

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 629
DEPARTMENT OF FORESTRY

FILED

09/23/2024 10:12 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Clarifying definitions related to emergency fire and emergency fire costs.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/31/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Ryan Miller
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/22/2024

TIME: 10:00 AM

OFFICER: Ryan Miller

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 541-620-0341

CONFERENCE ID: 8829567607

SPECIAL INSTRUCTIONS:

To provide written comment, submit it to the nancy.hirsch@odf.oregon.gov.

NEED FOR THE RULE(S)

This rule is necessary to address the recommendations made to the Oregon Department of Forestry (ODF) by Macias Gini & O'Connell LLP (MGO), an independent third-party contractor, that reviewed ODF's financial practices. The proposed amended administrative rules ensure the true costs of wildland suppression costs are accurately accounted for, tracked, reported, and paid for at the statewide level.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

<https://www.oregon.gov/odf/board/Documents/efcc/20240903-efcc-meeting-materials.pdf>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

All forest protection districts pursuant to ORS 477.225 are subject to these rules which are comprised of private and public landowners of forest and grazing land. These rules create improved transparency in suppression cost reporting, tracking and processing.

No impacts are expected to racial equity and there are no known adverse consequences regarding racial equity

FISCAL AND ECONOMIC IMPACT:

This proposal addresses the recommendations made to the Oregon Department of Forestry (ODF) by Macias Gini & O'Connell LLP (MGO), an independent third-party contractor, that reviewed ODF's financial practices. The proposed amended administrative rules ensure the true costs of wildland suppression costs are accurately accounted for, tracked, reported, and paid for at the statewide level.

Previously, on average about \$3.2 million of wildfire suppression costs were imbedded in readiness paid for by private and public landowners and GF at the local level. This proposal moves these costs to private and some public landowners and GF at the statewide level where the rest of these costs are already being accounted for. A portion of the costs that are GF are simply moving from being paid for through the biennial budget to emergency fire cost funding. The cost move does not increase any Oregon Forest Land Protection Fund revenue fees.

This change results in increased certainty in district readiness budgeting and expenditures at the local level and improves certainty in the Department of Forestry's fiscal year fire budgets.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

These amended administrative rules effect private and some public landowners within forest protective districts (as defined in ORS 477.225). There will be no change in effect on small businesses in any way. These amended rules provide improved transparency on wildfire suppression costs and create efficiencies in tracking and reporting.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Not applicable. Small business were not involved in development of rule as they are not impacted.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

629-165-0000, 629-165-0005, 629-165-0010, 629-165-0305

AMEND: 629-165-0000

RULE SUMMARY: The proposed modifications redefine Emergency Fire and Emergency Fire Costs and adds Statistical and Threat fire definitions.

CHANGES TO RULE:

629-165-0000

Definitions ¶¶

The definitions set forth in ORS 477.001 are made a part of this division by this reference; and the following definitions also apply:¶¶

- (1) "Administrator" means a staff member of the State Forestry Department designated by the State Forester to act as secretary of the committee and to carry out the provisions of ORS 477.440 to 477.460 in such manner as the committee shall direct.¶¶
- (2) "Committee" means the Emergency Fire Cost Committee established pursuant to ORS 477.440.¶¶
- (3) "District" means a forest protection district pursuant to ORS 477.225.¶¶
- (4) "Emergency fire" means a ~~fire~~ fire, statistical or threat due to the specific circumstances of fire.¶¶

~~(5) "Emergency fire suppression costs" means those fire, requires more suppression resources to control costs attributable to and extinguish the emergency fire.~~

~~(6) "Fiscal year" means the district can reasonably provide within the approved district budget, based on declared fire season resource levels, whether or not the fire occurs during a declared fire season (see also OAR 629-165-0005) period beginning July 1 of any year and ending June 30 of the next year.~~

~~(7) "Oregon Forest Land Protection Fund (OFLPF or the fund)" means that account established in the State Treasury as a trust fund for the purpose of equalizing emergency fire suppression costs and other listed purposes pursuant to ORS 477.750 to 477.775.~~

~~(5B) "Emergency fire suppression costs" means those fire suppression costs attributable to an emergency fire that exceed:~~

~~(a) The costs of the fire suppression response provided~~ Statistical Fire - A fire requiring suppression action by the Forester or cooperating agencies if it meets one of the following three conditions:

~~(a) The fire originates on paying forestlands within the forest protection district, including but not limited to:~~

~~(A) Fires occurring on Bureau of Land Management (BLM) lands identified in the ODF/BLM Western Oregon Operating Plan.~~

~~(B) Fires occurring on federal lands identified in a protection offset agreement for which the Forester has the suppression responsibility.~~

~~(b) The fire originates on land protected by another approved district budget as further described in OAR 629-165-0005; and agency or in another protection district, and spreads into the reporting protection district.~~

~~(b) An additional per fire or per day cost of suppression further defined in OAR 629-165-0010.~~

~~(6) "Fiscal year" means the period beginning July 1 of any year and ending June 30~~ The fire originates on land outside of the protection district but the fire spreads towards forestland or is determined by the Forester to be a threat to paying forestland, and:

~~(A) The fire is not within the boundaries of the next year another protection agency, or;~~

~~(7B) "Oregon Forest Land Protection Fund (OFLPF or the fund)" means that account established in the State Treasury as a trust fund for the purpose of equalizing emergency fire suppression costs~~ The fire is within another protection agency boundary; however, suppression is clearly needed to prevent the spread of fire to paying forestland. (This does not include suppression action provided by agreement or pre-planned dispatch.)

~~(9) Threat Fire - A fire originating on land outside of a protection district but spreads towards forestland and other listed purposes pursuant to ORS 477.750 to 477.775.~~

~~(8) "Regular fire suppression costs" means those fire suppression costs which are annually budgeted for and incurred by a forest protection district pursuant to ORS 477.205 to 477.281 determined by the Forester to be a threat to paying forestland. Threat fires require a district written request to the OFLPF administrator explaining the circumstances requiring fire suppression action and an explanation of costs and why the incident should be considered eligible for Emergency Fire Cost reimbursement.~~

Statutory/Other Authority: ORS 321, 477, 477.770
 Statutes/Other Implemented: ORS 183.335, 183.341, 477.440 - 477.460, 477.750 - 477.775

REPEAL: 629-165-0005

RULE SUMMARY: The proposed modifications eliminate this rule that included complex examples of emergency fires that increased complexity.

CHANGES TO RULE:

~~629-165-0005~~

~~Emergency Fires~~

~~As defined in OAR 629-165-0000 (4), an emergency fire is a fire that due to the specific circumstances of the fire, requires more suppression resources to control and extinguish the fire than the district can reasonably provide within the approved district budget based on declared fire season resource levels, whether or not the fire occurs during a declared fire season. The following are examples of emergency fires:¶¶~~

~~(1) A fire occurs in August, when the district is at full strength. The pre-planned dispatch for the fire at this time and place (as an example) specifies two engines, six persons and a district dozer. If these forces are inadequate to suppress the fire and additional forces must be hired, it becomes an emergency fire;¶¶~~

~~(2) If a fire in the same location as in section (1) occurs in February, when the readiness resources are substantially less, the district must still suppress the fire. Hired resources from cooperators will normally be used to supplement limited district resources. The fire becomes an emergency fire when hired and regular district resources exceed the resources equivalent to the fire season pre-planned dispatch of two engines, six persons and a dozer;¶¶~~

~~(3) An emergency fire situation may occur when there are multiple fires in a district, even though none of the fires individually have exceeded the planned dispatch level, if the total effort of all the fires exceeds the district's budgeted resource level. This situation most frequently occurs during and after widespread lightning events. Additional resources, hired to supplement regular forces in the described multiple fire situation, are emergency fire resources eligible for payment from the OFLPF.~~

~~Statutory/Other Authority: ORS 321, 477, 477.770~~

~~Statutes/Other Implemented: ORS 183.335, 183.341, 477.440-477.460, 477.750-477.775~~

AMEND: 629-165-0010

RULE SUMMARY: The proposed modifications delete reference to the eliminated ...0005 reference and updates the \$25,000 deductible language to create further financial incentive for keeping fires small.

CHANGES TO RULE:

629-165-0010

Additional Amount Not Considered Emergency Fire Suppression Costs ¶¶

(1) ~~Notwithstanding OAR 629-165-0005, it is a policy of the committee that a district is expected to pay an amount of fire suppression costs in addition to the pre-planned dispatch, before any costs are considered \$25,000 day/per fire if emergency fire suppression costs. This additional amount in most cases will be \$25,000 per day or per fire as costs exceed \$25,000 based on the following:~~¶¶

(a) If multiple fires occur on the same day within a district, only one additional amount of \$25,000 may be applied to the sum of the costs of all the fires that began on that day.¶¶

(b) If any individual fire or group of fires that began on the same day (or from the same lightning storm that continues into a second day, at the discretion of the committee) burns past midnight, or the suppression action continues for multiple days, only one additional amount of \$25,000 may be applied to the sum of the costs of those fires.¶¶

(c) If one fire or a group of fires begin on one day and suppression action continues for multiple days, and then a new fire or group of fires begin on a different day, an additional amount of \$25,000 may be applied to each day that new fires are ignited.¶¶

(2) The additional amount described in section (1) may be modified or waived by the committee if conditions so warrant. Conditions that may warrant modification or waiver include, but are not limited to:¶¶

(a) The unencumbered balance of the fund is determined to be in excess of the reserve base established in ORS 477.760.¶¶

(b) A district requesting waiver has over-expended the regular protection budget for the year in which the waiver request is made.¶¶

(3) If the additional amounts described in section (1) of this rule directly result in an increase in a district's annual budget greater than fifteen cents per acre on timberland or six cents on grazing land, the committee may waive that part in excess of these amounts. It is the committee's intent that the maximum effect of section (1) of this rule on a district budget will be limited to an additional fifteen cents per acre on timberland and six cents per acre on grazing land.

Statutory/Other Authority: ORS 321, 477, 477.770

Statutes/Other Implemented: ORS 183.335, 183.341, 477.440 - 477.460, 477.750 - 477.775

AMEND: 629-165-0305

RULE SUMMARY: The proposed modifications change a reference from a form readily available to approved policy.

CHANGES TO RULE:

629-165-0305

Qualifications for Payment ¶¶

(1) The administrator must pay only those emergency fire suppression costs as described in this rule, incurred by a district during the fiscal year, if the district has first expended for similar or other emergency fire suppression costs the deductible amount described in OAR 629-165-0100.¶¶

(2) When a fire originates in one fiscal year and continues burning in a subsequent fiscal year, all emergency fire suppression costs for that fire shall be included in the expenditures for the year in which the fire started.¶¶

(3) Emergency fire suppression costs eligible for payment by the OFLPF include, but are not limited to labor, services, transportation, supplies, reconditioning and rental equipment, and expenses incurred for the recovery of fire suppression costs.¶¶

(4) Emergency fire suppression costs, where applicable, are based on the wage rates and equipment rental rates approved by the State Forester.¶¶

(5) Notwithstanding section (3) of this rule, the committee may further limit qualifying emergency fire suppression costs, ~~by publishing its qualifications in a form readily available to the districts, prior to the beginning of the fiscal year in which expenses are incurred~~ through approved policy.

Statutory/Other Authority: ORS 321, 477, 477.770

Statutes/Other Implemented: ORS 183.335, 183.341, 477.440 - 477.460, 477.750 - 477.775