

Modifying an Administrative Deadline in Rule

Board of Forestry Meeting

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Background

Oregon Administrative Rule (OAR) 629-635-0200:

(18) By July 1, 2023, the State Forester shall update all published maps and the department's reporting and notification system to include flow duration for streams in Western Oregon and Eastern Oregon. The State Forester shall maintain in the department's reporting and notification system a map of perennial flow utilizing the following:

(a) Phase 1 Initial Mapping. The State Forester shall initially map perennial flow of Type N Streams using U.S. Geological Survey NHD high resolution data. The NHD stream layer may assist operational field surveys as described in OAR 629-643-0130 or 629-643-0143 but shall not provide for a modeled end. During this phase landowners shall apply the riparian management area prescriptions to all small Type N streams as described in OAR 629-643-0130 and OAR 629-643-0143, whether or not a stream is mapped as perennial. This requirement ends once the State Forester implements the Phase 2 model.

(b) Phase 2 Model. When advised by Department of Fish and Wildlife that an approved flow duration model sufficient for regulatory purposes is available, the State Forester shall promptly publish the information, including the modeled end, in all maps and the department's reporting and notification system, and in no event later than July 1, 2025.

(c) Field Verification. The operator may conduct field surveys for verification of the modeled end in accordance with Department of Fish and Wildlife field protocols for model verification. Once the verified end is approved by the Department of Fish and Wildlife, the State Forester shall substitute the verified end for the modeled end in all maps and the department's reporting and notification system.



Work to date and into the future

- 3 available flow permanence models/datasets were evaluated by ODF & ODFW in 2024
- Anticipating 3 new flow permanence models that will be evaluated for the requirements in the FPA
- Incorporation of approved landowner-submitted flow permanence surveys is critical



Rulemaking Authority

Oregon Revised Statute **(ORS) 527.710** grants the **Board authority to adopt forest practice rules** under the Administrative Procedures Act (APA) process.

Forest practice rule purposes:

- Ensure the continuous growing and harvesting of forest tree species and provide for the overall maintenance of air quality, water resources, soil productivity and fish and wildlife.
- Protect sites for certain threatened and endangered fish and wildlife species, sensitive bird sites, biological sites, and significant wetlands.
- Reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices.



Forest Practices Act Rulemaking Procedure

ORS 527.714 is the unique rulemaking procedure that applies to forest practice rules. Prior to filing a Notice of Proposed Rulemaking, the board must determine which type of rule is being considered.

Rule Types:

- Type (1)(a)- Implement administration, procedures or enforcement that support but do not directly regulate standards of forest practices.
- Type (1)(b)- Provide definitions or procedures for forest practices where the standards are set in statute.
- Type (1)(c)- Regulate forest practices and are within the Board's discretion to set the standards for forest practices.



Proposal- Amend OAR 629-635-0200 (18)(b) as follows:

(b) Phase 2 Model. When advised by the Department of Fish and Wildlife that an approved flow duration model sufficient for regulatory purposes is available, the State Forester shall promptly publish the information, including the modeled end, in all maps and the department's reporting and notification system, and in no event later than July 1, 20256.

Bold Underline= new text, ~~Strikethrough~~= deletion



Staff Recommendation & Next Steps

Staff Recommendations:

- 1) The Department recommends the Board determine that OAR 629-635-0200 (18) is a Type 1(a) rule.
- 2) The Department recommends the Board direct the Department to file a notice of proposed rulemaking to amend OAR 629-635-0200 (18)(b) as proposed.

Next Steps:

- If the recommendations are adopted, the Department will file a notice of proposed rulemaking, provide the required notifications and return to the Board with the results of the public comment period and proposed final language.