

Agenda Item No:	H
Title:	Administrative Rules to Implement HB 3628
Date Presented to Board:	April 29, 2008
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## **SUMMARY**

The purpose of this agenda item is to receive Board approval to draft rules to implement House Bill 3628 adopted by the 74th Oregon Legislative Assembly during the 2008 Special Session.

## **CONTEXT**

The Legislature passed HB 3628 to allow the Board of Forestry to modify or waive the limitations and requirements of ORS 527.676, 527.740, 527.750 and 527.755 for three specific purposes:

- A bona fide research project.
- As a term of a stewardship agreement entered into under ORS 541.423.
- For the planting, growing, managing or harvesting of intensively managed hardwood timber operations, including but not limited to hybrid cottonwood grown on rotations of more than 12 years and less than 20 years after planting.

## **DISCUSSION**

By statute, an exemption from being considered a forest operation is granted for plantations of intensively managed hardwoods (generally hybrid poplar) under irrigation and other intensive agricultural practices based upon repeated short rotation management aimed at pulp production. The statutory exemption was originally restricted to an 8-year rotation cycle, and then extended to a 12-year rotation. These types of plantations are excluded as an "operation" based upon a set of specific requirements in addition to the 12 year limit, including "[o]f a species marketable as fiber for inclusion in the furnish for manufacturing paper products."

For market reasons, the growers of intensively managed hybrid poplar plantations may now need to extent rotations past the 12 year cycle. The markets that they will be entering with these longer rotations include solid wood products. Under the current exemption, if a plantation goes beyond 12 years, it would have been an operation during the earlier parts of the cycle and regulated as a forest operation during the entire cycle of establishment, management and harvest.

During the 2007 Legislative Session a bill was introduced to extent the exemption to longer rotations (e.g.; 20 years). However, a number of other interests were concerned that extending the exemption created an uneven playing field among producers of solid wood products. The hybrid poplar interests were especially concerned about the implications of certain statutory requirements being applied to them that do not have any discretion for modification or waiver. These requirements include ORS 527.676 (snags and downed logs), ORS 527.740 (clearcut size limits), ORS 527.750 (clearcut size limits) and ORS 527.755 (Scenic Highways). Thus, the members of the House Agricultural and Natural Resources Committee asked that the interest groups work together to develop a solution for consideration at the 2008 Special Session.

The interest groups worked during the interim and agreed to several principles including:

- Plantations exceeding 12 year rotations should be considered forest operations.
- The Board of Forestry is the best place to address issues related to forest practices on these operations.
- Discretion for the Board was needed to address the statutory requirements that were not appropriate for these types of operations.

The bill that passed accurately reflects the agreements among the parties that worked on the issue. The concept also reflects recommendations that were suggested by the Department, by adding authority to waive or modify the same requirements for research or stewardship agreements.

In order to implement these authorities, rulemaking will be required by the Board of Forestry. Work on the hybrid poplar issue is an immediate need since the rotations are nearing the 12 year limit. The Department does not anticipate work on the other two scenarios (except as may be needed to address the hybrid poplar issues) until such time as there is a more immediate need.

## **RECOMMENDATION**

Staff recommends that the Board direct the Department to develop draft rules to address the needs related to intensively managed hardwood operation for consideration at the June 4, 2008 Board meeting for formal rulemaking. The Department will continue to work with the interested parties in developing the draft rules.

## **ATTACHMENT:**

(1) Enrolled HB 3628