

DIVISION 611
AFFORESTATION RULES

PURPOSE***OAR 629-611-0000***

- (1) The purpose of OAR 629-611-0000 to 629-611-0020 is to implement ORS 526.490, providing an incentive for landowners to convert parcels of idle land or land in other uses to commercial forest use.***
- (2) The provisions of ORS 526.490 shall be called the afforestation incentive and OAR 629-611-0000 to 629-611-0020 shall be known as the afforestation incentive rules.***
- (3) The afforestation incentive in these rules is a one-time exemption from most tree retention requirements in the forest practice rules as described in section (5) of this rule.***

RULE COMPLIANCE:

These rule sections are not subject to enforcement action.

ADMINISTRATION AND IMPLEMENTATION:

The purpose of the afforestation rules is to implement the incentive authorized by ORS 526.490, a statute enacted in 1995 as SB 530. The incentive is available for any parcel afforested after the statute's effective date of September 9, 1995, even though the rules were not adopted until April of 1998. Since OAR 629-611-0010(2) requires landowners to request inspection of the parcel when the afforested stand is two to five years old, landowners may apply for parcel certification any time after September 9, 1997.

The statute's intent is to encourage landowners to convert idle nonforest land into commercially productive forest use. Although this statute is part of the Forestry Administration chapter, ORS 526, rather than the Forest Practices Act, ORS Chapter 527, the incentive is being implemented through forest practice rules because it is an exemption from most tree retention rules.

This incentive is to be referred to as the afforestation incentive. It is a tree retention rules exemption for the first rotation following afforestation of a parcel. That single, specially favored rotation will be of variable length, determined by the owner's choice of when to harvest. When owners choose an even-aged management regime, the trees constituting the stand exempted from most tree retention rules will be all those planted to qualify the stand for certification. For an uneven-aged management regime using natural regeneration, in-growth, and perhaps some planting, the exempt trees must be defined. Both scenarios are provided for in OAR 629-611-0000(4) and the corresponding guidance.

RELATED RULES AND STATUTES:

- ORS 526.490 Afforestation of certain idle lands; harvest requirements; inspection fees; lands subject to Oregon Forest Practices Act

REFERENCE:

- Forest Practices Program NEWS NOTE, “*Exemption from Some Tree Retention Requirements to Encourage Afforestation*”, July 14, 1997

PURPOSE***OAR 629-611-0000***

- (4) *For the purposes of the afforestation incentive rules, “planted” trees means those trees that a landowner establishes as an initial forest stand to qualify for the incentive and includes:*
- (a) *All trees the landowner plants or causes to be planted, and*
 - (b) *All naturally established trees that are established within ten years prior to, or following, the date the parcel is certified as qualified for the incentive.*

RULE COMPLIANCE:

This rule section is not subject to enforcement action.

ADMINISTRATION AND IMPLEMENTATION:

This section defines “planted” trees so that the single rotation limit on the tree retention exemption is defined whether even-aged or uneven-aged management is used. The “planted” trees that may be harvested because they are exempted from the normal tree retention rule requirements may be referred to as “exempted” trees in the following discussion.

“Planted” trees are defined as either: (1) those the landowner transplants all at once or nearly so; or (2) those regenerated naturally, or supplemented by transplanting, within 10 years before or after the parcel’s certification date.

Under an even-aged management regime, the last of the exempted trees are cut in a single site-clearing final harvest, and the tree retention rules apply as usual to all following rotations. The replanted even-aged new stand is clearly the first stand subject to all the usual rule requirements.

Under an uneven-aged management regime, the exempted trees may be cut during multiple entries while the next stand of nonexempt trees is being regenerated at the same time. Regardless of stand age when any given entry is made, trees that are **more** than 10 years **younger** than the period since the certification date are **not exempt** from retention rules. These younger trees are considered part of the second rotation, and are subject to all the usual tree retention requirements in the rules. In addition, trees that are **more** than 10 years **older** than the certified stand **are also not exempt** from retention rules. These older trees may be key wildlife habitat, whether in use before or after afforestation, and this provision ensures this habitat is not lost. Disputes over the age of trees will be settled by ODF, with an increment borer if necessary (or perhaps something more high-tech by then).

Example: *A Landowner, under an uneven-aged management regime, proposes a harvest 50 years after the certification date.*

- Trees that are less than 40 years old must be retained wherever the rules then require it. This might be in the part of riparian management areas more than 20 feet from Type F or D streams.

- Depending upon the rate of harvest, there will eventually be an entry for which there are no trees of an age within 10 years of the period since certification. At that point, the first rotation and its tree retention exemption will have come to an end.

PURPOSE***OAR 629-611-0000***

- (5) *Notwithstanding forest practice rule provisions prohibiting harvest of trees, the afforestation incentive allows landowners to harvest all planted trees on certified afforestation incentive parcels with the following limitations:*
- (a) *The afforestation incentive applies only to the land and timber located more than 20 feet from the high water level of the following streams:*
- (A) *Type F streams;*
 (B) *Type SSBT streams;*
 (C) *Type D streams; or*
 (D) *Large or medium Type N streams.*
- (b) *Any forest operations on such parcels must comply with all forest practice rules that require practices other than restrictions on harvesting the planted trees.*
- (c) *A planted tree that later becomes a key component of a specified resource site normally requiring protection under the forest practice rules may be harvested; however, the State Forester may temporarily prohibit harvesting during an annual critical period of use of the site, as provided in the specified resource site protection rules.*
- (d) *(For information only) Federal law prohibits a person from taking threatened or endangered species. Taking, under the federal law, may include significant alteration of habitat on any class of land ownership. Compliance with the afforestation incentive rules is not in lieu of compliance with any federal requirements related to the federal Endangered Species Act.*

RULE COMPLIANCE:

This rule section is not subject to enforcement action.

This section describes the limits on the exemptions from tree retention. Enforcement action taken for exceeding those limits will be based upon the specific rules violated when trees that should have been retained are harvested.

ADMINISTRATION AND IMPLEMENTATION:

This rule section describes the core of the afforestation incentive, the exemption allowing harvest of trees that are normally retained.

Under the rules effective currently, the tree retention exemption incentive allows harvest of the following trees that are normally retained:

- RMA trees more than 20 feet from all Type F, Type SSBT, and D streams and large and medium Type N streams that: (1) contribute to the conifer retention requirement; (2) are part of the basal area retention requirement; or (3) are leaning over the channel
- Trees along small Type N streams (where usually retained in that geographic region)

- Trees in and around wetlands of any size
- Trees around lakes
- Trees around specified resource sites, including sensitive bird sites and threatened or endangered species sites (federal restrictions on “taking” may still apply)
- Trees in scenic highway corridors
- In-unit wildlife trees (on units or combined adjacent units larger than 25 acres)

These tree retention exemptions are the only deviations allowed under the afforestation incentive. All other resource protection requirements of the forest practice rules are in full force.

Subsection (c) provides that if, after the afforestation of the parcel, a wildlife species from the specified resource list establishes a normally-protected habitat site in the new stand, the trees may be harvested under the exemption, but the Stewardship Forester (SF) may prohibit that harvesting during the annual critical period of site use. Violations of this rule will be pursued as failure to comply with the appropriate specified resource site protection rule.

However, the incentive’s exemption does not shield the harvesting landowner from possible consequences meted out by federal agencies for “taking” under the federal Endangered Species Act. The SF should inform the landowner and operator of these potential consequences and encourage the landowner to consult the appropriate federal agency before operating on such sites.

QUALIFICATIONS AND PROCEDURES**OAR 629-611-0010**

- (1) To qualify for the afforestation incentive, a parcel or any separate portion thereof must meet all of the following requirements:**

 - (a) It must be at least five contiguous acres.**
 - (b) The State Forester must obtain evidence that, regardless of its use prior to July 1, 1972, from that date until the time of afforestation it has been idle or exclusively in uses other than commercial activities related to the growing and harvesting of forest tree species. Forestland in understocked condition, identified consistent with (c) below, may qualify for the incentive if the stocking was reduced or limited by causes other than a forest operation occurring after July 1, 1972.**
 - (c) No acre may be certified as part of an afforestation incentive parcel if, prior to the establishment of a well-stocked, free to grow stand of forest trees, the acre's stocking, if any, was 25 square feet of basal area or more.**
 - (d) Afforestation must have begun on the parcel on or after September 9, 1995, the date ORS 526.490 became effective.**
- (2) To gain certification of a parcel as eligible for the afforestation incentive, a landowner must request inspection by the State Forester within two to five years following stand establishment.**
- (3) A request for inspection and certification of a parcel shall be accompanied by the following:**

 - (a) A map that depicts the parcel or portion thereof in relation to public lands survey subdivisions and access roads for the purpose of locating and inspecting the parcel, and that will be sufficient to identify the parcel at the time of harvest;**
 - (b) Photographs documenting the condition of the parcel as idle land or land in other than adequately-stocked commercial forest use prior to stand establishment; and**
 - (c) Written permission of the owner to enter the property as necessary to inspect and determine whether the parcel qualifies for the afforestation incentive.**
- (4) To be certified eligible for the afforestation incentive, the parcel's afforestation must meet or exceed the reforestation rule standards for acceptable species, adequate stocking, and free to grow condition found in OAR Chapter 629 Division 610 of the forest practice rules. Pre-existing free to grow forest tree stocking may be counted toward meeting those standards.**
- (5) Landowners who qualify parcels for the afforestation incentive by meeting the requirements of sections (1) to (4) of this rule shall be issued a certificate by the State Forester describing the parcel and the exemption from harvest restrictions to which the landowner is entitled.**

RULE COMPLIANCE:

This rule section is not subject to enforcement action.

This section describes the criteria for certifying a parcel to be exempted from certain tree retention rules. Noncompliance by exceeding the limits on those exemptions will be enforced under the provisions of the specific rules violated rather than as a failure to comply with certification rules.

ADMINISTRATION AND IMPLEMENTATION:

The five-acre minimum parcel size is intended to encourage afforestation on a commercially viable scale. However, parcels need not be in continuous blocks.

Example: A landowner might wish to afforest pastureland interspersed with clumps of adequately stocked forestland.

- Any separate parcel within such an area must be of at least the minimum acreage, but multiple patches of such nonforest land that are reasonably grouped together may be considered under one application.
- In such a case, a detailed map of the area would be an important part of the application.

Subsections 1(b) and 1(c) are intended to ensure that the incentive is applied to truly nonforest lands that have been in nonforest use for a significant length of time.

Subsection 1(b) provides a very narrowly applicable allowance for forestland whose stocking has been reduced below subsection 1(c)'s threshold 25 square feet of basal area **by causes other than a forest operation** since July 1, 1972. Natural events such as wildfires or insect or disease epidemics in unmerchantable young stands are the type of exceptions allowed by this rule provision. In such special cases, the incentive is intended to promote reinvestment in land damaged before it could produce a crop to support its reforestation. Acreage damaged by escaped prescribed fire does not qualify. Such escaped fires are forest operations, disqualifying the land from the incentive. The afforestation incentive is not intended to insure landowners against the damage resulting from mistakes in forest management.

These criteria prevent cut-over forestland from being replanted under the afforestation incentive rather than being reforested as normally required after harvesting. The primary purpose of the afforestation incentive is to attract **nonforest** land into commercial forest management.

The State Forester's primary source of evidence that the parcel was in nonforest uses is the landowner and the application he submits when applying for certification. Department records of previous uses and activities on the candidate parcel should be used as well, if there are any.

Note: Notifications of operation in the archives would disqualify a parcel except under the subsection 1(b) special case.

Subsection 1(d) specifies that qualifying afforestation begin on or after the incentive law's effective date, September 9, 1995, in order to apply the incentive to lands attracted to afforestation specifically by this program.

Section (2)'s required stand age of two to five years allows the State Forester to assess the stocking and free to grow condition of the afforested stand at an age when it is nearly as well established as a reforested stand would be when checked for adequacy.

The application for certification of a parcel can be made on forms supplied by the department, available to field offices from Salem. Using these forms is not mandatory provided the information on them is supplied in some way. Section (3) requires some accompanying documents. To be acceptable, the required map must provide accurate identification of: (a) the parcel's location; (b) the boundaries of the afforestation; and (c) how to find it. The map(s) needs to be sufficiently detailed to make it possible to identify the parcel decades in the future. The required photographs are to help ODF confirm that the land was indeed in nonforest use prior to afforestation.

The written permission to enter the property is to ensure legal access for inspecting the applicant parcel and stand. These documents are mandatory parts of a complete application.

Section (4) makes it clear that the acceptable species, adequate stocking, and free to grow standards for afforestation are equivalent to those for reforestation. This standard was not specified in the statute, therefore it is clarified in the rule. Section (4) also allows the landowner to count scattered pre-existing stocking toward the required minimum stocking.

Section (5) specifies that the department give the landowner a document recording the landowner's entitlement to the exemption. Certificate forms were supplied to the field offices by forest practices staff, and can be resupplied upon request. **All certification is to be done using these standard forms.** The verifying signature on the certificate may be that of the SF, the Unit Forester responsible for the Private Forests Division, or the District Forester.

RELATED RULES AND STATUTES:

- ORS 526.490 Afforestation of certain idle lands; harvest requirements; inspection fees; lands subject to Oregon Forest Practices Act
- OAR 629-610-0000 through -0090 Reforestation Rules

QUALIFICATIONS AND PROCEDURES**OAR 629-611-0010**

- (6) *The afforestation incentive is a one-time exemption for each individual parcel or portion thereof, applying only to planted trees established to initially certify each parcel. These trees constitute the parcel's first rotation stand for either even-aged or uneven-aged management. The certification date shall be considered the beginning of the first rotation so that, at the time of harvesting, no trees other than the planted trees shall be included in the exemption.*

RULE COMPLIANCE:

These rule sections are not subject to enforcement action.

Enforcement action will be taken under the appropriate resource protection rules if the exemptions from resource protection rules are exceeded.

ADMINISTRATION AND IMPLEMENTATION:

Section (6) limits the afforestation incentive exemptions to the first rotation after establishment of the new stand. The certification date serves as a reference point in time for the beginning of the rotation. The definition of “planted” trees provides for a means of identifying the extent of the first rotation whether the parcel is managed under either an even-aged or uneven-aged regime. The combination of the certification date and the definition of “planted” trees provides a means of determining the trees that qualify for the harvesting exemption as part of the first rotation. This is explained in the guidance for OAR 629-611-0000(4) above, and is repeated here for convenience.

OAR 629-611-0000(4) defines “planted” trees. The “planted” trees that may be harvested because they are exempted from the normal tree retention rule requirements are referred to as “exempted” trees in the following discussion.

“Planted” trees are defined as either: (1) those the landowner transplants all at once or nearly so; or (2) those regenerated naturally, or supplemented by transplanting, within 10 years before or after the parcel’s certification date.

Under an even-aged management regime, the last of the exempted trees are cut in a single site-clearing final harvest, and the tree retention rules apply as usual to all following rotations. The replanted even-aged new stand is clearly the first stand subject to all the usual rule requirements.

Under an uneven-aged management regime, the exempted trees may be cut during multiple entries while the next stand of nonexempt trees is being regenerated at the same time. Regardless of stand age when any given entry is made, trees that are **more** than 10 years younger than the period since the certification date are **not exempt** from retention rules. These younger trees are considered part of the second rotation, and are subject to all the usual tree retention requirements in the rules.

Example: *A Landowner, under an uneven-aged management regime, proposes a harvest 50 years after the certification date.*

- Trees that are less than 40 years old must be retained wherever the rules then require it. This might be in the part of riparian management areas more than 20 feet from Type F or D streams.
- Depending upon the rate of harvest, there will eventually be an entry for which there are no trees of an age within 10 years of the period since certification. At that point, the first rotation and its tree retention exemption will have come to an end.

RELATED RULES AND STATUTES:

- OAR 629-611-0000(4) Purpose (defining “planted” trees)

QUALIFICATIONS AND PROCEDURES***OAR 629-611-0010***

- (7) *To ensure recognition of the afforestation incentive at the time of harvest, many years after certification of a parcel, landowners are encouraged to record the certificate issued by the State Forester with the appropriate county clerk as specified under ORS 205.130.*
- (8) *In order to exercise the exemption from tree harvesting restrictions under ORS 526.490(3), the landowner must present a record of the certificate to the State Forester whenever first rotation trees are to be harvested.*

RULE COMPLIANCE:

These rule sections are not subject to enforcement action.

ADMINISTRATION AND IMPLEMENTATION:

Section (7) encourages landowners to establish a long-term record of the certificate by recording it with the appropriate county clerk. Local offices should create a permanent file of certificates issued as well, but the responsibility of producing the certificate at the time of harvest is the landowner's. Section (8) makes this clear.

The department's files of certificates should include copies of the map(s) and clarifying notes, photos of previous uses, and the written permission to enter the property.

FEE FOR INSPECTION AND CERTIFICATION

OAR 629-611-0020

The State Forester shall charge a fee to persons requesting certification to offset the costs of inspecting parcels and preparing certificates. This fee shall be \$50 per parcel plus \$2 per acre for each acre in excess of five acres, to a maximum of \$200 per parcel.

RULE COMPLIANCE:

This rule is not subject to enforcement action.

ADMINISTRATION AND IMPLEMENTATION:

As authorized by ORS 526.490, a fee will be charged according to the formula in this rule because the department is not otherwise funded to conduct the inspections and certifications necessary to administer the afforestation incentive.

The fee formula sets a base fee of \$50 for the minimum five-acre parcel, an additional \$2 per acre fee for 6 to 80 acres, and a maximum fee of \$200 if the contiguous parcel is larger than 80 acres.

This is based on: (a) the cost of field and office personnel time; (b) estimates of one-half to a full day’s time to travel to and inspect parcels; and (c) the fact that it takes a certain amount of time to travel to, inspect, and prepare the certificate for even the smallest parcel. As the parcel gets larger, the inspection time increases, but at some point, a sampling survey method replaces inspection of the entire parcel, and marginal costs increase very little. These fee levels are also designed to provide for the State Forester’s expenses yet avoid being a disincentive to afforestation.

To illustrate the formula in the rule, here are three examples.

1. *Given an application for certification of a five-acre parcel:*
 The base fee only applies. **The total fee is:** **\$50**

2. *Given an application for certification of a 20-acre parcel:*
 The base fee applies to the first five acres. \$50
 The \$2 per acre fee applies to the remaining 15 acres. \$30
The total fee is: **\$80**

3. *Given an application for certification of a 100-acre parcel:*
 The base fee applies to the first five acres. \$50
 The \$2 per acre fee applies to the remaining 75 of the first 80 acres. \$150
The total fee is: **\$200**

This fee, being intended to offset the costs of traveling to and inspecting the applicant parcel, could be charged repeatedly for each inspection if a parcel failed to meet standards when

inspected the first time. This should be avoided by attempting to learn from the landowner beforehand whether the site is likely to be adequately afforested. Local offices may determine whether to require reapplication with repeated fees based upon the amount of time and travel required to reinspect the parcel. Local offices should also apply any considerations for encouraging good stewardship that are judged appropriate.

Landowners with multiple parcels located such that inspection takes an additional half day or more may be required by the district to submit separate applications and fees for each qualifying parcel or group of parcels. Conversely, a cluster of parcels in close proximity may be treated as one parcel submitted on one application form and charged only one base fee and appropriate per acre fees. The five contiguous acre minimum parcel size still applies for each separate piece. Separate certificates will be issued for each separate large or isolated parcel and for each group of parcels in close proximity.

Judgment should be applied to these decisions from the perspective of foresters who will need to locate, inspect, and verify the boundaries of qualifying parcels decades in the future.

Fees should be collected when the application is submitted by the landowner. Collection procedures should be coordinated with office managers in order to ensure compliance with the financial management system requirements at the time.