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PERMANENT ADMINISTRATIVE ORDER

DOF 14-2023

CHAPTER 629
DEPARTMENT OF FORESTRY

FILED

07/01/2023 12:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Minor revisions to adopted forest practice rules implementing SB 1501 (2022). Effective July 1, 2023.

EFFECTIVE DATE: 07/01/2023

AGENCY APPROVED DATE: 06/07/2023

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RULES:

629-600-0100, 629-603-0000, 629-603-0100, 629-603-0200, 629-603-0300, 629-605-0170, 629-605-0173

AMEND: 629-600-0100

RULE TITLE: Definitions

ADOPTED ATTORNEY GENERAL'S MODEL RULES BY REFERENCE.

RULE SUMMARY: Senate Bill 1501 (2022) Sections 2 and 3 set forth a process that the Board of Forestry and Department of Forestry must follow for establishing rules to implement both SB 1501 and SB 1502 (2022). The bill requires the Board to adopt rules by November 2022, and authorizes the Board to make minor changes and conforming amendments to these rules before July 1, 2023. SB 1501 Section 3(14) provides that the amendments for minor changes are not subject to certain rulemaking requirements, including the requirement to file public notices. The Oregon Administrative Rules Database (OARD) does not allow permanent rulemaking to occur without a notice on file, therefore this rule was filed under the process established for filing model rules, in order to comply with the legislative direction while also meeting OARD system requirements.

Definitions for common ownership, Eastern Oregon, small forestland owner and Western Oregon are needed to support forest practice rules effective 7/1/2023 as a result of Senate Bill 1501 (2022). Additionally, the definitions of small forestland and type SSBT stream needed to be updated to align with rules effective 7/1/2023 as a result of Senate Bill 1501 (2022). Additional minor corrections for numbering, spelling and rule references were also made.

RULE TEXT:

As used in OAR chapter 629, divisions 605 through 669 and divisions 680 through 699, unless otherwise required by context:

- (1) "Abandoned resource site" means a resource site that the State Forester determines is not active.
- (2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. 'Recent past' shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.

- (3) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.
- (4) "Aquatic area" means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.
- (5) "Artificial reforestation" means restocking a site by planting trees or through the manual or mechanical distribution of seeds.
- (6) "Basal area" means the area of the cross-section of a tree stem derived from DBH.
- (7) "Basal area credit" means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a stream, or conducting other enhancement activities such as side channel creation or grazing enclosures.
- (8) "Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.
- (9) "Bull Trout" means fish species *Salvelinus confluentus*.
- (10) "Channel" is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.
- (11) "Chemicals" means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliants, plant desiccants, and plant regulators, as defined in ORS 634.006(8); fertilizers, as defined in 633.311; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives, anti-foam agents, wetting agents, and spreading agents.
- (12) "Commercial" means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity undertaken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.
- (13) "Common ownership" means direct ownership by one or more individuals or ownership by a corporation, partnership, association, or other entity in which an individual owns a significant interest, as defined in section 16(1), chapter 33, Oregon Laws 2022.
- (14) "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.
- (15) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.
- (16) "Debris torrent-prone streams" are designated by the State Forester to include channels and confining slopes that drain watersheds containing high landslide hazard locations that are of sufficient confinement and channel gradient to allow shallow, rapid landslide movement.
- (17) "Department" means the Oregon Department of Forestry.
- (18) "Diameter breast height" (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.
- (19) "Domestic water use" means the use of water for human consumption and other household human use.
- (20) "Dying or recently dead tree" means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.
- (21) "Eastern Oregon" means the region east of the Cascade Crest in Oregon as described in OAR 629-635-0220.
- (22) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to

the western edge of Puget Island.

(23) "Exposure categories" are used to designate the likelihood of persons being present in structures or on public roads during periods when shallow, rapidly moving landslides may occur.

(24) "Filling" means the deposit by artificial means of any materials, organic or inorganic.

(25) "Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(26) "Fledging tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.

(27) "Forage" means the plant species or other source of food that will be provided to substantially contribute, either directly or indirectly to nutrition of the target wildlife species or guild.

(28) "Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(29) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

- (a) Reforestation of forestland;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals;
- (e) Disposal of slash; and
- (f) Removal of woody biomass.

(30) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

(31) "Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.

(32) "Further review area" means an area of land that may be subject to rapidly moving landslides as mapped by the State Department of Geology and Mineral Industries or as otherwise determined by the State Forester.

(33) "Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.

(34) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(35) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

- (a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;
- (b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or
- (c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(36) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

- (37) "High landslide hazard location" means a specific site that is subject to initiation of a shallow, rapidly moving landslide. The following criteria shall be used to identify high landslide hazard locations:
- (a) The presence, as measured on site, of any slope in western Oregon (excluding competent rock outcrops) steeper than 80 percent, except in the Tye Core Area, where it is any slope steeper than 75 percent; or
 - (b) The presence, as measured on site, of any headwall or draw in western Oregon steeper than 70 percent, except in the Tye Core Area, where it is any headwall or draw steeper than 65 percent.
 - (c) Notwithstanding the slopes specified in (a) or (b) above, field identification of atypical conditions by a geotechnical specialist may be used to develop site specific slope steepness thresholds for any part of the state where the hazard is equivalent to (a) or (b) above. The final determination of equivalent hazard shall be made by the State Forester.
- (38) "High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.
- (39) "Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.
- (40) "Important springs" are springs in arid parts of eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.
- (41) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.
- (42) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledging trees or perching trees.
- (43) "Lake" means a body of year-round standing open water.
- (a) For the purposes of the forest practice rules, lakes include:
 - (A) The water itself, including any vegetation, aquatic life, or habitats therein; and
 - (B) Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.
 - (b) "Lakes" do not include water developments as defined in this rule.
- (44) "Landslide mitigation" means actions taken to reduce potential landslide velocity or re-direct shallow, rapidly moving landslides near structures and roads so risk to persons is reduced.
- (45) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.
- (46) "Large lake" means a lake greater than eight acres in size.
- (47) "Large wood key piece" means a portion of a bole of a tree, with or without the rootwad attached, that is wholly or partially within the stream, that meets the length and diameter standards appropriate to stream size and high water volumes established in the "Guide to Placement of Wood, Boulders and Gravel for Habitat Restoration," developed by the Oregon Department of Forestry, Oregon Department of Fish and Wildlife, Oregon Department of State Lands, and Oregon Watershed Enhancement Board, January 2010.
- (48) "Live tree" means a tree that has 10 percent or greater live crown.
- (49) "Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.
- (50) "Main channel" means a channel that has flowing water when average flows occur.
- (51) "Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.
- (52) "Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.
- (53) "Nest tree" means the tree, snag, or other structure that contains a bird nest.
- (54) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.
- (55) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree

species except as provided by the following:

- (a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.
- (b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:
 - (A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;
 - (B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;
 - (C) Harvested on a rotation cycle that is 12 or fewer years after planting; and
 - (D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.
- (c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.
- (d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.
- (e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.
- (f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.
- (g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.
- (56) "Operator" means any person, including a landowner or timber owner, who conducts an operation.
- (57) "Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.
- (58) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.
- (59) "Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted to the State Forester for written approval describing practices different than those prescribed in statute or administrative rule.
- (60) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.
- (61) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.
- (62) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.
- (63) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.
 - (a) For the purposes of protection:
 - (A) For threatened and endangered bird species, "resource site" is the nest tree and all identified key components.
 - (B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.
 - (C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.
 - (b) For the purposes of requesting a hearing under ORS 527.670(4) and 527.700(3), "resource site" is defined in OAR 629-680-0020.
- (64) "Riparian area" means the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.
- (65) "Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and

fish and wildlife habitat.

(66) "Salmon" means any of the five salmon species that exist in Oregon. These species are:

- (a) Chinook salmon (*Oncorhynchus tshawytscha*);
- (b) Coho salmon (*Oncorhynchus kisutch*);
- (c) Chum salmon (*Oncorhynchus keta*);
- (d) Sockeye salmon (*Oncorhynchus nerka*); and
- (e) Pink salmon (*Oncorhynchus gorbuscha*).

(67) "Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.

(68) "Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.

(69) "Shallow, rapidly moving landslide" means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel at a velocity difficult for people to outrun or escape.

(70) "Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.

(71) "Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection, as follows:

- (a) Wetlands that are larger than eight acres;
- (b) Estuaries;
- (c) Bogs; and
- (d) Important springs in eastern Oregon.

(72) "Small forestland" means forestland that has an owner that owns or holds common ownership interest in less than 5,000 acres of forestland in this state, regulated under section 5(1)(b), chapter 33, Oregon Laws 2022.

(73) "Small forestland owner" pursuant to section (16), chapter 33, Oregon Laws 2022 and section 2, chapter 34, Oregon Laws 2022, means a landowner who:

- (a) Owns or holds in common ownership interest in less than 5,000 acres of forestland in this state;
- (b) Has harvested no more than an average yearly volume of two million board feet of merchantable forest products from the landowner's forestlands in this state, when averaged over the three years prior to:
 - (A) The date the department receives a harvest notification from the landowner; or
 - (B) If applying for a Small Forestland Investment in Stream Habitat Program grant, the date the landowner submits a grant application; and
- (c) Affirms that they do not expect to exceed an average yearly volume of two million board feet of merchantable forest products to be harvested from the landowner's forestlands in this state for 10 years after the department receives the harvest notification or grant application; or
- (d) Emergency exception: Any landowner who exceeds the two million board feet average harvest threshold from their land in the three years prior to submitting a harvest notification or grant application to the department, or who expects to exceed the threshold during any of the following 10 years, shall still be deemed a "small forestland owner" if the landowner establishes to the department's reasonable satisfaction that the harvest limits were, or will be, exceeded to raise funds to pay estate taxes or for a compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses.

(74) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

(75) "Sound snag" means a snag that retains some intact bark or limb stubs.

(76) "SSBT use" means a stream with salmon, steelhead or bull trout present or otherwise used by salmon, steelhead, or bull trout at any time of the year as determined by the State Forester.

(77) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(78) "Steelhead" means the anadromous life history variant of *Oncorhynchus mykiss*.

(79) "Stream" means a channel, such as a river or creek, which carries flowing surface water during some portion of the year.

- (a) For the purposes of the forest practice rules, streams include:
- (A) The water itself, including any vegetation, aquatic life, or habitats therein;
 - (B) Beds and banks below the high water level which may contain water, whether or not water is actually present;
 - (C) The area between the high water level of connected side channels;
 - (D) Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and
 - (E) Stream-associated wetlands.
- (b) "Streams" do not include:
- (A) Ephemeral overland flow (such flow does not have a channel); or
 - (B) Road drainage systems or water developments as defined in this rule.
- (80) "Stream-associated wetland" means a wetland that is not classified as significant and that is next to a stream.
- (81) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.
- (82) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.
- (83) "Target wildlife" means a wildlife species or wildlife guild expected to benefit from the installation of a wildlife food plot.
- (84) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.
- (85) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.
- (86) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.
- (87) "Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.
- (88) "Tyee Core Area" means a location with geologic conditions including thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in shallow soils creating a higher shallow, rapidly moving landslide hazard. The Tyee Core Area is located within coastal watersheds from the Siuslaw watershed south to and including the Coquille watershed, and that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5. Within these boundaries, locations where bedrock is highly fractured or not of sedimentary origin as determined in the field by a geotechnical specialist are not subject to the Tyee Core Area slope steepness thresholds.
- (89) "Type D stream" means a stream that has domestic water use, but no fish use.
- (90) "Type F stream" means a stream with fish use, or both fish use and domestic water use.
- (91) "Type N stream" means a stream with neither fish use nor domestic water use.
- (92) "Type SSBT stream" means a stream that is classified as a Type F stream and has SSBT use.
- (93) "Unit" means an operation area submitted on a notification of operation that is identified on a map and that has a single continuous boundary. Unit is used to determine compliance with ORS 527.676 (down log, snag and green live tree retention), 527.740 and 527.750 (harvest type 3 size limitation), and other forest practice rules.
- (94) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.
- (95) "Water bar" means a diversion ditch or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.
- (96) "Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.
- (97) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks,

estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(98) "Western Oregon" means the region west of the Cascade Crest as described in OAR 629-635-0220.

(99) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in this rule.

(100) "Wildlife food plot" means a small forestland area that, instead of being used for growing and harvesting of a forest tree species, is planted in vegetation or has vegetation capable of substantially contributing to wildlife nutrition.

(101) "Wildlife guild" means a grouping of wildlife that has similar characteristics and fulfills similar ecological roles in the environment.

(102) "Wildlife leave trees" means trees or snags required to be retained as described in ORS 527.676(1).

(103) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

STATUTORY/OTHER AUTHORITY: ORS 527.710(1), 527.714, 527.630(3), 526.016(4), 527.678(3)(a), chapter 33, Oregon Laws 2022

STATUTES/OTHER IMPLEMENTED: ORS 527.630(5), 527.674, 527.714, 527.678(3)(a), chapter 33, Oregon Laws 2022

AMEND: 629-603-0000

RULE TITLE: Adaptive Management Program Purpose

ADOPTED ATTORNEY GENERAL'S MODEL RULES BY REFERENCE.

RULE SUMMARY: Senate Bill 1501 (2022) Sections 2 and 3 set forth a process that the Board of Forestry and Department of Forestry must follow for establishing rules to implement both SB 1501 and SB 1502 (2022). The bill requires the Board to adopt rules by November 2022, and authorizes the Board to make minor changes and conforming amendments to these rules before July 1, 2023. SB 1501 Section 3(14) provides that the amendments for minor changes are not subject to certain rulemaking requirements, including the requirement to file public notices. The Oregon Administrative Rules Database (OARD) does not allow permanent rulemaking to occur without a notice on file, therefore this rule was filed under the process established for filing model rules, in order to comply with the legislative direction while also meeting OARD system requirements.

This rule describes the purpose of the Adaptive Management Program. Minor changes were made to the definition of biological goals and objectives to give the term meaning prior to the approval of a habitat conservation plan, and a technical correction to the research agenda definition was made.

RULE TEXT:

(1) The purpose of the adaptive management program rules is to provide science-based recommendations and technical information to assist the Board of Forestry in determining when it is necessary or advisable to adjust rules, guidance, and training programs to achieve the biological goals and objectives.

(2) OAR 629-603-0000 through 629-603-0600 shall be known as the adaptive management program rules.

(3) It is the policy of the State of Oregon that regulation of forest practices for the protection of aquatic species shall, in addition to other statutory requirements, be subject to a process of adaptive management, whereby forest practice rules are:

(a) Monitored for effectiveness relative to the biological goals and objectives; and

(b) Modified if necessary to achieve the biological goals and objectives.

(4) The adaptive management program is established to implement the policy stated in section (3) of this rule.

(5) The purpose of the adaptive management program is to:

(a) Ensure timely and effective change as needed to meet biological goals and objectives.

(b) Provide predictability and stability of the process of changing regulation so landowners, regulators, and interested members of the public can understand and anticipate change.

(c) Apply best available science to decision-making.

(d) Effectively meet biological goals and objectives with less operationally expensive prescriptions when feasible.

(6) For the purposes of this rule division, the following definitions apply:

(a) "Adaptive management program committee" (AMPC) means the adaptive management program committee described in OAR 629-603-0300.

(b) "Best available science" means the standards developed pursuant to OAR 629-603-0400(4).

(c) "Biological goals and objectives" means the biological goals and objectives as set by the department for a habitat conservation plan to meet requirements of section 11(1) chapter 33, Oregon Laws 2022.

(d) "Independent research and science team" (IRST) means the independent research and science team described in OAR 629-603-0400.

(e) "IRST housing agency" means a public body that houses and supports the Independent Research and Science Team as described in OAR 629-603-0450.

(f) "Research agenda" means the plan developed by the AMPC pursuant to OAR 629-603-0200(5)(a).

STATUTORY/OTHER AUTHORITY: ORS 527.710, section 34(2), chapter 33, Oregon Laws 2022

STATUTES/OTHER IMPLEMENTED: section 34(1), chapter 33, Oregon Laws 2022

AMEND: 629-603-0100

RULE TITLE: Adaptive Management Program Overview

ADOPTED ATTORNEY GENERAL'S MODEL RULES BY REFERENCE.

RULE SUMMARY: Senate Bill 1501 (2022) Sections 2 and 3 set forth a process that the Board of Forestry and Department of Forestry must follow for establishing rules to implement both SB 1501 and SB 1502 (2022). The bill requires the Board to adopt rules by November 2022, and authorizes the Board to make minor changes and conforming amendments to these rules before July 1, 2023. SB 1501 Section 3(14) provides that the amendments for minor changes are not subject to certain rulemaking requirements, including the requirement to file public notices. The Oregon Administrative Rules Database (OARD) does not allow permanent rulemaking to occur without a notice on file, therefore this rule was filed under the process established for filing model rules, in order to comply with the legislative direction while also meeting OARD system requirements.

This rule provides an overview of the Adaptive Management Program. Minor changes were made to reorganize text, reduce redundancies and clarify intent.

RULE TEXT:

(1) The adaptive management program must:

(a) Conduct effectiveness monitoring by assessing the degree to which the rules facilitating particular forest conditions and ecological processes achieve the biological goals and objectives. This assessment may include evaluation of cumulative effects.

(b) Conduct research inquiry and validation monitoring to:

(A) Determine if additional scientific inquiry is needed to fill knowledge gaps related to biological goals and objectives; and

(B) Test and improve existing and new models and methodologies used to design and implement forest practice rules intended to meet the biological goals and objectives.

(2) The adaptive management program participants include:

(a) The Adaptive Management Program Committee (AMPC) described in OAR 629-603-0300 and its composition specified in section 36, chapter 33, Oregon Laws 2022;

(b) The Independent Research and Science Team (IRST) described in OAR 629-603-0400 and its composition specified in section 38, chapter 33, Oregon Laws 2022; and

(c) The Adaptive Management Program Coordinator described in OAR 629-603-0500.

(3) The Board of Forestry and the department shall encourage access to land for the purpose of conducting studies and monitoring contemplated by Division 603 rules. The AMPC and the IRST may each prepare a report to the board describing instances where access to land has been insufficient to achieve the purposes of this rule division. If presented with such a report, the board shall consider whether to initiate rulemaking or other measures to address any research and monitoring problems arising from lack of access to land.

(4) The State Forester shall report to the board annually about the status of adaptive management program efforts.

(5) The board intends that the process of continuous improvement be applied to the adaptive management program. The department shall conduct performance audits once every six years per Generally Accepted Government Auditing Standards. The first audit must be completed by January 1, 2029. The performance audits will evaluate whether the program achieved the purposes outlined in OAR 629-603-0000(5).

(6) Adaptive management program studies will focus on issues related to the biological goals and objectives. However, studies may address issues that are not related to the biological goals and objectives only if the studies do not impair research and monitoring on issues related to the biological goals and objectives.

(7) Adaptive management program research may test whether:

(a) Operationally less expensive prescriptions can effectively meet biological goals and objectives; and,

(b) More risk averse prescriptions are necessary to meet biological goals and objectives.

(8) The following topics shall be prioritized in the initial phase of the adaptive management program:

(a) Literature review for eastern Oregon steep slopes;

(b) Requirements of baseline and trend monitoring of road rules; and

(c) Amphibians.

(9) The AMPC may determine when section (8) of this rule is satisfied and therefore those topics are no longer priorities.

In the event the AMPC makes these findings, the department shall present the AMPC findings to the board.

STATUTORY/OTHER AUTHORITY: ORS 527.710, Section 34(2), Chapter 33, Oregon Laws 2022

STATUTES/OTHER IMPLEMENTED: Section 34(1), Chapter 33, Oregon Laws 2022

AMEND: 629-603-0200

RULE TITLE: Adaptive Management Program Process Steps

ADOPTED ATTORNEY GENERAL'S MODEL RULES BY REFERENCE.

RULE SUMMARY: Senate Bill 1501 (2022) Sections 2 and 3 set forth a process that the Board of Forestry and Department of Forestry must follow for establishing rules to implement both SB 1501 and SB 1502 (2022). The bill requires the Board to adopt rules by November 2022, and authorizes the Board to make minor changes and conforming amendments to these rules before July 1, 2023. SB 1501 Section 3(14) provides that the amendments for minor changes are not subject to certain rulemaking requirements, including the requirement to file public notices. The Oregon Administrative Rules Database (OARD) does not allow permanent rulemaking to occur without a notice on file, therefore this rule was filed under the process established for filing model rules, in order to comply with the legislative direction while also meeting OARD system requirements.

This rule establishes the process steps for the Adaptive Management Program. Minor changes were made to modify the timeline to reflect implementation realities and additional minor changes were made for clarity.

RULE TEXT:

(1) This rule specifies communications between the Board of Forestry, the AMPC, and the IRST to implement the adaptive management program. To the extent there needs to be communications not identified in this rule for adaptive management program success, the Adaptive Management Program Coordinator will facilitate these communications.

(2) By January 31, 2024:

(a) The AMPC shall:

(A) Complete their charter per OAR 629-603-0300(2); and

(B) Develop the initial list of research topics including the priorities in OAR 629-603-0100(8). Following completion of this list, the AMPC shall integrate the list into a Research Agenda developed via sections (3) through (5) of this rule.

(b) The IRST shall complete their charter per OAR 629-603-0400(2) and determine best available science per OAR 629-603-0400(4).

(3) Step 1: The AMPC shall develop preliminary research question(s).

(a) The AMPC shall succinctly specify preliminary research questions that include the following:

(A) The type of research and monitoring per OAR 629-603-0100(1)(a) or (b);

(B) The rule, biological goals and objectives, or other issue being studied;

(C) The objective of the research;

(D) A brief description of the context of the research question; and

(E) Other information the AMPC deems necessary for the IRST's work per section (4) of this rule.

(b) The board may direct the AMPC to develop additional preliminary research questions.

(c) The AMPC shall send the preliminary research questions to the IRST annually on a date specified in the AMPC charter developed pursuant to OAR 629-603-0300(2).

(4) Step 2: The IRST shall prepare a proposal for each preliminary research question.

(a) Within 45 days of receiving a preliminary research question from the AMPC per subsection (3)(c) of this rule, the IRST shall inform the AMPC of the timeframe to complete a research proposal described in subsection (4)(c) of this rule.

(b) The IRST shall hone each preliminary research question into a final research question. The IRST shall communicate with the AMPC via the Adaptive Management Program Coordinator to allow the AMPC an opportunity to provide input to ensure that the AMPC's original intent is maintained in the final research question. Following this communication, the IRST shall finalize the research question.

(c) The IRST shall develop, or direct through a third party the development of, a research proposal for each finalized research question. Each research proposal shall include:

(A) A literature review that specifies the need for or the type of monitoring, research, commissioned studies, or other means of scientific inquiry necessary to answer the finalized research question described in subsection (4)(b) of this

rule;

(B) A preliminary estimate of the budget for each year of the research, and a timeline to complete the research project with specific deliverables; and,

(C) A preliminary description of research project requirements, scope of work including an estimate of the timeline and key milestones, and an estimate of the degree to which knowledge may be improved if the research proposal is implemented.

(d) The IRST may develop multiple research proposals to address each research question. Each proposal must include all the elements of subsection (4)(c) of this rule. If multiple research proposals are developed, the IRST shall compare their costs versus the knowledge benefits of the research proposals.

(e) The IRST shall send proposal(s) from subsections (4)(c) and (4)(d) of this rule to the AMPC within the timeframe communicated from the IRST to the AMPC pursuant to subsection (4)(a) of this rule.

(5) Step 3: The AMPC shall develop a research agenda.

(a) The AMPC shall develop a multi-year research agenda that includes:

(A) Prioritized research projects;

(B) Key milestones for each research project;

(C) A timeline for progress on research projects; and,

(D) A comprehensive IRST budget, including annual budget for each year of each project.

(b) In prioritizing the research projects, the AMPC shall consider:

(A) Biennial appropriations from the legislature;

(B) Priorities outlined in OAR 629-603-0100(8);

(C) Research proposals received from the IRST per subsection (4)(e) of this rule;

(D) Board direction;

(E) Requirements for continuity of research projects under agreement or out for RFP review; and,

(F) Other information as appropriate.

(c) The AMPC shall send the research agenda to the board no later than July 15 of odd-numbered years.

(d) The department shall present the budget in the research agenda developed pursuant to subsection (5)(a) of this rule to the board for a vote at the September board meeting of odd-numbered years.

(e) The AMPC may request the department to hire a third party to complete analyses per OAR 629-603-0100(7).

(6) Step 4: The IRST shall implement the research agenda approved by the board pursuant to subsection (5)(d) of this rule.

(a) No later than November 1 of odd-numbered years, the IRST shall develop an annual work plan to implement the research agenda approved by the board in subsection (5)(d) of this rule.

(b) The IRST shall develop request for proposals (RFP) in an open, competitive process for research projects in the research agenda. The RFP shall include:

(A) Research project objectives, deliverables, and deadlines;

(B) A statement of work;

(C) The level of rigor needed for successful research project completion;

(D) The required expertise and capacity of proposers;

(E) The data as a deliverable;

(F) The expectations for a detailed final report;

(G) An after-action review meeting between the IRST and the contractor and other cooperators; and,

(H) Other RFP elements required by the IRST Housing Agency specified in OAR 629-603-0450.

(c) RFPs may include requirements for:

(A) Contractor and other cooperator presentations to the AMPC, the board, or other entities as appropriate.

(B) A summary report. If the contractor and other cooperators are required to produce a summary report for the agreement, it must contain the elements listed in section (6)(g) of this rule.

(d) The RFP announcement and award process shall follow procedures of the IRST Housing Agency, with the IRST

selecting the RFP successful proposer.

(e) If an IRST member applies for an RFP, the IRST shall ensure RFP selections follow conflict of interest standards as established by the Oregon Government Ethics Commission.

(f) The IRST shall develop and manage agreements for RFP successful proposer.

(g) If the agreement in subsection (6)(f) of this rule did not require development of a summary report, the IRST shall complete the summary report within 90 days of receiving the contractor and other cooperator's detailed final report in paragraph (6)(b)(F) of this rule. The summary report shall be written for a lay audience and include:

(A) Methods sufficient to allow others to understand what was done and to evaluate the results and conclusions;

(B) A detailed description of the results; and

(C) Discussion and conclusions about:

(i) Effectiveness: In studies examining alternative prescriptions, the likely effectiveness of each prescription shall be reported.

(ii) Causal links: An assessment of how the results of relevant new research findings developed by the IRST or through outside research clarify or support causal links between forest practices and aquatic resources, and implications regarding how well forest practice rules or rule sets are likely to address these linkages.

(iii) Magnitude of impact: An assessment of the magnitude of impact on covered species or biological goals and objectives on a sliding scale.

(iv) Timescale of effects observed, and the immediacy of likely changes in the environment.

(v) Scope of inference.

(vi) Scientific uncertainty versus confidence: An assessment of the scientific uncertainty and confidence in the results.

(7) Step 5: Within 30 days of completion of the last of the reports described in paragraphs (6)(b)(F) and (6)(c)(B) and subsection (6)(g) of this rule, the IRST shall send both reports to the AMPC and the board.

(8) Step 6: The AMPC and the board shall assess the IRST reports described in section (7) of this rule and determine next steps per the following process.

(a) The AMPC shall consider reports described in paragraphs (6)(b)(F) and (6)(c)(B) and subsection (6)(g) of this rule from the IRST. Within 90 days of receipt of these reports from the IRST, the AMPC shall send its report to the board. This AMPC report shall include:

(A) Alternative actions, including a no action alternative, to address research findings identified in the IRST reports.

(B) The AMPC may recommend one or more of the alternatives. Recommendations shall include:

(i) Reasoning for the recommendation.

(ii) If a recommendation for a rule change, a clear description of the proposed rule change.

(iii) If a recommendation for additional scientific inquiry, a clear description of the preliminary research question.

(iv) If a recommendation for any other policy action, including rule guidance and training, a clear description of the proposed policy action.

(C) Minority reports may be included in reports to the board.

(b) By the second regular board meeting after receipt of the AMPC report, the AMPC shall present their recommendations to the board for a vote.

STATUTORY/OTHER AUTHORITY: ORS 527.710, Section 34(2), Chapter 33, Oregon Laws 2022

STATUTES/OTHER IMPLEMENTED: Section 38(7), Chapter 33, Oregon Laws 2022, Section 34(1), Chapter 33, Oregon Laws 2022

AMEND: 629-603-0300

RULE TITLE: Adaptive Management Program Committee

ADOPTED ATTORNEY GENERAL'S MODEL RULES BY REFERENCE.

RULE SUMMARY: Senate Bill 1501 (2022) Sections 2 and 3 set forth a process that the Board of Forestry and Department of Forestry must follow for establishing rules to implement both SB 1501 and SB 1502 (2022). The bill requires the Board to adopt rules by November 2022, and authorizes the Board to make minor changes and conforming amendments to these rules before July 1, 2023. SB 1501 Section 3(14) provides that the amendments for minor changes are not subject to certain rulemaking requirements, including the requirement to file public notices. The Oregon Administrative Rules Database (OARD) does not allow permanent rulemaking to occur without a notice on file, therefore this rule was filed under the process established for filing model rules, in order to comply with the legislative direction while also meeting OARD system requirements.

This rule sets the expectations for the Adaptive Management Program Committee. Minor changes were needed to better align with the formal appointment process for members.

RULE TEXT:

- (1) The purpose of the Adaptive Management Program Committee (AMPC) is to complete work described in division 603 of OAR chapter 629 and section 36(7), chapter 33, Oregon Laws 2022.
- (2) The AMPC shall develop its operating procedures through a charter approved by the AMPC. The charter shall include:
 - (a) A values statement on the purpose of the AMPC, including the need for ongoing good relationships.
 - (b) Ground rules for AMPC member interactions.
 - (c) Determination of what constitutes a substantial decision per section 36(8), chapter 33, Oregon Laws 2022.
 - (d) Process for selecting chairperson(s). The chairperson shall have the usual duties and powers of a presiding officer.
 - (e) Roles, expectations, and representation on subcommittees.
 - (f) Regular deadlines including the deadline specified in OAR 629-603-0200(3)(c).
 - (g) Measures to maintain and improve the long-term effectiveness of AMPC, including:
 - (A) Succession management procedures;
 - (B) Onboarding of new AMPC members; and
 - (C) Regular review and updating of the AMPC charter.
- (3) After the Board of Forestry appoints the first AMPC members pursuant to sections 36(5)(a) and 37, chapter 33, Oregon Laws 2022, members' terms may be renewed by a vote by the board. If an AMPC member's term is not renewed by the board or there is any other vacancy of a voting member on the AMPC, then the entity described in sections 36(3), 36(4), 36(5)(a) chapter 33, Oregon Laws 2022 shall propose two new candidates for a vote from the board for AMPC appointment.
- (4) The AMPC shall conduct their meetings per the AMPC charter, and all AMPC meetings shall be conducted as public meetings consistent with Oregon Public Meetings Law. The AMPC will provide for public testimony at meetings unless the chairperson determines that doing so would be detrimental to the conduct of the AMPC's business.
- (5) An organization on the AMPC may designate someone to serve as an interim member in place of their current member. The interim member will have all the rights and responsibilities of that organization's voting status per Section 36, Chapter 33, Oregon Laws 2022. The organization must submit in writing to the adaptive management program coordinator:
 - (a) The name of the interim member; and,
 - (b) The duration of their interim status, not to exceed one year.

STATUTORY/OTHER AUTHORITY: ORS 527.710, Section 34(2), Chapter 33, Oregon Laws 2022

STATUTES/OTHER IMPLEMENTED: Section 34(1), Chapter 33, Oregon Laws 2022

AMEND: 629-605-0170

RULE TITLE: Written Plans

ADOPTED ATTORNEY GENERAL'S MODEL RULES BY REFERENCE.

RULE SUMMARY: Senate Bill 1501 (2022) Sections 2 and 3 set forth a process that the Board of Forestry and Department of Forestry must follow for establishing rules to implement both SB 1501 and SB 1502 (2022). The bill requires the Board to adopt rules by November 2022, and authorizes the Board to make minor changes and conforming amendments to these rules before July 1, 2023. SB 1501 Section 3(14) provides that the amendments for minor changes are not subject to certain rulemaking requirements, including the requirement to file public notices. The Oregon Administrative Rules Database (OARD) does not allow permanent rulemaking to occur without a notice on file, therefore this rule was filed under the process established for filing model rules, in order to comply with the legislative direction while also meeting OARD system requirements.

This rule covers written plans related to forest operations. A technical correction was needed to clear a contradiction between subsections.

RULE TEXT:

(1) Definition of "Directly Affect" and "Physical Components" For the purpose of section (4) of this rule:

(a) "Physical components" means materials such as, but not limited to, vegetation, snags, rocks and soil; and

(b) "Directly affect" means that physical components will be moved, disturbed, or otherwise altered by the operation.

(2) Statutory Written Plans for Operations near Type F, Type SSBT and Type D Streams. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a Type F, Type SSBT or Type D stream.

(3) Statutory Written Plans for Operations near Wetlands larger than Eight Acres, Bogs or Important Springs in Eastern Oregon. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a significant wetland that is a wetland larger than eight acres (not an estuary), a bog, or an important spring in Eastern Oregon as identified in 629-645-0000 (Riparian Management Areas and Protection Measures for Significant Wetlands).

(4) Waiver of Statutory Written Plans. The State Forester may waive, in writing, the requirement for a written plan described in sections (2) and (3) unless the operation activity will directly affect the physical components of the riparian management area for Type F, Type SSBT, Type D streams or significant wetlands. The department shall publish Forest Practices Technical Guidance to explain how to implement this rule.

Note: OAR 629-605-0170(4) applies to operations with fish streams, except operations on small forestlands, for which a notification is filed under ORS 527.670(6) on or after July 1, 2023. This rule applies to all operations for which a notification is filed on or after January 1, 2024, or a notification filed prior to January 1, 2024, if the operation is not completed on or before December 31, 2023.

(5) Statutory Written Plans for Operations near Wildlife Sites and Estuaries. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 300 feet of any:

(a) Specific site involving threatened or endangered wildlife species, or sensitive bird nesting, roosting, or watering sites; as listed by approximate legal description, in a document published by the Department of Forestry titled "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984."

(b) Resource site identified in OAR 629-665-0100 (Species Using Sensitive Bird Nesting, Roosting and Watering Sites), 629-665-0200 (Resource Sites Used By Threatened and Endangered Species).

(c) Significant wetland that is classified as an estuary identified in OAR 629-645-0000 (Riparian Management Areas and Protection Measures for Significant Wetlands).

- (d) Nesting or roosting site of threatened or endangered species listed by the U.S. Fish and Wildlife Service or by the Oregon Fish and Wildlife Commission by administrative rule.
- (6) Statutory Written Plans and Stewardship Agreements. The written plan requirements in section (2), (3) and (5) of this rule do not apply to operations that will be conducted pursuant to a stewardship agreement entered into under ORS 541.973.
- (7) Statutory Written Plan Requirements and Notification of Protected Resource Sites. The State Forester shall notify the operator of the presence of any site listed in section (2), (3) or (5) of this rule at any time the State Forester determines the presence of those sites.
- (8) The State Forester shall notify the operator that a written plan is required if:
- (a) The operation will be within 100 feet of any sites listed in sections (2) or (3) of this rule and the operation will directly affect the physical components of a riparian management area associated with any of those sites; or
 - (b) The operation will be within 300 feet of any site listed in section (5) of this rule.
- (9) Statutory Written Plan Hearing Provisions. Written plans required under sections (2), (3) or (5) of this rule shall be subject to the hearings provisions of ORS 527.700 (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of 527.670(8) through (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.
- (10) Non-Statutory Written Plans.
- (a) An operator must submit a written plan as required by ORS 527.670(2) and the rules listed below unless the State Forester waives the written plan requirement. Written plans required by the rules listed below are not subject to the provisions of ORS 527.700(3) or ORS 527.670(10), (11) and (12).
 - (A) 629-605-0190(1) — Operating near or within sites that are listed in the "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984" or sites designated by the State Forester;
 - (B) 629-605-0190(2) — Operating near or within habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered;
 - (C) 629-623-0700(1) — Conducting timber harvesting or road construction operations with intermediate or substantial downslope public safety risk;
 - (D) 629-623-0700(2) — Constructing a stream crossing fill over a debris torrent-prone stream with intermediate or substantial downslope public safety risk;
 - (E) 629-623-0700(3) — Locating a waste-fill area within a drainage containing debris torrent-prone streams with intermediate or substantial downslope public safety risk;
 - (F) 629-630-0700(3)(d) Cable yarding across streams classified as medium or large Type Np;
 - (G) 629-630-0915(2) Harvesting timber where yarding will occur within stream adjacent failures identified upslope of the Type F or Type SSBT stream riparian management area.

Note: OAR 629-605-0170(10)(a)(H) applies to operations, except operations on small forestlands, for which a notification is filed under ORS 527.670(6) on or after July 1, 2023. This paragraph applies to all operations for which a notification is filed on or after January 1, 2024, or a notification filed prior to January 1, 2024, if the operation is not completed on or before December 31, 2023.

- (H) 629-630-0920(8) Harvesting timber where yarding will occur within stream adjacent failures identified upslope of the Type F or Type SSBT stream riparian management area.
 - (I) 629-650-0005 — Operating within 100 feet of a large lake;
 - (J) 629-665-0020(2) — Operating near a resource site requiring special protection; and
 - (K) 629-665-0210(1) — Operating near a Northern Spotted Owl resource site.
- (b) An operator must submit a written plan as required by ORS 527.670(2) and the rules listed below and the State Forester shall not waive the written plan requirement. Written plans required by the rules listed below are not subject to the provisions of ORS 527.700(3) or ORS 527.670(10), (11) and (12).

(A) 629-625-0100(2)(a) — Activities creating risks identified in 629-625-0100(2)(a) outside of 100 feet of Type F, Type SSBT, Type D streams and Significant Wetlands or creating risks identified in 629-625-0100(2)(a) to other Waters of the State;

(B) 629-625-0100(2) — Conducting machine activity in Type N streams or lakes;

(C) 629-625-0100(2)(c) — Constructing roads in RMA of Type N streams or lakes;

(D) 629-625-0100(2)(d) — Constructing or reconstructing any crossings of Waters of the State excluding Type F, Type SSBT, or Type D streams or Significant Wetlands;

(E) 629-625-0100(2)(e) — Activities in a critical location outside of 100 feet of Type F, Type SSBT, Type D streams, or Significant Wetlands;

(F) 629-625-0100(4) — Placing woody debris or boulders in Type N stream channels for stream enhancement;

(G) 629-625-0320(1)(b)(B) — Constructing or reconstructing any water crossing with fill over 15 feet deep in any Type N stream, wetland that does not meet the definition of significant wetland, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, or canals;

(H) 629-625-0410(5) — Temporary placement of fill within the RMA of any Type N stream, wetland that does not meet the definition of Significant Wetland, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, or canals;

(I) 629-630-0905(4) — Harvesting timber in a unit that contains designated debris flow traversal areas;

(J) 629-630-0910(6) — Harvesting timber in a unit that contains designated sediment source areas and slope retention areas; and

(K) 629-630-0920(4) — Harvesting timber in a unit that contains designated debris flow traversal areas.

(11) If an operator, timber owner or landowner is required to submit a written plan to the State Forester under section (10) of this rule:

(a) The State Forester shall review the written plan and may provide comments to the person who submitted the written plan;

(b) Provided that notice has been given as required by ORS 527.670 and OAR 629-605-0150, the operation may commence on the date the State Forester provides comments. If no comments are provided the operation may commence at any time after 14 calendar days following the date the written plan was received;

(c) Comments provided by the State Forester under subsection (a) of this section, to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester do not constitute an approval of the written plan or operation;

(d) If the State Forester does not comment on a written plan, the failure to comment does not mean an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation;

(e) In the event that the State Forester determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted thereunder, the State Forester shall consider, but is not bound by, comments that the State Forester provided under this section.

(12) Written Plan Content. Written plans required under OAR 629-605-0170 must contain a description of how the operation is planned to be conducted in sufficient detail to allow the State Forester to evaluate and comment on the likelihood that the operation will comply with the Forest Practices Act or administrative rules.

(13) Written plans required under OAR 629-605-0170 will be considered received when complete with the following information:

(a) A map showing protected resource(s) and the harvest area; and

(b) The specific resource(s) that require protection; and

(c) The practices that may affect the protected resource(s) such as road and landing location, disposal of waste materials, felling and bucking and post operation stabilization measures; and

(d) The specific techniques and methods employed for resource protection such as road and landing design, road

construction techniques, drainage systems, buffer strips, yarding system and layout; and

(e) Additional written plan content required in individual rules.

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

(15) Modification of a written plan shall be required when, based on information that was not available or was unknown at the time the original written plan was reviewed, the State Forester determines the written plan no longer addresses compliance with applicable forest practice rules. Written plans with modifications required under this section shall not be subject to the provisions of ORS 527.670(10) and (11) relating to waiting periods for written plans.

STATUTORY/OTHER AUTHORITY: ORS 527.710, Section 2(1), Chapter 33, Oregon Laws 2022

STATUTES/OTHER IMPLEMENTED: ORS 527.670, Section 2(2), Chapter 33, Oregon Laws 2022

AMEND: 629-605-0173

RULE TITLE: Plans for an Alternate Practice

ADOPTED ATTORNEY GENERAL'S MODEL RULES BY REFERENCE.

RULE SUMMARY: Senate Bill 1501 (2022) Sections 2 and 3 set forth a process that the Board of Forestry and Department of Forestry must follow for establishing rules to implement both SB 1501 and SB 1502 (2022). The bill requires the Board to adopt rules by November 2022, and authorizes the Board to make minor changes and conforming amendments to these rules before July 1, 2023. SB 1501 Section 3(14) provides that the amendments for minor changes are not subject to certain rulemaking requirements, including the requirement to file public notices. The Oregon Administrative Rules Database (OARD) does not allow permanent rulemaking to occur without a notice on file, therefore this rule was filed under the process established for filing model rules, in order to comply with the legislative direction while also meeting OARD system requirements.

This rule covers plans for alternative practices. Large revisions have been made to the forest practice rules to implement SB 1501 (2022), these rule reference changes and changes in language are needed to conform with the new rules.

RULE TEXT:

- (1) Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting forest practices utilizing protection standards or methods different than those specified in rule or statute.
- (2) Plans for an alternate practice must include sufficient information to allow the State Forester to assess the plan to determine that the practices described in the plan will yield results consistent with ORS 527.610 to 527.770 and administrative rules adopted thereunder.
- (3) Plans for alternate practices proposed as part of a written plan required by ORS 527.670(3) shall be subject to the hearings provisions of 527.700(3) (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of 527.670(10), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.
- (4) An operator must comply with all provisions of an approved plan for an alternate practice.
- (5) The following rules require an operator to submit a plan for an alternate practice and obtain approval from the State Forester of the plan before starting the specified practice or operation:
 - (a) 629-605-0100(2)(a) — Waiving or modifying the rules or statutes for a bona fide research project conducted by a federal or state agency, a college or university, or a private landowner;
 - (b) 629-605-0100(2)(b) — Waiving or modifying a specific practice when doing so will result in less environmental damage than if the practice is applied;
 - (c) 629-605-0100(2)(c) — Waiving or modifying a specific practice when doing so will improve soil, water quality, fish habitat, or wildlife habitat;
 - (d) 629-605-0100(2)(d) — Waiving or modifying rules to provide for public safety or to accomplish a land use change;
 - (e) 629-605-0100(4) — Waiving or modifying rules for resource sites when a county has an adopted program under OAR 660-016-0005 and OAR 660-016-0010 that has evaluated the resource sites;
 - (f) 629-605-0173(1) — Conducting forest practices utilizing protection standards or methods different than those specified in rule or statute;
 - (g) 629-605-0175(2) — Conducting operations that result in a single harvest type 3 unit, or combinations of harvest type 3 units, that exceed the contiguous 120 acre limit on a single ownership;
 - (h) 629-605-0175(7) — Waiving the harvest type 3 acreage limitations for conversions or disasters described in ORS 527.740(4);
 - (i) 629-605-0180(3) — Describing reasonable measures to resolve conflicts between an operation and protection of a resource site requiring a written plan under OAR 629-605-0170(5)(a) or (d);
 - (j) 629-605-0500 — Modifying the protection requirements for streams, lakes, wetlands and riparian management

- areas for reasons of forest health or because of hazards to public safety or property;
- (k) 629-610-0020(3) — Waiving or modifying the reforestation requirements following a stand improvement operation where the residual stand conditions will result in enhanced long-term tree growth;
- (l) 629-610-0020(10) — Modifying or waiving reforestation stocking levels if the purposes of the reforestation rules will be achieved or for a research project conducted by a public agency or educational institution;
- (m) 629-610-0030(3) — Utilizing natural reforestation methods when an operation results in a reforestation requirement;
- (n) 629-610-0040(3) — Extending the time allowed for reforestation when natural reforestation methods are utilized;
- (o) 629-610-0050(2) — Counting hardwoods to meet more than 20% of the applicable stocking standards when an operation results in a reforestation requirement;
- (p) 629-610-0060(1) — Counting non-native tree species to meet the applicable stocking standards when an operation results in a reforestation requirement;
- (q) 629-610-0070(1) — Suspending the reforestation rules for the salvage or conversion of low value forest stands when participating in a forest incentive program;
- (r) 629-610-0090(1) — Exempting the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover;
- (s) 629-610-0100(5) — Waiving or modifying the reforestation requirements for the purposes of establishing a wildlife food plot.
- (t) 629-615-0300(5) — Modifying the protection requirements for riparian areas, aquatic areas and wetlands when the need for prescribed burning outweighs the benefits of protecting components required to be left;
- (u) 629-620-0400(7)(d) — Modifying the protection requirements for aerial application of fungicides or nonbiological insecticides;
- (v) 629-625-0320(3) — Modifying the culvert sizing requirements of 629-625-320(2)(a) to reduce the height of fills where roads cross wide flood plains;
- (w) 629-643-0100(8) — Modifying the vegetation retention requirements in the riparian management area along Type F and Type SSBT streams in Western Oregon to allow the removal of trees upslope of roads which pose a safety hazard;
- (x) 629-643-0105(10) — Modifying the vegetation retention requirements in the riparian management area along Type N streams in Western Oregon to allow the removal of trees upslope of roads which pose a safety hazard;
- (y) 629-643-0120(8) — Modifying the vegetation retention requirements in the riparian management area along Type F and Type SSBT streams in Eastern Oregon to allow the removal of trees upslope of roads which pose a safety hazard;
- (z) 629-643-0125(8) — Modifying the vegetation retention requirements in the riparian management area along Type N streams in Eastern Oregon to allow the removal of trees upslope of roads which pose a safety hazard;
- (aa) 629-643-0400(1) — Utilizing site specific vegetation retention prescriptions for streams and riparian management areas;
- (bb) 629-645-0020(1) — Utilizing site specific vegetation retention prescriptions for significant wetlands;
- (cc) 629-645-0050(3) — Modifying the vegetation retention requirements for significant wetlands for reasons of forest health;
- (dd) 629-650-0040(3) — Modifying the vegetation retention requirements for lakes for reasons of forest health;
- (ee) 629-665-0020(1)(b)(C) — Structural or temporal exceptions when proposed forest practices conflict with a resource site;
- (ff) 629-665-0110(3) — Structural replacement of an osprey site;
- (gg) 629-665-0110(4) — Temporal exceptions near an osprey site;
- (hh) 629-665-0120(3) — Structural exceptions of a great blue heron site;
- (ii) 629-665-0120(5) — Temporal exceptions near a great blue heron site.

STATUTORY/OTHER AUTHORITY: ORS 527.710, 527.630(3), 527.714(1), 526.016(4), 527.678(3)(a)

STATUTES/OTHER IMPLEMENTED: ORS 527.670(10)-(12), 527.700(2), (5), (6), (8), (9)

