

**Applicable Statutes and Rules:
Minimize the Adverse Financial Effects
of Regulation, Hybrid Poplar**

Oregon Department of Forestry
November 7, 2008



"STEWARDSHIP IN FORESTRY"

FPA STATUTES

Definitions

527.620 Definitions for ORS 527.610 to 527.770. As used in ORS 527.610 to 527.770, 527.990 and 527.992:

(6) "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.

(7) "Forestland" means land that 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.

(9) "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.

(10) "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.

(12) "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.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

FPA Policy Statement

527.630 Policy; rules. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.

Clearcut Size Limitations (Type 3 Harvest Units)

ORS 527.740 Harvest type 3 limitations; exceptions. (1) No harvest type 3 unit within a single ownership shall exceed 120 acres in size, except as provided in ORS 527.750.

(2) No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single ownership if the combined acreage of the harvest type 3 areas subject to regulation under the Oregon Forest Practices Act would exceed 120 acres in size, unless the prior harvest type 3 unit has been reforested as required by all applicable regulations and:

- (a) At least the minimum tree stocking required by rule is established per acre; and either
- (b) The resultant stand of trees has attained an average height of at least four feet; or
- (c) At least 48 months have elapsed since the stand was created and it is "free to grow" as

defined by the State Board of Forestry.

(3) Any acreage attributable to riparian areas or to resource sites listed in ORS 527.710 (3) that is located within a harvest unit shall not be counted in calculating the size of a harvest type 3 unit.

(4) The provisions of this section shall not apply when the land is being converted to managed conifers or managed hardwoods from brush or hardwood stands that contain less than 80 square feet of basal area per acre of trees 11 inches DBH or greater or when the harvest type 3 results from disasters such as fire, insect infestation, disease, windstorm or other occurrence that the State Forester determines was beyond the landowner's control and has substantially impaired productivity or safety on the unit or jeopardizes nearby forestland. The prior approval of the State Forester shall be required for such conversion or harvest type 3 operations that exceed 120 acres in size.

(5) The provisions of this section do not apply to any operation where the operator demonstrates to the State Forester that:

(a) The trees are subject to a cutting right created by written contract prior to October 1, 1990, which provides that the trees must be paid for regardless of whether the trees are cut, or subject to a cutting right created by reservation in a deed prior to October 1, 1990; and

(b) If the provisions of this section were applied, the cutting right would expire before all the trees subject to the cutting right could reasonably be harvested. [1991 c.919 §4; 1995 s.s. c.3 §39b; 1996 c.9 §4]

527.750 Exceeding harvest type 3 size limitation; conditions; rules. (1) Notwithstanding the requirements of ORS 527.740, a harvest type 3 unit within a single ownership that exceeds 120 acres but does not exceed 240 acres may be approved by the State Forester if all the requirements of this section and any additional requirements established by the State Board of Forestry are met. Proposed harvest type 3 units that are within 300 feet of the perimeter of a prior harvest type 3 unit, and that would result in a total combined harvest type 3 area under a single ownership exceeding 120 acres but not exceeding 240 acres, may be approved by the State Forester if the additional requirements are met for the combined area. No harvest type 3 unit within a single ownership shall exceed 240 contiguous acres. No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single ownership if the combined acreage of the areas subject to regulation under the Oregon Forest Practices Act would exceed 240 acres, unless:

- (a) The prior harvest type 3 unit has been reforested by all applicable regulations;
- (b) At least the minimum tree stocking required by rule is established per acre; and
- (c)(A) The resultant stand of trees has attained an average height of at least four feet; or
- (B) At least 48 months have elapsed since the stand was created and it is “free to grow” as defined by the board.

(2) The requirements of this section are in addition to all other requirements of the Oregon Forest Practices Act and the rules adopted thereunder. The requirements of this section shall be applied in lieu of such other requirements only to the extent the requirements of this section are more stringent. Nothing in this section shall apply to operations conducted under ORS 527.740 (4) or (5).

(3) The board shall require that a plan for an alternate practice be submitted prior to approval of a harvest type 3 operation under this section. The board may establish by rule any additional standards applying to operations under this section.

(4) The State Forester shall approve the harvest type 3 operation if the proposed operation would provide better overall results in meeting the requirements and objectives of the Oregon Forest Practices Act.

(5) The board shall specify by rule the information to be submitted for approval of harvest type 3 operations under this section, including evidence of past satisfactory compliance with the Oregon Forest Practices Act. [1991 c.919 §7; 1995 s.s. c.3 §39d; 1996 c.9 §6; 2003 c.740 §5; 2005 c.22 §378]

Scenic Highways

527.755 Scenic highways; visually sensitive corridors; operations restricted; exemptions. (1) The following highways are hereby designated as scenic highways for purposes of the Oregon Forest Practices Act:

- (a) Interstate Highways 5, 84, 205, 405; and
- (b) State Highways 6, 7, 20, 18/22, 26, 27, 30, 31, 34, 35, 36, 38, 42, 58, 62, 66, 82, 97, 101, 126, 138, 140, 199, 230, 234 and 395.

(2) The purpose of designating scenic highways is to provide a limited mechanism that maintains roadside trees for the enjoyment of the motoring public while traveling through forestland, consistent with ORS 527.630, safety and other practical considerations.

(3) The State Board of Forestry, in consultation with the Department of Transportation, shall establish procedures and regulations as necessary to implement the requirements of subsections (4), (5) and (6) of this section, consistent with subsection (2) of this section, including provisions for alternate plans. Alternate plans that modify or waive the requirements of subsection (4), (5) or (6) of this section may be approved when, in the judgment of the State Forester, circumstances exist such as:

(a) Modification or waiver is necessary to maintain motorist safety, protect improvements such as dwellings and bridges, or protect forest health;

(b) Modification or waiver will provide additional scenic benefits to the motoring public, such as exposure of distant scenic vistas;

(c) Trees that are otherwise required to be retained will not be visible to motorists;

(d) The operation involves a change of land use that is inconsistent with maintaining a visually sensitive corridor; or

(e) The retention of timber in a visually sensitive corridor will result in severe economic hardship for the owner because all or nearly all of the owner's property is within the visually sensitive corridor.

(4)(a) For harvest operations within a visually sensitive corridor, at least 50 healthy trees of at least 11 inches DBH, or that measure at least 40 square feet in basal area, shall be temporarily left on each acre.

(b) Overstory trees initially required to be left under paragraph (a) of this subsection may be removed when the reproduction understory reaches an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforestation, by rule.

(c) Alternatively, when the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, has attained an average height of at least 10 feet and has at least the minimum number of stems per acre of free to grow seedlings or saplings required by the board for reforestation, by rule, or at least 40 square feet of basal area per acre, no trees are required to be left in the visually sensitive corridor, or trees initially required to be left under paragraph (a) of this subsection may be removed. When harvests within the visually sensitive corridor are carried out under this paragraph, the adjacent stand, extending from 150 feet from the outermost edge of the roadway to 300 feet from the outermost edge of the roadway, shall not be reduced below the minimum number of stems per acre of free to grow seedlings or saplings at least 10 feet tall required by the board for reforestation, by rule, or below 40 square feet of basal area per acre until the adjacent visually sensitive corridor has been reforested as required under subsection (6) of this section and the stand has attained an average height of at least 10 feet and has at least the minimum number of stems per acre.

(5) Harvest areas within a visually sensitive corridor shall be cleared of major harvest debris within 30 days of the completion of the harvest, or within 60 days of the cessation of active harvesting activity on the site, regardless of whether the harvest operation is complete.

(6) Notwithstanding the time limits established in ORS 527.745 (1)(a), when harvesting within a visually sensitive corridor results in a harvest type 1 or harvest type 3, reforestation shall

be completed by the end of the first planting season after the completion of the harvest. All other provisions of ORS 527.745 shall also apply to harvest type 1 or harvest type 3 within visually sensitive corridors.

(7) Landowners and operators shall not be liable for injury or damage caused by trees left within the visually sensitive corridor for purposes of fulfilling the requirements of this section, when carried out in compliance with the provisions of the Oregon Forest Practices Act.

(8) The following are exempt from this section:

- (a) Harvest on single ownerships less than five acres in size;
- (b) Harvest within an urban growth boundary, as defined in ORS 195.060; and
- (c) Harvest within zones designated for rural residential development pursuant to an exception adopted to the statewide land use planning goals under ORS 197.732. [1991 c.919 §17; 1993 c.306 §1; 1995 s.s. c.3 §39e; 1996 c.9 §7; 1997 c.249 §179; 2007 c.383 §1]

Leave Trees and Downed Wood

527.676 Leaving snags and downed logs in harvest type 2 or 3 units; green trees to be left near certain streams. (1) In order to contribute to the overall maintenance of wildlife, nutrient cycling, moisture retention and other resource benefits of retained wood, when a harvest type 2 unit exceeding 25 acres or harvest type 3 unit exceeding 25 acres occurs the operator shall leave on average, per acre harvested, at least:

(a) Two snags or two green trees at least 30 feet in height and 11 inches DBH or larger, at least 50 percent of which are conifers; and

(b) Two downed logs or downed trees, at least 50 percent of which are conifers, that each comprise at least 10 cubic feet gross volume and are no less than six feet long. One downed conifer or suitable hardwood log of at least 20 cubic feet gross volume and no less than six feet long may count as two logs.

(2) In meeting the requirements of this section, the operator has the sole discretion to determine the location and distribution of wildlife leave trees, including the ability to leave snags, trees and logs in one or more clusters rather than distributed throughout the unit and, if specifically permitted by the State Board of Forestry by rule, to meet the wildlife leave tree requirements by counting snags, trees or logs otherwise required to be left in riparian management areas or resource sites listed in ORS 527.710, subject to:

(a) Safety and fire hazard regulations;

(b) Rules or other requirements relating to wildlife leave trees established by the State Board of Forestry or the State Forester; and

(c) All other requirements pertaining to forest operations.

(3) In meeting the requirements of this section, the State Forester:

(a) Shall consult with the operator concerning the selection of wildlife leave trees when the State Forester believes that retaining certain trees or groups of trees would provide increased benefits to wildlife.

(b) May approve alternate plans submitted by the operator to meet the provisions of this section, including but not limited to waiving:

(A) The requirement that at least 50 percent of wildlife leave trees be conifers, upon a showing that a site is being intensively managed for hardwood production; and

(B) In whole or in part, the requirements of this section for one operation if an alternate plan provides for an equal or greater number of wildlife leave trees in another harvest type 2 or harvest type 3 operation, that the State Forester determines would achieve better overall benefits for wildlife.

(c) May require, for operations adjacent to a fish-bearing or domestic use stream, in addition to trees otherwise required to be left in riparian management areas, up to 25 percent of the green trees required to be retained under this section to be left in or adjacent to the riparian management area of the stream.

(d) May require by rule, for operations adjacent to a small, nonfish-bearing stream subject to rapidly moving landslides as defined in ORS 195.250, that available green trees and snags be left in or adjacent to the stream. The operator must leave available green trees and snags under this paragraph within an area that is 50 feet on each side of the stream and no more than 500 feet upstream from a riparian management area of a fish-bearing stream.

(4) When a harvest type 2 or harvest type 3 unit occurs adjacent to a prior harvest type 2 or harvest type 3 unit, resulting in a combined total contiguous acreage of harvest type 2 or harvest type 3 under single ownership exceeding 25 acres, the wildlife leave tree and downed log requirements of subsection (1) of this section apply to the combined total contiguous acreage. [1996 c.9 §9 (enacted in lieu of 527.675); 2001 c.340 §1]

FPA RULES

629-605-0175

Harvest Type 3 Units Exceeding 120 Acres

(1) The purpose of this rule is to describe the process that operators shall follow to gain approval of a plan for an alternate practice for a harvest type 3 unit that is between 120 and 240 acres in size.

(2) Operators must obtain written approval of a plan for an alternate practice from the State Forester before 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.

(3) For each unit on which a harvest type 3 is proposed to exceed the contiguous 120 acre limit, the plan for an alternate practice shall:

(a) Describe the planned harvest including, but not limited to, the elements of a written plan listed in OAR 629-605-0170;

(b) Include a detailed map of the planned harvest that shows the specific unit boundaries; and

(c) Demonstrate that the larger harvest size will result in increased protection of, or reduced adverse impact on, any or all of the resources and values protected by the Oregon Forest Practices Act. For the purposes of this rule, resources and values includes:

(A) Air quality, water resources, soil productivity, and fish and wildlife resources as described in ORS 527.710(2);

- (B) The resource sites needing protection as listed in ORS 527.710(3);
- (C) Scenic resources within visually sensitive corridors as provided in ORS 527.755; and
- (D) Public safety related to landslides.

(4) The State Forester shall review the operator's compliance with the Oregon Forest Practices Act and deny approval of the plan for an alternate practice submitted under this rule when the operator has:

- (a) Received citations for violating a forest practice rule or statute within the past year; or
- (b) Failed to comply with an order to cease further violation, an order to repair damage, or an order to correct an unsatisfactory condition under ORS 527.680(2).

(5) Plans for an alternate practice submitted under this rule shall not be subject to appeal under ORS 527.700(3).

(6) Single harvest type 3 units or combinations of harvest type 3 units may not exceed 240 contiguous acres on a single ownership, except when the units have been reforested as described in ORS 527.750(1)(a), (b) and (c).

(7) The harvest type 3 acreage limitations do not apply for conversions or disasters described in ORS 527.740(4) when the operator obtains approval from the State Forester of a plan for an alternate practice before conducting operations.

629-610-0020

Reforestation Stocking Standards

(1) The landowner shall increase tree stocking to a level that meets the applicable productivity-based stocking standards described in sections (4), (5) and (6) of this rule within the time limits established by OAR 629-610-0040 whenever post-operation free to grow tree stocking in all or a portion of the operation area is below the applicable stocking standards and:

- (a) Trees or snags of acceptable species are harvested; or
- (b) Free to grow tree stocking is reduced as a result of the operation.

(2) Reforestation is not required on those portions of the operation area:

- (a) Where adequate free to grow tree stocking remains after the completion of the operation;
- (b) That are not disturbed by operation activities; or
- (c) On soils or sites not meeting the minimum productivity requirements of OAR 629-610-0010.

(3) The State Forester shall approve a plan for an alternate practice to waive or modify the reforestation requirements following a stand improvement operation such as a precommercial

thinning, commercial thinning, overstory removal, or other partial cut harvest if the State Forester determines that the residual stand conditions after such an operation will result in enhanced long-term tree growth and there is a high probability the purpose of the reforestation rules will be achieved.

(4) For Cubic Foot Site Class I, II and III forestlands (capable of producing at least 120 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

- (a) 200 free to grow seedlings per acre; or
- (b) 120 free to grow saplings and poles per acre; or
- (c) 80 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or
- (d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(5) For Cubic Foot Site Class IV and V forestlands (capable of producing between 50 and 119 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

- (a) 125 free to grow seedlings per acre; or
- (b) 75 free to grow saplings and poles per acre; or
- (c) 50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or
- (d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(6) For Cubic Foot Site Class VI forestlands (capable of producing between 20 and 49 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

- (a) 100 or more free to grow seedlings per acre; or
- (b) 60 free to grow saplings and poles per acre; or
- (c) 40 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or
- (d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(7) In both even-aged and uneven-aged stands, the stocking of residual seedlings, saplings and poles, and larger trees shall be weighted to determine stand stocking and potential reforestation requirements. For this purpose, seedlings, saplings and poles, and trees 11-inches DBH and larger are proportionally equivalent in the following ratios: 100 free to grow seedlings are equivalent to 60 free to grow saplings and poles, which are equivalent to 40 square feet of basal area of free to grow trees 11-inches DBH and larger.

(8) Live conifer trees 11-inches DBH and larger left standing in harvested areas to meet the green tree and snag retention requirements of Section 5, Chapter 919, Oregon Laws 1991 shall be counted towards meeting the tree stocking standards if the trees are free to grow.

(9) For the purposes of determining compliance with the tree stocking requirements of the reforestation rules, tree stocking in riparian management areas within an operation area will be considered separately from stocking in the rest of the operation area.

(10) Landowners may submit plans for alternate practices that do not conform to the reforestation stocking levels established under these rules. A plan for alternate practices may be approved if the State Forester determines that there is a high probability that the purpose of the reforestation rules will be achieved, or if the plan carries out an authorized research project conducted by a public agency or educational institution.

