

Chapter 527

1991 EDITION

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527.050 [Amended by 1953 c.195 §2; 1959 c.83 §1, repealed by 1971 c.316 §15]

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527.150 [Repealed by 1971 c.316 §15]

527.160 [Amended by 1953 c.262 §2; 1957 c.33 §8; 1959 c.28 §8; 1961 c.221 §1; 1965 c.253 §148; repealed by 1971 c.316 §15]

527.170 [Amended by 1953 c.262 §2; 1961 c.221 §2; repealed by 1971 c.316 §15]

527.180 [Repealed by 1971 c.316 §15]

527.190 [Amended by 1953 c.262 §2; 1955 c.100 §6; 1961 c.221 §3; repealed by 1971 c.316 §15]

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527.220 [Amended by 1965 c.253 §149; repealed by 1971 c.316 §15]

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527.240 [Amended by 1971 c.316 §13; renumbered 527.700]

PROHIBITED ACTS

527.260 Injuring forest tree of another or extracting pitch without, or in violation of, a permit prohibited; permit to extract pitch. (1) No person shall willfully and unlawfully;

(a) Bore or cut any forest tree belonging to another for the purpose of extracting pitch;

(b) Cut, injure or deface any such tree for the purpose of taking any part of it; or

(c) Injure or destroy any such tree.

(2) The State Forester, with the consent of the owner of the land, shall issue permits for the extraction of pitch from forest trees. The terms of the permits shall clearly describe the area to which the extraction shall

be confined and state the precautions necessary, in the judgment of the State Forester, to be taken by the permittee, so that the extraction will not result in an increased fire hazard to life and adjoining property.

(3) No person shall:

(a) Bore or cut any forest tree for the purpose of extracting pitch without having first obtained a permit to do so; or

(b) Willfully or negligently fail to comply with the terms of the permit.

527.280 [1953 c.375 §24; 1957 c.654 §2; 1961 c.297 §8; 1965 c.253 §83; renumbered 477.440]

527.282 [1953 c.375 §25; 1961 c.297 §9; renumbered 477.445]

527.284 [1953 c.375 §26; 1957 c.309 §12; repealed by 1961 c.297 §12]

527.286 [1953 c.357 §27; 1957 c.309 §13; subsection (2) of 1959 Replacement Part enacted as 1957 c.216 §1; repealed by 1961 c.297 §12]

527.288 [1953 c.375 §28; 1961 c.297 §10; renumbered 477.450]

527.290 [1953 c.375 §29, renumbered 477.455]

527.292 [1953 c.375 §30; 1961 c.297 §11; renumbered 477.460]

527.294 [1961 c.689 §10; repealed by 1965 c.253 §153]

INTEGRATED PEST MANAGEMENT

527.310 Definitions for ORS 527.310 to 527.370. As used in and for the purposes of ORS 527.310 to 527.370:

(1) "Control" means reduction of resource losses or pest occurrences to an acceptable level by direct and immediate application of effective prevention, suppression or eradication strategies, or any combination thereof.

(2) "Eradication" means the implementation of strategies through host or pest destruction or removal, or by the use of pesticides, to contain or completely eliminate exotic pests in a specific area, or both.

(3) "Exotic" means any pest that has been accidentally or deliberately introduced into an area where it does not naturally occur.

(4) "Forestland" means any nonfederal land which has enough timber or forest growths, standing or down, to constitute, in the judgment of the State Board of Forestry, forest pests of a nature to be harmful, detrimental and injurious to the management objectives for the site.

(5) "Integrated pest management" means a coordinated decision-making process that utilizes the most appropriate of all reasonably available means, tactics or strategies blended together to minimize the impact of forest pests in an environmentally and economically sound manner to meet site specific management objectives.

(6) "Native" means any pest that is indigenous or naturally occurring in a particular area.

(7) "Owner" means any person owning nonfederal forestlands or timber as shown on the latest records of the tax collector of the county in which the forestlands or timber is situated. Where timber is owned entirely separate and apart from the land whereon it grows or is situated, "owner" means any person owning such timber as shown on the latest records of the tax collector of the county in which the timber is situated.

(8) "Pest" means any forest insect or disease which causes or may cause damage that prevents or interferes with management objectives in a specific area.

(9) "Pesticide" has the meaning given that term in ORS 634.006.

(10) "Prevention" means the implementation of strategies designed to minimize the impact of a pest before an outbreak occurs, including but not limited to, release or enhancement of natural enemies and silvicultural activities to increase tree vigor or otherwise reduce tree susceptibility to pest damage. "Prevention" requires the incorporation of integrated pest management into overall forest resource management in order to create ecological conditions unfavorable for the reproduction or survival of pest organisms.

(11) "Strategies" may include, but are not limited to, physical and biological methods and application of pesticides.

(12) "Suppression" means the implementation of intervention strategies designed to reduce native pest populations to acceptable levels necessary to meet forest resource management objectives in a specified area. [Amended by 1967 c.87 §1; 1991 c.686 §1]

527.315 Process components. The integrated pest management process shall consist of:

(1) Defining the management unit or area of concern.

(2) Defining site specific management objectives that are compatible with the ecosystem of concern and that are achievable within the economic, logistical and regulatory constraints that apply.

(3) Establishing or maintaining routine detection and monitoring systems of major pests and their damage through ground and aerial surveys.

(4) Evaluating forest and pest conditions on specified site.

(5) Establishing pest population thresholds or acceptable levels of damage, or both, but not taking action until those levels are

exceeded or where historical documentation has verified a reoccurring problem.

(6) Developing and evaluating potential strategies.

(7) Considering the following in selecting a strategy:

(a) Effectiveness;

(b) Operational feasibility;

(c) Cost-effectiveness;

(d) Ecological soundness;

(e) Environmental impact; and

(f) Site specific resource management objectives.

(8) Implementing the strategy selected.

(9) Timing actions for maximum effectiveness by monitoring pest, host development and weather.

(10) Monitoring and evaluating results of activities and strategies.

(11) Keeping current, accurate records.

(12) Structuring the program so that it can be adjusted to meet changes or varying situations. [1991 c.686 §3]

527.320 [Repealed by 1991 c.686 §11]

527.321 Implementation of process by State Forester. The State Forester shall implement the integrated pest management process as provided in ORS 527.315 on department-managed lands and encourage the process on other nonfederal lands by setting examples on department lands and through training workshops, demonstration areas and onsite technical advice. [1991 c.686 §4]

527.330 [Repealed by 1991 c.686 §11]

527.335 Investigations by State Forester concerning pests; access to privately owned lands. (1) The State Forester shall conduct surveys and evaluations on nonfederal forestlands to determine the presence, extent, trend and impact of native and exotic pests, as well as overall forest health monitoring. In so doing, the forester or representatives of the forester may go upon privately owned lands with permission of the respective owners thereof, and should any owner withhold such permission and the forester believes an emergency exists, the forester may petition that circuit court of this state having jurisdiction over the lands involved for a warrant authorizing the forester or representatives of the forester to go upon such lands. Upon petition being made the court shall forthwith summarily determine whether or not such emergency exists, and if determining such emergency exists, immediately issue a warrant authorizing the forester or representatives of the forester to go upon such lands for the purposes of this section.

(2) The State Forester may cooperate with the United States or agencies thereof, other agencies of the state, county or municipal governments, agencies of other states or other public or private organizations or individuals and may accept such funds, equipment, supplies or services from cooperators and others as it may deem appropriate for the purposes of subsections (1) and (4) of this section.

(3) The State Forester is authorized to enter into contracts for selected services or accept moneys from private and public sources for the purposes stated in subsections (1) and (4) of this section; provided, however, that such moneys shall be placed in the State Forestry Department Account and shall be continuously appropriated for such purposes.

(4) The State Forester shall also provide onsite technical advice regarding insect and disease management to nonfederal land owners who request such services. [1961 c.212 §1; 1991 c.686 §7]

527.340 [Amended by 1955 c.116 §1; 1967 c.87 §2; repealed by 1991 c.686 §11]

527.341 Forestland owners to implement strategies to carry out resource management objectives. Every owner of forestlands or timber shall implement prevention and suppression strategies to meet their own forest resource management objectives. [1991 c.686 §5]

527.346 State Forester to assist landowners unable to take action against pest. (1) Whenever the State Forester determines, using criteria approved by the State Board of Forestry, that owners are unable to take action against a pest that is threatening Oregon's economic, social and environmental well-being, the State Forester shall, using funds appropriated by the Legislative Assembly, declare a control district and implement the appropriate strategy.

(2) The State Forester shall, within 15 days after receiving state funds, notify in writing all owners of forestlands within the control district of the declared control project. The notice shall be served by return receipt mail addressed to the last-known address of the owner. In addition, there shall be published an article describing the nature of the control district, including a legal description of the area and vicinity map, at least once a week for two consecutive weeks in a newspaper having a general circulation in the area in which the control district is situated. Other methods of notification may be used in the future as new technology becomes available. [1991 c.686 §6]

527.350 [Amended by 1967 c.87 §3; repealed by 1991 c.686 §11]

527.360 Costs of eradication; state to contribute; unpaid costs to be charge against timber; collection of charge. Upon completion of any work authorized and performed under the provisions of ORS 527.346, the State Forester shall prepare a certified statement of the expenses necessarily incurred in performing the work. The state shall assist in the payment of control costs from funds available for that purpose. The balance of the expenses, after deducting the sum of such amounts as may be contributed by the state, the Federal Government or any other agencies or persons to defray control costs, shall constitute a charge against the forestlands or timber involved and shall be collected in the same manner as forest patrol assessments under the provisions of ORS chapter 477. [Amended by 1967 c.87 §4; 1991 c.686 §8]

527.370 Disposition of receipts. All moneys collected under ORS 527.335 and 527.346, together with such moneys as have been and may be appropriated by the legislature for the purposes of ORS 527.310 to 527.370, and with such moneys as may be contributed by the Federal Government or any agencies or persons, shall be placed into the State Forestry Department Account. [Amended by 1953 c.15 §3; 1955 c.116 §2; 1957 c.83 §11; 1967 c.34 §5; 1991 c.686 §9]

527.380 [Repealed by 1991 c.686 §11]

527.390 [Amended by 1957 c.83 §12; repealed by 1967 c.34 §8]

527.400 [Repealed by 1991 c.686 §11]

527.410 [Repealed by 1957 c.83 §26]

527.420 [Repealed by 1957 c.83 §26]

527.430 [Repealed by 1957 c.83 §26]

527.510 [Repealed by 1991 c.686 §11]

527.520 [Repealed by 1975 c.771 §33]

527.530 [Repealed by 1975 c.302 §15]

527.540 [Repealed by 1991 c.686 §11]

OREGON FOREST PRACTICES ACT

(Generally)

527.610 Short title. ORS 527.610 to 527.770, 527.990 (1) and 527.992 are known as the Oregon Forest Practices Act. [Formerly 527.010; 1991 c.634 §2]

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

(1) "Board" means the State Board of Forestry.

(2) "Clear-cut" means any harvest unit in western Oregon that leaves fewer than 50 trees per acre that are well-distributed over the unit and that measure at least 11 inches at DBH or that measure less than 40 square feet of basal area per acre. "Clear-cut" means any harvest unit in eastern Oregon that leaves fewer than 15 trees per acre that

are well-distributed over the unit and that measure at least 10 inches at DBH. For purposes of this subsection, no tree shall be counted unless the top one-third of the bole of the tree supports a green, live crown. For purposes of computing basal area, trees larger than 20 inches shall be considered 20-inch trees.

(3) "Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions.

(4) "DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one-half feet above the ground, on the uphill side.

(5) "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.

(6) "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; and
- (e) Disposal of slash.

(7) "Forest tree species" does not include:

(a) Christmas trees on land used solely for the production of cultured Christmas trees as defined in ORS 215.203 (3).

(b) Hardwood timber, including but not limited to hybrid cottonwood, which is:

(A) Grown or growing on land which has been prepared by intensive cultivation methods and which 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 within 10 years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, insect and disease control, cultivation and irrigation.

(8) "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.

(9) "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.

(10) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

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

(12) "Suitable hardwood seedlings" means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.

(13) "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.

(14) "Visually sensitive corridor" means forestland located within the area extending 150 feet measured on the slope from the outermost right of way boundary of a scenic highway referred to in ORS 527.755.

(15) "Written plan" means a plan submitted by an operator, for written approval by the State Forester, which describes how the operation will be conducted, including the means to protect resource sites described in ORS 527.710 (3)(a) and information required by ORS 527.745 and 527.750, if applicable. [1971 c.316 §3; 1987 c.919 §9; 1991 c.547 §1; 1991 c.634 §3; 1991 c.919 §1]

527.630 Policy. (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 assure 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 that assures the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations

and in planning and carrying out operations on forestlands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770 and 527.990 and 527.992, it is declared to be in the public interest to vest in the board exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment.

(4) The board may adopt and enforce rules addressing scenic considerations only in accordance with ORS 527.755. [1971 c.316 §4; 1987 c.919 §10; 1991 c.634 §4; 1991 c. 919 §10]

527.640 Forest regions. The board shall establish a number of forest regions, but not less than three, necessary to achieve the purposes described in ORS 527.630. [1971 c.316 §6]

527.650 Forest practice committees; members; qualifications; appointment; terms. (1) The board shall establish a forest practice committee for each forest region established pursuant to ORS 527.640. Each such committee shall consist of nine members, a majority of whom must reside in the region. Members of each committee shall be qualified by education or experience in natural resource management and not less than two-thirds of the members of each committee shall be private landowners, private timber owners or authorized representatives of such landowners or timber owners who regularly engage in operations.

(2) Members of forest practice committees shall be appointed by the board for three-year terms. Appointments under this subsection shall be made by the board within 60 days after July 1, 1972. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term. Each such committee shall select a chairman from among its members. A staff member of the State Forestry Department shall be designated by the State Forester to serve as the secretary, without voting power, for each such committee.

(3) Notwithstanding the terms of the committee members specified by subsection (2) of this section, of the members first appointed to each such committee:

(a) Three shall serve for a term of one year.

(b) Three shall serve for a term of two years.

(c) Three shall serve for a term of three years. [1971 c.316 §7]

527.660 Committees to review rules. Each forest practice committee shall review

proposed forest practice rules in order to assist the board in developing rules appropriate to the forest conditions within its region. Committee recommendations are advisory only and the committees need not be consulted prior to the adoption of any forest practice rule. [1971 c.316 §8; 1987 c.919 §11]

527.665 Notice of reforestation requirements to be given in forestland transfers; effect of failure to notify; damages. (1) In any transaction for the conveyance of an ownership interest in forestland, the transferor must provide to the transferee, prior to the date of execution of the conveyance, written notice of any reforestation requirements imposed upon the land pursuant to the Oregon Forest Practices Act.

(2) The failure of the transferor to comply with subsection (1) of this section does not invalidate an instrument of conveyance executed in the transaction. However, for any such failure the transferee may bring against the transferor an appropriate action to recover the costs of complying with the reforestation requirements. If the transferee prevails in any such action, the transferee is entitled to costs and disbursements and reasonable attorney fees at trial and on appeal. [1983 c.759 §4]

527.670 Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan. (1) The board shall designate the types of operations for which notice shall be required under this section.

(2) The board shall determine by rule what types of operations require a written plan to be approved by the State Forester.

(3)(a) The board's determination under subsection (2) of this section shall require a written plan for operations:

(A) Within one hundred feet of a Class 1 stream, unless the board, by rule, provides that a written plan is not required because there is no reasonable likelihood that such operations would damage a resource described in ORS 527.710 (2), within the riparian management area;

(B) Within three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a);

(C) On lands determined by the State Forester to be within high risk sites, unless the board, by rule, provides that a written plan is not required because there is no reasonable likelihood that such operations would damage a resource described in ORS 527.710 (2); or

(D) On lands to be clear-cut in excess of 120 acres pursuant to ORS 527.750.

(b) Plans submitted under subparagraphs (C) and (D) of paragraph (a) of this subsection are not subject to appeal under ORS 527.700 (3).

(c) The board shall adopt rules and standards for which a written plan may be required for final clear-cut harvest operations of any stand of an average age less than 40 years. The written plan for such an operation must address the environmental consequences of the harvest and the economic costs and benefits.

(4) The distances set forth in subparagraphs (A) and (B) of paragraph (a) of subsection (3) of this section are solely for the purpose of defining an area within which a hearing may be requested under ORS 527.700 and not the area to be protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

(5) For the purpose of determining the distances set forth in subparagraphs (A) and (B) of paragraph (a) of subsection (3) of this section "site" means the specific resource site and not any additional buffer area.

(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall send a copy of notices involving chemical applications to persons within 10 miles of the chemical application who hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested that notification in writing. The board shall adopt rules specifying the information to be contained in the notice. All information filed with the State Forester pertaining to chemical applications shall be public record. The State Forester shall also send to the operator, the timber owner and the landowner a copy of the rules applicable to the proposed operation.

(7) An operator, timber owner or landowner, whichever filed the original notification, shall notify the State Forester of any subsequent change in the information contained in the notification.

(8) Within three working days of receipt of a notice or a written plan filed under

subsection (6) or (7) of this section, the State Forester shall send a copy of the notice or written plan to any person who requested of the State Forester in writing that the person be sent copies of notice and written plan and who has paid any applicable fee established by the State Forester for such service. The State Forester may establish a fee for sending copies of notices and written plans under this subsection not to exceed the actual and reasonable costs. In addition, the State Forester shall send a copy of the notification to the Department of Revenue and the county assessor for the county in which the operation is located, at times and in a manner determined through written cooperative agreement by the parties involved.

(9) Persons may submit written comments pertaining to the operation to the State Forester within 14 calendar days of the date the notice or written plan was filed with the State Forester under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the State Forester may waive any waiting period for operations not requiring a written plan under subsection (3) of this section, except those operations involving aerial application of chemicals.

(10) Whenever an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subparagraph (A) or (B) of paragraph (a) of subsection (3) of this section, the State Forester shall not approve any such written plan until 14 calendar days following the date the written plan was filed with the State Forester. An operation may commence upon approval of the written plan.

(11)(a) The State Forester shall issue a decision on a written plan within five working days after the end of the 14-day period described in subsection (10) of this section.

(b) If the State Forester fails to issue a decision within five working days after the end of the 14-day period described in subsection (10) of this section, the written plan shall be deemed approved and the operation may be commenced.

(12) When the operation is required to have a written plan under subparagraph (A) or (B) of paragraph (a) of subsection (3) of this section and comments have been timely filed under subsection (9) of this section pertaining to the operation requiring a written plan, the State Forester shall:

(a) Send a copy of the approved written plan to persons who submitted timely written comments under subsection (9) of this section pertaining to the operation; and

(b) Send to the operator, timber owner and landowner a copy of the approved writ-

ten plan and copies of all timely comments submitted under subsection (9) of this section. [1971 c.316 §9; 1987 c.919 §12; 1991 c.634 §5; 1991 c.919 §11]

527.680 Violation by operator; citation; order to cease violation; order to repair damage; temporary order where violation continuing; service on operator. (1) Whenever the State Forester determines that an operator has committed a violation under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation issued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as the result of such violation.

(2) Whenever a citation is served pursuant to subsection (1) of this section, the State Forester:

(a) Shall issue and serve upon the landowner or operator or authorized representative an order directing that the landowner or operator cease further violation. If the order is served upon an operator, the State Forester shall cause a copy of such order to be mailed or delivered to the timber owner and landowner; and

(b) May issue and serve an order upon the landowner or operator and shall cause a copy of such order to be mailed or delivered to the timber owner and landowner, directing the landowner or operator, where practical and economically feasible, to make reasonable efforts to repair the damage or correct the unsatisfactory condition specified in the citation within a period specified by the State Forester.

(3) In the event the order issued under paragraph (a) of subsection (2) of this section has not been complied with, and the violation specified in such order is resulting in continuing damage, the State Forester by temporary order, may direct the landowner or operator to cease any further activity in that portion of the operation that is resulting in such damage. Such temporary order shall be in effect until the date of the expiration of the period as prescribed in subsection (4) of this section or until the date that the violation ceases, whichever date occurs first.

(4) A temporary order issued under subsection (3) of this section shall be served upon the landowner or operator or author-

ized representative, and the State Forester shall cause a copy of such temporary order to be mailed or delivered to the operator, timber owner and landowner. If requested by the operator, timber owner or landowner, the board, following the appeal procedures of ORS 527.700, must hold a hearing on the temporary order within five working days after the receipt by the board of the request. A temporary order issued and served pursuant to subsection (3) of this section shall remain in effect not more than five working days after such hearing unless the order is sooner affirmed, modified or revoked by the board. [1971 c.316 §10; 1983 c.759 §1]

527.683 Notice of violation. (1) No civil penalty prescribed in ORS 527.992 shall be imposed until the person incurring the penalty has received notice in writing from the State Forester specifying the violation. Such notice is in addition to the notice required in ORS 183.090.

(2) The citation issued pursuant to ORS 527.680 (1) and the order issued pursuant to ORS 527.680 (2)(b) shall each constitute the notice required by subsection (1) of this section. [1987 c.919 §25; 1991 c.734 §48]

Note: 527.683 to 527.687 were enacted into law by the Legislative Assembly and added to and made a part of chapter 527 but were not added to or made a part of any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

527.685 Civil penalty considerations.

(1) The board shall by rule establish the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed \$5,000 per violation.

(2) In imposing a penalty authorized by this section, the State Forester may consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to the Oregon Forest Practices Act.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The size and type of ownership of the operation.

(g) Any relevant rule of the board.

(h) The violator's cooperativeness and efforts to correct the violation.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the board determines to be proper and consistent with the public benefit. Upon the request of the person incurring the penalty, the board shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated.

(4) The board, by rule, may delegate to the State Forester upon such conditions as deemed necessary, all or part of the authority of the board provided in subsection (3) of this section to assess, remit or mitigate civil penalties. [1987 c.919 §26]

Note: See note under 527.683.

527.687 Civil penalty procedure. (1) Subject to the notice provisions of ORS 527.683, any civil penalty under ORS 527.992 shall be imposed in the manner provided in ORS 183.090.

(2) In no case shall a hearing requested under ORS 183.090 be held less than 45 days from the date of service of the notice of penalty to allow the party to prepare testimony. The hearing shall be held not more than 90 days following issuance of the notice unless all parties agree on an extension.

(3) The board, by rule, may delegate to a hearings officer appointed by the State Forester, upon such conditions as deemed necessary, all or part of the authority to conduct hearings required by subsection (2) of this section.

(4) All civil penalties recovered under ORS 527.610 to 527.770, 527.990 and 527.992 shall be paid to the General Fund. [1987 c.919 §27; 1991 c.634 §6; 1991 c.734 §121]

Note: See note under 523.683.

527.690 Failure to comply with order to reforest or repair damage; estimate of cost of repair; notification; board may order repair completed; cost of repair as lien upon operator, timber owner or landowner. (1) In the event an order issued pursuant to ORS 527.680 (2)(b) directs the repair of damage or correction of an unsatisfactory condition, including compliance with reforestation requirements, and if the operator or landowner does not comply with the order within the period specified in such order and the order has not been appealed to the board within 30 days, the State Forester based upon a determination by the forester of what action will best carry out the purposes of ORS 527.630 shall:

(a) Maintain an action in the Circuit Court for Marion County or the circuit court for the county in which the violation occurred for an order requiring the landowner or operator to comply with the terms of the

forester's order or to restrain violations thereof; or

(b) Estimate the cost to repair the damage or the unsatisfactory condition as directed by the order and shall notify the operator, timber owner and landowner in writing of the amount of the estimate. Upon agreement of the operator, timber owner or the landowner to pay the cost, the State Forester may proceed to repair the damage or the unsatisfactory condition. In the event approval of the expenditure is not obtained within 30 days after notification to the operator, timber owner and landowner under this section, the State Forester shall present to the board the alleged violation, the estimate of the expenditure to repair the damage or unsatisfactory condition and the justification for the expenditure.

(2) The board shall review the matter presented to it pursuant to subsection (1) of this section and shall determine whether to authorize the State Forester to proceed to repair the damage or correct the unsatisfactory condition and the amount authorized for expenditure. The board shall afford the operator, timber owner or landowner the opportunity to appear before the board for the purpose of presenting facts pertaining to the alleged violation and the proposed expenditure.

(3) If the board authorizes the State Forester to repair the damage or correct the unsatisfactory condition, the State Forester shall proceed, either with forces of the State Forester or by contract, to repair the damage or correct the unsatisfactory condition. The State Forester shall keep a complete account of direct expenditures incurred, and upon completion of the work, shall prepare an itemized statement thereof and shall deliver a copy to the operator, timber owner and landowner. In no event shall the expenditures exceed the amount authorized by subsection (2) of this section. An itemized statement of the direct expenditures incurred by the State Forester, certified by the State Forester, shall be accepted as prima facie evidence of such expenditures in any proceeding authorized by this section. If the State Forester's action to repair the damage or correct the unsatisfactory condition arose from an operation for which a bond, cash deposit or other security was required under ORS 527.760, the State Forester shall retain any applicable portion of a cash deposit and the surety on the bond or holder of the other security deposit shall pay the amount of the bond or other security deposit to the State Forester upon demand. If the amount specified in the demand is not paid within 30 days following the demand, the Attorney General, upon request by the State Forester, shall in-

stitute proceedings to recover the amount specified in the demand.

(4) The expenditures in cases covered by this section, including cases where the amount collected on a bond, deposit or other security was not sufficient to cover authorized expenditures, shall constitute a general lien upon the real and personal property of the operator, timber owner and landowner within the county in which the damage occurred. A written notice of the lien, containing a statement of the demand, the description of the property upon which the expenditures were made and the name of the parties against whom the lien attaches, shall be certified under oath by the State Forester and filed in the office of the county clerk of the county or counties in which the expenditures were made within six months after the date of delivery of the itemized statement referred to in subsection (3) of this section, and may be foreclosed in the manner provided in ORS chapter 88.

(5) All moneys recovered under this section shall be paid into the State Forestry Department Account. [1971 c.316 §11; 1981 c.757 §10; 1983 c.28 §1; 1991 c.919 §12]

527.700 Appeals from orders of State Forester; hearings procedure; stay of operation. (1) Any operator, timber owner or landowner affected by any finding or order of the State Forester issued under ORS 527.610 to 527.770 and 527.992 may request a hearing within 30 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for the hearing unless all parties agree to an extension of the time limit.

(2) The board may delegate to a hearings officer the authority to hear and issue proposed or final orders on matters under this section. Hearings provided under this section shall be conducted as contested case hearings under ORS 183.413 to 183.470. The board may establish such rules as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders under this section shall be provided in ORS 183.482.

(3) Any person adversely affected or aggrieved by an operation described in subsection (4) of this section may file a written request to the board for a hearing if the person submitted written comments pertaining to the operation within the time limits established under ORS 527.670 (9).

(4) A request for hearing may be filed under subsection (3) of this section only if a written plan was required pursuant to ORS 527.670 (3).

(5) A request for hearing filed under subsection (3) of this section shall be filed within 14 calendar days of the date the written plan was approved. Copies of the complete request shall be served, within the 14-day period, on the operator, timber owner and landowner. The request shall include:

(a) A copy of the written plan on which the person is requesting a hearing;

(b) A copy of the comments pertaining to the operation that were filed by the person requesting the hearing;

(c) A statement that shows the person is adversely affected or aggrieved by the operation and has an interest which is addressed by the Oregon Forest Practices Act or rules adopted thereunder; and

(d) A statement of facts that establishes that the operation is of the type described in ORS 527.670 (3).

(6) If the board finds that the person making the request meets the requirement of paragraph (c) of subsection (5) of this section, the board shall set the matter for hearing within 14 calendar days after receipt of the request for hearing. The operator, timber owner and landowner shall be allowable parties to the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules of the board. A final order shall be issued rescinding, affirming or modifying the written plan within 28 days after the request for hearing was filed, unless all parties agree to an extension of the time limit.

(7) The board may award reasonable attorney fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well-founded, or made a request primarily for a purpose other than to secure appropriate action by the board.

(8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this section, a stay of the operation subject to the hearing may be granted upon a showing that:

(A) Commencement or continuation of the operation will constitute a violation of the rules of the board;

(B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

(C) The requirements of subsections (3), (4) and (5) of this section are met.

(b) If the board grants the stay, it shall require the person requesting the stay to give an undertaking which may be in the

amount of the damages potentially resulting from the stay, but in any event shall not be less than \$15,000. The board may impose other reasonable requirements pertaining to the grant of the stay. The board shall limit the effect of the stay to the specific geographic area or elements of the operation for which the person requesting the stay has demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

(c) If the board affirms the written plan pertaining to the operation for which the stay was granted, the board shall award reasonable attorney fees and actual damages in favor of each of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

(9) If the board disapproves or changes the written plan as submitted and approved by the State Forester pertaining to any operation, the board shall award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

(10) As used in this section, "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character. [Formerly 527.240; 1983 c.28 §2; 1987 c.919 §13]

527.710 Duties and powers of board; rules to protect resources; inventory for resource protection; consultation with other agencies required. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the board shall adopt, in accordance with applicable provisions of ORS 183.310 to 183.550, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall assure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

(a) Air quality;

(b) Water resources, including but not limited to sources of domestic drinking water;

(c) Soil productivity; and

(d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are

adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS 468B.005 to 468B.110, 468B.300, 468B.335 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat improvement tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060, 316.084, 501.005 to 501.540 and ORS chapters 496, 498, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.475 to 358.565, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill, natural heritage conservation and natural heritage conservation tax incentive programs administered by the State Land Board and the Division of State Lands under ORS 196.800 to 196.900, 273.553 to 273.591, 307.550, 307.560 and 541.700 to 541.990;

(g) Federal Safe Drinking Water Act programs administered by the Health Division under ORS 448.273 to 448.990;

(h) Natural heritage conservation programs administered by the Natural Heritage Advisory Council under ORS 273.553 to 273.591, 307.550 and 307.560;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308.740 to 308.790;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) of this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630. The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If based upon the analysis required in section 15 (2)(f), chapter 919, Oregon Laws 1991, and as the results become available, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall include a process for determining areas where adverse impacts from cumulative effects have occurred or are likely to occur,

and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) The board shall adopt rules that provide the State Forester with authority to condition the approval of plans required under ORS 527.670 (2) and (3) when the State Forester makes a determination that there is evidence of a potential threat to resources protected under this section by controlling method, timing and extent of harvest when the forester determines such limitations are necessary to achieve the objectives of ORS 527.630. [1971 c.316 §5; 1987 c.919 §14a; 1989 c.171 §69; 1989 c.904 §38; 1991 c.634 §7; 1991 c.919 §13]

527.715 Rules to establish standards and procedures. The board shall establish, by rule, the standards and procedures to implement the provisions of ORS 197.180, 197.270, 197.825, 215.050, 477.090, 477.440, 477.455, 477.460, 526.009, 526.016, 526.156, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.724, 527.736 to 527.760 and 527.992. [1987 c.919 §28; 1991 c.919 §14]

527.720 [1971 c.316 §5a; repealed by 1987 c.919 §15 (527.721 enacted in lieu of 527.720)]

527.721 Coordination with state and local agencies for review and comment on operations. By rule or by cooperative agreement entered into following an opportunity for public comment before the board, the board shall provide for coordination with appropriate state and local agencies regarding procedures to be followed for review and comment on individual forest operations. [1987 c.919 §16 (enacted in lieu of 527.720)]

527.722 Restrictions on local government adoption of rules regulating forest operations; exceptions. (1) Notwithstanding any provisions of ORS chapters 196, 197, 215

and 227, and except as provided in subsections (2), (3) and (4) of this section, no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forestlands located outside of an acknowledged urban growth boundary.

(2) Nothing in subsection (1) of this section prohibits local governments from adopting and applying a comprehensive plan or land use regulation to forestland to allow, prohibit or regulate:

(a) Forest practices on lands located within an acknowledged urban growth boundary;

(b) Forest practices on lands located outside of an acknowledged urban growth boundary, and within the city limits as they exist on July 1, 1991, of a city with a population of 100,000 or more, for which an acknowledged exception to an agriculture or forestland goal has been taken;

(c) The establishment or alteration of structures other than temporary onsite structures which are auxiliary to and used during the term of a particular forest operation;

(d) The siting or alteration of dwellings;

(e) Physical alterations of the land, including but not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, when such uses are not auxiliary to forest practices; or

(f) Partitions and subdivisions of the land.

(3) Nothing in subsection (2) of this section shall prohibit a local government from enforcing the provisions of ORS 455.310 to 455.715 and the rules adopted thereunder.

(4) Counties can prohibit forest practices on land for which an acknowledged exception to an agricultural or forest land goal has been taken.

(5) To insure that all forest operations in this state are regulated to achieve protection of soil, air, water, fish and wildlife resources, in addition to all other forestlands, the Oregon Forest Practices Act applies to forestlands inside any urban growth boundary unless a local government has adopted regulations for forest practices. Such local regulations shall:

(a) Protect soil, air, water, fish and wildlife resources; and

(b) Be acknowledged as being in compliance with land use planning goals.

(6) Local governments which have, before September 29, 1991, adopted a comprehensive plan policy or land use regulation allowing, prohibiting or regulating forest practices consistent with subsections (1) to (5) of this section shall inform the State Forester of such policies and regulations within 60 days of September 29, 1991. Existence or adoption of such policies or regulations relieves the State Forester of responsibility to administer the Oregon Forest Practices Act within the affected area.

(7) The Director of the Department of Land Conservation and Development shall provide the State Forester copies of notices submitted pursuant to ORS 197.615, whenever such notices concern the adoption, amendment or repeal of a comprehensive land use regulation allowing, prohibiting or regulating forest practices. [1979 c.400 §2; 1987 c.919 §17; 1991 c.919 §29]

527.724 Forest operations to comply with air and water pollution control rules and standards; effect of violation. Subject to ORS 527.765 and 527.770, any forest operations on forestlands within this state shall be conducted in full compliance with the rules and standards of the Environmental Quality Commission relating to air and water pollution control. In addition to all other remedies provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available under statute or rule to the Department of Environmental Quality or the Environmental Quality Commission. [1979 c.400 §3; 1991 c.919 §19]

527.725 [1975 c.185 §5; repealed by 1975 c.185 §6]

527.726 [1979 c.400 §4; 1983 c.827 §55; repealed by 1987 c.919 §29]

527.730 Conversion of forestland to other uses. Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use. [1971 c.316 §12; 191 c.634 §8]

527.735 [1987 c.919 §6a; renumbered 526.156 in 1991]

(Clear-cut; Water Quality Regulation)

527.736 Forest practice standards for operations on public and private land. (1) The standards established in ORS 527.740 to 527.750 shall be administered by the State Forester as standards applying to all operations in the state, including those on forestland owned by the state or any political subdivision thereof. Pursuant to ORS 527.710 the board shall adopt, repeal or amend forest practice rules as necessary to be consistent with and to implement the standards established in ORS 527.740 to 527.750. Nothing in ORS 321.016, 468B.100 to 468B.110, 477.562, 527.620, 527.630, 527.670, 527.690, 527.710, 527.715, 527.722, 527.724 and 527.736 to 527.770 shall affect the powers and duties of

the board to adopt, or the State Forester to administer, all other regulations pertaining to forest practices under applicable state law.

(2) Nothing in ORS 527.740 to 527.750 is intended to apply to cutting of trees that is for growth enhancement treatments, as defined by the State Forester, such as thinning or precommercial thinning. [1991 c.919 §3]

527.740 Clear-cut limitations; exceptions. (1) No clear-cut unit within a single ownership shall exceed 120 acres in size, except as provided in ORS 527.750.

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

(a) At least 200 healthy conifer or suitable hardwood seedlings are established per acre; and either

(b) The resultant reproduction has attained an average height of at least four feet; or

(c) At least 48 months have elapsed since the seedlings were planted and the reproduction is "free to grow" as defined by the board.

(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 clear-cut unit.

(4) The provisions of this section shall not apply when the land is being converted to conifers or managed hardwoods from brush or understocked hardwoods, or when the clear-cut harvest 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 clear-cut 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]

Note: Section 5, chapter 919, Oregon Laws 1991, is repealed July 1, 1995. See section 5a, chapter 919, Oregon Laws 1991. The text is set forth for the user's convenience.

Sec. 5. Rules in clear-cut harvest unit larger than 10 acres. (1) In a clear-cut harvest unit exceeding 10 acres, 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 at 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 are at least 12 inches in diameter at the widest point and at least 16 feet long, or equivalent volume if trees of this size are not available on the site.

(2) In meeting the requirements of subsection (1) of this section, the required snags, trees and logs may be left in one or more clusters rather than distributed throughout the unit. The location and distribution of the material shall be in the sole discretion of the landowner or operator, consistent with safety and fire hazard regulations. The requirements of subsection (1) of this section are in addition to all other requirements pertaining to forest operations and may not be met by counting snags, trees or logs otherwise required to be left in riparian areas or resource sites listed in ORS 527.710 (3).

(3) Notwithstanding subsection (2) of this section:

(a) The State Forester shall consult with operators on the selection of green trees and snags required to be left pursuant to this section whenever the State Forester believes that retaining certain trees or groups of trees would provide increased benefits to wildlife;

(b) Operators may submit, and the State Forester may approve, alternate plans to meet the requirements of this section. The State Forester may approve alternate plans to waive, in whole or in part, the requirements of this section for one clear-cut harvest operation if the plan provides for an equal or greater number of trees to be left in another clear-cut harvest operation which, in the opinion of the State Forester, would, in the aggregate, achieve better overall benefits for wildlife; and

(c) For clear-cut harvest operations adjacent to Class 1 streams, the State Forester may require up to 25 percent of the green trees required to be left pursuant to this section to be left in or adjacent to the riparian management area of the Class 1 stream if such requirement would provide increased benefits to wildlife. Such trees shall be in addition to trees otherwise required by rule to be left in riparian management areas. The operator shall have sole discretion to determine which trees to leave, either in or adjacent to a riparian management area, pursuant to this paragraph. [1991 c.919 §5]

527.745 Reforestation of clear-cuts. (1) The board shall adopt standards for the reforestation of clear-cut harvests. Unless the board makes the findings for alternate standards under subsection (2) of this section, and except to the extent that more stringent reforestation requirements apply under ORS 527.740 (2), the standards for the reforestation of clear-cuts shall include the following:

(a) Reforestation, including site preparation, of clear-cut units shall commence within 12 months after the completion of

harvest and shall be completed by the end of the second planting season after the completion of harvest. By the end of the fifth growing season after planting or seeding, at least 200 healthy conifer or suitable hardwood seedlings shall be established per acre, well-distributed over the area, which are "free to grow" as defined by the board.

(b) Landowners may submit plans for alternate practices that do not conform to the standards established under paragraph (a) of this subsection or the alternate standards adopted under subsection (2) of this section, including but not limited to variances in the time in which reforestation is to be commenced or completed or plans to reforest sites by natural reforestation. Such alternate plans may be approved if the State Forester determines that the plan will achieve equivalent or better regeneration results for the particular conditions of the site, or the plan carries out an authorized research project conducted by a public agency or educational institution.

(2) The board, by rule, may establish alternate standards for the reforestation of clear-cuts, in lieu of the standards established in subsection (1) of this section, upon finding that the alternate standards will better assure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes, consistent with sound management of soil, air, water, fish and wildlife resources based on one or more of the following findings:

(a) Alternate standards are warranted based on scientific data concerning biologically effective regeneration;

(b) Different standards are warranted for particular geographic areas of the state due to variations in climate, elevation, geology or other physical factors; or

(c) Different standards are warranted for different tree species, including hardwoods, and for different growing site conditions.

(3) Pursuant to ORS 527.710, the board may adopt definitions, procedures and further regulations to implement the standards established under subsection (1) of this section, without making the findings required in subsection (2) of this section, if those procedures or regulations are consistent with the standards established in subsection (1) of this section.

(4) The board shall encourage planting of disease and insect resistant species in sites infested with root pathogens or where planting of susceptible species would significantly facilitate the spread of a disease or insect pest and there are immune or more tolerant commercial species available which are adapted to the site.

(5) The requirements of this section apply only to clear-cuts as defined in ORS 527.620 (2). Nothing in this section is intended to affect the administration and enforcement of regulations pertaining to the maintenance of minimum stocking levels or the reforestation of sites required as a result of operations other than such clear-cuts. [1991 c.919 §6]

527.750 Exceeding clear-cut size limitation; conditions. (1) Notwithstanding the requirements of ORS 527.740, a clear-cut 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 board are met. Proposed clear-cut units that are within 300 feet of the perimeter of a prior clear-cut unit, and that would result in a total combined clear-cut 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 clear-cut area. No clear-cut unit within a single ownership shall exceed 240 contiguous acres. No clear-cut unit shall be allowed within 300 feet of the perimeter of a prior clear-cut unit if the combined acreage of the clear-cut areas subject to regulation under the Oregon Forest Practices Act would exceed 240 acres, unless the prior clear-cut unit has been reforested by all applicable regulations and:

(a) At least 200 healthy conifer or suitable hardwood seedlings are established per acre; and either

(b) The resultant reproduction has attained an average height of at least four feet; or

(c) At least 48 months have elapsed since the seedlings were planted and the reproduction 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 written plan be submitted prior to approval of a clear-cut 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 clear-cut operation if the proposed clear-cut would provide better overall results in meet-

ing 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 clear-cut operations under this section, including evidence of past satisfactory compliance with the Oregon Forest Practices Act. [1991 c.919 §7]

527.755 Scenic highways; visually sensitive corridors; operations restricted. (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, 82, 97, 101, 126, 138, 140, 199, 230, 234 and 395.

(2) In consultation with the Department of Transportation, the board shall establish procedures and regulations as necessary to implement the requirements of subsection (3) of this section, consistent with the safety of the motoring public, including provisions for alternate plans providing equivalent or better results within visually sensitive corridors extending 150 feet from the outermost right of way boundary along both sides and for the full length of the scenic highways designated in subsection (1) of this section.

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

(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 250 stems per acre.

(c) When the adjacent stand, extending from 150 feet from the corridor to 300 feet from the corridor, has attained an average height of at least 10 feet and has at least 200 stems per acre or at least 40 square feet of basal area, 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. Harvest areas within the 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. Reforestation shall be completed by the end of the first planting season after the completion of harvest. A minimum of 400 trees per acre shall be planted. By the end of the fifth growing season after the completion of planting, at least 250 healthy conifer seedlings shall be established per acre, well-distributed over the area, which are "free to grow" as defined by the board. When harvests within the visually sensitive corridor are carried out under this paragraph the adjacent stand, extending from 150 feet from the corridor to 300 feet from the corridor, shall not be clear-cut until the adjacent visually sensitive corridor has been reforested as required under this paragraph and the stand has attained an average height of at least 10 feet and has at least 250 stems per acre.

(4) 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. [1991 c.919 §17]

527.760 Reforestation exemptions for land use changes. (1) The board shall review its rules governing changes in land use and adopt or amend rules as necessary to assure that only bona fide, established and continuously maintained changes from forest uses are provided an exemption from reforestation requirements. The board shall set specific time periods for the completion of land use conversions. Among other factors, the board shall condition exemptions from reforestation requirements upon:

(a) Demonstrating the intended change in land use is authorized under local land use and zoning ordinances, including obtaining and maintaining all necessary land use or construction permits and approvals for the intended change in land use;

(b) Demonstrating progress toward the change in land use within the time required for planting of trees, and substantial completion and continuous maintenance of the change in land use in a time certain;

(c) Allowing an exemption for only the smallest land area necessary to carry out the change in land use, and requiring that additional land area within the harvest unit remains subject to all applicable reforestation requirements; and

(d) Allowing an exemption only to the extent that the proposed land use is not compatible with the maintenance of forest cover.

(2) The board may require that, prior to commencing an operation where a change in land use is proposed, a bond, cash deposit,

irrevocable letter of credit or other security be filed with the State Forester in an amount determined by the State Forester sufficient to cover the cost of site preparation and reforestation for the area subject to an exemption from reforestation due to a change in land use, and shall require that provisions be made for the administration and collection on such bond or security deposit in the event that the change in land use is not established or continuously maintained within a time certain.

(3) Nothing in this section is intended to exempt any change in land use from, nor affect the applicability and administration of, any planning, zoning or permitting requirements provided under state or local laws or regulations. [1991 c.919 §8]

527.765 Best management practices to maintain water quality. (1) The board 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. Factors to be considered by the board in establishing best management practices shall include, where applicable, but not be limited to:

- (a) Beneficial uses of waters potentially impacted;
- (b) The effects of past forest practices on beneficial uses of water;
- (c) Appropriate practices employed by other forest managers;
- (d) Technical, economic and institutional feasibility; and
- (e) Natural variations in geomorphology and hydrology.

(2) The board shall consult with the Environmental Quality Commission in adoption and review of best management practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands.

(3)(a) Notwithstanding ORS 183.310 (7), upon written petition for rulemaking under ORS 183.390 of any interested person or agency, the board shall review the best management practices adopted pursuant to this section. In addition to all other requirements of law, the petition must allege with reasonable specificity that nonpoint source discharges of pollutants resulting from forest

operations being conducted in accordance with the best management practices are a significant contributor to violations of such standards.

(b) Notwithstanding the time limitations of ORS 183.390, the board shall complete its review of a petition and either dismiss the petition in accordance with paragraph (c) of this subsection or commence rulemaking in accordance with paragraph (f) of this subsection within 90 days of the date the petition for review was filed.

(c) Except as provided in paragraph (d) of this subsection, if the board determines that forest operations being conducted in accordance with the best management practices are neither significantly responsible for particular water quality standards not being met nor are a significant contributor to violations of such standards, the board shall issue an order dismissing the petition.

(d) If the petition for review of best management practices is made by the Environmental Quality Commission, the board shall not terminate the review without the concurrence of the commission, unless the board commences rulemaking in accordance with paragraph (f) of this subsection.

(e) If a petition for review is dismissed, upon conclusion of the review, the board shall issue an order that includes findings regarding specific allegations in the petition and shall state the board's reasons for any conclusions to the contrary.

(f) If, pursuant to review, the board determines that best management practices should be reviewed, the board shall commence rulemaking proceedings for that purpose. Rules specifying the revised best management practices must be adopted not later than two years from the filing date of the petition for review unless the board, with concurrence of the Environmental Quality Commission, finds that special circumstances require additional time.

(g) Notwithstanding the time limitation established in paragraph (f) of this subsection, at the request of the Environmental Quality Commission, the board shall take action as quickly as practicable to prevent significant damage to beneficial uses identified by the commission while the board is revising its best management practices and rules as provided for in this section.

(h) The board shall include in its triennial review of administrative rules in accordance with ORS 183.545 an analysis of the effectiveness of the best management practices and other rules applying to forest practices adopted to maintain water quality standards established by the Environmental Quality Commission. [1991 c.919 §20]

527.770 Good faith compliance with best management practices not violation of water quality standards; subsequent enforcement of standards. A forest operator conducting, or in good faith proposing to conduct, operations in accordance with best management practices currently in effect shall not be considered in violation of any water quality standards. When the board adopts new best management practices and other rules applying to forest operations, such rules shall apply to all current or proposed forest operations upon their effective dates. However, nothing in this section prevents enforcement of water quality standards against a forest operator conducting operations after the time provided in ORS 527.765 (3)(f) for adoption of revised best management practices if the board either has not adopted revised management practices or has not made a finding that such revised best management practices are not required. [1991 c.919 §21]

Note: Sections 9, 15, 18 and 25, chapter 919, Oregon Laws 1991, provide:

Sec. 9. Review of classification of waters. (1) Not later than September 1, 1992, the board shall review its classification of waters of the state, create at least three classifications and establish rules applicable to each classification. The board shall give particular consideration to perennial streams, not currently classified as Class 1, which have an average gradient of not more than eight percent and which are important to water quality and fish needs in downstream Class 1 streams. The board shall consider requirements for vegetative buffers along such streams consistent with the health of the forest and the protection of fish and wildlife. The board shall consider whether additional classifications shall be subject to the requirements of ORS 527.670.

(2) The board shall review current Class 1 stream and associated riparian protection rules and, where appropriate, shall improve protection of soil, air, water, fish and wildlife resources, which include but are not limited to fish and wildlife habitat, species biodiversity and stream morphology.

(3) Until the board adopts rules pursuant to this section, the following interim protection shall apply to operations near streams which are important to threatened, endangered, sensitive or game fish species and to streams with an average gradient of not more than eight percent and which are important to water quality and fish needs in downstream Class 1 streams.

(a) A buffer three times the stream width or 25 feet, whichever is greater, shall be retained on both sides of the stream;

(b) All nonmerchantable herbaceous vegetation shall be retained;

(c) Ground-based equipment shall not be operated within the buffer without approval of the State Forestry Department;

(d) Logs shall not be yarded across streams unless the logs are fully suspended in order to minimize disturbance to streambanks, stream channels and streambank vegetation;

(e) Streams shall not be crossed without approval of the State Forestry Department; and

(f) Removal of merchantable trees may be permitted consistent with protection of the buffer, streambanks

and stream channels with prior approval of the State Forester and consistent with protection of forest resources pursuant to ORS 527.630.

(4) The State Forestry Department shall consult with the appropriate state agencies in determining which streams are affected by this section.

(5) The interim protection in subsection (3) of this section terminates on the effective date of permanent rules adopted by the board for the protection of these streams

(6) The board shall report to the Sixty-seventh Legislative Assembly on the results of the board's reviews pursuant to this section and section 8 of this 1991 Act [527.760], including any recommendations for legislative changes. [1991 c.919 §9]

Sec. 15. (1) The State Forester, in cooperation with the Department of Environmental Quality and the State Department of Fish and Wildlife, shall conduct a study of harvest rates and cumulative effects related to forest practices on forestland in Oregon, and submit a progress report to the Sixty-seventh Legislative Assembly and a final report to the Sixty-eighth Legislative Assembly on the results of the study, along with recommendations for addressing any problems that may be identified during the course of such study.

(2) The study shall include, but be not limited to, an analysis of:

(a) The annual rates of harvest of commercial tree species on Oregon's private forestlands compared to the annual rates of growth on such forestlands;

(b) The effect of such harvest rates on employment and community stability;

(c) Age and species composition of commercial forest trees species at final clear-cut harvest, the rationale for such harvests and any problems caused by premature harvesting;

(d) The extent to which private forest resources in Oregon are being rapidly liquidated to fulfill the terms of highly leveraged contracts to purchase such resources;

(e) The effectiveness of current forest practices rules;

(f) The impact of cumulative effects of harvest operations on air, soil, water, and fish and wildlife. The study of cumulative effects shall be conducted in at least three distinct geographic areas in the state; and

(g) The appropriate limitations on clear-cut size.

(3) As results from the analyses in paragraphs (e) and (f) of subsection (2) of this section become available, the board shall adopt additional rules it deems necessary to protect forest resources pursuant to ORS 527.630. Nothing in this section shall be construed to limit the board's responsibility to carry out any other rulemaking requirements of the Oregon Forest Practices Act.

(4) For purposes of the study required by this section, "cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions. Nothing in this section shall be construed to limit the board's responsibility to carry out any other rulemaking requirements of the Oregon Forest Practices Act.

(5) This section is repealed January 1, 1995. [1991 c.919 §15]

Sec. 18. The State Forestry Department shall conduct a study and shall submit to the Sixty-seventh Legislative Assembly a recommendation regarding the native Pacific yew species in this state. The study shall use existing information to assess the availability of

native Pacific yew on public and private lands in this state. [1991 c.919 §18]

Sec. 25. (1) The State Board of Forestry, after consultation with the State Department of Fish and Wildlife, shall commission a scientific inquiry on the state of knowledge, using existing information, of the relative effects of forest practices on anadromous fish runs in western Oregon. The study will identify the leading causes, both on-shore and off-shore, for anadromous fish population declines if that is the case; assign the relative importance of forest practices to these declines, compared to other leading causes; identify the relative importance of various habitat characteristics in streams in limiting anadromous fish production; determine how forest practices have affected fish production; determine how forest practices have affected these habitat characteristics and anadromous fish populations before and since 1972; identify the extent to which forest practices are limiting the recovery of depressed anadromous fish populations; and make recommendations as to how forest practices can assist in recovery of anadromous fish populations.

(2) The board shall contract with an independent and disinterested organization to assemble a panel of well-qualified scientists to conduct the work described in subsection (1) of this section and to write a report of its findings.

(3) Nothing in this section shall be construed to limit the ability of the board to promulgate rules relating to forest practices which appropriately protect fish and wildlife populations. [1991 c.919 §25]

FOREST PRACTICE AS NUISANCE

527.800 Definitions for ORS 527.805 and 527.810. As used in ORS 527.800 to 527.810:

(1) "Forestland" means land that is:

(a) Assessed for taxation under ORS 321.352, 321.705 to 321.765 or 321.805 to 321.825; or

(b) Classified pursuant to land use laws in a zone for which one of the primary uses is the production of forest products for commercial purposes.

(2) "Forest practice" includes, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control. [1985 c.347 §1]

527.805 Certain forest practices not private or public nuisance; effect on local ordinances; exceptions. (1) A forest practice conducted on forestland in accordance with ORS chapters 477 and 527 shall not be declared or held to be a private or public nuisance.

(2) Any local government ordinance adopted after September 20, 1985, that declares a forest practice to be a nuisance or that provides for abatement of the forest practice as a nuisance is invalid with respect to that forest practice.

(3) Subsections (1) and (2) of this section do not apply:

(a) When a nuisance results from the negligent conduct of a forest practice;

(b) To the growing, raising, harvesting or transporting of infested, infected or diseased forest products that are declared a nuisance by statute or pursuant to rules adopted by the State Forestry Department;

(c) City ordinances adopted in accordance with ORS 527.722; or

(d) To any forest practice conducted in violation of a solar energy easement that complies with ORS 105.880 to 105.890. [1985 c.347 §2]

527.810 Effect on other remedies and laws. (1) The provisions of ORS 527.805 shall not impair the right of any person or governmental body to pursue any remedy authorized by statute, ordinance or administrative rule that:

(a) Concerns matters other than a nuisance;

(b) Does not expressly purport to prohibit or regulate forest practices as a nuisance; or

(c) Prohibits or regulates the use or physical condition of facilities that adversely affect public health or safety, regardless of whether it purports to prohibit or regulate a situation as a nuisance.

(2) The provisions of ORS 527.805 do not supersede:

(a) Any existing or future statute.

(b) Any ordinance or administrative rule that names specific activities or occurrences as nuisances and that was in effect on September 20, 1985. [1985 c.347 §3]

PENALTIES

527.990 Criminal penalties. (1) Violation of ORS 527.670 or any rule promulgated under ORS 527.710 is punishable, upon conviction, as a misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

(2) Violation of ORS 527.260 (1) is a misdemeanor. Violation of ORS 527.260 is punishable, upon conviction, by a fine of not more than \$250 or by imprisonment in the county jail for not more than 60 days, or both. [Amended by 1953 c.262 §2; 1971 c.316 §14; 1987 c.919 §32; 1991 c.686 §10]

527.992 Civil penalties. (1) In addition to any other penalty provided by law, any person who fails to comply with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

(a) The requirements of ORS 527.670.

(b) The terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(c) Any rule or standard of the board adopted or issued pursuant to ORS 527.710.

(d) Any term or condition of a written waiver, or prior approval granted by, or of a written plan of operation accepted by the State Forester pursuant to the rules adopted under ORS 527.710.

(2) Imposition or payment of a civil penalty under this section shall not be a bar to actions alleging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover an amount based on the gain resulting from individual or corporate criminal violations. [1987 c.919 §24]

FORESTRY AND FOREST PRODUCTS

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