

Work Plan:	Forest Resources Division
Topic:	Implementing Legislative Direction
Presentation Title:	Rulemaking on Post-disturbance Harvest
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## **SUMMARY**

This agenda item requests the Board make determinations required by statute and direct the Oregon Department of Forestry (Department) to take specific actions related to rulemaking on post-disturbance harvest. This is a decision item.

## **BACKGROUND**

In 2020, the Oregon Legislature passed [SB 1602](#) which set helicopter pesticide application requirements and required the Governor to facilitate mediated sessions between representatives of the forest industry and representatives of environmental interests. As a product of this collaborative process, the [2022 Private Forest Accord \(PFA\) Report](#) was drafted and released by an author group comprised of representatives from those discussions. During the 2022 Legislative Session, [SB 1501](#) and [SB 1502](#) passed making substantial changes to the Forest Practices Act and requiring the Board to incorporate the recommendations of the Private Forest Accord Report into the forest practice rules through the adoption of a single rule package and to conduct two additional rulemaking efforts.

The Board adopted the single rule package on October 26, 2022, adopted minor revisions to those rules on June 7, 2023, must initiate tethered logging rulemaking by March 17, 2025, and must complete post-disturbance harvest rulemaking by November 30, 2025. At the January 4, 2023, board meeting, the Board directed the Department to initiate rulemaking on post-disturbance harvest activities and complete an analysis of the factors in ORS 527.714. To meet the statutory timeline for the rulemaking and consistent with the PFA Report, the Department began a literature review to support the Board's work under ORS 527.714.

## **ANALYSIS**

Oregon Revised Statute ([ORS](#)) [527.710](#) grants the Board authority to adopt forest practice rules and [ORS 527.714](#) establishes procedures the board must follow when adopting such rules. ORS 527.714 requires the Board to determine which type of rule is being considered prior to filing an Administrative Procedures Act (APA) rulemaking notice. The rule types are summarized below;

- Type (1)(a)- Implement administration, procedures or enforcement that support but do not directly regulate standards of forest practices.
- Type (1)(b)- Provide definitions or procedures for forest practices where the standards are set in statute.
- Type (1)(c)- Regulate forest practices and are within the Board's discretion to set the standards for forest practices.

If the Board determines a proposed rule is a Type (1)(c) rule and it is not only designed to clarify the meaning of or make minor adjustments to rules already adopted, additional requirements apply. ORS 527.714(4) requires the rule describe its' purpose and the level of protection desired, and ORS 527.714(8) requires the Board make an economic analysis of the impact of the proposed rule available to the public prior to the close of the APA public comment period. Additionally, per ORS 527.714(5) the Board may only adopt such a rule after determining specific facts exist and standards are met.

Per the Board's January 2023 direction, the Department began rulemaking efforts culminating in the Post-Disturbance Harvest Draft Rules (attachment 1) and Literature Review: Post-Disturbance Harvest (attachment 2), to assist the Board in fulfilling their obligations under ORS 527.714.

Relevant to this rulemaking and proposed Oregon Administrative Rule (OAR) 629-643-0300, the required ORS 527.714(5) determinations and related staff analysis are as follows:

- a) There is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710(2) or (3) is likely if forest practices continue under existing rule.
  - Rules adopted under ORS 527.710(2) ensure the continuous growing and harvesting of forest tree species and provide for the overall maintenance of air quality, water resources, soil productivity and fish and wildlife. Rules adopted under ORS 527.710(3) protect sites for certain threatened and endangered fish and wildlife species, sensitive bird sites, biological sites, and significant wetlands. OAR 629-643-0300 is related to resources maintained under ORS 527.710(2).

The literature review provides research evidence that degradation is likely to occur depending on the severity and type of catastrophic event and the condition of the landscape on which it occurs when the current catastrophic event prescription is applied. Studies synthesized in the literature review suggested that increased tree retention near streams increases large wood availability and reduces sediment delivery. The literature review also found that faster-growing hardwoods provide short-term benefits to water quality and fish and wildlife by contributing to early post-disturbance stream shade, bank stability, and large wood delivery.

- b) The proposed rule reflects available scientific information and, as appropriate, the results of relevant monitoring and adequate field evaluation at representative locations in Oregon.
  - The proposed rule aligns with the findings reported in the literature review, which reflects recent studies about post-disturbance harvest impacts on RMAs and water resources in areas ecologically similar to Oregon. The proposed rule, for Type F and Type SSBT streams in Western Oregon requires a 75-foot no harvest buffer and allows harvest of only dying or recently dead trees in the remainder of the RMA. This is an increase in buffer and tree retention requirements in comparison to the current rule. For small Type Np streams in Western Oregon, the proposed rule allows harvest of only dying or recently dead trees in the RMA resulting in increased tree retention in comparison to current rule. In Eastern Oregon, the proposed rule allows for the harvest of only dying or recently dead trees in the outer zone of Terminal Type Np streams, effectively establishing a 30-foot no harvest buffer which is an increase in tree retention in comparison to the current rule.

- c) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices are to prevent harm or provide benefit to the protected resource and are directly related to the objective of the proposed rule and materially advance its purpose.
- The proposed rule contains a purpose statement and the level of protection desired consistent with ORS 527.714(4), clearly defining its objective.

*“The purpose of this rule is to prescribe an alternative vegetation retention prescription for harvest units experiencing stand level mortality. This alternative prescription is intended to contribute to desired future conditions, provide tree retention, woody debris, bank stability and result in the re-establishment of live trees.”*

The proposed rule is an alternative vegetation retention prescription that an operator can choose to implement over the standard practice or a small forestland owner minimum option, if applicable, and does not prescribe regulations or restrictions for those who are not applying the prescription. The proposed rule allows operators, when the harvest unit is experiencing stand level mortality, to harvest dying or recently dead trees in areas that they would otherwise not be able to harvest to contribute to desired future conditions, provide tree retention, woody debris, bank stability and establish a new stand, providing a benefit to resources. To protect the RMA, specific measures are prescribed to prevent harm to the resources.

- d) The availability, effectiveness and feasibility of alternatives to the proposed rule, including non-regulatory alternatives were considered, and the alternative chosen is the least burdensome to landowners and timber owners in the aggregate while still achieving the desired level of protection.
- The proposed rule is the least burdensome option for landowners and timber owners while still achieving the desired level of protection. The proposed rule is an alternative vegetation retention prescription that an operator can choose to implement, if applicable, and does not prescribe regulations or restrictions for those not applying it. As described in c), the proposed rule allows operators to harvest dying or recently dead trees in areas that they would otherwise not be able to harvest while prescribing specific protection measures achieving the desired level of protection for the resources.

An additional option considered was to not take rulemaking action and keep the existing rule, however, based on the findings of the literature review, the desired level of protection may not be achieved. Another option considered was to repeal the existing rule rather than amending the rule, which would result in no alternative vegetation retention prescription. This alternative would be the most burdensome to landowners and timber owners as they would have to seek and gain approval for plans for alternate practices to modify vegetation retention requirements along streams. Under this option, it is also unlikely the desired level of protection would be achieved, as this increased burden could decrease the likelihood of intervention, which the literature review indicated could be needed depending on the type of catastrophic event and pre-existing site condition. As the proposed rule would amend an existing forest practice rule, meaning a regulation is already in place, the consideration of a non-regulatory alternative in the traditional sense was not an option. However, the proposed rule could be considered a non-regulatory alternative in that it provides operators with an additional option and does not establish regulations for those not applying it.

## **RECOMMENDATIONS**

- 1) The Department recommends the Board determine proposed OAR 629-643-0000, Vegetation Retention Goals for Streams; Desired Future Conditions, is a Type 1(c) rule, and that the proposed changes only make minor adjustments to rules already adopted.
- 2) The Department recommends the Board determine proposed OAR 629-643-0300, Alternative Vegetation Retention Prescriptions, is a Type 1(c) rule that would change the standards for forest practices.
- 3) The Department recommends the Board make the following determinations, regarding proposed OAR 629-643-0300 as required by ORS 527.714(5);
  - a) There is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710(2) or (3) is likely if forest practices continue under existing rule.
  - b) The proposed rule reflects available scientific information and, as appropriate, the results of relevant monitoring and adequate field evaluation at representative locations in Oregon.
  - c) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices are to prevent harm or provide benefit to the protected resource and are directly related to the objective of the proposed rule and materially advance its purpose.
  - d) The availability, effectiveness and feasibility of alternatives to the proposed rule, including non-regulatory alternatives were considered, and the alternative chosen is the least burdensome to landowners and timber owners in the aggregate while still achieving the desired level of protection.
- 4) The Department recommends the Board direct the Department to complete an economic analysis that satisfies the requirements of ORS 527.714(8) and post it to the ODF website.
- 5) The Department recommends the Board direct the Department to file a notice of rulemaking.

## **NEXT STEPS**

If the Board adopts the above recommendations, the Department will continue with rulemaking under the APA process.

## **ATTACHMENTS**

- 1) Post-Disturbance Harvest Draft Rules
- 2) Literature Review: Post-Disturbance Harvest