

Private Forest Accord Rulemaking: Enforcement & Civil Penalties



Summary:

Updates to Division 670 include: Rules for “Pesticide Applications by Helicopter” statutes, incorporating them as part of the civil penalty process for contesting within the Forest Practices Act (FPA) process, additions to ORS 527.680, and modifications and additions to ORS 527.685.

Updates to civil penalties:

While the civil penalty formula remains the same, updates to the standard civil penalty calculations doubled base and maximum fines, with the maximum civil penalty, increasing from \$5,000 to \$10,000. The civil penalty administrator shall consider the history of a company that changes its name to avoid higher civil penalties because of previous violations.

Establishment of Significant Violations and Repeat Violators:

The proposed rules establish and define significant violations and repeat violators for operators, landowners, or timber owners. Repeat violators are individuals or companies with a history of significant violations that show a pattern of willful disregard of the Forest Practices Act rules. The State Forester will maintain a repeat violators list of individuals and entities with three or more significant violations within three years. The list will be used to inform the civil penalty calculations process, which will consider the organizational structure of the party incurring the penalty and any derived economic benefits from the activity. A repeat violator will be removed from the list three years after their last citation was issued.

The proposed rules establish a new formula to calculate significant violations. The base penalty is set at \$2,000 for the significant violation formula, the maximum penalty is \$50,000 or the value determined by the formula, whichever is less.

Financial Assurances for Repeat Violators:

The State Forester may require a violator to acquire, post, and maintain a bond or another financial assurance instrument throughout the active periods of the operation, including stopping and restarting at a later date.

Assurance amounts would be based on either the type and number of protected resources or the number of acres within the operation. The maximum value of a bond or assurance instrument is \$250,000.

Should an operator, landowner or timber owner fail to post a required financial assurance with the State Forester, or if they stop the operation and fail to renew their bond when resuming activities, the State Forester may issue an order to prohibit any new operations until they have filed an active financial assurance.

The State Forester may also submit claims against the assurance instrument if the agency must repair damage and/or for the recovery of civil penalties.

Contesting an Order of the State Forester:

Changes to Division 672 update the list of contestable orders in the Order of the State Forester list to include the finding of being a repeat violator and the requirement of financial assurances.

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