM REFORESTATION FOR LAND USES NOT COMPATIBLE WITH FOREST TREE COVER****629-610-0090**

- (7) *To remain exempt from the reforestation requirements the landowner shall continuously maintain the land in the new use until at least six calendar years following the completion of the operation.*

**APPLICATION:**

This rule is not used for enforcement. If the conversion is not maintained as required, the exemption goes away and the landowner is again subject to the reforestation requirements.

**ADMINISTRATION:**

If a landowner does not maintain the land in the new use, enforcement should be taken under OAR 629-610-0020, -0040 and/or OAR 629-605-0173(4). The landowner may be directed to reforest or submit a revised PFAP that proposes how the land use change will be completed within the 24 months allowed in subsection (4) of this rule.

**RULES, STATUTES AND REFERENCES:**

- ORS 527.730 Conversion of forestland to other uses is not prohibited
- ORS 527.745. Reforestation of certain harvest types.