Chapter 527

2003 EDITION

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527.010 [Amended by 1971 c.316 §1; renumbered 527.610]

527.020 [Amended by 1955 c.100 §1; 1957 c.33 §1; 1959 c.28 §1; repealed by 1971 c.316 §15]

527.030 [Amended by 1957 c.33 §2; 1959 c.28 §2; repealed by 1971 c.316 §15]

527.040 [Amended by 1955 c.100 §2; repealed by 1971 c.316 §15]

527.050 [Amended by 1953 c.195 §2; 1959 c.83 §1; repealed by 1971 c.316 §15]

527.060 [Amended by 1959 c.28 §3; repealed by 1971 c.316 §15]

527.070 [Repealed by 1971 c.316 §15]

527.080 [Amended by 1955 c.100 §3; 1957 c.33 §3; repealed by 1959 c.28 §9]

527.090 [Amended by 1955 c.100 §4; 1957 c.33 §4; repealed by 1959 c.28 §9]

527.091 [1959 c.28 §5; repealed by 1971 c.316 §15]

527.100 [Amended by 1957 c.33 §5; repealed by 1959 c.28 §9]

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527.120 [Repealed by 1971 c.316 §15]

527.140 [Amended by 1957 c.33 §7; repealed by 1971 c.316 §15]

527.150 [Repealed by 1971 c.316 §15]

527.160 [Amended by 1953 c.262 §2; 1957 c.33 §8; 1959 c.28 §8; 1961 c.221 §1; 1965 c.253 §148; repealed by 1971 c.316 §15]

527.170 [Amended by 1953 c.262 §2; 1961 c.221 §2; repealed by 1971 c.316 §15]

527.180 [Repealed by 1971 c.316 §15]

527.190 [Amended by 1953 c.262 §2; 1955 c.100 §6; 1961 c.221 §3; repealed by 1971 c.316 §15]

527.200 [Amended by 1953 c.262 §2; repealed by 1971 c.316 §15]

527.210 [Repealed by 1953 c.262 §2]

527.215 [1953 c.262 §3; 1955 c.100 §7; 1959 c.83 §2; repealed by 1971 c.316 §15]

527.220 [Amended by 1965 c.253 §149; repealed by 1971 c.316 §15]

527.230 [Repealed by 1971 c.316 §15]

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. [Amended by 1995 c.79 §299]

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 on-site 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 on-site 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) "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.

(3) "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.

(4) "Edge of the roadway" means:

(a) For interstate highways, the fence.

(b) For all other state highways, the outermost edge of pavement, or if unpaved, the edge of the shoulder.

(5) "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.

(6) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

(7) "Forestland" means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(8) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(9) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

(a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;

(b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or

(c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(10) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

(11) "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.

(12) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

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

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

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

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

(14) "Single ownership" means ownership by an individual, partnership, corporation, limited liability company, trust, holding company or other business entity, including the state or any political subdivision thereof. Single ownership includes ownership held under different names or titles where the same individual or individuals, or their heirs or assigns, are shareholders (other than those of public corporations whose stock is traded on the open market), partners, business trustees or officers, or otherwise have an interest in or are associated with each property.

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

(16) "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.

(17) "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.

(18) "Visually sensitive corridor" means forestland extending outward 150 feet, measured on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS 527.755, along both sides for the full length of the highway.

(19) "Wildlife leave trees" means trees or snags required to be retained as described in ORS 527.676 (1).

(20) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted. [1971 c.316 §3; 1987 c.919 §9; 1991 c.547 §1; 1991 c.634 §3; 1991 c.919 §1; 1995 s.s. c.3 §39; 1996 c.9 §2; 1999 c.59 §166; 2001 c.451 §1; 2003 c.740 §2]

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

(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 State Board of Forestry 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.

(5) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (10). As used in this subsection, "rapidly moving landslide" has the meaning given in ORS 195.250.

(6) The State of Oregon should provide a stable regulatory environment to encourage investment in private forestlands. [1971 c.316 §4; 1987 c.919 §10; 1991 c.634 §4; 1991 c. 919 §10; 1995 s.s. c.3 §39L; 1996 c.9 §14; 1999 c.1103 §11; 2003 c.740 §9]

Note: Section 14, chapter 740, Oregon Laws 2003, provides:

Sec. 14. (1) If a rule adopted by the State Board of Forestry prior to the effective date of this 2003 Act [August 29, 2003] requires prior approval of a written plan, the requirement for prior approval is void. Written plans submitted under such a requirement shall be reviewed under ORS 183.700, 195.260, 527.620, 527.630, 527.670, 527.700, 527.710, 527.714, 527.750 and 527.992 as amended by sections 1 to 10 of this 2003 Act.

(2) Notwithstanding subsection (1) of this section, any substantive standard contained within a rule described in subsection (1) of this section that governs the conduct of forest practices remains enforceable under ORS 527.680, 527.683, 527.685, 527.687, 527.690, 527.990 and 527.992. [2003 c.740 §14]

527.640 Forest regions. The State Board of Forestry 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 State Board of Forestry 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 chairperson 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 State Board of Forestry 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]

527.662 [1997 c.413 §4; 1999 c.849 §105; 2003 c.75 §93; repealed by 2003 c.539 §37]

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. The court may award reasonable attorney fees to the prevailing party in an action brought under the provisions of this section. [1983 c.759 §4; 1995 c.618 §79]

527.670 Commencement of operations; rules; written plan; effect of plan; notice of chemical application. (1) The State Board of Forestry 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.

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

(a) Within one hundred feet of a stream determined by the State Forester to be used by fish or for domestic use, unless the board, by rule, provides that a written plan is not required because the proposed operation will be conducted according to a general vegetation retention prescription described in administrative rule; or

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

(4) The distances set forth in subsection (3)(a) and (b) 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 subsection (3)(a) and (b) 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.

(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) If an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subsection (3) of this section:

(a) The State Forester shall review a written plan and may provide comments to the person who submitted the written plan;

(b) The State Forester may not provide any comments concerning the written plan earlier than 14 calendar days following the date that the written plan was filed with the State Forester nor later than 21 calendar days following the date that the written plan was filed; and

(c) Provided that notice has been provided as required by subsection (6) of this section, the operation may commence on the date that the State Forester provides comments or, if no comments are provided within the time period established in paragraph (b) of this subsection, at any time after 21 calendar days following the date that the written plan was filed.

(11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester or the board do not constitute an approval of the written plan or operation.

(b) If the State Forester or the board does not comment on a written plan, the failure to comment does not mean that an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation.

(c) In the event that the State Forester or board determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted thereunder, the State Forester or board shall consider, but are not bound by, comments that the State Forester provided under this section or comments that the board provided under ORS 527.700.

(12) When the operation is required to have a written plan under 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 State Forester's review and comments, if any, 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 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; 1995 s.s. c.3 §39a; 1996 c.9 §3; 1997 c.413 §1; 2003 c.539 §39; 2003 c.740 §3]

527.674 Rules requiring approval of written plan prohibited. The State Board of Forestry may not adopt or enforce a rule under ORS 527.610 to 527.770 that requires that the board or the State Forester approve written plans as a required precedent to conducting a forest practice or operation. [2003 c.740 §13]

527.675 [1995 s.s. c.3 §39g; repealed by 1996 c.9 §8 (527.676 enacted in lieu of 527.675)]

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

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

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

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

(a) Safety and fire hazard regulations;

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

(c) All other requirements pertaining to forest operations.

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

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

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

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

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

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

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

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

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 subsection (2)(a) 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 authorized 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 State Board of Forestry, 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.

(5) If a landowner or operator fails to comply with a final order issued under subsection (2)(b) of this section within the time specified in the order, or if the landowner or operator fails to comply with a final order imposing civil penalties for violation of any provision of the Oregon Forest Practices Act, the State Forester may issue an order that prohibits the affected landowner or operator from conducting any new operations on any forestland in this state until the landowner or operator has complied with the order to correct an unsatisfactory condition, make repair or pay the civil penalty, as the case may be, to the satisfaction of the State Forester. [1971 c.316 §10; 1983 c.759 §1; 1997 c.306 §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 183.745.

(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]

527.685 Civil penalty considerations; rules. (1) The State Board of Forestry 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]

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 183.745.

(2) In no case shall a hearing requested under ORS 183.745 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 180 days following issuance of the notice unless all parties agree on an extension.

(3) Hearings under this section shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(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; 1995 s.s. c.3 §39k; 1996 c.9 §13; 1999 c.849 §§107,108; 2003 c.75 §45]

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 State Board of Forestry 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 institute 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; hearing 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 State Board of Forestry may delegate to the administrative law judge the authority to issue 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, except that the comments of the board or the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(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 State Forester completed review of the written plan and issued any comments. 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 subsection (5)(c) of this section, the board shall set the matter for hearing within 21 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. The board shall issue its own comments, which may affirm, modify or rescind comments of the State Forester, if any, on the written plan within 45 days after the request for hearing was filed, unless all parties agree to an extension of the time limit. The comments of the board or of the State Forester concerning a written plan are not reviewable orders under ORS 183.480.

(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 determines in its comments that the written plan pertaining to the operation for which the stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules of the board, the board may 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 rescinds or modifies the comments on the written plan as submitted by the State Forester pertaining to any operation, the board may 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; 1999 c.849 §110; 2003 c.75 §94; 2003 c.740 §4]

527.710 Duties and powers of board; rules; 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 State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall ensure 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 chapters 468A and 468B and ORS 477.013 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, 315.134 and ORS chapters 496, 498, 501, 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 358.480 to 358.545, 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 Department of State Lands under ORS 196.800 to 196.900 and 273.553 to 273.591;

(g) Federal Safe Drinking Water Act programs administered by the Department of Human Services 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;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308A.300 to 308A.330;

(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)(a) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630.

(b) 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 study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws 1991, 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) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices. The rules shall consider the exposure of the public to these safety risks and shall include appropriate practices designed to reduce the occurrence, timing or effects of rapidly moving landslides. As used in this subsection, "rapidly moving landslide" has the meaning given that term in ORS 195.250. [1971 c.316 §5; 1987 c.919 §14a; 1989 c.171 §69; 1989 c.904 §38; 1991 c.634 §7; 1991 c.919 §13; 1993 c.18 §126; 1995 c.79 §300; 1997 c.274 §54; 1997 c.413 §2; 1999 c.1103 §12; 2001 c.114 §52; 2001 c.540 §24; 2003 c.14 §342; 2003 c.539 §40; 2003 c.740 §7]

527.713 [1995 s.s. c.3 §39n; repealed by 1996 c.9 §15 (527.714 enacted in lieu of 527.713)]

527.714 Types of rules; procedure; findings necessary; rule analysis. (1) The rulemaking authority of the State Board of Forestry under ORS 527.610 to 527.770 consists generally of the following three types of rules:

(a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to 527.770 that support but do not directly regulate standards of forest practices.

(b) Rules adopted to provide definitions or procedures for forest practices where the standards are set in statute.

(c) Rules adopted to implement the provisions of ORS 527.710 (2), (3), (6), (8), (9) and (10) that grant broad discretion to the board and that set standards for forest practices not specifically addressed in statute.

(2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS 183.335, the board shall determine which type of rule described in subsection (1) of this section is being considered.

(3) If the board determines that a proposed rule is of the type described in subsection (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning of rules already adopted or to make minor adjustments to rules already adopted that are of the type described in subsection (1)(c) of this section, rulemaking may proceed in accordance with ORS 183.325 to 183.410 and is not subject to the provisions of this section.

(4) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would change the standards for forest practices, the board shall describe in its rule the purpose of the rule and the level of protection that is desired.

(5) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and the proposed rule would provide new or increased standards for forest practices, the board may adopt such a rule only after determining that the following facts exist and standards are met:

(a) If forest practices continue to be conducted under existing regulations, there is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710 (2) or (3) is likely, or in the case of rules proposed under ORS 527.710 (10), that there is a substantial risk of serious bodily injury or death;

(b) If the resource to be protected is a wildlife species, the scientific or biological status of a species or resource site to be protected by the proposed rule has been documented using best available information;

(c) The proposed rule reflects available scientific information, the results of relevant monitoring and, as appropriate, adequate field evaluation at representative locations in Oregon;

(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A) Are to prevent harm or provide benefits to the resource or resource site for which protection is sought, or in the case of rules proposed under ORS 527.710 (10), to reduce risk of serious bodily injury or death; and

(B) Are directly related to the objective of the proposed rule and substantially advance its purpose;

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory 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; and

(f) The benefits to the resource, or in the case of rules proposed under ORS 527.710 (10), the benefits in reduction of risk of serious bodily injury or death, that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.

(6) Nothing in subsection (5) of this section:

(a) Requires the board to call witnesses;

(b) Requires the board to allow cross-examination of witnesses;

(c) Restricts ex parte communications with the board or requires the board to place statements of such communications on the record;

(d) Requires verbatim transcripts of records of proceedings; or

(e) Requires depositions, discovery or subpoenas.

(7) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in addition to the economic and fiscal impact statement required by ORS 183.335 (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make available to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

(a) An estimate of the potential change in timber harvest as a result of the rule;

(b) An estimate of the overall statewide economic impact, including a change in output, employment and income;

(c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

(d) Information derived from consultation with potentially affected landowners and timber owners and an assessment of the economic impact of the proposed rule under a wide variety of circumstances, including varying ownership sizes and the geographic location and terrain of a diverse subset of potentially affected forestland parcels.

(8) The provisions of this section do not apply to temporary rules adopted by the board. [1996 c.9 §16 (enacted in lieu of 527.713); 1999 c.1103 §13; 2003 c.740 §10]

Note: 527.714 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 527 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

527.715 Rules to establish standards and procedures. The State Board of Forestry 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 State Board of Forestry, 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 195, 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 on-site 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 may prohibit, but in no other manner regulate, forest practices on forestlands:

(a) Located outside an acknowledged urban growth boundary; and

(b) For which an acknowledged exception to an agricultural or forest land goal has been taken.

(5) To ensure 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 forest operations inside any urban growth boundary except in areas where a local government has adopted land use regulations for forest practices. For purposes of this subsection, "land use regulations for forest practices" means local government regulations that are adopted for the specific purpose of directing how forest operations and practices may be conducted. These local regulations shall:

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

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

(c) Be developed through a public process;

(d) Be developed for the specific purpose of regulating forest practices; and

(e) Be developed in coordination with the State Forestry Department and with notice to the Department of Land Conservation and Development.

(6) To coordinate with local governments in the protection of soil, air, water, fish and wildlife resources, the State Forester shall provide local governments with a copy of the notice or written plan for a forest operation within any urban growth boundary. Local governments may review and comment on an individual forest operation and inform the landowner or operator of all other regulations that apply but that do not pertain to activities regulated under the Oregon Forest Practices Act.

(7) The existence or adoption by local governments of a comprehensive plan policy or land use regulation regulating forest practices consistent with subsections (1) to (5) of this section shall relieve the State Forester of responsibility to administer the Oregon Forest Practices Act within the affected area.

(8) 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; 2001 c.268 §1]

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; 1991 c.634 §8]

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

(Harvest Type; 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 State Board of Forestry 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. Except as provided in ORS 527.714, nothing in ORS 468B.100 to 468B.110, 477.562, 527.620, 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; 1993 c.657 §5; 1995 s.s. c.3 §39r; 1996 c.9 §20]

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

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

(a) At least the minimum tree stocking required by rule is established per acre; and either

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

(c) At least 48 months have elapsed since the stand was created and it is "free to grow" as defined by the State Board of Forestry.

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

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

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

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

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

527.745 Reforestation of certain harvest types; adoption of standards; rules. (1) The State Board of Forestry shall adopt standards for the reforestation of harvest type 1 and harvest type 3. Unless the board makes the findings for alternate standards under subsection (2) of this section, the

standards for the reforestation of harvest type 1 and harvest type 3 shall include the following:

(a) Reforestation, including site preparation, 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 or lesser number as permitted by the board by rule, 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 harvest type 1 and harvest type 3, in lieu of the standards established in subsection (1) of this section, but in no case can the board require the establishment of more than 200 healthy conifer or suitable hardwood seedlings per acre. Such alternate standards may be adopted 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) Notwithstanding subsections (1), (2) and (3) of this section, in order to remove potential disincentives to the conversion of underproducing stands, as defined by the board, or the salvage of stands that have been severely damaged by wildfire, insects, disease or other factors beyond the landowner's control, the State Forester may suspend the reforestation requirements for specific harvest type 1 or harvest type 3 units in order to take advantage of the Forest Resource Trust provisions, or other cost-share programs administered by the State Forester or where the State Forester is the primary technical adviser. Such suspension may occur only on an individual case basis, in writing, based on a determination by the State Forester that the cost of harvest preparation, harvest, severance and applicable income taxes, logging, site preparation, reforestation and any other measures necessary to establish a free to grow forest stand will likely exceed the gross revenues of the harvest. The board shall adopt rules implementing this subsection establishing the criteria for and duration of the suspension of the reforestation requirements. [1991 c.919 §6; 1993 c.562 §1; 1995 s.s. c.3 §39c; 1996 c.9 §5]

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

exceed 240 acres, unless the prior harvest type 3 unit has been reforested by all applicable regulations and:

(a) At least the minimum tree stocking required by rule is established per acre; and either

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

(c) At least 48 months have elapsed since the stand was created and it is "free to grow" as defined by the board.

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

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

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

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

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, 66, 82, 97, 101, 126, 138, 140, 199, 230, 234 and 395.

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

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

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

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

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

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

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

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

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

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

per acre until the adjacent visually sensitive corridor has been reforested as required under subsection (6) of this section and the stand has attained an average height of at least 10 feet and has at least the minimum number of stems per acre.

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

(6) Notwithstanding the time limits established in ORS 527.745 (1)(a), when harvesting within a visually sensitive corridor results in a harvest type 1 or harvest type 3, reforestation shall be completed by the end of the first planting season after the completion of the harvest. All other provisions of ORS 527.745 shall also apply to harvest type 1 or harvest type 3 within visually sensitive corridors.

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

(8) Harvest on single ownerships less than five acres in size are exempt from this section. [1991 c.919 §17; 1993 c.306 §1; 1995 s.s. c.3 §39e; 1996 c.9 §7; 1997 c.249 §179]

527.760 Reforestation exemptions for land use changes. (1) The State Board of Forestry 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; rules. (1) The State Board of Forestry shall establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. Such best management practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state. 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 (8), 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) Except as provided in paragraph (c) 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.

(c) 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 (e) of this subsection.

(d) 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.

(e) 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.

(f) Notwithstanding the time limitation established in paragraph (e) 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. [1991 c.919 §20; 2003 c.75 §95; 2003 c.749 §11]

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 State Board of Forestry 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)(e) 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; 2003 c.749 §12]

527.780 Exemption from liability for trees or debris left on property. (1) A landowner is not liable in tort for any personal injury, death or property damage that arises out of the leaving of trees and other debris on the property of the landowner under the provisions of ORS 527.610 to 527.770, under any rules adopted pursuant to ORS 527.610 to 527.770, or under any other law or rule requiring trees and debris to be left upon property after logging or other activity on the land.

(2) The limitation on liability provided by this section applies to any injury, death or damage arising out of wildfire, erosion, flooding, diversion of waters, damage to public improvements and any other injury, death or damage caused by trees or debris left by the landowner.

(3) The limitation on liability provided by this section does not apply if the injury, death or damage was caused by the intentional tort of the landowner or by the gross negligence of the landowner. As used in this subsection, "gross negligence" means negligence that is materially greater than the mere absence of reasonable care under the circumstances, and that is characterized by indifference to or reckless disregard of the rights of others.

(4) The limitation on liability provided by this section is in addition to any limitation on liability provided under ORS 105.672 to 105.696.

(5) The limitation on liability provided by this section does not apply to any liability established by the provisions of ORS chapter 477. [1999 c.543 §1]

527.785 Exemption from liability for large woody debris left on property. (1) A landowner is not liable in tort for any personal injury, death or property damage that arises out of the leaving of large woody debris on the property of the landowner under the provisions of ORS 527.610 to 527.770, under any rules adopted pursuant to ORS

527.610 to 527.770, or under any other law or rule requiring trees and large woody debris to be left upon property after logging or other activity on the land.

(2) The limitation on liability provided by this section applies to any injury, death or damage arising out of wildfire, erosion, flooding, diversion of waters, damage to public improvements and any other injury, death or damage caused by the large woody debris left by the landowner.

(3) The limitation on liability provided by this section does not apply if the injury, death or damage was caused by the intentional tort of the landowner or by the gross negligence of the landowner. As used in this subsection, "gross negligence" means negligence that is materially greater than the mere absence of reasonable care under the circumstances, and that is characterized by indifference to or reckless disregard of the rights of others.

(4) The limitation on liability provided by this section is in addition to any limitation on liability provided under ORS 105.672 to 105.696.

(5) The limitation on liability provided by this section does not apply to any liability established by the provisions of ORS chapter 477. [1999 c.863 §2]

527.800 [1985 c.347 §1; repealed by 1993 c.792 §55]

527.805 [1985 c.347 §2; repealed by 1993 c.792 §55]

527.810 [1985 c.347 §3; repealed by 1993 c.792 §55]

PENALTIES

527.990 Criminal penalties. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.676, 527.740, 527.750 or 527.755, 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; 1995 s.s. c.3 §39h; 1996 c.9 §10; 1999 c.1051 §317]

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, 527.676, 527.740, 527.750 or 527.755.

(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 State Board of Forestry adopted or issued pursuant to ORS 527.710.

(d) Any term or condition of a written waiver, or prior approval granted 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; 1995 s.s. c.3 §39i; 1996 c.9 §11; 2003 c.740 §6]