

Agenda Item No.:	Consent Item B
Work Plan:	Fire Protection
Topic:	Advancing Wildfire Prevention
Presentation Title:	Draft Administrative Rules for Advancement of Wildfire Prevention
Date of Presentation:	Sept 4, 2024
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SUMMARY

The purpose of this agenda item is to seek the Board of Forestry (Board) adoption of the proposed administrative rules regarding Division 43 Fire Prevention, Division 47 Enforcement Policy, and Division 25 State Park and Recreation Areas. This is a decision item.

BACKGROUND

The Protection Division is tasked with implementing the policy defined in ORS 47.005(1), “The preservation of the forests and the conservation of the forest resources through the prevention and suppression of forest fires hereby are declared to be the public policy of the State of Oregon.” This is completed through the appointments of District Fire Wardens, appointed by the State Forester, and additional fire wardens as needed, appointed by the District Fire Wardens.

477.365(1) Describes the duties and powers of wardens, of which is (a) “Take proper steps for the prevention and extinguishment of fires within the locations in which they exercise their functions.”

ORS 526.041 states, “the forester, under the general supervision of the State Board of Forestry, shall: (5) Take action authorized by law to prevent and extinguish forest, brush, and grass fires.”

OAR 629-047-0020 is the General Enforcement Policy for the Department and is described as, “The policy of the Oregon Department of Forestry to gain compliance with the fire prevention requirements of ORS Chapter 477 first through education and cooperation, and second through enforcement. Authorized fire wardens are to educate forest users on the need for the fire prevention requirements and to cooperate with the users in formulating solutions to compliance problems within the realm of these requirements.”

The Department’s measurement of success for the prevention of human caused wildfires is through key performance measure #12, which is the number of Oregon residents per human-caused wildfires. This metric measures the ability to maintain or reduce the number of human-caused wildfires as the population of Oregon increases.

CONTEXT

Human activities continue to be the leading cause of wildfires in Oregon, on average, accounting for over 70% of wildfire ignitions on ODF protected lands. The top three human activities that

cause fires are debris burning, equipment use/vehicles, and campfires. Debris burning is regulated through its own statute and requires a burn permit during fire season, but a permit may be required at any time of year if conditions warrant. Many other human activities are regulated under ORS 477.535, which vary in each forest protection district depending on the fire danger conditions at any given time.

Forest operations account for less than 5% of all human-caused fires and are regulated through separate wildfire protection statutes and associated administrative rules.

To meet the statutory requirements and the key performance measures, the Department focuses on public engagement activities for educating the public such as city and county events, fairs, the Smokey Bear Prevention program for elementary students, the Firewise USA program, social and traditional outlets, media, and collaborating with other partners such as Keep Oregon Green and the Department of the State Fire Marshall.

At the June 2024 Board Meeting, the Department presented administrative rule modifications to enhance the wildfire prevention standards on Department protected lands, with a recommendation to conduct public hearings on the proposed administrative rule modifications.

ANALYSIS

Public Restrictions

Debris burning continues to be the leading cause of human-caused wildfires each year in Oregon. Continued education and cooperation have been the primary tools to gain compliance and unfortunately, we continue to get the same outcome.

ODF is leading the way through the development of a statewide Smart APP and website that aims to reduce public confusion on outdoor debris burning, training, and allowability, with the intent to ultimately reduce the number of fires that result from debris burning.

Along with the increase in education and information efforts, the proposed rule modifications strengthening our enforcement rules will allow for better tracking of existing violators. Burning without a permit will result in an automatic fire prevention citation, along with all violations that occur during extreme fire danger.

The current definition of an “Authorized Fire Warden” limits the Department’s ability to fully perform wildfire investigation duties under the duties and powers of a fire warden, in certain instances. Most of the Department’s investigations are completed by our Class A and Class B Fire Wardens. These individuals are primarily Forest Officers and Stewardship Foresters who are also tasked with fire suppression, fire prevention, enforcement, and performing industrial fire inspections. By expanding the definition, it will allow additional trained staff, not classified as a Class A or B Fire Warden, to serve solely as Wildfire Investigators if they are willing and able to do so. This definition change would immediately result in an increase of wildfire investigation capacity within the Department, expediting the completing of open incidents.

The Department’s current basic enforcement policy only requires the tracking of violations that occur in each district and for 36 months. Therefore, an individual can be in violation of the same offense in different forest protection districts several times within a 36-month period, before ever receiving a fire prevention citation, unless offending within the same district twice over that

period. In addition, the current rule language restricts a fire prevention citation to be issued if an individual is in violation of the SAME violation of ORS 477. This limits the ability to determine if someone is a frequent violator in multiple Districts and limits the ability to gather data on the demographics of violators, which hinders the ability to determine corrective prevention messaging. It is recommended to include the addition of requiring an automatic fire prevention citation during times of violations that occur during extreme fire danger, which can limit the threat of wildfires during critical periods of heightened wildfire danger.

Currently, for a fire prevention citation to be issued for burning without a permit, there must be a need for suppression assistance from a fire agency and/or escape and cross a property line (unless it is not the first offense, which results to an automatic fire prevention citation). If one of these does not occur, then a fire prevention warning is issued. By removing these limitations, it will strengthen the Department's enforcement ability and encourage the public to check before they burn. It is recommended to remove these limitations.

Industrial Restrictions

ODF maintains a standing Industrial Fire Prevention Rules Review Committee, comprised of landowners, operators, affiliated organizations and ODF protection and field staff. This committee made recommendations for administrative rule updates in 2017. The committee continues to review industrial fire prevention rules annually, if not more often, to ensure rules are clear and meet the statutory effect.

Part of the 2017 administrative rule review provided additional clarification on water delivery to a fire start. The resulting change requiring water to be delivered within 10-minutes, however it did not consider eastern Oregon landscapes and the challenges of meeting the intent of the rule. The recommended additional language requiring the "combination of water supply, pump and hose or equipment capable of constructing fireline to effectively attack a fire start" will resolve the issue.

Current rule language requires a 3-hour fire watch to occur after power-driven machinery has shut down for the day on an industrial operation, unless waived or reduced in a written order if conditions warrant. As shown in attachment (7), between the years of 2013 to 2022 a total of 152 fires occurred when a fire watch was required. 85% of these fires were discovered within the first 60 minutes of ignition time, 3% were discovered between 1-2 hours after ignition time, 5% were discovered between 2-3 hours after ignition time, with the remaining 7% were discovered after 3 hours of ignition time. The data supports the fact that most fires that are a result of an operation occur either while the operation is active or within the first 60 minutes of the conclusion of operational activity for the day. The proposed changes still give the landowner the ability to require additional fire watch hours but limit the forester to only requiring up to two hours of fire watch. The additional proposed changes remove duplication in rule for the forester to have the ability to reduce or waive any requirement with a written order.

State Forests

The current rule language only restricts the use of fireworks and similar items within designated recreation areas and during a regulated use closure. The use of fireworks and other devices that have the potential to ignite wildfires continue to pose a threat throughout all of Oregon State Forests and not only during a regulated use closure or during fire season.

The recommended rule changes will strengthen the restrictions of the use of fireworks and similar items and will help prevent human caused fires in Oregon State Forests and reduce the threat of harming other visitors or forest resources.

PUBLIC COMMENT AND HEARING

The Hearing Officer’s Report, Attachment 1, summarizes the public hearing process. Based on questions the Department received pertaining to the proposed rules, clarifying edits were made to the final rule set.

RECOMMENDATION

The Board directs the Department to proceed with the promulgation of the proposed rules and rules changes in September 2024, as written in the draft rule language for Chapter 629, Division 25, 43, and 47.

NEXT STEPS

- Pending the Board of Forestry’s direction, the Department submits the rule package to the Secretary of State and Legislative Counsel for filing.

TIMELINE

June 6, 2024 – Department presents proposed rules to Board to seek permission to conduct public hearings.

June 15, 2024 – Notice of Proposed Rulemaking and Fiscal Impact Statement sent to Secretary of State.

July 2024 – Department conducts public hearings.

September 4, 2024 – Department submits final rule draft with public comments to the Board for final considerations and approval.

September 15, 2024 – Submit rule to Secretary of State and Legislative Counsel for filing.

January 1, 2025 – Rules effective.

ATTACHMENTS

- (1) Hearing Officer’s Report
- (2) Oregon Administrative Rule Division 43- Prevention
- (3) Oregon Administrative Rule Division 47- Enforcement
- (4) Oregon Administrative Rule Division 25- Forest Park and Recreation Areas

Date: August 2, 2024
To: Oregon Board of Forestry
From: Nicole Stapp, Forest Resources Division Policy Advisor
Subject: Public Comment on Wildfire Prevention, Enforcement, and Restriction Rulemaking

Background: At the June 6th, 2024 Board of Forestry meeting, the Board directed the State Forester to begin the rulemaking process to amend rules related to wildfire prevention, enforcement and restrictions which will apply statewide. Therefore, the Department filed the required Notice of Proposed Rulemaking and held a public comment period from July 1st to August 1st at 5 PM.

Hearing Information

Hearing Date & Time: July 30, 2024 @ 3:00 PM.
Hearing Location: Virtual Zoom Meeting
Hearing Officer: Nicole Stapp

The Public Hearing on the Wildfire Hazard Map & Procedural Rules was formally convened at 3:00 p.m. virtually. An informational session began at 3:02 p.m. along with a general introduction to the hearing process and instructions. At 3:12 p.m. the formal hearing began and at 3:15 p.m. the hearing concluded, and the meeting was adjourned.

Summary of Oral Comments

No public comments were received during the hearing.

Summary of Written Comments

No written comments were received in the manner indicated on the Notice of Proposed Rulemaking.

Division 43

Fire Prevention

629-043-0020

Water Supply and Equipment for Fire Suppression

(4) Within an operation area, except as required by ORS 477.615 or 477.660, only one water supply will be required to comply with sections (1), (2) or both of this rule, so long as access and communications are such that the combination of water supply, pump and hose can timely and effectively attack a fire start. Taking more than ten minutes to effectively attack a fire start may not be considered timely.

(5) Notwithstanding the requirements under section (4) of this rule, the deployment of equipment capable of constructing fire line to effectively attack a fire start until a water supply, pump and hose arrives is deemed compliant with the intent of section (4).

629-043-0030

Fire Watch Service

(1) Pursuant to ORS 477.665, during fire season inside or within one-eighth of one mile of a forest protection district, operators must comply with the following fire watch requirements. A person performing fire watch service must:

(a) Constantly observe the operation area during any breaks in operation activity and for a period of time designated by the forester, through a written order, not to exceed 2 hours after the power-driven machinery used by the operator has been shut down for the day.

Division 47

Enforcement Policy

629-047-0010

Definitions

(a) “Authorized Fire Warden” means a person who has been designated, a Fire Warden — Class A, Fire Warden — Class B, or a Fire Warden-Wildfire Investigator by the forester.

629-047-0040

Basic Enforcement Action

(1) When a violation is determined to exist, an authorized fire warden shall:

(a) Issue either a Fire Prevention Citation or a Fire Prevention Warning to the violator in accordance with ORS Chapter 477 and OAR 629-047-0040 to 629-047-0280.

(A) A Fire Prevention Citation shall be issued if:

(i) A violator has been issued a Fire Prevention Citation or a Fire Prevention Warning for any violation of ORS 477, in any district in the previous 60 months; or

(ii) The enforcement policy for the violation set forth in OAR 629, division 047 requires the issuance of a Fire Prevention Citation; or

(iii) The alleged violation occurred at a time and in an area that fire danger was declared to be Extreme.

629-047-0100

Enforcement Policy for ORS 477.515, OAR 629-043-0041 and 629-043-0043 — Burning Permits

A Fire Prevention Citation shall be issued for all violations.

629-025-0040

General Forest Recreation Rules and Public Conduct

(1) Sanitation.

(a) On all State Forest Land, a Person may not in any manner, unless otherwise authorized, cause any rubbish, garbage, refuse, organic or inorganic waste, diseased or dead animals, recreational vehicle sewage, or other offensive matter or any abandoned property or material to be placed or left on State Forest Land. A Person may not:

(A) Dispose of any cans, bottles and garbage except in designated places or receptacles;

(B) Drain sewage or petroleum products or dump refuse or waste other than grey water except in places or receptacles provided for that purpose;

(C) Dispose of any household, commercial or industrial refuse or waste brought as such from private or municipal property, including but not limited to automobiles, household appliances and furnishings;

(D) Pollute or contaminate water supplies or water used for human consumption;

(E) Use a refuse container or disposal facility for any purpose other than for which it is supplied; or

(F) Remove items from containers designated for recyclables, garbage, sewage or waste without authorization from the Forester.

(b) A Person may not wash any clothing, dishware, cookware, or other materials in any lake, stream, river, well pump or other body of water on State Forest Land.

(c) A Person may not deposit human waste within 100 feet of any campsite, trail, or body of water. Human waste must be disposed of by burying to a depth of a least six inches.

(d) Where toilet or sewage facilities are provided, a Person may not dispose of human waste except in those facilities.

(2) Occupancy and Use.

(a) On State Forest Land, a Person may not:

(A) Camp longer than 14 days out of any 35-day period; or

(B) Camp more than a total of 42 days during a consecutive 12 month period; or

(C) Camp longer than the period of time specifically authorized or established by the Forester in writing; or

(D) Camp within 25 horizontal feet of the high water mark of any body of water or in other areas posted closed to Camping by the Department; or

(E) Leave personal property unattended longer than 48 hours on State Forest Land or 24 hours in a Designated Recreation Area; or

(F) Leave personal property or possessions overnight in a Day Use Area without prior written permission from the Forester. Unattended personal property is considered Camping for the purposes of determining the length of stay at a given site. Personal property left unattended longer than 48 hours on State Forest Land or more than 24 hours in a Designated Recreation Area without permission of the Forester may be removed by the Department.

(b) The Forester may establish camping stay limits that are shorter in order to address public safety concerns, or protect and conserve forest resources.

(3) Property and Resources. On all State Forest Land, unless under contract with the Forester, a Person may not:

(a) Deface, disturb, remove or destroy any public property, structures, or any scientific, cultural, archaeological or historic resource, natural object or area;

(b) Deface, remove or destroy plants or their parts, soil, rocks, or minerals, or cave resources.

(4) Animals.

(a) A horse or other animal may not be hitched or confined in a manner that may cause damage to any tree, shrub, improvement, or structure.

(b) The Forester may undertake any measures deemed necessary (including removal of the animal from State Forest Land or requiring the animal be kept under physical control) to protect forest resources or improvements and to prevent interference by the animal with the safety, comfort, and well-being of others, including Department of Forestry employees and its contractors.

(c) A Person may not bring an animal other than a dog or cat - or in designated areas, llamas, alpacas, mules, horses, donkeys, or goats - onto State Forest Land.

(5) Construction of Trails and Shelters. On State Forest Land, a Person may not modify, construct, or cause to be constructed any trail, shelter, building, or other facility or improvement without written permission of the Forester.

(6) Firewood Collection.

(a) A Person Camping may collect and possess up to one quarter of a cord of firewood for their personal use while Camping on State Forest Land except where otherwise prohibited in these Division rules.

(b) A Person may not remove from State Forest Land firewood which has been collected for use while Camping on State Forest Land without a valid firewood permit except as allowed by ORS 164.813.

(c) Firewood must be collected only from dead and down material that is 12 inches or less in diameter at its largest point. No standing trees, living or dead, may be felled for conversion into firewood.

(7) Campfires.

(a) Fires must be confined to camp stoves or fire grates or other fireproof structures provided by the Department for such purposes. Such structures must be less than four feet in diameter or four feet in length.

(b) All flammable material must be cleared for a distance of five feet around and 10 feet above any fire grate or other fireproof structure used to contain a campfire.

(c) A fire may not be left unattended and every fire must be extinguished before its user leaves the site.

(8) Traffic Rules.

(a) When operating a Vehicle on State Forest Lands, a Person may not violate the basic speed rule or exceed posted speed limits, willfully endanger Persons or property, or act in a reckless, careless, or negligent manner.

(b) A Person may not obstruct or hinder the flow of traffic on a Forest Road.

(c) A Person may not operate a Vehicle on State Forest Road in violation of Oregon traffic laws.

(d) A Person may not block, obstruct or interfere with vehicular or pedestrian traffic on a Forest Road, parking area, trail, walkway, pathway or common area. The Department may tow a vehicle at the owner's expense if the Vehicle is left unattended for more than 24 hours or is parked in a fire lane, roadway, campsite, entry way, driveway, closed area or other location in a manner that threatens the resource, impedes operations of a Designated Recreation Area, public safety, forest practices as defined under ORS 527.620, or any combination thereof.

(9) Target Shooting.

(a) A Person may not:

(A) Place targets on live trees or shoot live trees for any purpose;

(B) Shoot across or along any road or trail;

(C) Shoot carelessly, recklessly, or without regard for the safety of any Person, or in a manner that endangers, or is likely to endanger, any Person or property;

(D) Shoot glass of any kind;

(E) Shoot appliances, furniture, or other materials determined by Department personnel or a law enforcement officer to be garbage;

(F) Shoot targets other than non-exploding targets commercially manufactured for the specific purpose of target shooting, except for paper targets privately manufactured by the Person or persons engaging in target shooting; or

(G) Engage in target shooting or other shooting related activity at times between one half-hour after sunset until one half-hour before sunrise.

(H) Shoot into a stream, waterfall, pond, lake, or other body of water.

(b) A Person engaged in target shooting must:

(A) Remove from State Forest Land all shell casings, targets, and other debris resulting from the target shooting activity; and

(B) Use an appropriately sized, non-flammable, natural backstop or a commercially-manufactured bullet recovery system of sufficient size to capture all projectiles.

(10) Concessions. A Person may not:

(a) Operate a concession on State Forest Land, either fixed or mobile, solicit, sell or offer for sale, peddle, hawk, or vend any goods, wares, merchandise, food, liquids, or services without written permission of the Forester;

(b) Advertise any goods or services by any means whatsoever.

(11) General Conduct. A Person may not:

(a) Use a metal detector or similar device on State Forest Land without written permission of the Forester;

(b) Obstruct, harass or interfere with any Department personnel or volunteer, or any peace officer in the performance of their duties;

(c) Enter or occupy any building, facility or portion of a Designated Recreation Area or Designated Trail that has been closed to public access;

(d) Occupy or interfere with access to a structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility;

(e) Engage in fighting or promoting, instigating or encouraging fighting or similar violent conduct which may threaten the physical well-being of a Person;

(f) Engage in activities or conduct which creates a public nuisance or hazard; or

(g) Engage in public indecency as defined in ORS 163.465.

(h) Excessive noise: A Person may not operate or use any noise-producing machine, vehicle device, or instrument, including, but not limited to: audio-visual equipment, televisions, radios or stereos, amplifiers, or chainsaws in such a manner that is disturbing to another Person.

(i) Discharge or cause to be discharged any firecrackers, explosives, torpedoes, rockets, fireworks, sky lanterns, or other similar product, which could ignite a fire, without written permission of the Forester.

(12) On State Forest Land, a Person must use hay, straw, and other livestock forage that is certified by The Oregon Department of Agriculture to be weed-free according to North American Weed Management Association standards. A database of certified growers in Oregon may be obtained through The Oregon Department of Agriculture Weed Free Forage Program.

Statutory/Other Authority: ORS 530.050

Statutes/Other Implemented: ORS 530.010 - 530.040

629-025-0050

Designated Recreation Areas

(1) State Forest Land designated by the Forester as "Designated Recreation Areas" may include, but are not limited to, Campgrounds, Camping Areas, Day Use Areas, trailheads, staging areas, and boat launch sites. Maps showing the Designated Recreation Areas must be kept on file at the Forester's office and the applicable District office, and must be available for public inspection during normal business hours.

(2) General Forest Recreation Rules as outlined in OAR 629-025-0040 apply to Designated Recreation Areas. In addition to those rules, the following rules apply:

(3) Occupancy and Use:

(a) At areas where Camping is permitted a Person may not camp longer than 14 days out of any 28 day period at a Designated Recreation Area.

(b) A Person must be 18 years of age or older to reserve and register for campsites in Designated Recreation Areas.

(4) Firewood: A Person may not collect firewood within the boundaries of any Designated Recreation Area.

(5) Firearms, Weapons, and Explosives: Within a Designated Recreation Area a Person may not:

(a) Hunt, pursue, trap, kill, injure, molest, or disturb the habitat of any bird or animal without first obtaining permission from the Forester;

(b) Discharge any firearm, pellet gun, bow and arrow, slingshot or other weapon capable of injuring any Person, bird, or animal; or

(6) Forest Resources and Improvements: A Person may not mutilate, deface, damage, or remove any table, bench, building, sign, marker, monument, fence, barrier, fountain, faucet, traffic recorder, or other structure or facility of any kind in a Designated Recreation Area.

(7) Parking: Automobiles, trailers, or other Motor Vehicles must be parked only in designated parking areas.

(8) Animals:

(a) Any dog, cat, horse, or other animal brought into or kept on State Forest Land must be kept under control at all times.

(b) An animal owner is responsible for the disposal of the animal's waste within Designated Recreation Areas.

(9) Offensive Behavior: A Person may not use abusive, threatening, boisterous, vile, obscene, or indecent language or gestures, or engage in demonstrations, disturbances, or riotous behavior in any Designated Recreation Area.

(10) Excessive Noise: A Person may not operate or use any noise-producing machine, vehicle device, or instrument in such a manner that is disturbing to another Person.

Statutory/Other Authority: ORS 530.050

Statutes/Other Implemented: ORS 530.010 - 530.040