



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 10**

**OREGON OPERATIONS OFFICE**

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September 30, 2022

Lisa Appel ([lisa.m.appel@odf.oregon.gov](mailto:lisa.m.appel@odf.oregon.gov))  
Oregon Department of Forestry  
2600 State St Bldg. D  
Salem, OR 97310

RE: Notice of Proposed Rulemaking: Forest Practices Act rule revisions directed by the enrollment of Senate Bills 1501 and 1502.

Submitted to: [sb1501.rulemaking@oregon.gov](mailto:sb1501.rulemaking@oregon.gov) (as directed in notice of proposed rulemaking).

Dear Ms. Appel

The Environmental Protection Agency, Pacific Northwest Region 10, appreciates the opportunity to provide comments on the Forest Practices Act rule revisions directed by the enrollment of Senate Bills 1501 and 1502. The Oregon Department of Forestry specifically requested 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.

The EPA commends the work of ODF, the Governor's Office, State Legislators and all the participants of the Private Forest Accord (PFA) for developing forest practices that support the harvest of timber while reducing impacts to natural resources and protected species. We understand the goal of the PFA stakeholders is for these forest practices to provide the basis of a Habitat Conservation Plan that will achieve the issuance criteria of an Incidental Take Permit under Section 10 of United States Endangered Species Act for the Covered Species.

While meeting Oregon's water quality standards may not be an explicit goal of the PFA stakeholders, the EPA believes the forest practice rules play an important role in protecting water quality and helping Oregon meet its obligations under the Clean Water Act.

Section 629-635-0100 paragraph (5) states "the overall goal of the water protection rules is to provide resource protection during operations adjacent to and within streams, lakes, wetlands and riparian management areas so that, while continuing to grow and harvest trees, the protection goals for fish, amphibians, other wildlife, and water quality are met." The protection goal for water quality (as prescribed in ORS 527.765) is to ensure through the described forest practices that, to the maximum extent practicable, non-point source discharges of pollutants resulting from forest operations do not impair the achievement and maintenance of the water quality standards.

Oregon Revised Statutes ORS 527.765 state “The State Board of Forestry shall establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. Such best management practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state.”

While the proposed rules are clearly more protective of water quality than the existing rules, the PFA stakeholders did not explicitly assess whether the rules meet the protection goal for water quality as prescribed in ORS 527.765. The EPA recommends that the Board and ODF prioritize an assessment of the effectiveness of the rules in meeting water quality standards. This would help the Board meet its duty under ORS 527.765 to ensure nonpoint source pollutants from forest operations do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission.

Without an assessment of effectiveness, there is uncertainty about the adequacy of some of the buffer prescriptions’ ability to meet water quality standards. We understand the December 9, 2021, MOU between ODF and ODEQ is intended to ensure any shortfalls in meeting water quality standards are address through implementation of Total Maximum Daily Loads. We also understand the MOU requires coordination between ODF and ODEQ in conducting sufficiency reviews of whether the FPA rules are meeting desired goals for protecting water quality.

Another option ODF should consider is to revise section 629-603-0100 paragraph (8) to include an assessment of the rule’s effectiveness in meeting water quality standards among the priorities in the initial phase of the adaptive management program. The EPA recommends ODF pursue this option and, if necessary, that the Board provide direction to do so under section 629-603-0200(3)(b) of the rule.

In addition to the above option for achieving the rule's substantive goals as requested by ODF, we suggest an alternative option for Section 629-643-0300 that we encourage ODF to consider along with our additional attached comments. We thank ODF and the Board for considering the EPA’s comments. Please contact me at [brown.dan@epa.gov](mailto:brown.dan@epa.gov) or 503-326-6832 for any questions related to these comments.

Sincerely,

Daniel J. Brown  
Natural Resource Advisor - Forest Sector  
EPA Region 10, Pacific Northwest

Attachment: EPA Comments on Forest Practices Act rule revisions directed by the enrollment of Senate Bills 1501 and 1502

CC: Jenifer Wigal, ODEQ; Eugene Foster, ODEQ; Josh Seeds, ODEQ

Attachment: EPA comments on Forest Practices Act rule revisions directed by the enrollment of Senate Bills 1501 and 1502

- 1) The "biological goals and objectives" play an important role in the implementation of the rules and it is not clear what they are. The definition in Division 600 states "Biological goals and objectives" means the biological goals and objectives as set by the department for an approved habitat conservation plan." The rules should clearly state the biological goals and objectives and/or incorporate a reference where they can be readily found.
- 2) Section 629-625-0910 establishes that the department will consult with the EPA while leading a cooperative effort to identify abandoned roads. Any such cooperative effort should also include consultation with the Oregon Department of Environmental Quality. Paragraph (4) of this section specifies requirements for landowners following the identification of high-risk abandoned road segments. ODF should consider clarifying whether these landowner requirements apply to small landowners.
- 3) The water protection rules propose riparian buffers that are more protective of water quality than the current rules. At the same time, the rules eliminate the monitoring and evaluation provision of section 629-635-0110. While the new adaptive management program outlined in Division 603 will ensure some monitoring and evaluation of the rules, a focus on maintaining and improving water quality should remain to increase the level of confidence that the rules will maintain and improve the condition of the riparian vegetation and waters of the state over time.
- 4) Section 629-630-900: The "Slopes model" is defined as "the department's computer-generated model to identify designated debris flow traversal areas, designated sediment source areas, and trigger sources." Familiarity with the slopes model is limited. The 2022 Private Forest Accord Report describes Slopes Modeling in section 3.3.6 as using the models described in TerrainWorks (2022). The rule should be more specific in defining the "slopes model," providing references justifying the choice of the model and its application and whether it is based on the same methodology in TerrainWorks (2022). The PFA Report notes that most of the models used to identify landscape features have been published in peer-reviewed scientific journals (Miller and Burnett, 2007; Miller and Burnett, 2008; Burnett and Miller, 2007). However, some components of the model to identify Designated Sediment Source Areas based on the probability of sediment delivery to Type F or Type SSBT channels are new and have not been peer reviewed. Consequently, the Authors agree that the approach to identifying Designated Sediment Source Areas should undergo a scientific review before application. ODF should ensure all components of the "slopes model" have undergone scientific peer review/evaluation.
- 5) Section 629-630-0910 regarding Designated Sediment Source Areas and Slope Retention Areas, addresses a small proportion of potential landslide areas. The identification of slope retention areas is first limited to looking in "debris flow traversal area sub-basins," or those basins that contain debris flow traversal areas that have a probability of traversal in the upper 20 percent. Looking only in those "debris flow traversal area sub-basins," the slopes model is used to identify "designated sediment source areas," as hillslope areas

greater than 0.25 acres in size that provide the top 33 percent of the landslide-derived sediment to Type F or Type SSBT streams. Finally, among that population of “designated sediment source areas,” fifty percent are identified as “slope retention areas” where harvest of trees is not allowed. The EPA understands debris flows providing large wood and sediment are consistent with maintaining or improving aquatic habitat. However, debris flows without large wood reduces the benefits to streams. Therefore, this approach of providing limited slope retention areas should be monitored and evaluated as a priority of the adaptive management program. This is particularly true given that, as noted above, PFA authors indicated the approach to identify Designated Sediment Source Areas should undergo a scientific review before application.

- 6) Section 629-635-0200 paragraph (9) regarding fish use appears obsolete and could be deleted since the provisions for classifying fish use have been updated with the new rule language in paragraph (11).
- 7) Section 629-635-0200 paragraph (16) (c) states that “Any stream with a drainage area less than 200 acres shall be assigned to the small stream category regardless of the flow index calculated in (15)(a)” This paragraph carries over from the existing forest practice rules and seems at odds with the newly negotiated protections for Type N that vary based on stream size. Given the straightforward methodology for calculating average annual stream flow in paragraph (16)(a) of this section, there appears to be no rationale, scientific or otherwise, to support this default stream size for drainage areas of less than 200 acres. The EPA recommends striking this paragraph and relying on the methodology agreed to in the PFA as captured in paragraph 16(a).
- 8) Section 629-643-0130 Standard Practice Requirements for Small Type N Streams includes provisions for applying and R-ELZ and ELZ on Small Type N streams above the tree retention zones without providing a reference to the R-ELZ and ELZ width requirements. We recommend including a reference in this section that points the reader back to section 629-630-0800(8) where the R-ELZ and ELZ width requirements are described. We note the same language describing the R-ELZ and ELZ widths in section 629-630-0800(8) is included in section 629-630-700(6). An alternative could be to include the description of R-ELZ and ELZ and width requirements in the definitions of these terms in section 629-600-0100. It’s also worth noting that we are not aware of any assessment of the proportional length of small Type N streams covered by a 75-foot riparian buffer vs an R-ELZ nor the effectiveness of an R-ELZ prescription in meeting water quality standards. As noted in our comment letter, we recommend an assessment of the effectiveness of the rules in meeting water quality standards be conducted as part of the adaptive management program.
- 9) Section 629-643-0300 Alternative Vegetation Retention Prescriptions is at odds with the PFA Report and legislative direction in SB 1501. The short-term fixes ODF is proposing to existing provisions for Alternative Vegetation Retention Prescriptions (i.e., section 629-642-0600) do not account for significant advances in habitat and water quality protections provided by the PFA agreement that legislators directed ODF to adopt. It is apparent this discrepancy cannot be addressed by simply adjusting the basal area targets

in tables 5 and 6 while retaining outdated and inconsistent no-cut areas of 20 feet from the highwater mark. Furthermore, the alternative vegetation retention prescription for hardwood dominated sites appears to be in direct conflict with the PFA report which offers the following example of a restoration treatment, “removing conifers to ensure diverse hardwood habitats.” The PFA authors explicitly state “the current hardwood conversion option would not be used unless ODF makes a determination that the conversion would substantially improve the likelihood and timeline for reaching “desired future condition,” as it may hereafter be defined by the Board.” Both SB1501 and the PFA Report intend the Board and ODF to invest adequate time, adopting rules in November 2025, to define desired future conditions and alternative prescriptions that incorporate the increased habitat and water quality protections provided by the PFA. Therefore, EPA suggests ODF withdraw this section of the rule. To the extent landowners need alternative prescriptions for what the PFA report refers to as “activities genuinely undertaken for ecologically restorative purposes,” those alternatives could be provided as a plan for an alternate practice under the Site Specific Vegetation Retention Prescriptions for Streams and Riparian Management Areas under the provisions of section 629-643-0400. Alternatively, if ODF retains provisions for alternative prescription 1, wider no-cut buffers should be developed consistent with the new PFA riparian buffers and ODF should ensure basal area targets in tables 5 and 6 are adequate, particularly for the Eastern Cascade and Blue Mountain Geographic Areas, which appear comparatively low. If ODF retains provisions for alternative prescription 2, references for concluding that hardwood dominated sites cannot maintain fish, wildlife and water quality resources should be provided along with a demonstration that the alternative practices provide better protection of water quality resources than the standard practice vegetation retention prescriptions agreed to in the PFA.

10) Section 629-643-0400 Site Specific Vegetation Retention Prescriptions for Streams and Riparian Management Areas is carried over from the existing rules (section 629-642-0700) with minimum changes. Importantly this section requires the State Forester to review and approve any plans for alternate practice. While the factors to be used in evaluating the plans are substantively the same as the existing rules, the base-line level of protection provided by the new vegetation retention requirements are substantially better than the existing rules. Therefore, foresters will need to be trained to evaluate the ability of site specific plans for alternative practices to provide for the improvement to functions and values of streams and their riparian management areas that the increased vegetation retention goals provide. Since this can be a drastically different comparison compared to the existing riparian protection rules, we recommend ODF develop technical guidance for implementation of this section of the rules.

11) General comments:

- Language in Sections 629-643-0100 thru 629-643-0125 require operators to submit plans to the State Forester but it’s not clear whether those plans need to be approved prior to proceeding with them.
- There are over ten instances where ODF will be providing technical guidance for implementation of the rules. It would be helpful for ODF to share a general timeline for completing the technical guidance, including any opportunities for public review and comment.