

OREGON FOREST PRACTICES ACT (SELECTED STATUTES)

Please note: Because some definitions relate to each other in the guidance, the numbers 5 and 7 are not in numerical order. They retain their number from statute 527.620.

DEFINITIONS FOR ORS 527.610 TO 527.770

ORS 527.620

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.*

STATUTE COMPLIANCE:

These definitions are not subject to enforcement action, but are used to apply the rules and statutes.

- (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;*
 - (e) Disposal of slash; and*
 - (f) Removal of woody biomass.*
- (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.*

APPLICATION:

“Forest tree species” definition is not to be used for enforcement action. The Oregon Forest Practices Act (FPA) has authority only when forest tree species are being established, managed, or harvested. The reforestation rules define species that are acceptable for reforestation.

ADMINISTRATION AND IMPLEMENTATION:

The definition of “forest tree species” is a key element of determining if an activity is an “operation” subject to the FPA.

A conifer or hardwood species that has any commercial value as a forest product will meet the requirements of this section. This includes products such as commercial firewood and Pacific yew bark. The fact that such products may not be the most profitable for a given site is not relevant.

This 2001 definition retains the exclusion of trees grown solely for Christmas trees from “forest tree species.” SB 315 (2001) established a clearer delineation between the FPA regulated activities and activities that are better suited to agricultural or other non-forest regulation. The change clarifies when the FPA regulations are not applicable in an agricultural, urban, or rural-residential setting. The definition of “forest tree species” was modified to specifically identify Christmas tree growing as exempt from forest practice regulations.

- (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 which 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 which 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 per ORS 527.740 and 527.750.***

STATUTE COMPLIANCE:

Harvest type 1, 2 and 3 definitions are not subject to enforcement action, but are used to apply the rules and statutes.

ADMINISTRATION AND IMPLEMENTATION:

Harvest type 1 is typically a shelterwood cut or a very heavy commercial thinning. In either case, at the completion of the harvest, the amount of understory regeneration (in combination with the retained overstory trees) would be inadequate to meet the reforestation requirements, but the retained trees and snags greater than 11 inches DBH exceed the wildlife tree basal area requirements. A common scenario for this type of harvest unit is the insect damage salvage in eastern Oregon that requires reforestation but often retains a significant number of live trees and/or snags. The harvest unit size is not limited.

Harvest type 2 is typically a “green clearcut.” This is the type of operation where the overstory is removed, but the advanced (understory) regeneration is adequate to meet the free to grow reforestation standards without additional planting or time. The harvest unit size is not limited.

Harvest type 3 units are traditionally “clearcuts” that are routinely conducted in even-aged management in western Oregon and less commonly in eastern Oregon. The harvest unit size is limited to 120 acres, but may exceed 120 acres up to 240 acres through an approved plan for an alternate practice (PFAP).

For harvest type 2 or 3 units, the landowner is expected to maintain the identity and location of the required wildlife trees. For future reference, the Stewardship Forester (SF) should document in the FERNS notification the location of the retained wildlife leave trees when known. Landowners are not required to mark wildlife leave trees.

Note: while dead trees can be counted as wildlife trees, they cannot be included in tree stocking and basal area measurements when determining harvest type 1, 2, or 3.

Determining Harvest Type by Post-Harvest Requirements and Site Class

6/2020

1. Does the post-operation unit meet the minimum reforestation stocking requirements by Site Class?

- If yes, then the unit is either Harvest type 2 or Undesignated harvest type
- If no, then the unit is either Harvest type 1 or Harvest type 3

High (Site Class I, II, III)

Plant or Retain:

200 seedlings (< 1" DBH)/acre;

Retain:

120 saplings & poles (1" to 10" DBH)/acre;

or

Retain:

80 sq. ft. basal area/acre in 11"+ DBH trees
or equivalent combinations of seedlings,
saplings or poles

Medium (Site Class IV and V)

Plant or Retain:

125 seedlings (< 1" DBH)/acre;

Retain:

75 saplings & poles (1" to 10" DBH) /acre;

or

Retain:

50 sq. ft. basal area / acre in 11"+ DBH trees
or equivalent combinations of seedlings,
saplings or poles

Low (Site Class VI)

Plant or Retain:

100 seedlings (< 1" DBH)/acre;

Retain:

60 saplings & poles (1" to 10" DBH)/acre;

or

Retain:

40 sq. ft. basal area/acre in 11" DBH trees or
equivalent combinations of seedlings,
saplings or poles

2. Does the post-operation unit meet the minimum wildlife trees retention requirements by Site Class?

- If yes, then the unit is either Harvest type 1 or Undesignated harvest type
- If no, then the unit is either Harvest type 2 or Harvest type 3

High (Site Class I, II, III)

Retain trees ≥ 30 feet tall, ≥ 11 inches DBH,
and ≥ 50% conifer:

50 trees/acre or 33 sq. ft. basal area/acre;

Medium (Site Class IV and V)

Retain trees ≥ 30 feet tall, ≥ 11 inches DBH,
and ≥ 50% conifer:

30 trees/acre or 20 sq. ft. basal area/acre

Low (Site Class VI)

Retain trees ≥ 30 feet tall, ≥ 11 inches DBH,
and ≥ 50% conifer:

15 trees/acre or 10 sq. ft. basal area/acre

Summary by harvest type and post-harvest requirements based on answers to questions 1 and 2:

- **Harvest type 1**, Reforest any unit size; Not required to retain wildlife trees & downed logs.
- **Harvest type 2**, Not required to reforest any unit size; Retain wildlife trees and downed logs if unit is > 25 acres.
- **Harvest type 3**, Reforest any unit size; Retain wildlife trees and downed logs if unit is > 25 acres; and Limit harvest size to 120 acres, unless exempted by an approved plan for an alternate practice.
- **Undesignated harvest type**, No post-harvest requirements for reforestation, wildlife trees and downed logs retention, or harvest size limitation.

- (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.*

APPLICATION:

Operation - This definition is not used directly for enforcement action. However, in combination with other definitions in law and rule, it is a key factor in determining whether an activity is within the jurisdiction of the forest practice regulations and whether notification is required.

ADMINISTRATION:

This definition of an "operation" is relevant in evaluating any commercial activity (also defined in this section) associated with establishing, managing, or harvesting forest tree species (also defined in this section) with designated exceptions. These exceptions are discussed individually below.

The FPA does not have jurisdiction for the following herbicide applications, where the clear purpose of the activities is not to establish, manage, or harvest forest trees:

- “The establishment or management of trees intended to mitigate the effects of agricultural practices...” as defined under operation, ORS 527.620 and OAR 629-600-0100. For example, establishment and management of streamside forested buffers projects under the Conservation Reserve Enhancement Program (CREP), Natural Resources Conservation Service (NRCS) or Soil and Water Conservation District (SWCD).
- Herbicide applications solely for agricultural purposes on mixed agricultural-forestlands. For example, a herbicide application to maintain or improve livestock forage on open, grazed ponderosa pine lands in areas of eastern Oregon.
- Noxious weed control programs administered by an agency, nongovernmental group, or landowner consortium, and take place across multiple ownerships. For example, herbicide applications to control streamside infestations of knotweed species.
- Herbicide applications to control streamside infestations of knotweed species.

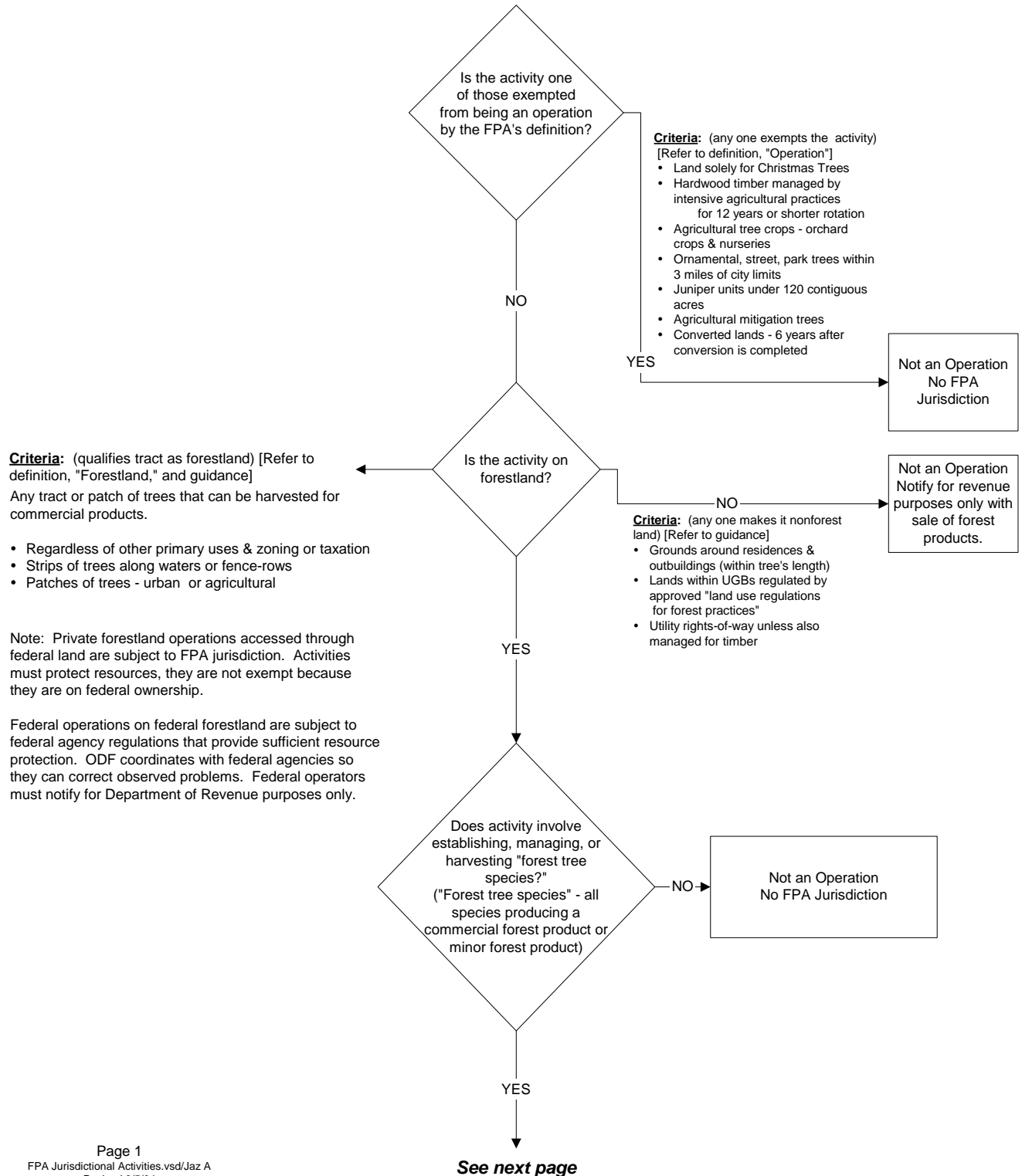
This guidance uses the definitions of **"forestland," "forest practice", "forest tree species", "commercial",** and **"operation." (in ORS 527.620)** These definitions are key in **determining if forest practice regulations apply to a specific activity.** These definitions also provide the criteria needed for determining FPA jurisdiction using the following checklist.

- (1) Is the activity one of those exempted from being an operation under FPA jurisdiction? If so, the activity is, by definition, excluded from forest practice’s authority.
- (2) Is the activity on "forestland"? If not, there is no forest practice’s jurisdiction.
- (3) Does the activity relate to the "establishment, management, or harvesting" of forest tree species? If not, there is no forest practice’s jurisdiction.
- (4) Is the activity "commercial"? If not, there is no forest practice’s jurisdiction.
- (5) Is the activity an "operation"? If not, there is no forest practice’s jurisdiction.

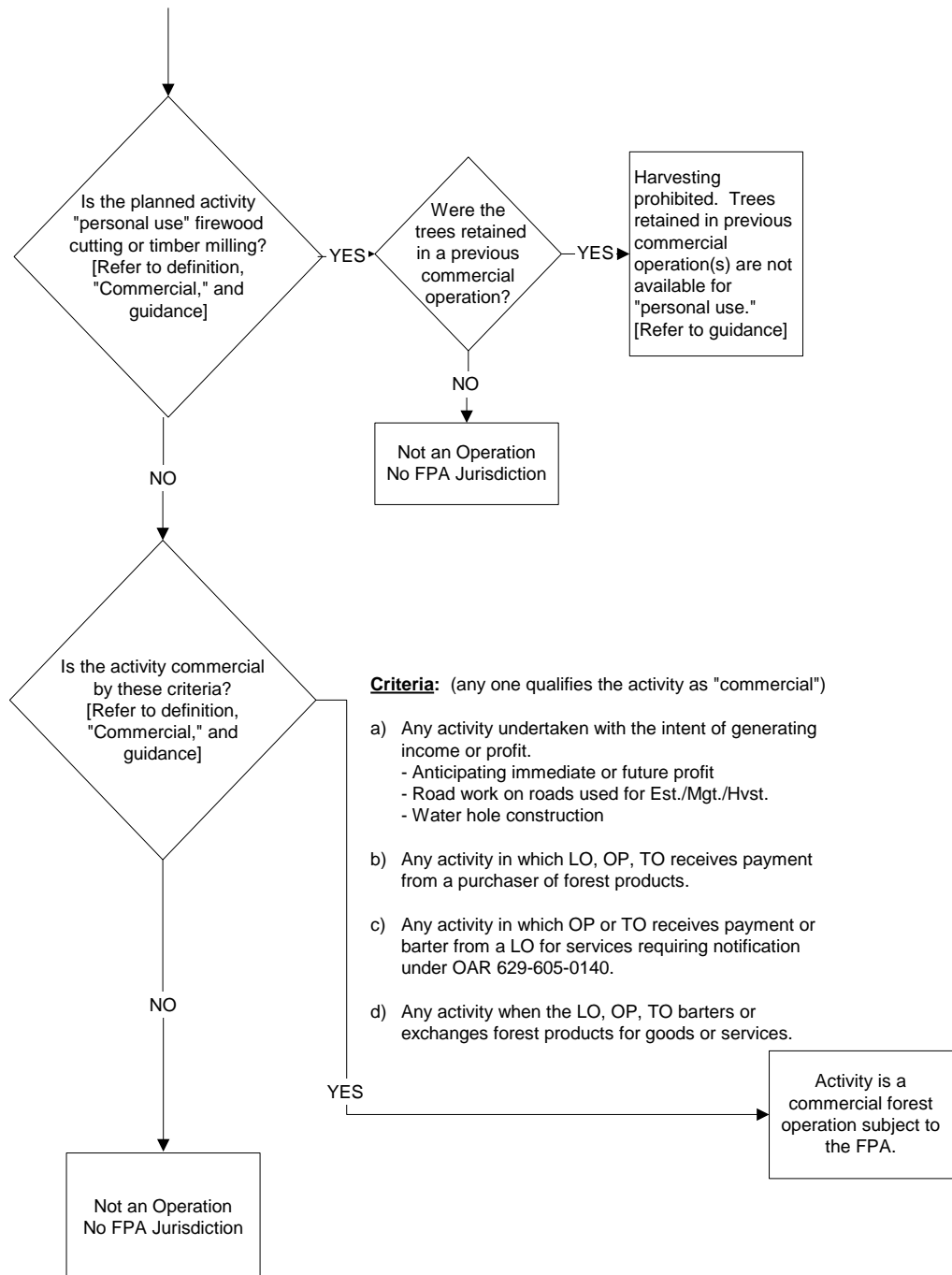
The following flowchart, “Identifying Commercial Forest Operations,” illustrates these decision checkpoints for determining whether an activity is an operation within the jurisdiction of the FPA.

Identifying Commercial Forest Operations

(This is how the definitions of "operation," "forestland," "forest tree species," and "commercial" go together with ODF policy guidance in determining Forest Practices Act jurisdiction over an activity.)



Identifying Commercial Forest Operations



1. Is the activity one of those exempted from being an operation under FPA jurisdiction?

The statute and rule defining an "operation" lists seven exemptions, which generally, but not always, are excluded from forest practice's authority.

Example: The Oregon Department of Forestry (ODF) approves a land use change, but monitors FPA compliance until the land use change complies with the completion and maintenance requirements.

OAR 629-605-0140(2) "Notification to the State Forester - Types of Operations" lists activities that are "operations" but do not require notification. OAR 629-600-0100(52) takes some of those same activities which do **NOT** require notification and exempts them from being considered as "operations", and therefore explicitly exempt from FPA jurisdiction.

(a) Land devoted solely to Christmas tree growing.

"Operation" means any commercial activity . . . except. . . :

Subsection (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."

Christmas tree management on lands devoted solely to that use is outside FPA jurisdiction.

However, an intermixed plantation strategy where a portion of the trees are for Christmas trees and a portion are to be managed for timber is within FPA jurisdiction. Regulated activities would include forest management activities such as vegetation control using herbicides or pre-commercial thinning. In addition, harvesting of forest products would come under FPA regulation.

One way to distinguish Christmas tree growing from timber growing is to determine if the landowner is licensed with the Oregon Department of Agriculture (ODA) as a Christmas tree grower under ORS 571.525.

Paragraph (a) adds the ORS 571.505 reference to define Christmas trees. ORS 571.505 defines Christmas trees as follows.

(2) "Christmas tree" means a cut evergreen tree:

(a) Of a marketable species;

(b) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

(c) Evidencing periodic maintenance practices of shearing or culturing, or both, for all Christmas tree species; weed and bush control and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation and irrigation.

(b) Hardwoods intensively managed for fiber.

"Operation" means any commercial activity . . . except. . . :

Subsection (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."**

The distinguishing characteristics of this tree growing activity are the intensive cultural methods that relate more to agricultural practices than to forest practices. These same hardwood species, when grown under normal silvicultural practices that depart from the specifics in this definition, would be considered within FPA jurisdiction.

When timber is harvested on a rotation cycle greater than 12 years and less than 20 years after planting, ODF **may modify or waive** the limitations and requirement for: wildlife leave trees, ORS 527.676; harvest type 3 limitations, ORS 527.740 and 750; and scenic highways, ORS 527.755, as authorized in ORS 527.736(5). Contact Salem staff when the rotation cycle is 20 years or greater.

ODF will not consider hardwood fiber plantations left to grow past 12 years to be automatically subject to forest practice harvesting regulations. Determine what the hardwoods are to be used for and contact Salem staff for further coordination with the ODA. Notification for harvesting would be required by the Oregon Department of Revenue (DOR) if timber were the product harvested. Clarification with the DOR will be necessary.

(c) Agricultural tree crops.

"Operation" means any commercial activity . . . except. . . :

Subsection (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."

Agricultural trees include fruit and nut trees in actively managed orchards (apple, pear, cherry, walnut, filbert, etc.) and all ornamental trees grown in nurseries. Agricultural trees also include trees such as yew or Douglas-fir that are managed in nurseries or seed orchards for the continuous production of seed or other "crops" such as taxol.

Old orchard trees growing on sites that have not been maintained for agricultural production should also be treated as agricultural trees. However, if old orchard sites have grown back into native tree cover that includes some remnant fruit trees, harvesting them for timber or commercial firewood would be considered a part of the overall "operation."

(d) Ornamental, street, or park trees.

"Operation" means any commercial activity . . . except. . . :

Subsection (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."

This exception applies to "urbanized areas". The reference, ORS 221.010 states:

"(4) "Urbanized area" means territory within three miles of a city.

Furthermore, "city" is defined also:

(2) "City," except in the term "incorporated city" in ORS 221.020, means a city incorporated under ORS 221.020 to 221.100 or proposed to be incorporated. "

The first category of trees exempted from "operations" in urbanized areas is "ornamental trees." Ornamental trees are interpreted by ODF to be those in the "yard" immediately surrounding a house and its associated outbuildings. Harvesting in this area is often done because of windthrow threats to the buildings. ODF will not dispute these homeowner concerns.

Note: ODF does not consider the area within the "yard" to be forestland. The "yard" is the area within the extent of 1.5 times the height of on-site trees currently growing in the vicinity, per guidance for hazard trees from Oregon Occupational Safety and Health Division. "Yards" as nonforest land are discussed in detail under the topic, "Is the activity on "forestland?"

However, outside of the "landscaped and maintained yard," such as on large lots with a house or undeveloped lots, harvesting groups of trees for sale as a commercial forest product is an operation. **Note:** *Other agencies may have jurisdiction for land ODF considers to be already converted to non-forest uses.*

The second category of trees exempted from "operations" in urbanized areas is "street trees." ODF interprets street trees to be those lining city and urban streets and those located in parking lot and urban highway medians.

The third category of trees exempted from "operations" in urbanized areas is "park trees." Park trees are interpreted to be those located within state, county, and city parks that are in urbanized areas. Forest management activities should not be considered an operation when they occur in designated parks in or within three miles of city limits. A "park-like" forest stand should not be confused with a park, owned and maintained by a public entity.

Technical questions or conflicts about the culturing or harvesting of ornamental trees should be handled by the city government or directed to the department's urban foresters.

This provision of the ORS 527.620 and OAR 629-600-0100 definition of an "operation" relieves ODF of administering resource protection rules for only ornamental street or park tree harvesting in and around cities. Harvesting of remnant stands of forest within urbanized areas remains subject to ODF regulation unless: a) the city has adopted "land use regulations for forest practices" under ORS 527.722(5); or b) the activity is otherwise exempted by the definition of an "operation" as discussed in this section.

ODF may inform local government or Department of Environmental Quality (DEQ) of the activity planned within three miles so that they may consider administering their resource protection or water quality regulations as appropriate. Priority of such reporting should be locally determined by ODF. The SF should inform the landowner of these additional regulations and of the value of tree retention to the stream and all the associated resources including water quality, fish and wildlife habitat, and the like.

Notification is still required when any urban trees are going to be sold on sites that are not on “forestland”. Such notification will often be solely for the purposes of the DOR as stated in ORS 321.550. "Notice of intent to harvest; rules; effect of failure to file notice." as follows:

"(1) No person shall harvest or cause to be harvested any timber from land in Oregon without first having notified the State Forester in writing with a copy to the DOR on forms prepared by the State Forester and the department of intent to harvest pursuant to ORS 321.005 to 321.185, 321.560 to 321.600, and 321.700 to 321.754."

Prior to 2003's legislative changes to the forest tax law, ORS 321, operators had to have a notification number to supply to mills and other log buyers before the logs could be received. The DOR no longer can require a notification number for each transaction. The DOR encourages mills to maintain a record of notification numbers, but it is not mandatory. This reduces the usefulness of the one "sort yard" notification specifically for operators who make a business of collecting small batches of logs from numerous landowners and selling them as a batch. ODF will no longer accept open-ended "sort yard" notifications.

FPA statutes require an operator to have a notification for each site that qualifies as an "operation."

Exception: The 2020 catastrophic fire event allowed one notification for multiple landowners for very small fire salvage operations, provided the Operator was listed as the Timber Owner and the digitized operation area includes all landowners conducting the salvage operation.

(e) Juniper species management or harvest under 120 acres.

"Operation" means any commercial activity . . . except. . . :

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

Senate Bill 1151 (1999), directed ODF to review the department's management of western juniper (*Juniperus occidentalis*) and recommended changes to benefit landowners and improve watershed health. The ODF 2000 Ad Hoc Juniper Issues Group, concluded that western juniper management was needed, but that rangeland owners might see FPA regulatory procedures as a disincentive. The group recommended that western juniper harvests be regulated only by Agricultural Water Quality Management Plans (administered by the ODA), not by the FPA. The 120-acre threshold figure was introduced during legislative negotiations in 2001. ODF may inform other agencies if there are natural resource concerns with juniper management.

Landowners may separate juniper harvest units by breaks of any width. Harvesting mixed stands of juniper and acceptable species is subject to the FPA regardless of harvest unit size, e.g., pine

site with juniper encroachment, not a juniper site with few pine on microsites. The purpose of juniper-only projects is typically to maintain or improve rangelands and/or natural resources.

Though other juniper tree species were not identified in the 2000 Ad Hoc SB 1151 Juniper Issues Group or ORS 321, apply ODF regulations to all juniper tree species as if they were western juniper.

Determine between Tables 1, 2, or 3 which represents the stand type by reviewing ground observations, aerial photos and land management history.

Table 1: Western juniper-only stand, few to no pine or other acceptable tree species, Unit <120 acre	
Scenario	FPA Implications
Any juniper management activity	<ul style="list-style-type: none"> None – FPA does not apply, 629-600-0100(52)(e)

Table 2: Western juniper-only stand, few to no pine or other acceptable tree species, Unit >120 acres	
Scenario	FPA Implications
Juniper management, no commercial harvest	<ul style="list-style-type: none"> None – FPA does not apply, 629-600-0100(12)
<ul style="list-style-type: none"> Juniper management, otherwise commercial harvest (e.g., firewood or specialty products) or incidental commercial harvest (e.g., a friend takes a few firewood cords or special wood piece) 	<ul style="list-style-type: none"> FPA applies except¹ reforestation, leave trees, down wood, and harvest type 3 size limitation Water Protection rules apply Specified Resource Sites rules apply Plan for Alternate Practice may apply

Table 3: Mixed Stand of western juniper and "Acceptable Species", pine, etc.; Unit + any Acreage	
Scenario	FPA Implications
Any juniper-only management activity, harvest or no harvest (always a commercial "operation" because it is management of the acceptable species, e.g., pine, etc.)	<ul style="list-style-type: none"> FPA applies except² reforestation, leave trees, down wood, and harvest type 3 size Water Protection Rules apply Specified Resource Sites rules apply Plan for Alternate Practice may apply

¹Juniper isn't an "acceptable reforestation species," so juniper-only removal doesn't require reforestation.

² For cubic foot site class at least VI, when a mixed stand has a juniper-only Type 2 harvest that exceeds 25 acres, the leave trees and down wood requirement applies.

The FPA applies to western juniper harvest units 120 acres or larger. However, because juniper tends to grow on low-productivity sites, some of the FPA requirements may not apply.

Table 4. Regulatory Standards for Commercial Western Juniper Harvests Unit > 120 acres	
Statute or Rule Standard	Standard applies to western juniper harvest?
Notification OAR 629-605-0140(2)(j)	Yes. The activity is an operation exceeding 120 acres, and is not exempted from notification.
Written plans OAR 629-605-0170	Yes, if a statute or rule requires a written plan for the specific activity and location, e.g., operations within 100 feet of a Type F stream.
Retain trees along scenic highways ORS 527.755(1)	Yes, but the landowner may file a plan for alternate practices to remove the trees and convert to grazing land.
120-acre size limitation on harvest type 3 units ORS 527.740, 527.750	No, if below cubic foot site class VI. Also, there is not a Type 3 harvest for a juniper-only stand, because juniper is not considered an acceptable species to require reforestation. Yes, if site class VI or above and harvesting a mixed stand of juniper and acceptable species, e.g., pine stand with juniper encroachment, not a juniper stand with few pine on microsites.
Retain green trees, snags, and down wood in harvest type 2 or type 3 units exceeding 25 acres ORS 527.676	
Reforestation OAR 629-610	No. Reforestation is not required after juniper-only harvesting. Juniper is not an acceptable reforestation tree species.
Protection of waters and specified resource sites OAR 629-635 through OAR 629-665 during <ul style="list-style-type: none"> • slash treatment, OAR 629-615; • chemical application, OAR 629-620; • harvesting, OAR 629-630; and • road construction/maintenance, OAR 629-625 	Yes. The activity is an "operation" exceeding 120 acres, OAR 629-600-0100(52)(e), conducted on "forestland", OAR 629-600-0100(25), for managing "forest tree species", OAR 629-600-0100(27).
Plan for an alternate practice for site specific vegetation retention for streams and RMA OAR 629-642-0700	Yes, if the approved plan provides incentive for restoring or enhancing RMAs, while protecting waters of the state during felling and stream crossings. Review with ODFW proposals to fell juniper trees within 20 feet of RMAs -- prior to plan approval.
Western Juniper harvest and privilege taxes ORS 321.005(6) and 321.805(7)	No. Exemption from taxes means notification to DOR is not required for commercial harvest of any juniper product on any amount of western juniper acreage.

A PDM, permit to use fire or power-driven machinery, is required for any sized operation where juniper management activities is in, or within 1/8 mile of a fire protection district, ORS 477.625.

Though the Rocky Mountain juniper (Juniperus scopulorum) was not identified in the 2000 Ad Hoc SB 1151 Juniper Issues Group or ORS 321, apply ODF regulations as if it were western juniper.

(f) Trees mitigating agricultural practices.

"Operation" means any commercial activity . . . except. . . :

Subsection (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."

Forest practices regulation does not apply to establishing and managing trees to mitigate agricultural practices. Site preparation, planting, chemical vegetation control, and non-commercial thinning are exempt from forest practice regulations. However, "harvesting" is not included in the exemption wording. This was intentional and means that any commercial harvesting among such trees is an operation subject to the forest practice rules. Non-commercial removal of such trees would be subject to the ODA's Water Quality Management Area Plans for the basin. ODF will contact and inform ODA when learning of such activities. DEQ would also likely be interested in being notified of the activity, per the 2006 MOA, Conversion of Forestland. For example, establishment and management of streamside forested buffers projects under CREP, NRCS or SWCD.

(g) Approved land use change.

"Operation" means any commercial activity . . . except. . . :

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

This provision establishes a point in approved land use change operations when FPA resource protection jurisdiction ends, except for completion and maintenance of the land use change. The phrase "after timber harvest activities have been completed" should usually be interpreted as the completion of yarding. The commencement of "land use conversion activities" occurs with the beginning of any activity that is not a forest practice. The definition reads **"and"** so both conditions must be present before the site is no longer an operation subject to forest practice rules. Note: There is a more complete discussion of land use changes in the guidance for OAR 629-610-0090 Exemption from Reforestation for Land Uses Not Compatible with Forest Tree Cover. Administer the processes for a plan for alternate practice (PFAP) in alignment with the interagency Memorandum of Agreement for Conversion of Forestland.

Note: Two other types of activities are exempt from forest practice regulations:

- A. Emergency insect eradication projects sponsored or conducted by the ODA are not regulated by the FPA.

Examples: Applications of Btk, an organic biopesticide, for gypsy moth eradication, even if portions of the application take place on forestland. This conclusion is based on the finding that these types of projects are not commercial activities directly related to growing and harvesting forest tree species.

Insecticide applications that are conducted by forest landowners and that are clearly related to growing and harvesting forest tree species remain subject to the FPA.

Example: A pesticide application on forestland for control of Douglas-fir tussock moths.

B. Invasive weed control projects are not subject to the FPA if the projects meet the following conditions:

- They are sponsored or conducted by the ODA, a cooperative weed management area, or similar entity other than a forest landowner; and
- The purpose is clearly to control invasive and/or noxious weeds, not to control vegetation for the purpose of growing and harvesting forest tree species.

Example: A knotweed control projects in coastal streamside areas, is coordinated by local weed control organizations in cooperation with the ODA.

- Vegetation control activities that are done or directed by the landowner and that are clearly connected to the purpose of growing and harvesting forest trees species are subject to the FPA, even though control of invasive weeds might be involved.

Example: Control of overtopping Scotch broom in a conifer plantation.

The distinctions in A and B above may not always be clear, especially when landowners are directly involved in the projects. Contact Salem staff to determine the appropriate policy.

2. Is the activity on "forestland?"

Forestland defined for Forest Practices Administration.

"Forestland" is defined broadly in ORS 527.620 "Definitions" and includes any land being used to grow and harvest forest tree species, even if that is not the **primary** use of the land. The zoning, tax status, other state or local statutes, ordinances, rules or regulations that may apply to the parcel are not considered when making the forestland determination. If forest tree species are growing on the land and activities for managing or harvesting trees for commercial purposes have been or are being conducted, it is forestland.

Forestland: Any size tract or patch of trees that can be harvested for a commercial forest product regardless of the surrounding land use or zoning of the land, including:

- Strips of timber along streams on farm or range land. There is an exemption for the *establishment* and *management* of forested patches 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. This exemption does not apply to the *harvest* of such forested patches.
- Patches of timber that remain inside urbanized areas that are not exempted by the FPA definition of "operation."
- Patches of timber within the urban growth boundary of local governments that have not adopted land use regulations that supplant the FPA.
- Natural or unmaintained areas of public parks and campgrounds (Not including areas of publicly-accessible parks and campgrounds maintained for public use, as these are considered to be already converted to non-forest land).
- The forested portions of rights-of-ways are considered "forestland" for purposes of FPA administration.

Non-forestland, considered to be already converted to a non-forest use, includes:

- “Yard” or grounds around maintained residential structures and outbuildings to the extent of 1.5 times the height of on-site trees currently growing in the vicinity, per guidance for hazard trees from Oregon Occupational Safety and Health Division.
- The portions of parks, campgrounds, and day-use areas that are maintained/landscaped, or developed with maintained buildings or other structures, and where people are normally present.
 - Includes publicly- and privately-owned parks, campgrounds, and day-use areas, with the condition that the public is invited to use the facilities.
 - “Developed with building or other structures” does not include:
 - Hiking trails outside publicly-accessible parks, campgrounds and day-use areas.
 - Privately-owned facilities not generally open for public use.
- Developed and maintained public campgrounds and park areas that are not managed for the growing and harvesting of tree species, rather are managed exclusively for recreation. Incidental tree harvests in public campgrounds or parks that are non-forestland would not be reforested with the intent of future commercial tree harvest.
- Tree nurseries and seed orchards.
 - Statute excludes from the definition of “operation” those activities relating to tree nurseries and seed orchards (ORS 527.620).
 - The 1995 Memorandum of Agreement on pesticide regulation between the Board of Forestry and ODA states that the definition of forestland does not include tree nurseries or seed orchards.
- “Utility rights-of-way” such as power line or gas pipeline corridors, where commercial trees have already been harvested. However, within the non-forestland portion of the ROW, notifications are required for incidental commercial forest harvest for DOR and PDM purposes only. There is typically a federal/state/regional/local process for such conversions. ODF’s policy is that it wants to be included in the planning stages, but that most of its resource protection concerns would be addressed in the existing formal process. **Note:** Notifications are needed for stream crossings, road building and harvesting. Where written plans are needed, they would usually be in the form of existing planning documents. Other concerns, such as landslides and public safety should be considered in the planning process.

Because the definition of an "operation" reads ". . . activity relating to the establishment, management or harvest of forest tree species . . .," forest practice’s jurisdiction extends to adjacent land crossed in order to access forestland.

Examples: A road, used however occasionally in forest operations, that crosses residential or agricultural land to reach forestland. ODF will regulate the resource-affecting activities on a road crossing federal land to access an operation on private forestland.

Note: Other agencies may have jurisdiction for land ODF considers to be already converted to non-forest uses. Example: DEQ would be the regulatory authority over any delivery of sediment to waters of the state originating from activities on non-forestland campgrounds.

Local Government Regulation.

Note that ORS 527.722 relieves the State Forester of the responsibility to administer the FPA on those forestlands within urban growth boundaries (UGBs) where a local government has adopted "land use regulations for forest practices." Salem staff maintains a list of qualifying local government regulations on the program website. Districts should periodically review the status of local government regulation within UGBs and inform Salem staff of any changes. Since the law directs local governments to develop such regulations in coordination with ODF, districts and Salem staff should be aware of and involved in development and revision of such land use regulations. ODF will foster a cooperative relationship with local governments developing or revising land use regulations for forest practices inside their UGBs. Until this cooperative process is complete, ODF will continue to administer forest practices within the local government's UGB.

Forestland Conversions.

If a landowner is converting forestland to an approved use not compatible with forestry, the land is forestland until timber harvest activities have been completed and land use conversion activities have commenced (see subparagraph (g), defining "operation" above). Harvest completion means yarding and all forestry-related disturbance is complete on the site. The commencement of land use conversion is marked by initiation of any activity, not a forest practice, which contributes to the non-forest use.

Landowners who intend land use conversions must first obtain approval of a PFAP for the exemption from reforestation requirements. This requires written approval from ODF and other agencies as appropriate. See also guidance for OAR 629-610-0090.

Afforestation.

Where a landowner is converting non-forest land to forestland, the forestland designation applies when the afforestation activity begins.

Examples: Clearing, piling, and spraying, activities which require notification and observance of the relevant rule requirements, such as water quality protection practices.

ODF should investigate to determine whether the rules apply in cases where the landowner's intent to convert to forest tree species is not clear.

Example: A landowner may intend to convert forestland to only grow Christmas trees.

Federal or other Jurisdiction.

The FPA does not have jurisdiction for forest practices within the National Floodplain Insurance Program (NFIP), per a Department of Justice review, May 20, 2014. The county administration of the NFIP, through a land use permit, provides more regulatory certainty than the FPA.

The FPA does not have jurisdiction when forest practices take place within the right of way boundary of the existing railroad line, per the federal railway regulations (primarily the Interstate Commerce Commission Termination Act).

However, other communications through the ODF's E-Notification system is required for:

- Any activity that is on or within 1/8-mile of a forest protection district and that qualifies as an "operation" under ORS 477.001 (17) would be subject to the requirement to obtain a permit to use fire or operate power driven machinery (via ODF's E-Notification system), and would be subject to the other requirements in ORS 477; and
- If harvesting will be involved, the timber owner must notify DOR (via ODF's E-Notification system).

FPA Authority and Federal Forestland.

Though federal forestlands fit under the FPA's definition of forestland, the State Forester does not administer the FPA on federal lands. Federal lands is not addressed directly by ORS 527.620. Nothing in the FPA indicates there is any intent for the FPA to not apply to federal lands. Under the federal Clean Water Act (CWA), federal agencies are required to comply with the measures of Oregon designed to implement the CWA. The FPA is one of these measures.

The Forest Service and BLM lands have signed agreements with the state to be the designated management agencies to implement the state's water quality program, specifically temperature (OAR 340-041-0028(12)(g) and other water quality criteria (OAR 340-041-0061(13)). These agreements require that the Forest Service and BLM have a program in place that will meet or exceed the standards of the FPA. Contact Salem staff to review FPA jurisdiction for operations on other federal lands, including Bonneville Power Administration, Army Corps of Engineers, U.S. military agencies, Bureau of Reclamation, and national wildlife refuges.

An operator, harvesting on federal forestlands, must file a notification with ODF for DOR purposes. An operator conducting forest activities on BLM land in western Oregon must file a Permit to Use Fire or Power Driven Machinery (PDM) to allow ODF to administer industrial fire prevention regulations, including forest operations inspections, per the BLM Western Oregon Suppression Agreement.

Violations of the standards of the FPA observed by ODF on federal lands, and unrelated to operations on private land, should be reported to the local BLM, Forest Service, or other federal agency office. Both the USFS and BLM are DEQ designated management agencies for compliance with the state water quality standards and unsatisfactory conditions on their lands can be referred to DEQ.

Operations on Private Land that Cross Federal Land.

Private operations that use federally-controlled haul roads are responsible to maintain state water quality standards. This is analogous to compliance with state game laws on federal land. It is a fine point, legally, that the FPA will be applied to federally-controlled lands and roads, but ODF will only inform federal agencies of unsatisfactory conditions on federally-owned lands and roads. ODF will require operators to address unsatisfactory conditions on federally-controlled lands and roads they are using, even if the conditions are due to inadequate road design, materials, or road maintenance by the federal agency.

Example: A private operator is hauling on a federally-controlled road and causes or contributes to a turbidity standard violation, they will be required by ODF to stop the damage by

adequate road maintenance practices or by ceasing use of the road. Failure to comply will result in enforcement action by ODF against the operator.

To correct the problems, the private operator may attempt to apply the terms of the road use agreement with the federal agency or otherwise negotiate with them to correct the unsatisfactory condition. When the landowner is the USFS or BLM, ODF will first report the violation to them for correction. ODF will not take direct enforcement action against the federal landowner. ODF may report the violation to the Department of Environmental Quality (DEQ) if the federal agency continues to contribute to the unsatisfactory condition whether by inaction or inadequate repair. The federal agencies are required by the federal Clean Water Act to comply with the state Water Quality Standards and are subject to enforcement action by DEQ.

Operations on Private Land that are conducted by federal agencies.

Activities conducted by the BLM, Forest Service, or other federal agencies on private lands are directly subject to all requirements of the FPA as administered by the State Forester.

Example: Road construction to access federal lands through a private land's easement.

FPA Authority where Tribes Exert Sovereign Rights.

- **Caution should be used when confronted with a forest resource issue pertaining to tribal trust or tribal fee lands or operations on non-Indian lands within tribal reservation boundaries.**
- **Consult with Salem staff, who will discuss with the tribe, Department of Justice and Bureau of Indian Affairs.** These issues are very sensitive and complex and generalization cannot be made between reservations or land classifications on the same reservation.
- “Tribal lands” means land owned and managed by the tribe but held in federal trust.
- “Fee lands” means land, originally tribal reservation land, which is owned by a tribe, Indian or non-Indian and is not held in federal trust, The state and local governments have jurisdiction on fee lands but sometimes a tribe may exert jurisdiction when fee lands are inside a tribal reservation boundary.
- “Closed reservation” means the tribe has sole regulatory authority over all lands within the reservation boundary.
- “Open reservation” means the tribe has limited regulatory authority on non-Indian land within the reservation boundary.

FPA jurisdiction on tribal trust and tribal fee lands:

- The Department acknowledges **each** of Oregon's nine federally recognized tribes have sovereign rights unique to other Oregonians.
- Though tribal forestlands held in federal trust fit under the FPA's definition of forestland, the FPA does not directly address federal trust lands, therefore, the FPA has no jurisdiction on tribal trust lands or on tribal lands in the process of being converted to federal trust status.
- Tribes may benefit by notifying the State Forester of forest operations, who will provide a resource review, such as, landslide and public safety concerns.

FPA jurisdiction on non-Indian lands within **each** tribal reservation:

- Private lands within the Confederated Tribes of Warm Springs Reservation must comply with tribal regulations and notify the State Forester for the Oregon Department of Revenue processing of harvest income, otherwise, the FPA has no jurisdiction.
- Non-Indian landowners within other tribal reservation boundaries very likely must comply with the FPA and may also be required to comply with the tribe's regulations. Consult Salem.

FPA jurisdiction, yet to be determined by Salem staff for **each tribe**:

- Tribal lands which remain independent of federal trust status (fee lands),
- Lands owned by individual tribal members located inside or outside the tribal reservation boundaries,
- Enforcement action when resources are damaged on tribal lands not under federal trust
- Enforcement action on lands owned by individual tribal members, and
- Enforcement action when resources are damaged on non-Indian lands within a tribal reservation boundary.

Table 5. Forest Practices Act Authority Where Tribes Exert Sovereign Rights			
Land	Federal trust	FPA	Department of Revenue
Tribal trust land, within or outside reservation	Yes	No	No
New tribal lands seeking federal trust status	Yes	No	No
New tribal lands outside a reservation, not seeking federal trust	No	Consult Salem	Consult Salem
Tribal fee land within a reservation	No	Consult Salem	Consult Salem
Individual tribal member land outside reservation	No	Maybe, consult Salem	Maybe, consult Salem
Non-Indian land within a “closed” reservation. <u>Example</u> : Confederated Tribes of Warm Springs Reservation of Oregon.	No	No	Yes
Non-Indian land within an “open” reservation. <u>Example</u> : Confederated Tribes of Umatilla Indian Reservation.	No	Likely, consult Salem. Umatilla IR requires private lands to comply with tribal regulations	Yes

Department of Justice, October, 27, 2011

3. Does the activity establish, manage, or harvest "forest tree species?"

Establishing, managing, or harvesting forest trees includes, but is not limited to: reforestation; road construction and maintenance; harvesting of forest tree species; application of chemicals; disposal of slash; site preparation; pre-commercial thinning; pruning; development of rock pits for forest road use; collecting cones and seeds; tree protection such as bud capping; and harvesting of minor forest products.

"Forest tree species" includes all tree species that can produce a commercial forest product, including minor forest products. Forest trees grown as Christmas trees on land dedicated wholly to growing Christmas trees are excluded from this definition. However, "forest tree species" does include those planted as Christmas trees that are allowed to outgrow their initial purpose and are instead managed for timber or other forest products.

4. Is the activity a "commercial" "operation?"

"Operation" means any "commercial" activity relating to the establishment, management, or harvesting of forest tree species. "Commercial" is a key characteristic in determining whether an activity is an "operation." Until 2002, it was defined only in guidance, but it is now defined in rule OAR 629-600-0100 Definitions.

By this rule, **"commercial" means of, or pertaining to, the exchange or buying and selling of commodities or services. This includes . . .**

(a) Any activity undertaken with the intent of generating income or profit;

- Operations are commercial when they include activities that are being conducted because of the anticipation of either immediate or future profit. Therefore, precommercial thinning, fire prevention, chemical release, fertilizing, and site preparation are commercial operations.
- Construction or reconstruction of any road on or accessing forestland that was built for or has been used as part of a commercial forest operation is a commercial operation.

Example: Industrial forest landowners are in the "business" of growing trees, thus any road on their ownership is part of their commercial operation. This also includes any roads used by non-industrial landowners that are or have been used for harvesting trees and managing timber, notwithstanding other additional uses such as agriculture.

- Excavating water holes for fire protection "pump chances" or for chemical mixing water sources is a commercial activity. It's an aspect of forest management, ultimately for income or profit. ODF may determine that a PFAP is required for machine work in the stream in order to minimize the activity as required in OAR 629-625-0430(2), Stream Protection.

(b) Any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products;

- Harvesting forest products for sale is the most common commercial operation.

(c) Any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or

Except when firewood cutting or timber milling for personal use is involved, there is a commercial operation any time an activity occurs on forestland and someone is paid or in some way compensated for conducting forest practices requiring notification under OAR 629-605-0140. **Note:** If the activity occurs on land already converted to non-forest use, such as a residential yard or a utility right-of-way, the activity will not be considered an "operation" because it is not on forestland; therefore, notification will not be required by OAR 629-605-0140. However, the notifier must check the E-Notification box to inform ODF and the DOR when there is saleable or personal use, timber or firewood produced.

Examples:

- It is a commercial activity when an operator is hired to rebuild a road for access to a woodlot for planting and further forest management.
- It is not a commercial activity if a landowner pays a logger to cut trees from their woodlot solely for the landowner's personal use as firewood or milled timber, but a notification for DOR use is required.
- It is a commercial activity if a landowner pays a logger to cut trees from their woodlot to be sold or traded.
- It is not a commercial activity when a disgruntled landowner pays someone to cut, with the intent to leave trees lie unused on the landowner's forestland.
- It is commercial if a landowner pays to have danger trees cut from within reach of the structures around his house. However, this is not an operation because the land is considered non-forest land by ODF. The landowner may need a notification for DOR purposes because they sell the logs, but forest practices regulations do not apply.
- It is a commercial operation to cut and clear trees from existing forestland in order to clear the land for conversion to a non-forest use, **If** the activity meets the definitions of "operations" and "commercial" (OAR 629-605-0140(e)).

See also Timber subject to taxation under OAR 150-321-0020 and 150-321-0640.

(d) Any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services.

- It is a commercial operation if a landowner exchanges some of his logs with the mill for cash and some in exchange for milling of lumber that he uses for construction on his own land.

(e) This does not include firewood cutting or timber milling for personal use.

- If all criteria are met, this exclusion overrides any of the above conditions in this definition that might be present. It is intended to allow individual landowners to cut their own trees for firewood or lumber they process, or to pay someone to do so, solely to obtain these products for their personal use. ODF interprets "personal use" to mean that the landowner makes use of the firewood or lumber from their land for its primary purpose. That is, the landowner burns the firewood in their structures or builds on their own land with the lumber. A key criterion is that they use the firewood or lumber themselves and do not sell it or barter it for any other purpose than to obtain the products for their personal use. This means they do not give these products away, even as a charitable donation, e.g. for large wood stream

enhancement projects with the ODFW. Any use outside this meaning of "personal use" is "commercial," and if all other criteria for an "operation" are met, the activity is an "operation" that must comply with appropriate forest practice regulations. Although this may seem strict, it is necessary to prevent attempts by some landowners to evade protecting forest resources by claiming personal use, exempt from regulation.

In summary this exemption from regulation as a commercial forest operation applies when:

- I. The only forest products of the activity are firewood or lumber, and
- II. The landowner cuts and processes the products himself or pays someone to do so in currency or barter, but solely for the purpose of obtaining firewood or lumber; and
- III. The firewood or lumber are used only on the landowner's property for their primary and normal purposes, except that product bartered in return for its production; and
- IV. The landowner receives no monetary return from the product bartered to someone else in return for product production.

Technically, firewood and lumber harvested and processed for personal use must be declared as income in reporting to the DOR. Therefore, notification only for DOR purposes is appropriate for such activities even though they are not considered commercial. ODF will inform the operator of this should the occasion present itself.

Note: Trees retained as required in a commercial operation, such as in-unit wildlife leave trees or riparian trees, remain part of that commercial operation until they would otherwise become available for harvest under rule (usually this is when replacement trees have grown in the stand).

If the land use is changed to non-forest use, the removal must be approved by the appropriate agency with regulatory jurisdiction over the non-forest use. Such trees are not available for personal use harvesting for firewood or lumber. This is because leave tree requirements would be meaningless if the trees can be harvested for some non-commercial purpose. Interpretations of legal requirements that result in a meaningless outcome are generally not supported by courts during legal actions.

Non-commercial activities include the following.

- (1) The cutting of firewood or milling of lumber by the landowner personally or by someone they pay or trade some of the wood or lumber only for the service, solely for the landowner's personal use.
- (2) Utility companies' rights-of-way are usually considered by ODF to be land converted to non-forest use, with no trees being intentionally grown for commercial forest products. Therefore, vegetation management on rights-of-way is not a commercial operation requiring notification. A PDM may be required however.

In contrast, utility companies cutting and selling trees alongside their rights-of-way to protect the power lines are conducting a commercial operation under clause c) of the "commercial" guidance above. When this is the situation, the utility company must notify ODF of the operation.

If, however, the utility company leaves the merchantable trees for the landowners alongside the right-of-way to sell, then, not the utility company, but those landowners must notify, primarily for DOR purposes. If the landowner cuts up the trees for firewood or mills them for personal use as lumber, there is no commercial operation.

When outside their rights-of-way, utility companies may cut normally-retained trees that may be in an RMA to protect their installation, under the rule modifications allowed by OAR 629-605-0500, Modification of Requirements for Forest Health and Public Safety. If such trees are outside the utility right-of-way, the utility company must notify and submit written plans (when required by rule or statute) and a PFAP for approval when the trees are on forestland.

Examples to determine if an activity is a commercial operation.

- (1) Situation: A landowner annually harvests a year's worth of firewood from his woodlot for heating his house. Trees required to be retained as part of a previous commercial operation are not involved. The landowner does all the work.

Analysis:

- (a) *Is the activity exempt from being a forest operation?*
The activity is not exempt in the definition of "operations".
- (b) *Is the activity on "forestland"?*
The activity occurs on forestland, used for growing and harvesting forest trees.
- (c) *Does the activity relate to the "establishment, management or harvesting" of "forest tree species"?*
The activity is related to harvesting forest trees.
- (d) *Is the activity "commercial"?*
 - (A) The wood is not harvested to generate income, nor is it bartered for services or products.
 - (B) The landowner receives no payment for the firewood.
 - (C) No money or bartered product or service is exchanged, although harvesting usually requires a notification under OAR 629-605-0140.
 - (D) The landowner cut the firewood for personal use.
 - (E) The trees harvested were not retained as obligations under a previous commercial operation.

Conclusion: The activity is not commercial because of factor (d)(D). Cutting firewood solely for personal use is not considered commercial activity. Notification for forest practices is not required, but technically notification to DOR is required.

Variations on this scenario are common and can change the conclusion. ODF must consider the relative weight of each factor to make the determination. If the landowner plans to exchange money or barter for services in harvesting, hauling, or processing the wood, but will only supply his personal use, the activity would not be considered commercial. If the landowner plans to sell or barter some or all of the wood, the activity would be commercial.

- (2) Situation: A landowner plans to hire a faller to cut down five large trees which the landowner will process into lumber on site with his own portable sawmill. The lumber will be used to build a barn on the property. The landowner will do all the yarding and

processing work. The trees are within 100 feet of a large Type F stream, but there has never been a commercial operation along this riparian area.

Analysis:

- (a) *Is the activity exempt from being a forest operation?*
The activity is not exempt in the definition of "operations".
- (b) *Is the activity on "forestland"?*
The activity occurs on forestland, used (at least in part) for growing and harvesting forest trees.
- (c) *Does the activity relate to the "establishment, management or harvesting" of "forest tree species"?*
The activity is related to harvesting forest trees.
- (d) *Is the activity "commercial"?*
 - (A) The DOR rules require reporting the value of the lumber as income.
 - (B) The landowner would receive no payment for the lumber.
 - (C) Money or barter would change hands for services, and harvesting requires a notification under OAR 629-605-0140.
 - (D) The landowner plans to mill the wood for personal use.
 - (E) The trees planned for harvest were not retained as obligations under a previous commercial operation.

Conclusion: This activity is not commercial because of factor (d)(D).

The landowner is required by DOR rules to report the value of the lumber as income.)

- (3) Situation: In a commercial harvesting activity a landowner reluctantly leaves the required vegetative components in the 1,000 foot long RMA on one side of a small Type F stream. However, the landowner advises ODF he will remove most of those trees himself for personal use firewood.

Analysis (applies to the firewood cutting):

- (a) *Is the activity exempt from being a forest operation?*
The activity is not exempt in the definition of operations.
- (b) *Is the activity on "forestland"?*
The activity would occur on forestland, used for growing and harvesting forest trees.
- (c) *Does the activity relate to the "establishment, management or harvesting" of "forest tree species"?*
The activity would be harvesting forest trees.
- (d) *Is the activity "commercial"?*
 - (A) The wood would not be harvested to generate income.
 - (B) The landowner would receive no payment for the firewood.
 - (C) Money or barter will not change hands for services, but harvesting usually requires a notification under OAR 629-605-0140.
 - (D) The landowner plans to cut the firewood for personal use.
 - (E) The trees to be cut for firewood are being retained as a requirement under a previous commercial operation.

Conclusion: The activity is not commercial, because of factor (d)(E). It's not commercial in itself, but the RMA trees must be maintained as part of the preceding commercial operation under the applicable forest practice requirements. While the woodcutting is separated in time from a specific harvest activity, it would take trees that are being maintained as part of a commercial operation; this cannot be overridden by claiming non-commercial status for this activity.

- (4) Situation: A residential landowner (or group of landowners) wishes to hire a contractor to clear excess and ladder fuels from around their houses and outbuildings to reduce fire danger. Some merchantable trees will be removed by the contractor who is working in the area and will combine logs from many homeowners and sell them, paying the homeowners for their net value.

Analysis:

- (a) *Is the activity exempt from being a forest operation?*
The activity is not exempt in the definition of "operations".
- (b) *Is the activity on "forestland"?*
The activity will not occur on forestland, used for growing and harvesting forest trees. ODF views this area around the house and outbuildings as converted to non-forest use.

Conclusion: No operation or FPA jurisdiction is involved because the land is not forestland. However, the operator who is selling the logs must notify the DOR.

The analysis checklist should be applied for each unique set of conditions to consistently determine the applicability of the FP rules in each case. Consult local supervisors or Salem staff in situations where application of the test criteria is uncertain.

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

STATUTE COMPLIANCE:

“Operator” This definition is not subject to enforcement action, but is used to apply the rules and statutes.

ADMINISTRATION AND IMPLEMENTATION:

The term "operator" refers to any person conducting a forest operation and may include the operator, landowner or timberowner. Unless the responsible party is specified by rule (such as reforestation being the sole responsibility of the landowner), use of this generic term provides flexibility to determine on an operation-by-operation basis who is responsible for rule requirements.

As a technical legal matter, each landowner is ultimately responsible for what happens on his/her land so long as the person taking the action is acting with the owner's permission and on the owner's behalf. However, as a matter of policy, if noncompliance occurs, SFs should apply discretion in taking enforcement action toward the party or parties most accountable for the problem and who will benefit from the educational aspects of the enforcement action. This can include the operator listed on the notification; an employee or subcontractor of the operator; the landowner; the timber owner; an agent (such as a consulting forester); any combination or all of the above, provided a responsibility for the actions resulting in noncompliance exists. The enforcement directive should be consulted for additional information with regard to enforcement actions and responsibility.

- (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.*

STATUTE COMPLIANCE:

These definitions are not subject to enforcement action, but are used to apply the rules and statutes.

ADMINISTRATION AND IMPLEMENTATION:

“Written plan” - A written plan requires certain information to be included in the document in order for it to be considered a complete written plan. The purpose of a written plan is found in OAR 629-605-0170(12) and states that the written plan must contain enough information to allow the Forester to evaluate the likelihood that the operation or practice described in the plan would comply with the FPA.

The required elements of a written plan are identified in OAR 629-605-0170(13). This rule outlines the basic information required in the written plan to make such an assessment. If a document is submitted that does not contain this information, it is not considered a complete written plan and therefore does not satisfy the requirement to submit a written plan.

REFERENCES:

- Other Agencies’ Program Guidance, 2000
- 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and Regional Supplements