### SELECTED STATUTES

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**Pesticide Applications by Helicopter, ORS 527.786 to 527.798**

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APPLICATION:

Subsection (1) through (6) are not used for enforcement action.

ADMINISTRATION:

Subsection (3) The Board of Forestry (Board) is directed to develop rules and to coordinate through the ODF, with other state agencies and local governments, which are concerned with the forest environment. The department’s coordination with local governments concerned with environment is not conditioned on whether there is a notification, which indicates a land use change.
ORS 527.670

(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 provide a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall provide 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 that filed an original notification shall notify the State Forester of any subsequent change in the information contained in the notification.

(8) Within six working days of receipt of a notice or a written plan filed under subsection (6) or (7) of this section, the State Forester shall make a copy of the notice or written plan available to any person who requested of the State Forester in writing that the person be provided with 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 providing copies of notices and written plans under this subsection not to exceed the actual and reasonable costs. In addition, the State Forester shall provide 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.

APPLICATION:

December 15, 2021 is the effective date for the helicopter spray laws to use E-Notification as the “department reporting system.” Note: Helicopter spray notifications may not be continued into the next calendar year.
Subsections (6) and (7) are used for enforcement action where the operator is required to notify the State Forester. Subsections (6), (8) and (9) are not used for enforcement action that require actions by the State Forester.

**COMPLIANCE:**

Subsection (6). Non-compliance occurs when the operator fails to notify the State Forester before starting an operation. When an operator fails to notify the State Forester before starting an operation, take enforcement action under ORS 527.670(6).

Subsection (7). Non-compliance occurs when the operator fails to provide the State Forester with updated notification information.

Subsection (9). When an operator fails to complete the 15-day waiting period, take enforcement action under OAR 629-605-0150(1).

See guidance for OAR 629-605-0150 for additional discussion on notification requirements and OAR 629-670-0125, use of a written statement for procedural violations.

**ADMINISTRATION:**

Subsections (6) and (7) Notification of an operation or changes. Refer to guidance for OAR 629-605-0150.

Subsection (6) Notify downstream surface water rights of chemical operations: The State Forester (i.e., district offices) will provide notification information to people who have requested such and hold legal surface water rights within 10 miles downstream from an operation where chemicals are to be applied. Water rights "holders" do not include renters who use the water right held by a landlord or citizens connected to a community water system. The community water system manager is included as a water right holder, however. Water right holders must request notification in writing to the State Forester. The SF notifies the landowner of chemical application within 10 air miles from the water right and that is within the drainage upstream of the water right. The purpose is to inform the requesting party that a chemical application will be conducted which may affect their resource.

Legal surface water right holders may include irrigators or domestic water users. Water rights are filed with the Oregon WRD and remain with the property, if the property is sold, provided the original water right holder did not legally retain the water right. The State Forester Notification applies only to chemical applications.

Chemicals are defined in OAR 629-600-0100 to include all classes of pesticides, petroleum products used as carriers, fertilizers, and adjuvants.

Subsection (8). The notification and written plan must be sent to any non-electronic paying or water rights subscribers or any requesting party within 6 full business days, excluding Sunday and government holidays. This information is also available free to the general public through FERNS subscriptions. If interested parties submit comments related to specific proposed chemical application operations, SFs should review the comments relative to whether the operations are likely to comply with the applicable forest practice rules.
E-Notification, aka “FERNS” (Forest Activity Electronic Reporting and Notification System) is the “department reporting system.”

**Subsection (9) Prohibition of waiver of 15-day waiting period:**
The State Forester is prohibited from granting waiver of any waiting period (15-day waiting period) when the planned operation is an aerial application of chemicals. SFs should advise landowners and operators to plan ahead by submitting notifications of operations at least 15 days prior to beginning aerial chemical application operations. Guidance for OAR 629-605-0150(2) further discusses notifications and the 15-day waiting period.

Request for waiver of the 15-day waiting period will not be granted when a subscriber has requested copies of notifications and written plans under ORS 527.670(6), -670(8) and OAR 629-674-0100 unless:
1. The SF confirms that the person with a downstream water right or subscriber(s) have had copies of the notification and any required written plans for at least 24 hours, or
2. The notification and written plans have been sent by first-class mail and four working days have passed (this allows for adequate mail delivery and review by the applicant), or
3. The water user or subscriber states on their subscription application that they do not need to be informed before operations begin.
ORS 527.670

(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) If 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 under ORS 527.610 to 527.770, 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) If the operation is required under rules described in subsection (3) of this section to have a written plan 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) Provide 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) Provide to the operator, timber owner and landowner a copy of all timely comments submitted under subsection (9) of this section.
ADMINISTRATION:

1. ORS 527.670(10) requires (a) the State Forester to review written plans submitted under (1)(a) - (d) of this rule and after review, may provide comments to the person who submitted the written plan; and (b) the State Forester’s comments may be made no earlier than 14 calendar days after the plan was received and no later than 21 calendar days after the plan was received; and (c) provided a notification of operation was received, the operation may commence on the date the State Forester provides comments or, if no comments are provided, at any time after 21 calendar days after the written plan was received.

2. ORS 527.670(11) states: (a) that comments provided by the State Forester or the board are for the sole purpose of providing advice to the operator regarding whether the operation described in the plan is likely to comply with the FPA. Comments provided by the State Forester or the board do not constitute approval of the plan or the operation; and (b) that if the board or the State Forester does not comment on a written plan, the failure to do so does not mean that the operation, if carried out in conformance with the written plan complies with the FPA nor does failure to comment on the written plan constitute a rejection of the written plan or operation; and (c) that, in the event enforcement action is necessary, the State Forester or the board shall consider, but are not bound by, comments provided by the State Forester or the board.

3. ORS 527.670(12) – Lists the responsibilities of the State Forester when timely comments are filed on written plans. First the State Forester must send a copy of the review and comments, if any to persons who submitted comments within the 14-day written plan general comment period. Second, the State Forester must send to the operator, timber owner and landowner, a copy of the written plan, the State Foresters review and comments, if any, along with any public comments. Timely comments are defined in ORS 527.670(9).

There should be no administrative fees or copying fees required to meet the above obligations. If other interested parties request copies, copying fees consistent with the public records directive and public record rule are appropriate.

Note: The SF is not required to have an engineering license to review a written plan or PFAP for FPA compliance when the plan is written by a person with an engineering license.
AERIAL HERBICIDE APPLICATION
ORS 527.672

When a forest operation involves applying herbicides by aircraft near an inhabited dwelling or school, the operator is responsible for leaving an unsprayed strip of at least 60 feet adjacent to the dwelling or school. The responsibility of the operator under this section is in addition to any responsibility of the aerial pesticide applicator under ORS chapter 634.

APPLICATION:

ORS 527.672 is used for enforcement action for aerial herbicide applications by means other than helicopter, effective January 1, 2016. Violations of ORS 527.672 will be treated as procedural violations, as described for ORS 527.740 (120-acre limit on harvest type 3 units) in ODF Directive 6-3-0-001 Forest Practices Act Enforcement.

In June 2020, the Oregon Legislature held a special session, passing Senate Bill 1602 with broad support and signed by the governor into law on July 7, 2020 and codified as ORS 527.786 to 527.798. The SB 1602 supplants portions of division 620 rules. SB 1602 expands ORS 527.672 aerial herbicide application buffer adjacent to a school or inhabited dwelling from 60 feet to 300 feet buffer for helicopter pesticide applications, effective January 1, 2021. See also Table 2. SB 1602, Helicopter Applications Pesticides – Minimum Buffers per Oregon FPA. Contact Private Forests Division staff for enforcement of SB 1602. See complete guidance for helicopter pesticide applications in “FPA Guidance ORS 527: Selected Statutes.”

The restrictions on aerial herbicide applications within ORS 527.672 took effect starting January 1, 2016, but SB 1602 limits the extent of ORS 527.672 application to aerial herbicide application by means other than helicopter, effective January 1, 2021. See also complete guidance for aerial herbicide application in “FPA Guidance ORS 527: Selected Statutes.”

COMPLIANCE:

Unsatisfactory Condition: An unsatisfactory condition exists when an operator applies one or more herbicides on forestland by aerial means other than helicopter, and fails to leave an “unsprayed strip” of at least 60 feet adjacent to a “school” or an “inhabited dwelling”. See Table 2. ORS 527.672, for the definitions of “unsprayed strip,” “school,” and “inhabited dwelling.”

Damage: ORS 527.672 includes neither a purpose statement nor a description of a protected resource, so there is no opportunity to identify damage to a resource.

Violation: An unsatisfactory condition under ORS 527.672 is automatically a violation. Because the presumed intent of ORS 527.672 is protection of human health and safety, ODF’s policy is that, except in rare circumstances, it will issue a citation for a violation of that statute.

Written Statement of Unsatisfactory Condition: OAR 629-670-0125 allows the State Forester discretion to issue a written statement of unsatisfactory condition for procedural violations if the criteria specified in that rule are satisfied. However, because the presumed intent of ORS 527.672 is protection of human health and safety, ODF’s policy is that except in rare
circumstances it will not issue a written statement of unsatisfactory condition in lieu of a citation under OAR 629-670-0125.

Citation: Use ORS 527.672 to issue a citation when the operator (applicator) applied herbicides by aircraft and failed to leave an unsprayed strip of at least 60 feet adjacent to an inhabited dwelling or school tax lot. There is no order to repair damage or correct unsatisfactory condition, because there is no opportunity to repair the consequences of the violation.

Plan for Alternate Practices: Because ORS 527.672 does not allow a PFAP, there is no opportunity for ODF to approve a PFAP. Example: If an agreement was made by the owner of an inhabited dwelling that an aerial herbicide application, by means other than helicopter on that property or an adjacent property, could take place closer than 60 feet to the dwelling, it does not authorize ODF to approve the PFAP.

ADMINISTRATION:

Background ORS 527.672, Aerial herbicide applications
The Oregon Legislative Assembly adopted House Bill 3549 in 2015, and the Governor signed the bill into law on August 12, 2015. The bill was the culmination of long discussions during the legislative session regarding pesticide use. The bill contained many items related to pesticide use (e.g., technical adjustments to Oregon Department of Agriculture (ODA) fees, enforcement processes, and licensing standards), but the items relevant to the FPA are as follows (after codification into ORS):

- Added ORS 527.672, outlining the new unsprayed strip requirements.
- The restrictions in ORS 527.672 became active starting January 1, 2016.
- The restrictions in ORS 527.672 are in effect only for aerial applications of herbicides on forestland. Ground-based applications are not subject to these restrictions. Applications of pesticides other than herbicides are not subject to the restrictions in ORS 527.672, but product label requirements and other relevant regulations would still apply.
- Inserted references to ORS 527.672 into ORS 527.990 and 527.992, thereby incorporating the unsprayed strip requirement into the enforcement system of the FPA.

The legislature did not provide a preamble or purpose statement in HB 3549 or in ORS 527.672. The effective date of HB 3549 was not predicated on Board rulemaking, and the legislature did not direct the Board to adopt rules for implementation. In the interim, and until further notice, ODF will use this guidance for administration of the unsprayed strip requirement.

Table 1. Definitions for ORS 527.672, Aerial herbicide applications other than helicopter.
Provides a quick-reference summary of definitions developed by ODF as needed to administer ORS 527.672.
Table 1. ORS 527.672, Definitions for Aerial Herbicide Application other than Helicopter

<table>
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<th>Effective Date of Statute:</th>
<th>January 1, 2016 for ORS 527.672</th>
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<td>&quot;Unsprayed strip&quot;</td>
<td>means a no-direct application zone.</td>
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<td><strong>60-foot zone</strong></td>
<td>is measured in horizontal distance from an inhabited dwelling (the dwelling structure itself) or a school (the property boundary of the school campus tax lot).</td>
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<td><strong>&quot;Inhabited dwelling&quot;</strong></td>
<td>means:</td>
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<td>---- any structure meeting the following definition of a ‘dwelling unit’:</td>
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<td>• A &quot;Dwelling unit&quot; means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. The dwelling unit structure itself; excluding outbuildings, yard areas, or other land associated with the structure.</td>
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<td><strong>&quot;School¹&quot;</strong></td>
<td>means the campus of a school, with school defined as follows:</td>
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<td>• Public or private Oregon prekindergarten or a federal Head Start program</td>
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<td>• Public or private educational institution with all or part of kindergarten through grade 12</td>
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<tr>
<td>• Educational facility of an education service district, ORS 334.003</td>
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<tr>
<td>• Community college’s own building and ground maintenance, ORS 341.005</td>
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<td>• Oregon School for the Deaf</td>
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<tr>
<td>• Regional residential academy operated by the Oregon Youth Authority</td>
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<tr>
<td>• Public universities’, own building and ground maintenance ORS 352.002, e.g., Oregon State University, University of Oregon</td>
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<tr>
<td>• Private colleges or universities</td>
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<td><strong>&quot;Campus&quot;</strong></td>
<td>means the buildings, other structures, playgrounds, athletic fields and parking lots of a school and any other areas on the school property that are accessed by students on a regular basis. ORS 634.700(1).</td>
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<td>• “Campus” includes undeveloped², school-owned areas such as forested areas that are geographically connected to the developed³ campus and that are used for instruction of students.</td>
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<tr>
<td>• “Campus” does not include undeveloped school-owned areas such as forested areas that are geographically unconnected to the developed campus.</td>
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<tr>
<td>• “Campus” does not include buildings such as school district administrative facilities that are typically not used for instruction.</td>
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ORS 572.672 applies to aerial forest herbicide applications near schools regardless of formal school hours, the timing of scheduled or unscheduled events, or the presence (or absence) of students, staff, or others.

ORS 527.672 Applies to aerial herbicide applications other than by helicopter.

¹"School" as defined by ORS 634.700 (8), does not include “public and private.” It is inserted in this guidance to account for facilities to operate private pre-kindergartens and private colleges or universities.

²"Undeveloped" means those school facilities are not present, e.g., forestland with few or no structures.

³"Developed" means school facilities such as instructional buildings, athletic fields, or other constructed facilities.
Defining Unsprayed Strip (No-direct Application Zone)
ODF defines “unsprayed strip” as a no-direct application zone. The logic for that determination is as follows.

ORS 527.672 does not specify the precise meaning of “unsprayed strip.” However, existing setbacks from waters in Type F streams are described as zones of “no direct application” in OAR 629-620-0400. In addition, there was an indication in legislative committee hearings on the bill that the authors intended to restore the restriction on aerial herbicide applications near inhabited dwellings that was in the chemical rules until the Board revised those rules in 1997. The rule apparently referred to was OAR 629-24-203(6).

The pre-1997 guidance for OAR 629-24-203(6) indicated that the unsprayed strip would be a no-direct application zone. Current guidance for application setbacks described in OAR 629-620-0400 takes the same approach.

Administering “Unsprayed Strip” (No-direct Application Zone)
"Direct application" means an herbicide is applied at a concentration at or above the concentration applied to the target area. ODF’s purpose in administration of ORS 527.672 is to provide a setback for direct application to protect human health and safety. The purpose is not to maintain an herbicide-free zone around inhabited dwellings or schools tax lot. If an herbicide has been directly applied within the 60-foot zone by aircraft other than helicopter, a violation has occurred under this statute, as there is no opportunity to eliminate the consequences of noncompliance.

Evaluating Compliance
ODF will use post-application visual observation of herbicide effects on vegetation (item 2 below) as the routine method of evaluating compliance with the unsprayed strip requirement. ODF will use other methods shown below in combination with this method, as outlined in items 1 through 4 following:

1. Direct Observation at the Time of the Application
   a. **What:** When aware that aerial herbicide applications may take place near schools or inhabited dwellings, ODF field staff may be on site to observe the applications. Joint observation with ODA staff is often advisable.
   b. **When:** ODF field staff should conduct these inspections when the forest landowner, neighbors, or others indicate there may be heightened concern over a proposed application.
   c. **Additional Information:** It is rare that direct observation alone would provide results conclusive enough for compliance evaluation. Typically, it is difficult to find a safe observation point close enough to the application and with an effective vantage point for the observation to be conclusive. Therefore, this method should be used only in combination with other methods discussed here.

2. Post-Application Visual Observation of Herbicide Effects on Vegetation
   a. **What:** On-site, post-application, visual inspection and comparison of herbicide effects on vegetation inside and outside the 60-foot zone is ODF’s standard method of assessing whether direct application has occurred in the 60-foot zone.
   b. **When:** ODF field staff should conduct these inspections when the forest landowner, neighbors, or others indicate there is a concern over a completed aerial herbicide application. ODF field staff should conduct inspections in other circumstances as other
priorities and workloads allow. In either situation, inspections should be timed to allow herbicide effects on vegetation in the subject unit to become evident.

c. **Additional Information:**
   i. To assess if direct application of herbicides has occurred, visually compare vegetation within the target unit to vegetation within the 60-foot zone. If the chemical effects are the same or similar between the two areas, then direct application has occurred in the 60-foot zone. Minor incursion or drift, which show less effect than in the application unit into the 60-foot zone, may not indicate noncompliance.
   ii. Environmental conditions such as very cold temperatures, disease, and summer to autumn transitions can cause foliar symptoms similar to what is caused by herbicides. As needed, ODF may request assistance from ODA staff, who have expertise and experience in identifying herbicide effects on foliage.
   iii. ORS 527.672 does not regulate ground-based herbicide applications. In some instances, there may have been ground-based applications within the 60-foot zone around schools and inhabited dwellings. ODF field staff should consider this possibility when evaluating compliance.

3. **Review of GPS Flight Records**
   a. **What:** GPS tracks for aerial herbicide applications is common. GPS tracks show where the aircraft has flown, and often whether nozzles were open or closed.
   b. **When:** ODF field staff should request these records when there is a pre- or post-operation complaint or other indication of potential noncompliance.
   c. **Additional Information:**
      i. ODF should use GPS tracks only as supporting information, or to determine if further investigation is needed. ODF should not use GPS tracks as proof that a violation of ORS 527.672 for lack of assurances that there hasn’t been a loss of satellite signals and when the following has occurred:
         1. The tracks show only the location of the aircraft, not the deposition of the herbicide,
         2. There are potential inaccuracies when a GPS track is transferred to a map projection, and
      ii. Operators are not required to provide GPS tracks to ODF, but to date, most have been willing to do so. In some instances, ODA may have already obtained the records, and could make them available to ODF.

4. **Sampling and Analysis**
   a. **What:** When done properly, sampling of media (vegetation, soil, water or other) and analysis of results for the presence of herbicides can help determine if direct application has occurred in the 60-foot zone.
   b. **When:** ODF field staff should use this method when there is a pre- or post-operation complaint or other indication of potential noncompliance. Refer to the ODF Complaint Investigation and Reporting Policy, Procedures, and Guidance Documents for other information on responding to complaints or other indications of noncompliance.
      i. ODF does not intend that sampling and analysis will be done routinely to determine whether direct application has occurred in the 60-foot zone. ODF staff have neither the training nor the equipment to properly collect and ship sampled media. ODA has agreed to collect samples at no cost to ODF when there are specific concerns about an application, especially given that ODA would likely already be involved in
Sensitive situations. ODA likely would not have the resources to assist with sampling for all applications subject to ORS 527.672.

ii. Samples would generally be analyzed at ODA’s laboratory. ODA has agreed that it will pay for analysis of samples needed for ODA and ODF investigations. ODF would pay for analysis needed solely for ODF investigations. ODF will work with ODA prior to sampling occurring to clarify who will pay for what in a given situation.

iii. Ideally, samples should be collected within one to two weeks after a subject application. In some instances, however, ODF might not be aware of specific concerns or allegations until a later date. Depending on specifics of the application and site, sampling and analysis probably are still appropriate later. ODF should consult with ODA to determine the best approach.

c. Additional Information:
   i. Establish a sampling and analysis plan in consultation with ODA before sampling.
   ii. To get meaningful results, it is critical that sampling and analysis be conducted properly. A single sample or a limited number of samples would likely be inconclusive. The need is to establish a gradient of herbicide concentrations from within the 60-foot zone extending into the intended application unit. See Figure 13 for a graphic representation of a sampling scheme outlining the gradient concept.
   iii. Sample media would typically be vegetation, but in some instances could include soil, water, or other media.
   iv. ORS 527.672 does not regulate ground-based herbicide applications. In some instances, there may have been ground-based applications within the 60-foot zone around schools and inhabited dwellings. ODF field staff should consider this possibility when evaluating compliance.
Measuring 60 Feet

Measure the 60-foot zone as a horizontal distance.

ORS 527.672 does not specify how the distance is to be measured. However, because the Chemical and other Petroleum Product Rules specify that all distances established in that division are to be measured horizontally (see OAR 629-620-0000(4)), and the unsprayed strip is a related standard, ODF will measure the 60-foot zone in horizontal distance. The starting points for measurements are as follows:

- For an inhabited dwelling, measure the distance starting from the nearest edge of the dwelling structure.
- For a school, measure the distance starting at the nearest property boundary of the school campus tax lot.

Background for “Definition of Inhabited Dwelling”

ORS 527.672 does not define “inhabited,” “dwelling,” or “inhabited dwelling.” In the absence of statutory direction, ODF has determined that “inhabited” means people would generally be present, even if they might not be present in the dwelling at the precise date and time when an aerial herbicide application takes place. The reasons for this determination are:
• It is appropriate to take an approach that is conservative of human health and safety; and
• It would be difficult to evaluate compliance based on presence of people at the time of an application. That is, how would ODF (or an operator) know if anyone was or was not present in a dwelling at any given moment?

A review of Oregon Revised Statute, Oregon Administrative Rules, and county land use regulations yields a general concept of a habitable dwelling, although the concept is used for processes such as evaluating whether new homes may be built on natural resource lands, or whether a permit for a replacement dwelling will be approved. Even so, the general concept of habitable dwelling approximates what the reasonable person would identify as a dwelling. Therefore, ODF will use that concept, with some modification, as shown in Table 2.

Background:
In developing Table 2, ODF also used concepts in the guidance from OAR 629-24-203(6) (see the discussion under Unsprayed Strip above). That rule was deleted in 1997, but the guidance is still helpful. “When applying herbicides by aircraft near inhabited dwellings, operators shall leave an unsprayed strip of at least 60 feet adjacent to such dwellings.” Two versions of that guidance indicated the following:

- “Inhabited dwelling’ means a structure used as a residence. Barns, storage sheds, etc. are not considered to be inhabited dwellings.” (1978)
- “Outbuildings such as sheds or barns are not inhabited dwellings.” (1995)

Background for “Definition of School”
ORS 527.672 states that an operator must maintain a 60-foot unsprayed strip adjacent to “an inhabited dwelling or school.” Neither HB 3549 nor public discussions among legislators provided substantive guidance on whether the authors intended a reading of “inhabited school” or merely “school.” However, because the authors could have used the text “inhabited dwelling or inhabited school,” ODF’s interpretation is that the intended meaning is merely “school” (not “inhabited school”). In addition, students and others may be present on school grounds at times or seasons outside of regular school hours, so the question is somewhat moot. Therefore, ODF’s determination is that ORS 572.672 applies to a school at all times, regardless of formal school hours or the timing of scheduled or unscheduled events at the school.

Neither HB 3549 nor public discussions among legislators provided a clear definition of “school.” Therefore, ODF needed to develop a working definition of “school.” ODF began with a common definition from Merriam-Webster, March 9, 2016: “An organization that provides instruction: as (a) an institution for the teaching of children; (b) college, university.”

ODF then searched Oregon Revised Statutes and Oregon Administrative Rules. While not directly related to ORS 527.672, the definitions and approaches in state Integrated Pest Management statutes were the best fit, providing definitions of elementary schools, community colleges, and public universities at least partially for the purposes of managing pesticide use. Those statutes also outlined a concept that the regulations apply only to school “campuses”; ODF determined it was supportable to adopt that concept as meeting the apparent intent of the legislature to protect human health and safety.

“Campuses” in the context of ORS 527.672.10, where undeveloped, school-owned properties that are away from the developed portion of the campus with school facilities, may still be used for instruction. Such parcels are often used by schools for learning, research, and/or demonstration, and may have operational agricultural or forest uses.
In most instances, an undeveloped property that has a direct, geographic connection to the developed campus will be considered part of that campus. **Example:** A forested area that is contiguous to a high school campus and that may have students present at times. Undeveloped parcels that are not geographically connected or adjacent to a developed campus will not be considered part of the school campus. **Example:** OSU’s McDonald-Dunn Forest, which is used for student instruction, but is not geographically connected to the developed OSU campus. ODF’s determination in this instance is based on the likelihood that in adopting ORS 527.672, the legislature (1) was focused on traditional school campuses, and (2) did not intend to prohibit aerial herbicide applications outright on forested areas managed by universities, as would be the case if these areas were considered school campuses.

**When is a Campus no longer a School?**

There may be instances where school campuses are not used as schools for some time, e.g., for a period of years when enrollment in a district has decreased. In some cases, the campus will again be used as a school; in others, the campus may remain dormant or may be converted to some other use, e.g., office buildings. Once a campus has been used as a school, it is a school for the purposes of ORS 527.672 until the campus is used for a different purpose, or it deteriorates to the point that it is no longer reasonable to consider that it would be used as a school.

**Identifying Schools and Inhabited Dwellings**

The operator must comply with the unsprayed strip requirement. The statute does not direct ODF to develop an inventory of schools or inhabited dwellings, and it does not state that ODF must notify the operator of the presence of such sites. Therefore, the operator has the ultimate responsibility to use the definitions described above to identify schools and inhabited dwellings that may be affected by a specific aerial herbicide application. ODF may provide to an operator any relevant information it possesses, but is not responsible to maintain an inventory of inhabited dwellings or schools, or to notify operators of the presence of such sites.

Currently, there is no requirement that an operator must notify ODF of the presence of schools or inhabited dwellings, and there is no requirement that the operator must submit a written plan for aerial herbicide applications near such sites. ODF field offices will need to evaluate compliance based on a post-operation review, based on this guidance. As always, ODF field offices should work to help operators and landowners prior to operations beginning to help them understand protection requirements.

**Outreach to Operators and Landowners**

Because ORS 527.672 places responsibilities on operators, and because identifying schools and inhabited dwellings on the landscape may be difficult, ODF staff in field offices and in Salem should reach out to potentially affected operators and landowners with information on the requirements in the statute.

**REFERENCES FOR ORS 527.672:**

- Pesticide Complaint Investigation and Reporting Policy, Procedures, and Guidance Documents, ODF Private Forests Division.
LEAVING SNAGS AND DOWNED LOGS IN HARVEST TYPE 2 OR TYPE 3 UNITS; GREEN TREES TO BE LEFT NEAR CERTAIN STREAMS
ORS 527.676

(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.

APPLICATION:

Subsections (1)(a) and (b) are subject to enforcement action.

COMPLIANCE:

Subsection (1). Non-compliance occurs when the operator fails to leave the required number and size of snags or green trees, and downed wood within a harvest type 2 or type 3 unit over 25 acres, unless a PFAP has been approved under subsection (2). Development of a PFAP will not be considered a way to avoid a violation once a violation exists. Changing of unit boundaries from those designated on the notification and maps is also not an alternative to a violation.

Repair orders should be issued whenever the effects of the violation can be lessened. Consideration should be given to requiring that any replacement or substitute snags or live green trees be left adjacent to or in close proximity to the unit on the same ownership. Remember to document the location of these "leave areas" so that the designated habitat components on the repair order are retained until they are replaced in the unit over time.

ADMINISTRATION:

Subsection (1). The intent of this subsection is to build some within-stand structural diversity into future rotations, which may provide habitat for a variety of wildlife species and help maintain site productivity. The definition of “unit” is in OAR 629-600-0100 and the definition of “wildlife leave trees” is in OAR 626-600-0100 and ORS 527.620.

A harvest type 2 unit over 25 acres requires wildlife tree and downed log retention but does not require reforestation under the OAR 629-610, reforestation rules. A harvest type 3 unit over 25 acres requires both wildlife tree/log retention and reforestation. Traditional clear-cut harvests are harvest type 3 units. Operators are required to retain two snags or green trees and two downed logs per acre in harvest type 2 and harvest type 3 units exceeding 25 acres. Harvest type 2 and 3 are defined in OAR 626-600-0100 and ORS 527.620.

The total basal area per acre of trees 11-inches DBH and larger remaining after harvest determines if wildlife leave trees and downed log retention are required for harvest type 2 or
harvest type 3 units. Retention of wildlife leave trees and down logs are required when the basal area in the harvest type 2 or 3 unit is below the threshold for the site productivity as follows:

Table 1. ORS 527.676. The post-harvest wildlife leave trees and downed logs requirements for a harvest unit over 25 acres is based on site productivity and either:
- The number of trees or snags per acre at least 11 inches DBH or
- The square feet basal area per acre of trees or snags 11-inches DBH and larger.

Table 1. ORS 527.676. Minimum requirements, by site class, to determine if wildlife leave trees and downed logs are required to be retained

Table 2. ORS 527.676. Basal area per acre and tree spacing for different tree diameters

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

Example Table 2. A post-harvest inspection on a 30-acre unit with a high site (site class I, II, or III) determines there are 10 trees (not snags) per acre averaging 20 inches DBH. Trees that have an average of 20 inch DBH should be at least 15 trees per acre, to avoid the wildlife leave tree requirement. The 30-acre unit is either a harvest type 2 or 3, which requires wildlife leave tree retention. If reforestation stocking is adequate, the 30-acre unit is a harvest type 3.
Table 3. ORS 527.676. Minimum parameters for leave trees and downed logs to be retained for harvest type 2 or 3 units over 25 acres; total required is per acre harvested.

<table>
<thead>
<tr>
<th>Two snags or two green trees</th>
<th>Two downed logs or downed trees</th>
</tr>
</thead>
<tbody>
<tr>
<td>30+ feet in height</td>
<td>6+ feet long</td>
</tr>
<tr>
<td>11+ inches DBH</td>
<td>10+ gross cubic foot volume per log</td>
</tr>
<tr>
<td>50%+ must be conifers</td>
<td>50%+ must be conifers.</td>
</tr>
<tr>
<td></td>
<td>Logs containing 20 cubic feet or more count as two</td>
</tr>
</tbody>
</table>

Table 4. ORS 527.676. Minimum downed log dimensions needed to meet the 10 and 20 cubic feet of volume standards.

<table>
<thead>
<tr>
<th>Equivalent to 1 downed log (10 cubic feet)</th>
<th>Equivalent to 2 downed log (20 cubic feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Length (feet)</td>
<td>Diameter (inches, small end)</td>
</tr>
<tr>
<td>6</td>
<td>18</td>
</tr>
<tr>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>14</td>
<td>11</td>
</tr>
<tr>
<td>20</td>
<td>9</td>
</tr>
<tr>
<td>28</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>44</td>
</tr>
</tbody>
</table>

Hardwood conversion harvest units. If a harvest type 2 or type 3 unit is a hardwood conversion, with few or no conifers of 11” and larger DBH, hardwood trees must be substituted for the conifer trees that are not available. Any available conifers of sufficient size must be left to meet the wildlife tree retention requirements, regardless of where they are located in the unit. This limits the landowner’s discretion.

Acceptable snags or green trees. The law is clear as to the minimum specifications of snags or green trees to be left within units: they must be at least 30 feet in height and 11 inches in DBH. Any standing stem meeting these criteria qualifies, as long as at least 50 percent are conifers.

Downed logs are those logs in place, on site. The logs may be disturbed or moved by harvesting or site preparation activities consistent with meeting the purpose of this statutory requirement. The logs may have been down prior to the operation or they may be logs from trees harvested by the operation. Logs retained on a road or landing surface or subgrade should not be counted toward meeting this requirement unless the road or landing will be ripped and reforested.

Beyond a certain stage of decay, a downed log will break down and slowly become organic material in the soil. For the purposes of determining compliance, we shall assume that logs will quickly transition and become a component of soil at Decay Class IV and V in the five-class system of decay based on fallen Douglas-fir trees. At Decay Class IV, bark is absent; twigs are absent; log shape is oval instead of round; wood texture consists of small, soft, blocky pieces; wood color is light brown to reddish brown; and invading roots are present in the heartwood. In other words, "punky logs" should be classified as soil rather than acceptable downed logs. A rule of thumb that applies in most cases is that if the log would fall apart if pulled by a choker or picked up by a log loader, it should not be counted toward meeting the downed log requirement.
To determine compliance, the SF should inspect visually approximately five percent of all operations (count snags, green trees and downed wood). Most operations can be inspected from one or more prominent locations on the unit. If the unit does not appear to comply with the law, the SF should count the residual trees and downed wood within the unit to document noncompliance. SFs should emphasize education and coordination, and concentrate their most intensive inspections on apparent violations.

Figure 2. ORS 527.676. Log Decomposition Classification

Figure 2: Visual representation of the five class decay system for downed logs (from British Columbia Ministry of Forestry and Range, 2008, vegetation and resources inventory ground sampling procedures, Victoria, B.C.)
LEAVING SNAGS AND DOWNED LOGS IN HARVEST TYPE 2 OR TYPE 3 UNITS; GREEN TREES TO BE LEFT NEAR CERTAIN STREAMS
ORS 527.676

(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.

APPLICATION:

Sections (2) and (3) are not subject to enforcement action. Take enforcement action for failure to follow a PFAP under OAR 629-605-0173(3) or (4).

ADMINISTRATION:

Section (2). By law, components shall be left at the discretion of the landowner or operator, consistent with safety and fire hazard regulations and the requirements of subsection (2). The operator is not required to leave any particular trees or logs, even if the SF and operator agreed prior to the operation. However, failure to leave agreed-upon particular components may be an indication of an impending violation. The SF should consult with the operator in this situation to ensure that the completed operation will comply with the law.

The SF may encourage the operator to retain certain trees or groups of trees to provide increased benefits to wildlife. Pre-operation inspections are also important to assure that the operator understands the law. The SF will then have baseline evidence to evaluate compliance after the
operation is completed. SFs should become familiar with the guidelines in the listed reference publications and communicate those guidelines to landowners and operators, where practical, to help them efficiently and effectively meet the requirements of the statute.

The intent is to provide wildlife habitat beyond that required along streams, lakes, wetlands, or other sensitive resource sites. Unless it is specifically allowed in rule, trees retained for protection of other resources cannot be used to “double-count” towards the leave tree requirements. For example, trees retained as osprey nest and perch trees, bald eagle nest and buffer trees, or heron rookery key components, may not be counted in evaluating compliance under this subsection (2) and (3). In contrast, some trees retained for stream protection can also “double-count” as leave trees (see Tables 5 and 6 below). Any trees retained in excess of those required by rule may be used to count as leave trees. For example trees retained beyond those needed to meet the 50% retention standard for significant wetlands and lakes may be counted as leave trees. When the operator plans to use trees retained to protect other resources as leave trees, whether double-counted or retained in excess of those required, a stand tally of the trees to be retained may be needed as part of a written plan to ensure overall compliance.

Tables 5. and 6., summarizes when trees and downed logs retained for the division 642 water protection rules can be counted as in-unit wildlife leave trees and downed logs for harvest Type 2 and 3 units.

Paragraph (3)(a). The SF should work with the operator to encourage selection of certain trees or groups of trees if retaining those trees would increase benefits to wildlife.

In general, large sound trees will have less likelihood of being danger trees than highly decayed snags, and will provide more diverse wildlife functions for a longer period of time than smaller, more decayed trees. Operators may choose snags, culls, or less valuable trees to meet the retention requirements. Retention of the most structurally sound trees in the unit is not necessarily desirable, although retention of the largest trees should be encouraged. Unsound trees (poor growth form or decadence) are the most valuable for wildlife. Large diameter trees provide habitat for the greatest number of wildlife species, and growth imperfections offer micro-sites for wildlife use. Fortunately, these trees have less economic value to the operator.

A combination of dead and green wildlife leave trees is preferable so that dead tree habitat is provided over the rotation, however retention of existing sound snags should be encouraged as these will provide critical cavity habitat for those species of wildlife that require cavities for nesting in open, early seral habitats. As snags decay and fall to become logs, green trees die to become snags. Fall and decay rates are such that most snags left at initial harvest will be inadequate for most wildlife uses after 30-50 years. Green trees should be available as replacement habitat when existing snags are too decadent to support wildlife use.

Douglas-fir trees decay at a significantly slower rate than all other species except western red cedar. Thus, Douglas-fir or western red cedar are preferable for retention to provide snag habitat late into the rotation. In eastern Oregon, Ponderosa pine is also a highly desirable species. There is benefit to providing some trees or recently dead snags of tree species that more readily decay so that cavity habitat may be available immediately or in the early stages of regeneration. Tree species that tend to decay more readily are hemlock, true firs (grand and noble fir), larch, and aspen. Red alder also decays rapidly, but may only provide small-diameter cavity habitat and for
short periods of time. Regardless of tree species, large DBH and sound wood are more important factors in selecting snags than tree species or tree height.

A final consideration in the location of leave trees is the ability of these trees to withstand windstorms after the remaining stand has been harvested. SFs should assist operators in identifying trees that either are windfirm or are located in areas that are relatively sheltered from the wind. Operators will not be penalized if the trees they select are not windfirm; however, in order to meet the intent of the law, the SF should help identify and protect windfirm trees. Note: Retained trees that later fall within the unit may be salvaged through an approved PFAP, if the substitute trees meet the wildlife leave tree requirements for the unit.

Paragraph (3)(b). The first sentence allows the department to approve a PFAP that modify specific requirements of ORS 527.676 while still meeting the general purposes and provisions of the statute for in-unit wildlife leave trees and downed logs. The PFAP must be submitted before felling begins on the operation. Example: The requirement that at least 50 percent of the wildlife leave trees or snags be conifers may be modified or waived in an approved PFAP in situations where the landowner intends to intensively manage a harvest unit for hardwood production.

Paragraph (3)(b)(B). A PFAP is allowed if it will provide an equal or greater number of trees within another harvest type 2 or type 3 unit on the same ownership that achieves better overall benefits for wildlife. The underlying reasoning is that it is usually better to leave snags and downed logs throughout the landscape that will support well-distributed populations of wildlife dependent upon these habitat components. To clump the elements from two or more units into one discrete area may lead to a lesser level of protection. Replacement areas for leave trees must be associated with another harvest type 2 or 3 unit and should not be located in other areas with no associated harvest unit (e.g., cannot use an isolated patch of trees in an otherwise non-forested area or in an unharvested area to count as replacement or substitute leave trees).

The intent of the law is to allow flexibility in the distribution of these components over the landscape if it will benefit wildlife. The intent is not to allow a PFAP for the convenience of the operator to reduce the total number of trees or snags required to be retained. Such PFAPs could identify a special wildlife resource that is not effectively protected under existing forest practice rules. Examples: Special wildlife resource areas include deer fawning areas; elk calving areas; big game winter ranges; sensitive species not identified as threatened and endangered; sensitive bird nesting, roosting, and watering sites.

The SF should consult with an Oregon Department of Fish and Wildlife (ODFW) biologist to identify opportunities where PFAPs should be pursued. The SF determines whether a PFAP submitted by a landowner or operator actually results in better overall benefits for wildlife. Any approved PFAP must include assurances that address future entries or property sales so that the agreed-upon components remain on the site over time. These assurances must be in writing to assist in enforcement if a violation occurs.

Landscape catastrophic events
In prior fire landscapes, PFAPs have been approved for clumping wildlife leave trees within unburned portions of the landscape. This approach may be reasonable in landscapes where there would be many unsalvaged areas on the landscape as snag habitat for wildlife, such as where there is private and federal checkerboard ownership. In severely burned landscapes where federal lands existed, it was reasonable to assume 1) that snags would be present on federal
parcels, and 2) that overall, the green trees would become the “rarer” type of wildlife leave tree because of the amount of dead trees on the landscape.

Historically ODF has asked for maps of leave tree locations when landowners have moved leave trees from multiple units into new locations under ORS 527.676 (3)(b)(B), both during salvage operations and in non-salvage situations. The maps are important for the purposes of evaluating the “achieve better overall benefits to wildlife” part of this statute and for tracking these new leave tree patches into the future. See also guidance for OAR 629-605-0175.

When a PFAP is used to exceed 120 acres because of a large fire salvage event, the PFAP should include a map of the green patches of trees used for WLT that are relocated. This requirement ensure on-going compliance with the WLT retention requirements for the current and future notifications that affect the green patches of WLT. While a map is not required as a component of PFAPs in general, the SF can require a map if it is considered critical to meeting the need of “must include sufficient information,” OAR 629-605-0173(2). At any time, the SF can request information regarding location of leave trees to evaluate compliance with the PFAP.

The PFAP should also explain why the alternative strategy of replacing leave trees from prior harvest units with new leave trees will “achieve better overall benefits for wildlife”. In many situations, this will not be met by removing all dead trees in existing units or RMAs, in exchange for blocks of live trees, because snags and downed logs are an important component of wildlife habitat. WLT felled as a safety hazard may count for WLT if not harvested. Downed logs retained in prior harvest units that are completely consumed by fire do not need to be replaced.

PFAP for landscape catastrophic events, additional considerations:

- Address compliance with WLT requirements for previously designated WLT in uplands and RMA and new harvest type 2 or 3 units or 25 acres.
- Describe how alternate WLT strategy will “achieve better overall benefits for wildlife.”
- Describe the condition (live or dead), species, and size range of the trees to be retained in the new leave tree clumps.
- Describe the harvested area in total to be associated with the leave tree patches.
- Explain how leave tree areas will be tracked over time to assure retention until reach 11 inches DBH and 30 feet tall size)?
- Explain how the proposal will result in “better” overall benefit to wildlife than it would be to keep the original leave trees in place within the burnt units.
- Designate on a map the relocation of WLT or WLT combined from multiple harvest units in another area.
- Describe how salvage blow downed or burned WLT, including in WLT designated in RMAs from previous harvest type 2 or 3 will be relocated or designated in the basin.
Table 5. ORS 527.676. Stream RMA requirements that also can be used to meet in-unit wildlife leave trees and downed logs requirements

<table>
<thead>
<tr>
<th>STREAM SIZE AND TYPE</th>
<th>Large/Medium Type F</th>
<th>Small Type F</th>
<th>Medium/Small Type SSBT</th>
<th>Type D &amp; Type N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Live Trees¹</td>
<td>Conifers: All live trees retained beyond the Active Mgmt. BA Target. Hardwoods: All trees &gt; 20 ft. 629-642-0100(7); (11)(a)</td>
<td>All live trees 629-642-0100(11)(b)</td>
<td>Prescription 1 and 2 All trees within 20 ft.; Up to 50% of BA trees used to meet BA target &gt; 20 ft.; All RMA trees beyond the BA target &gt; 20 ft. 629-642-0105(10)(c); (11)(f) Prescription 3 All trees within 40 ft. 629-642-0105(12)(e)</td>
<td>Type D &amp; Type N All live trees 629-642-0400(12)</td>
</tr>
<tr>
<td>Dying &amp; Recently Dead Trees¹</td>
<td>Hardwoods: All trees &gt; 20 ft. 629-642-0100(7); (11)(a)</td>
<td>None</td>
<td>Prescription 1 and 2 All trees within 20 ft.; Up to 50% of BA trees used to meet BA target &gt; 20 ft.; All RMA trees beyond the BA target &gt; 20 ft. 629-642-0105(10)(c); (11)(f) Prescription 3 All trees within 40 ft. 629-642-0105(12)(e)</td>
<td>Type N debris torrent-prone All trees within 50 ft and up to 500 ft. from Type F/SSBT. 629-642-0500(2)</td>
</tr>
<tr>
<td>Downed Wood and Snags¹</td>
<td>None</td>
<td>None</td>
<td>Prescription 2 Sound conifer snags up to &gt;10% of BA target &gt; 20 ft. 629-642-0105((11)(e)(c) Prescription 3 Sound conifer snags within 40 ft.</td>
<td>Type N debris torrent-prone All snags within 50 ft. and up to 500 ft. from Type F/SSBT 629-642-0500(2)</td>
</tr>
</tbody>
</table>

Note: ¹ Terms defined in OAR 629-600-0100. See rules and ORS 527.676 requirements to clarify numeric standards. All measurements are from the stream high water level.

Table 6. ORS 527.676. Wetlands and Lakes RMA requirements that can be used to meet in-unit wildlife leave trees and downed logs requirements

<table>
<thead>
<tr>
<th>WETLANDS</th>
<th>LAKES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant, &gt; 8 acres 629-645</td>
<td>Other, not stream associated nor RMA 629-655-0000(5)(a)</td>
</tr>
<tr>
<td>Live Trees¹</td>
<td>None</td>
</tr>
<tr>
<td>Dying &amp; Recently Dead Trees¹</td>
<td>For wetlands and lakes, a dying tree should be considered a live tree and a recently dead tree should be considered a snag.</td>
</tr>
<tr>
<td>Downed Wood and Snags¹</td>
<td>None</td>
</tr>
</tbody>
</table>

Note: ¹ Terms defined in OAR 629-600-0100. See rules and ORS 527.676 requirements to clarify numeric standards. All measurements are from the stream high water level.
APPLICATION:

Paragraph (3)(c) and (d) are subject to enforcement action. Noncompliance occurs if operators fail to retain the additional RMA trees required by the SF.

ADMINISTRATION:

Paragraph (3)(c) refers only to green trees. If felling conifers or hardwoods in or along a Type F, Type SSBT or Type D stream RMA is likely to cause adverse disturbance to the general integrity of the stream or RMA soils and vegetation, the SF should direct the operator to make the reasonable effort to prevent adverse disturbance by retaining up to 25 percent of the green wildlife leave trees in the RMA.

The purpose for requiring additional green leave trees within or adjacent to the RMAs of Type F, Type SSBT and Type D streams is to provide increased benefits to wildlife including fish. These trees are in addition to trees required under the RMA rules. It is always up to the operator to decide which trees to leave to meet the snag or green tree requirements, although the SF may provide suggestions.

Although the SF may require up to 25% of the leave trees to be retained on any fish-bearing or domestic stream, some Type F and Type SSBT stream reaches offer greater potential to provide key fish and aquatic habitat. These are referred to as ‘High Aquatic Potential’ (HAP) stream reaches. HAP stream reaches provide justification for the SF to prioritize retention of up to 25 percent of the required leave trees in or adjacent to the identified stream reaches.

Exceptions are possible only if a site-specific assessment indicates placement along other stream types or other upland locations will provide better protection and/or benefit to fish habitat. HAP stream reaches exist in medium and small streams that tend to have low gradient channels/wide flood plain in which the stream channel has the potential to migrate. These are key...
places where fish like to hang out. A stream reach may have ‘potential’ to provide high quality habitat but may not currently have high quality habitat present. This could occur for a variety of reasons such as a lack of large wood or other habitat features. HAP stream reaches are the best locations to provide large wood. Active placement of large wood in these locations can provide immediate benefits for fish. HAP may also indicate where managing riparian conditions to grow large trees for future supplies may be helpful. HAP stream reaches are available in the hydrography/fish layers in Vantage or ArcGIS.

For other areas not identified as HAP, the SF should consult with an ODFW biologist to identify circumstances where it is desirable to leave additional components within or adjacent to the RMA for either fish or wildlife. Such circumstances may include big game migration corridors or travel corridors between mature forested areas. This requirement also should be considered when the SF and biologist feel that the number of existing trees within the RMA is deficient, making it desirable to leave more green trees adjacent to the RMA.

Particular attention should be paid to applying this requirement to RMAs on small Type F and Type SSBT streams wherever possible. Exceptions should be made where this requirement could adversely affect operation efforts to protect resources (such as more road building).

Paragraph (3)(d) refers to green trees or snags, as is required by rule found in OAR 629-642-0500 for leaving green trees and snags along small Type N streams that are subject to rapidly moving streams. **Note:** The SF should refer to the more in-depth guidance for the rules within OAR 629-642-0500 to determine when and where green trees and snags should be retained.

Although SFs can require a maximum of only 25 percent of the components to be located near the RMA, they may recommend placement of the other 75 percent. The SF may also recommend that specific trees be left, although the final decision lies with the operator. Retention of wildlife leave trees along Type N streams cannot be required, but SFs should encourage this practice where practical, see OAR 629-660-0060, headwater amphibian species.
**LEAVING SNAGS AND DOWNED LOGS IN HARVEST TYPE 2 OR TYPE 3 UNITS; GREEN TREES TO BE LEFT NEAR CERTAIN STREAMS**

ORS 527.676

(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.

**APPLICATION:**

Subsection (4) is not subject to enforcement action.

**ADMINISTRATION:**

When a harvest type 2 or type 3 unit is planned adjacent to an existing harvest type 2 or type 3 unit and the total acreage will exceed 25 acres, wildlife leave trees and downed logs must be retained for the total acreage, even if the previous unit was 25 acres or smaller.

**Example:** A 20-acre harvest type 3 unit is planned adjacent to an older 10-acre type 2 harvest that still lacks the basal area of 11-inch DBH and larger trees needed to exceed the type 2 harvest threshold.

- At least 60 wildlife leave trees and downed logs would have to be retained within or adjacent to the new unit.
- If instead the units are more than 300 feet apart no wildlife leave tree and downed log retention is required.

After a harvest unit of less than 25 acres has developed ingrowth sufficient to supply the prescribed wildlife leave trees or snags and downed logs, adjacent harvest type 2 and type 3 units no longer need to supply these features for the older unit’s acreage.

Since “adjacent” is not defined in the statute, a precedent can be drawn from ORS 527.740, the harvest type 3 acreage limitations. It is consistent that any less than 300-feet slope distance between harvest type 3 units will make them “adjacent” and more than 300-feet slope distance between them will make them separate.

Although it is more consistent with the purpose of ORS 527.676(1) to leave the buffers between units untouched, the 300 plus foot buffer may be partial cut. However, the buffer must not be thinned below the threshold stocking that would make it a harvest type 2 or type 3.

Although all these options are available, legally, to the landowner, SFs should encourage landowners to retain trees designated as wildlife leave trees for long periods (multiple rotations) to achieve the purpose and spirit of the wildlife leave trees statute. Refer to the guidance on the characteristics of the most valuable wildlife leave trees under ORS 527.676(2) and (3) stated above.
Harvest units meeting the harvest type 2 or type 3 unit definition that were logged prior to September 30, 1991 will not be considered when determining compliance with subsection (4).

Example: A landowner proposes a 15 acre harvest type 2 or type 3 unit located adjacent to the landowner’s previously harvest 95 acre and the 105 acre Type 2 or 3 harvests that have reached free-to-grow. Is there a wildlife leave tree requirement for the 15 acre unit?

- The 120 harvest limitation requirement does not affect the proposed 15 acre harvest type 2 or type 3 unit, because the two harvested adjacent units, 95 acres and 105 acres, meet the free-to-grow standards. ORS 527.740.

- **Note:** The wildlife tree retention requirements affect the proposed 15 acre harvest type 2 or type 3 unit, because the proposed harvest must combine acres with adjacent harvest type 2 or type 3 units.
  - In this case, the 95 acres and 105 acres harvest type 2 or type 3 units plus the proposed 15 acre harvest type 2 or type 3 unit equals 215 acres that must meet the wildlife leave tree requirement because of adjacency. ORS 527.676(4).

- An approved PFAP is required to designate wildlife leave trees in one or both of the adjacent harvested units to meet all or part of the wildlife leave tree requirements for the proposed 15 acre harvest type 2 or type 3 unit. ORS 526.676(3)(b)(B).

- The wildlife leave trees located in the harvested adjacent units, designated for the proposed 15 acre harvest type 2 or type 3 unit, may be harvested once the wildlife leave trees develop at least 30 feet in height and 11 inches DBH or larger. ORS 527.676(1), (2).

**REFERENCES FOR ORS 527.676:**

- “Alternate Plans for Snag and Green Tree Retention”; memo by Clint Smith, ODF, and Rebecca Goggins, ODFW, July 13, 1992
- Implementation guidance for the Oregon Plan measures 19, 20, and 22.
WILDLIFE FOOD PLOTS; RULES
ORS 527.678

(1) As used in this section:
   (a) “Forest tree species” has the meaning given that term in ORS 527.620.
   (b) “Small forestland” means forestland as defined in ORS 527.620 that:
       (A) Has an owner that owns or holds common ownership interest in at least 10 acres of Oregon forestland but less than 5,000 acres of Oregon forestland; and
       (B) Constitutes all forestland within a single tax lot and all forestland within contiguous parcels owned or held in common ownership by the owner.
   (c) “Wildlife food plot” means a small forestland area that, instead of being used for growing and harvesting a forest tree species, is planted in vegetation capable of substantially contributing to wildlife nutrition.

(2) The owner of a small forestland that is subject to reforestation requirements under ORS 527.610 to 527.770 may, notwithstanding any contrary provision of the reforestation requirements for the forestland, establish wildlife food plots within the boundaries of the small forestland. The combined size of the wildlife food plots described in this subsection may not exceed:
   (a) 2.5 percent of the small forestland, if the small forestland is 500 acres or less in size;
   (b) 2.0 percent of the small forestland, if the small forestland is more than 500 acres but not more than 1,000 acres in size; or February 2018 Oregon Forest Practices Act 119
   (c) 1.0 percent of the small forestland, if the small forestland is more than 1,000 acres in size.

(3) (a) The State Board of Forestry shall adopt rules for carrying out this section. The board shall consult with the State Department of Fish and Wildlife to identify vegetation capable of substantially contributing to wildlife nutrition.
   (b) The establishment of a wildlife food plot as provided by board rules is a forest practice providing for the overall maintenance of forestland resources as described in ORS 527.710 and supersedes any contrary reforestation requirement under ORS 527.610 to 527.770 for the wildlife food plot.
   (c) Notwithstanding ORS 527.670 (1), the establishment or relocation of a wildlife food plot, and the reforestation of a location that ceases to be a wildlife food plot, are forest operations requiring notice to the State Forester under ORS 527.670.

APPLICATION:

Under the Oregon FPA, wildlife food plot (WFP) establishment may occur on a small percent of forestland ownership that would be otherwise subject to the reforestation rules. Landowners need to maintain appropriate vegetation and manage food plots to provide nutrition to the intended species. Wildlife species include deer or elk, birds, and even pollinating insects. Maximum food plot sizes on eligible ownerships range from a quarter acre to 50 acres.
COMPLIANCE:

Guidance for OAR 629-610-0100 describes compliance requirements for the establishment, maintenance and ending of a WFP.

ADMINISTRATION:

The 2015 Oregon legislative session passed House Bill 3013, WFP as an approved activity under the FPA, which became effective January 1, 2016 and codified as ORS 527.678. Legislature opined that establishment of a WFP as provided by board rules is a forest practice providing for the overall maintenance of forestland resources as described in ORS 527.710. At the July 2020 Board meeting, the WFP rules were adopted as part of division 610, effective September 9, 2020.

See guidance for OAR 629-610-0100 describes the eligibility criteria and direction for a forest landowner to pursue an exemption from reforestation to establish and maintain a WFP.

Definitions associated with WFP in division 605 and 610 were added to OAR 629-600-0100:

(25) “Forage” means the plant species or other source of food that will be provided to substantially contribute, either directly or indirectly to nutrition of the target wildlife species or guild.

(71) “Small forestland” for the purpose of implementing a wildlife food plot means forestland as defined in ORS 527.620 that:

(a) Has an owner that owns or holds common ownership interest in at least 10 acres of Oregon forestland but less than 5,000 acres of Oregon forestland; and

(b) Constitutes all forestland within a single tax lot and all forestland within contiguous parcels owned or held in common ownership by the owner.

(80) “Target wildlife” means a wildlife species or wildlife guild expected to benefit from the installation of a wildlife food plot.

(96) “Wildlife food plot” means a small forestland area that, instead of being used for growing and harvesting of a forest tree species, is planted in vegetation or has vegetation capable of substantially contributing to wildlife nutrition.

(97) “Wildlife guild” means a grouping of wildlife that has similar characteristics and fulfills similar ecological roles in the environment.

A PFAP for establishing and removing WFP was added to OAR 629-605-0140(1)(j).
RESTRICTIONS ON LOCAL GOVERNMENT ADOPTION OF RULES REGARDING FOREST OPERATIONS; EXCEPTIONS
ORS 527.722

(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.

APPLICATION:
ORS 527.722 is not used for enforcement. The statute describes allowances and limitations related to forest practice regulations enacted by local governments.

ADMINISTRATION:
In summary, ORS 527.722 has three main elements, as follows:
1. As a baseline, the statute establishes that the Board has the exclusive authority to develop and enforce statewide and regional forest practice rules, ORS 527.630(3), ORS 527.722(1) and (5).

2. Under specific circumstances, the statute allows local governments to assume the regulation of forest practices within urban growth boundaries (UGB), with additional, but very limited, opportunities for counties to prohibit forest practices outside UGB.

3. The statute does not affect a local government’s jurisdiction over tree removal or associated activities involved with traditional urban development activities such as residential or commercial construction.

Allowances for Local Forest Practice Regulation
Subsection (1). As used in ORS 527.722 “local government” means a city or county government, or a regional government such as Metro.

Paragraph (2)(a) allows a local government to regulate forest practices **within the local UGB** if the regulations are developed in compliance with ORS 527.722(5). This allowance is a key element of the statute. See the guidance under subsection (5).

Paragraph (2)(b) was included in the statute to address a specific situation in the City of Portland for areas that were within the city limits as of July 1, 1991 but outside the UGB. No other local government is included in this allowance.

Paragraphs (2)(c) through (f) clarify that local governments retain local control of urban development activities or other activities unrelated to growing and harvesting of forest trees. The county can require tree retention as part of development plans.

Subsection (3) clarifies that local governments retain control of the standards in ORS 455.310 to 455.715, which relate to building codes.

Subsection (4) allows counties to prohibit but in no other manner regulate forest practices **outside UGB**. This is a very limited allowance. The prerequisite is that the county must have an acknowledged exception to the agricultural or forestland use goal. This suggests that the county has gone through the exception process with the Department of Land Conservation and Development (DLCD) on their comprehensive plan for exceptions on land relative to the land use Goals.

In the 1980s, county comprehensive plans zoned lands, in coordination with the DLCD, designated lands by zone classifications. Lands zoned as protected resource lands are protected from development and under FPA jurisdiction. Other lands, not zoned as protected resource lands, are not under the FPA but under county jurisdiction. The county may prohibit forest practices under the exception provision in ORS 527.722(4) for lands not zoned protected as resource lands (farm/forest or small woodlot).

Example: A landowner proposes a commercial harvest with the likely, but unconfirmed intention to develop a home site. The county informs ODF that the county has jurisdiction over the harvest, because the DLCD acknowledged exception provision in ORS 527.722(4) for land zoned other than farm / forestland. The FPA does not have jurisdiction, even though the land meets the definition of forestland, because the county has authority to under ORS 527.722(2)(c) through (2)(f) and the exception provision in ORS 527.722(4).
Counties may adopt such exceptions for specific areas and uses if the conditions in Goal 2: Land Use Planning are met. “Acknowledged” means the DLCD has approved the exception. Where a county prohibits forest practices under subsection (4), the local regulation applies in those areas and the FPA does not.

Subsection (4). The exception in is strictly limited, as illustrated in the following:

1. A county must go through a formal procedure to take an exception to the agricultural or forestland land use goal, to have the exception acknowledged by DLDC, and to declare that forest practices are prohibited. One county asserted that it had taken an exception to the land use goals and had prohibited forest practices outside city UGB simply by not listing forest management as one of the outright or conditional uses in specific land use zones. ODF’s position was that the county’s process was inadequate and that therefore the county could not prohibit forest practices in the specified areas. Consult with the Business and Land Use Coordinator in the Partnership and Planning Program about conflicts with land use interpretation between a county and ODF.

2. A county may prohibit all forest practices in a specified area outside any UGB, or the county may refrain from any limitation on forest practices in that area. The county may not choose to allow forest practices to continue in the area with some limitations. **Example:** A county attempted to prohibit clearcutting in an area outside an UGB, while allowing other forest practices to proceed under jurisdiction of the FPA. ODF’s position was that this was not allowed under ORS 527.722(4).

3. A county may identify outstanding natural features that might be adversely affected by forest practices, and prohibit forest practices as needed to preserve the features. ODF’s position is that a county may not apply the allowance to prohibit forest practices for other purposes, e.g., to preserve a scenic, wooded view for homeowners.

Local Governments

As used in ORS 527.722 “local government” means a city or county government, or a regional government such as Metro. A city may adopt a local ordinance within the city limits inside the UGB. A county or regional government may adopt a local forest practice ordinance that applies only to the “urban fringe,” i.e., the area outside the city limits but inside the UGB. Finally, cities, counties, and/or regional governments may enter into intergovernmental agreements related to local forest practice regulations. **Example:** The City of Springfield and Lane County agree that the city’s forest practice regulations will extend into the UGB.

Metro and Clackamas County do have protection requirements for operating within 200 feet of the stream within their Water Reserve Area, but both have confirmed in 2020, that if there is no development their requirements do not supplant the FPA. They have not finalized a comprehensive tree ordinance for areas within the UGB, as of April, 2020.
RESTRICTIONS ON LOCAL GOVERNMENT ADOPTION OF RULES REGULATING
FOREST OPERATIONS; EXCEPTIONS
ORS 527.722

(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.

APPLICATION:
ORS 527.722 is not used for enforcement. Subsection (5) describes the conditions and standards for local forest practice regulations within UGB.

ADMINISTRATION:

Purpose of this Guidance
ODF has a key role in the process of a local government developing a local forest practice ordinance. A broader look at how local governments may take advantage of the local option is provided in “Guidelines for Developing Urban Forest Practices Ordinances, 1999, ODF”, though it has portions that need to be updated. ODF should provide that document to local governments contemplating local forest practice regulations.

Forest Practices Act or Local Ordinance, not both
Subsection (5) first reinforces the principle that while the FPA is the default statewide forest practice regulation on all non-federal forestland. See also ORS 527.630(2) and (3), and ORS 527.722(1), a local government may adopt forest practice regulations that apply within and only within the local UGB.¹ The purpose is to allow local governments to account for local, urban conditions and concerns that the FPA is not designed to address. The local forest practice regulations must meet the standards in paragraphs (5)(a) through (e). If a local government adopts the regulation in compliance with paragraphs (5)(a) through (e), the local regulation applies in that jurisdiction within the local UGB and the FPA does not. In this circumstance, the local government assumes all responsibility for administering the local forest practice regulations in the area affected by the regulations. See ORS 527.722(7) for more information.

¹ ORS 527.722(2)(b) provides a limited allowance for the City of Portland to regulate forest practices in areas inside the city limits but outside the UGB. See the guidance under that paragraph for more information.
Protection of Natural Resources
Paragraph (5)(a) requires protection of the same set of natural resources that are protected under the FPA (excluding scenic highways and public safety). The implication is that the local regulation must provide an adequate level of protection, but the statute does not specify a required level of level of protection. Local governments are not required to duplicate the resource protection strategies in the FPA. However, a local government must ensure that its local forest practice ordinance satisfies other regulations, including the Clean Water Act, administered by the Oregon Department of Environmental Quality (DEQ), and land use planning regulations, e.g., Goal 5 Natural Resources. Note: ODF should help local governments develop goals and requirements that protect natural resources in ways that make sense in the local, urban context.

Process Requirements
In paragraph (5)(b), “acknowledged” means the DLCD has acknowledged that the local regulation is in compliance with land use planning goals. In practice, if the local government notifies the DLCD of the regulation, and DLCD does not object, the regulation is considered to be acknowledged.

Paragraph (5)(c), requires a public process which is usually satisfied if local governments enact the forest practice regulations using their standard process for meaningful public involvement.

Paragraph (5)(d) requires that the local regulations be developed for the specific purpose of regulating forest practices. This requirement is intended to make local governments aware that if local forest practice regulations are enacted, the regulations must address the full range of forest practices and resource protections.

Paragraph (5)(e) also requires local governments to notify the DLCD when developing local forest practice regulations. In addition, paragraph (5)(e) requires that local governments consult with ODF when developing local forest practice regulations. This requirement sets up a cooperative relationship between ODF and the local government. Local governments should involve ODF as early in the process as is practical. ODF’s role is one of reviewing and advising, based on the following three broad areas:

- Local government’s proposed regulation must meet the conditions in ORS 527.722(5)(a) through (e). In addition, local governments should be careful to avoid confusion over whether the local regulation or the FPA will apply, ORS 527.722(7).
- Urban and Community Forestry issues are broader than simply asking if legal requirements are met. During the required consultative process, the Urban and Community Forests Program will take the lead in advising local governments on these issues. Examples: Advice on tree care, appropriate tree species for particular applications, elements of a comprehensive tree ordinance, and procedural issues. These items would generally not bear on whether the local regulation complies with 527.722(5).
- Local governments must consider other issues. Example: Where local jurisdictions are within forest protection districts, it may be appropriate to address how the local regulations will mesh with state wildland fire laws. These items would not influence the determination of whether the local regulation complies with ORS 527.722(5).

Collaboration is described in ORS 527.722(5), between ODF and the local government that produces regulations that adequately protect natural resources and that make sense in the local, urban context. ODF has no authority to direct a local government to comply with the statute, and
no penalties are specified for failure to comply. Accordingly, where a local forest practice regulation does not meet the standards in ORS 527.722, ODF will do the following:

- Notify the local government that it (the local government) does not have authority to adopt the forest practice regulation.
- Notify the local government that the FPA and not the local forest practice ordinance applies within the local jurisdiction.
- Administer the FPA within the local jurisdiction.
- Avoid giving legal orders to the local government to comply with ORS 527.722.
- Avoid giving advice to landowners or others involved in the matter, other than to explain the department’s determination that the local regulation is not authorized by statute.
- Avoid taking an advocacy role for forest landowners or others involved in the matter. Landowners and others may be subjected to a confusing double-regulation scenario. However, other than by working cooperatively with the local government, ODF cannot resolve this situation for landowners. Landowners or others who believe they have been unfairly limited by the city regulation must determine what, if any, legal action they should take.

Private Forests Division Field and Staff Roles
Salem staff, including staff from the Urban and Community Forests Program, coordinate department review of local government forest practice regulations as they are being developed and maintain a list of local governments that have enacted local forest practice regulations. Local ODF field personnel are usually very involved in the review process. SF should also notify staff if they learn of local government plans to adopt or change local forest practice regulations.

Local Governments
As used in ORS 527.722 “local government” means a city or county government, or a regional government such as Metro. A city may adopt a local ordinance within the city limits inside the UGB. A county or regional government may adopt a local forest practice ordinance that applies only to the “urban fringe,” i.e., the area outside the city limits but inside the UGB. Finally, cities, counties, and/or regional governments may enter into intergovernmental agreements related to local forest practice regulations. Example: The City of Springfield and Lane County agree that the city’s forest practice regulations will extend into the urban fringe.
APPLICATION:

ORS 527.722 is not used for enforcement. Subsection (6) describes ODF’s obligation to send copies of notifications and written plans to local governments.

ADMINISTRATION:

ODF to provide Information to Local Governments
Subsection (6) requires ODF to forward to the appropriate local government copies of any notifications or written plans received for forest operations within an UGB. This requirement applies regardless of whether a local government has adopted a local forest practice regulation inside an UGB or whether a county has prohibited forest practices outside the UGB.

Discussions during the 2001 revision of ORS 527.722 made it clear that ODF must send copies of the notifications and written plans even if the local government indicates it does not want them; the statute does not provide for any agreement or waiver to cease the distribution. ODF offices should mail the notifications or written plans within three days of receipt. For areas where the FPA applies in the local jurisdiction, the three-day turnaround reduces the likelihood that an operation for which the 15-day waiting period has been waived will have started before the local government has a chance to contact the landowner or operator. Local ODF offices are encouraged to communicate with local governments to register as a FERNS subscriber to receive email alerts when a proposed forest operation is located in their area of interest.

Note: If a waiver of the 15-day waiting period is otherwise justified, the SF is not obligated to withhold the waiver to allow the local government time to contact the landowner or operator.

E-Notification, aka “FERNS” (Forest Activity Electronic Reporting and Notification System) is the “department reporting system.”

As with any other person or group, a local government may provide comments to ODF relating to specific forest operations under jurisdiction of the FPA. The SF will consider the comments as they relate to whether the operation is likely to comply with the FPA. If the comments are considered “timely” comments related to statutory written plans, ODF must forward the comments to the operator, timber owner, and landowner; see ORS 527.670(9) and (12)(b). Otherwise, if a local government wishes to communicate with the operator, timber owner, or landowner, it must do so in some other fashion; ODF is not obligated to forward local government comment to those parties.
Local Governments
As used in ORS 527.722 “local government” means a city or county government, or a regional
government such as Metro. A city may adopt a local ordinance within the city limits inside the
UGB. A county or regional government may adopt a local forest practice ordinance that applies
only to the “urban fringe,” i.e., the area outside the city limits but inside the UGB. Finally,
cities, counties, and/or regional governments may enter into intergovernmental agreements
related to local forest practice regulations. Example: The City of Springfield and Lane County
agree that the city’s forest practice regulations will extend into the urban fringe.
**APPLICATION:**

ORS 527.722 is not used for enforcement. Subsections (7) and (8) relate to state agency obligations.

**ADMINISTRATION:**

Forest Practices Act or Local Ordinance, not both

Subsection (7). If a local government enacts a local forest practice regulation consistent with ORS 527.722(1) through (5), the local regulation applies within the local jurisdiction inside the UGB, and the FPA does not. Similarly, where a county prohibits forest practices under ORS 527.722(4), the local regulation applies in those areas and the FPA does not. Where the local regulation applies in place of the FPA, the local government assumes all responsibility for administering the local forest practice regulations. A city and county may enter into an intergovernmental agreement for a qualifying city forest practice to apply to lands outside the city limits but within the UGB.

Exceptions to the Rule

In general, the operative principle in ORS 527.722 is that either the FPA or the local ordinance will apply, but not both. However, there are several complicating factors, as described in the following:

1. The ODA holds that the state pesticide preemption law, ORS 634.055 through 634.065, forbids local governments from regulating pesticide storage, use, or reporting in any fashion, regardless of whether local government has adopted local forest practice regulations. This apparent conflict between ORS 634 and ORS 527.722 has not been resolved; until further notice, ODF will simply notify local governments adopting local forest practice ordinances of the conflict.

2. A local government may opt to regulate forest practices on only a portion of its jurisdiction within the local UGB. Example: The local government may adopt forest practice regulations specific to areas within 100 feet of all streams in the local jurisdiction. If the requirements of ORS 527.722 are otherwise satisfied, the local ordinance would apply in the 100-foot wide streamside zones, and the FPA would apply in other areas within the local jurisdiction. ODF should advise local governments considering this option that there is a high potential for confusion over which regulation...
applies where, and that the local government will need to provide ODF with regularly updated mapping of where the local regulation applies.

3. A local government may opt to exempt parcels taxed as forestland from the local ordinance. In this instance, the FPA would apply to operations on those parcels, and the local ordinance would apply to other portions of the local jurisdiction. Again, there would be the potential for confusion over jurisdiction, so the local government should provide ODF with accurate mapping. **Examples:** Salem and Tigard which have city tree ordinances that supplant the FPA for non-forest deferral lands.

4. A local government **may not** adopt a local ordinance that regulates only a subset of forest practices on a given area. **Example:** A local government is not authorized to prohibit clearcutting in an area and leave resource protection and other forest practices on the same area to ODF’s administration of the FPA.

**Other Requirements not Affected**
Regardless of whether a local forest practice regulation has been adopted, persons planning to harvest trees must first notify the Department of Revenue of that intent by filing the notification of operations form with ODF, ORS 321.550. Where a local forest practice ordinance applies, ODF will send copies of these notices to the local government, but will administer no other aspect of the FPA. If an operation is within a forest protection district, persons planning the activity must file an application for a permit to operate power driven machinery (Notification of Operation or Permit to Use Fire or Power Driven Machinery) with ODF under ORS 477.625. Neither of the requirements identified in this paragraph is altered by local assumption of forest practices jurisdiction. **Note:** The definition of “operation” for ORS 477 is different from the definition used in the FPA defined in OAR 629-600-0100 and ORS 527.620. See ORS 477.001 for the definition of “operation” for the fire laws.

**DLCD Actions**
Subsection (8) describes a responsibility of the DLCD. Under ORS 197.615(1) (relating to adopted land use regulations), a local government that amends a land use regulation or adopts a new land use regulation is required to notify DLCD of any new land use regulations. ORS 527.722(5)(e) echoes this requirement as it pertains to forest practice ordinances. In turn, ORS 527.722(8) requires DLCD to forward these notices to ODF. The intent is to provide a mechanism to notify the agencies that need to be involved in the land use planning process. Interagency meetings between ODF and DLCD should include review adoptions, amendments or repeals of any local government comprehensive land use regulation, which prohibit or regulate forest practices.
**CONVERSION OF FORESTLAND TO OTHER USES**
ORS 527.730

*Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use.*

**APPLICATION:**

ORS 527.730 is not used for enforcement.

**COMPLIANCE:**

Non-compliance is enforced using ORS 527.670(6) for failure to notify for all planned activities on forestland when there is resource damage and/or use the appropriate resource protection rule. Refer to guidance on OAR 629-610-0090 for enforcement action for failure to begin, complete and/or maintain a conversion of forestland.

For commercial forest products operations, a conversion of forestland for to non-forest use requires a notification of operation and the landowner, prior to any conversion work, must obtain an SF approved PFAP to exempt the converted land from the reforestation requirement, which may include a statutory written plan and other agency and county approvals.

**ADMINISTRATION:**

Refer to guidance of OAR 629-610-0090 for a complete discussion on the conversion of forestland to a non-forest use.

Land use is regulated by local government. As used in ORS 527.722, “local government” means a city or county government, or a regional government such as Metro. Each local government has developed land use plans that include land use zones and ordinances. This statute makes it clear that nothing in the FPA shall prevent a land use change that may be authorized or permitted under a local government plan. Thus, modifications to the forest practice rules must be granted when necessary to accommodate land use changes when the following conditions exist:

a. The proposed land use change is allowed under the local government plan and all applicable land use permits have been secured,
b. The modifications are necessary to complete the land use change, and
c. Other state natural resource agencies have reviewed or approved such actions.

If a county's zone allows the conversion of forest land to other uses, and other agencies have reviewed or approved such actions, we must allow such conversion to the extent that the landowner is going to make (and maintain) the conversion.

Because the department can withhold approval of PFAP to begin such conversion operations, it has accepted the role of a “gatekeeper” for other natural resource regulatory agencies in order to ensure the continuous protection of natural resources. When a conversion operation proceeds beyond forest management activities, department’s jurisdiction ends, and as ORS 527.730 reads, “Nothing in the FPA shall prevent the conversion of forestland to any other use.”
As directed by OAR 629-605-0120, the department consults with other state agencies concerned with the forest environment situations where expertise from such agencies is desirable or necessary. The department has entered into formal and informal agreements with other agencies and local governments, in response to the Board requiring the department to coordinate with other agencies and local governments which are concerned with the forest environment, ORS 527.630(3).

The department participates in an interagency review procedure that maintains some protection of the natural resources that are guarded by forest practices regulations. The November 2006, interagency memorandum of agreement (MOA) for forestland conversion includes the ODA, Department of State Lands (DSL), ODFW, Department of Parks and Recreation (OPRD), DLCD, and Department of Environment Quality (DEQ). The MOA seeks a coordinated transition of jurisdiction between agencies to protect water quality and other resources throughout the conversion process. The SF must be familiar with the MOA and the obligations of ODF and each of the participating agencies.

The landowner should be encouraged to retain as much land in forest use as possible. The exemption should apply for only that area being converted to a land use not compatible with forest tree cover. A typical home site might receive an exemption of no more than one acre unless the landowner wishes to convert surrounding land to a bona fide non-forest use.

Example: A landowner requests a land use change modification of the rules to clear a field to grow Christmas trees within 50 feet of a large Type F stream or significant wetland, but the county land use ordinances prevent agricultural uses within 75 feet of the wetland or stream.

- ODF would not modify the RMA width requirement to 50 feet, since the county ordinance does not allow the use within 75 feet. Within the 75 feet, the purpose of the applicable rules should be achieved to the maximum extent practicable. The basal area targets may or may not need to be adjusted depending on the stocking present.
- ODF would require the landowner to acquire review and approval of the proposed forestland conversion from DEQ and ODA, prior to approval the PFAP.
APPLICATION:

Subsection (1) is subject to enforcement action.

COMPLIANCE:

Compliance occurs when a single harvest unit that meets the definition of a harvest type 3 does not exceed 120 acres on a single ownership. Failure to limit harvest type 3 units to 120 acres on any single ownership is a violation, unless a PFAP is approved to exceed 120 acres under OAR 629-605-0175. Refer to subsection (2) for requirements applicable to multiple harvest type 3 units in close proximity to each other.

ADMINISTRATION:

A harvest type 3 unit, over 25 acres requires reforestation and retention of wildlife leave tree and downed logs. The criteria for determining if harvest units require reforestation is in OAR 629-610-0020. The criteria for determining if wildlife leave trees and downed log retention is required is in the guidance for ORS 527.676. See also harvest type 1, 2 and 3 definition in ORS 527.620 and a flowchart describing post-harvest requirements by harvest type and site class.

The requirements to limit the size of harvest type 3 units apply even when pre-operation stocking levels are below those specified in the harvest type 3 definition. All traditional clear-cut harvests meet the harvest type 3 criteria.

The harvest unit size requirement only applies to "single ownerships," as defined in ORS 527.620 and OAR 629-605-0210. SFs must be alert for the use of "name games" used to circumvent the law. While this is not expected to be a large-scale problem, it has occurred in the past. If ODF suspects that individuals, corporations, or other entities are attempting to circumvent the law using numerous names or corporate ownerships that essentially reflect a single ownership, contact Salem Private Forests Division staff for further advice.

SF should check notifications to determine unit size and proximity to prior harvest type 3 units. Harvest type 3 unit size should be evaluated during the course of regular inspections to determine compliance.

Legislative History
SB 1125 was passed in 1991 as a compromise, with forest industry as the main author. Most harvests prior to SB 1125 were around 40 acres, with some well over 300 acres. Legislators were aware of several large clearcuts occurring in the Coast Range prompted from recent timber land purchases.
**APPLICATION:**

Subsection (2) is subject to enforcement action.

**COMPLIANCE:**

Noncompliance occurs when new and older harvest type 3 units are:

- Within 300 feet (slope distance) of an older harvest type 3 unit;
- Combined acreages of both units exceeds 120 acres;
- The older unit has not met the "green-up" standards in paragraphs (2); or
- A PFAP to exceed 120 acres was not approved, OAR 629-605-0175.

**ADMINISTRATION AND IMPLEMENTATION:**

Subsection (2). The 300 foot buffer may include trees that meet the “free-to-grow” standards defined in OAR 629-600-0100, which includes a minimum tree stocking per acre of well-distributed trees of acceptable species based on the site productivity, OAR 629-610-0020(1). Subsection (2) requires the trees that meet the “free-to-grow” standards are at least 4 feet tall or at least 48 months have passed since the date originally planted.

Green-up” means the entire harvest type 3 unit must be: 1) “Free-to-grow” as defined in OAR 629-600-0100, which includes well-distributed tree stocking per acre based on the site productivity of acceptable tree species per OAR 629-610-0020(1); and 2) Either trees are at least 4 feet tall or at least 48 months have passed since the date originally planted.

Paragraph (2)(c) “stand was created” means the date the unit was originally planted to determine compliance with this paragraph. Note: this is not the “completion of the operation” date used for compliance with division 610 reforestation rules.
Refer to Table 1. Measurements for 120-acre harvest type 3 units, single ownership, for a
description of the measurement criteria to determine the 120 acres and 300-foot buffers between
harvest type 3 units.

The harvest type 3 unit size requirement only applies to "single ownerships," as defined in ORS 527.620 and OAR 629-605-0210. SFs must be alert for the use of "name games" used to
circumvent the law. If ODF suspects that individuals, corporations, or other entities are
attending to circumvent the law using numerous names or corporate ownerships that essentially
reflect a single ownership, contact Salem Private Forests Division staff for further advice.

**Notification Review:** SFs should check harvest type 3 unit size and proximity to prior harvest
type 3 units during notification review and regular inspections to determine compliance.
**Example:** A proposed harvest type 3 unit adjacent to an unsuccessful reforestation unit has a
combined acreage that exceeds the 120-acre limit. The two harvest type 3 units must be at least
300 feet apart, measured as slope distance.

**300-foot buffer area:**
- May manage the 300-foot buffer area between harvest type 3 units as a harvest type
either 1 or a type 2 unit, but not a harvest type 3 unit. Harvesting the buffer to below the
harvest type 2 threshold of trees larger than 11 inches DBH would require that adequate
residual reproduction be present.
- In this case of harvest type 2 unit in the buffer, the reproduction left must be at least four
feet tall to provide for the "green-up" feature adjacent to the primary operating unit, a
harvest type 3 unit. If only seedlings shorter than four feet tall were left in the buffer, it
would become a de facto harvest type 3 unit, negating its value as a buffer, and violating
the statute.
- Non-forest uses should not be inserted into the 300-foot perimeter between harvest type 3
units after it is established, if the change to a non-forest use involves a commercial
harvest. Refer to the discussion in guidance under ORS 527.740(3).
- The **intent** of this law is to have old type 3 harvest units "green-up" before new ones may
be commenced. The statute is framed on the distance between harvest type 3 units.
Natural openings or land dedicated to non-forest uses are not included in determining the
acreage of type 3 harvest units. Likewise, natural openings and land dedicated to non-
forest uses may be included in the buffers between type 3 harvest units.

**Example:** If a 100-foot wide power line right-of-way separates two harvest type 3 units, then an
additional buffer of non-harvest type 3 vegetation of only 200 feet would be needed to prevent
combining the acreage of both units to determine rule compliance.

Salvage operations may occur within the 300-foot buffer if sufficient trees are retained result in
no more than a harvest type 1 or type 2 unit **within the 300-foot buffer**. The salvage operation
must not include trees retained under other rule or law requirements. **Except,** retained wildlife
leave trees that later fall **within the unit** may be salvaged through an approved PFAP, if the
substitute trees meet the wildlife leave tree requirements for the unit. Wildlife leave trees must be
located within the unit, not within the 300-foot buffer, ORS 527.676.
Situation 1: Planting Date: Tree planting on a harvest type 3 unit met the stocking standards in OAR 629-610-0020, but there was significant seedling mortality outside the landowner’s control prior to “green up” requirements of ORS 527.740(2)(c). The landowner plans to interplant to replace the seedling mortality, and then harvest the 300-foot buffer that separates an adjacent harvest type 3 unit.

- ODF would consider the date of the original planting as an unchanging stand creation date and combine the other standards in ORS 527.740 (2) to determine if the “green up” standard had been met.
- The entire harvest type 3 unit must meet the “green up” standards before the 300-foot buffer separates an adjacent harvest type 3 unit.

Free to Grow: Because seedling mortality may not be evident until the beginning of the next growing season, ODF would evaluate the free to grow status of the trees at that point, as defined in OAR 629-600-0100. At a minimum, the seedlings must survive and be in a free to grow condition for one full growing season. If there were evidence of good control of competing vegetation and other seedling stressors, one growing season would likely be sufficient.

Situation 2: A landowner proposes a salvage harvest type 3 units on several hundred acres of non-contiguous areas of standing timber, including designated wildlife leave trees (WLT) in RMAs and uplands from previous harvest type 3 units.

- When feasible, retain previously designated WLT and downed logs. May fell hazard WLT and leave where felled. Downed logs completely consumed by fire do not need to be replaced.
- A PFAP is required to relocate WLT or to combine trees from multiple harvest units in another area. New WLT should be designated on a map submitted with PFAP.
- A PFAP is required to salvage blow downed or burned WLT, including in WLT designated in RMAs from previous harvest type 2 or 3. Designate substitute WLT in the watershed.
- A PFAP to exceed 120 acres should address leave trees, describing compliance with meeting the two trees per acre requirement.

A PFAP must describe how alternate leave tree strategy will “achieve better overall benefits for wildlife,” ORS 527.676(3)(b)(B).

Situation 3: An operator proposes in a PFAP a long-span yarding harvest unit across a canyon that would exceed 120 acres, but eliminate a road through steep, marginally stable terrain.

- The SF may approve the PFAP to exceed 120 acres up to 240 acres if absolutely necessary.
### Table 1. Measurements\(^1\) for 120-acre harvest type 3 units, single ownership

<table>
<thead>
<tr>
<th>Include</th>
<th>At least a 300-foot buffer</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Harvest type 3 unit plus any adjacent harvest type 3 unit within 300 feet that does not meet “green-up”(^2) standards</td>
<td>Vegetative:</td>
</tr>
<tr>
<td>• RMA(^3) portions that meet the harvest type 3 definition or have designated wildlife leave trees</td>
<td>• Undisturbed vegetation or trees meet the “green-up”(^2) standard</td>
</tr>
<tr>
<td>• Landowner’s existing roads, landings, rock pits developed for forest road use, and landowner’s roads used as the unit boundary</td>
<td>• RMA(^4) portions that are not a harvest type 3 or have no designated wildlife leave trees</td>
</tr>
<tr>
<td>• New/reconstructed roads within the proposed harvest type 3 unit</td>
<td>• Specified resource sites acres for osprey, great blue heron, or bald eagle, including the active nest tree and other key components</td>
</tr>
<tr>
<td>• Designated wildlife leave trees or clusters for the harvest type 3 unit</td>
<td>Non-Vegetative or Non-FPA Jurisdiction:</td>
</tr>
<tr>
<td></td>
<td>• Natural openings, utility right-of-ways and other land dedicated to non-forest uses prior to the harvest type 3 unit</td>
</tr>
<tr>
<td></td>
<td>• Roads pre-existing outside the harvest type 3 unit or roads not owned by the notifying landowner</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Exclude</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• RMA(^3) portions that are not harvest type 3 or have no designated wildlife leave trees for the harvest type 3 unit</td>
<td>Designated wildlife leave trees or clusters for the harvest type 3 unit</td>
</tr>
<tr>
<td>• Specified resource sites acres for osprey, great blue heron, or bald eagle, including the active nest tree and other key components</td>
<td>New/reconstructed roads for a harvest type 3 unit</td>
</tr>
<tr>
<td>• Natural openings, utility right-of-way, and land dedicated to non-forest uses (no FPA jurisdiction) prior to the harvest type 3 unit</td>
<td>Harvests type 3 unit</td>
</tr>
<tr>
<td>• Roads not owned by the notifying landowner, e.g., county road or multi-easement mainline running through the harvest unit</td>
<td>New/reconstructed roads and conversions to non-forest use until the adjacent harvest type 3 meets “green-up”(^2) standards</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Exceptions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• <strong>Plan for an Alternate Practice</strong>(^4)</td>
<td></td>
</tr>
<tr>
<td>o Converting brush land to managed conifers or managed hardwoods or</td>
<td></td>
</tr>
<tr>
<td>o Harvesting hardwood stands &lt; 80 sq. ft. basal area per acre of trees ≥ 11 inch DBH or</td>
<td></td>
</tr>
<tr>
<td>o Salvaging from natural disasters or other occurrence beyond the landowner’s control which has substantially impaired productivity, safety on the unit, or jeopardized nearby forestland.</td>
<td></td>
</tr>
<tr>
<td>o Provide better overall results.</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) Measurements mean slope distance (unless the slope won’t grow merchantable trees) from the perimeter of the harvest type 3 unit, regardless if an RMA\(^3\) or specified resource site is inside the unit. **Measure from the center of a retained tree or snag to the center of the tree, snag or stump within the harvest type 3 unit.**

\(^2\) “Green-up” means the entire harvest type 3 unit must meet two conditions: 1) “Free-to-grow” as defined in OAR 629-600-0100, which includes a minimum tree stocking per acre based on the site productivity of acceptable tree species, that are well-distributed, OAR 629-610-0020(1); and 2) Either trees are at least 4 feet tall or at least 48 months have passed since the date originally planted. Do not use the operation completion date.

\(^3\) “RMA” means **for this document**, the “riparian area”, defined in OAR 629-600-0100 as the ground and vegetation along a water of the state influenced by year-round or seasonal water, which exhibit some wetness characteristics.

\(^4\) Plan for an Alternate Practice, ODF approved. See regulations and guidance for ORS 527.740 and OAR 629-605-0175
APPLICATION:

Subsection (3) is not subject to enforcement action.

ADMINISTRATION:

Subsection (3) provides administrative guidance about how to determine total harvest type 3 unit acres. “Riparian area”, is defined as the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics, OAR 629-600-0100. The term “riparian area” in this subsection will be characterized as either “riparian area” or "riparian management area" (RMA), unless a portion of the RMA meets the harvest type 3 unit definition.

When counting harvest type 3 unit acres for a new or old unit, acres within these units that are left as the RMA are not added into the acreage determination. Acres that include trees left in special resource sites, such as osprey nests, great blue heron rookeries, or bald eagle nesting sites, are also excluded. However, if part of the RMA meets the harvest type 3 unit definition, then these acres are counted as part of the 120-acre limit.

Example: A 100-foot RMA where all leave tree requirements are met within the first 50 feet. The second 50 feet, having no leave trees, meets the harvest type 3 unit definition. Therefore, the first 50 feet of the RMA is not counted in the 120-acre limit, while the second 50 feet is counted.

Refer to Guidance for ORS 527.740(2), Table 1. for measurement criteria to determine the 120 acres and 300 foot buffer between harvest type 3 units.
APPLICATION:

Subsection (4) is subject to enforcement action.

COMPLIANCE:

Subsection (4). Non-compliance occurs when the operator fails to obtain an approved PFAP to exceed 120-acre harvest type 3 unit for a conversion or salvage harvest before creating a harvest type 3 unit exceeding 120 acres.

ADMINISTRATION:

Exceptions to the 120-acre harvest type 3 unit limitations described in ORS 527.740(1) and (2) can be approved by the SF through a PFAP under the appropriate specific circumstances. The law is not intended to discourage the conversion of brush or unmanaged hardwood stands or salvage operations. There is no upper limit on the size of such harvest units. See above, Table 1. Exceptions summary.

Before approving a PFAP, the SF must determine if the larger harvest unit provides "overall better results" in resource protection under the FPA. The burden of proof is placed upon the operator to show the SF through the plan how the requested larger unit provides a clear improvement in overall resource protection. Economic savings or benefits cannot be considered.

For the purposes of this statute, a forest stand is considered a "hardwood stand" if more than half of the total basal area of trees 11 inches DBH and larger is comprised of hardwoods. Refer to the field guide for a table converting basal area per acre to trees per acre and tree spacing for various average stand diameters.

Where extremely large units are proposed which contain smaller logical units of adequately stocked, free to grow conifer trees, the SF should carefully evaluate the proposal within the context of the intent of the 120-acre harvest type 3 unit limitation.
Example: A conversion unit of 200 acres is proposed, and the unit has 100 contiguous acres of hardwoods with an average basal area per acre of 11-inch DBH and larger trees exceeding 80 square feet of basal area. The SF should not approve the PFAP for removal of the well-stocked hardwood stand. The SF may approve the PFAP for the conversion of 100 acres of hardwoods below the 80 square feet per acre standards. Note: The statute criteria for allowing conversions of hardwood stands to exceed 120 acres differs from the definition of "conversion of underproducing forestland" provided in OAR 629-610-0070(2)(a). That rule establishes when the reforestation requirements may be suspended for certain types of harvest units.

Example: A landowner proposes a PFAP to exceed the 120 harvest type 3 unit size limitation to salvage extensive areas damaged by wildfire (windthrow) that may harbor and spread insect or disease infestations or wildfire to nearby forestland. The SF may approve the PFAP.

Three Situations – brush/hardwood conversions:
The harvest type 3 unit size limitation statutes become difficult to administer when brush/hardwood conversion or salvage harvest units are located adjacent to regular (non-conversion/non-salvage) type 3 harvest units.

Situation 1: A regular harvest type 3 is planned to occur at the same time as an adjacent type 3 brush/hardwood conversion (or salvage) harvest and the combined acreage of the created openings would exceed 120 acres.

SFs should carefully review the situation. Operators should not be allowed to log the regular type 3 harvest area if it could logically be logged separately after the brush/hardwood portions have "greened-up." An approved PFAP is required to increase the size up to 240 acres under the provisions of ORS 527.750.

Situation 2: A regular harvest type 3 is planned to occur after an adjacent type 3 brush/hardwood conversion (or salvage) harvest and the combined acreage of the created openings would exceed 120 acres.

A regular harvest type 3 should not be allowed adjacent to any existing opening if the total clear-cut acreage will exceed 120 acres. The fact that the existing opening was the result of a previous brush/hardwood conversion does not change this requirement. An approved PFAP is required to increase the size up to 240 acres under the provisions of ORS 527.750. The operator must either leave a 300-foot buffer that is stocked above the harvest type 3 definition between units or wait for the older unit to "green-up."

Situation 3: A type 3 brush/hardwood conversion (or salvage) harvest is planned to occur after an adjacent regular harvest type 3 and the combined acreage of the created openings would exceed 120 acres.

If the brush/hardwood conversion harvest is planned next to an existing opening resulting from a regular harvest type 3 unit, the law implies the unit size limitations do not apply to these types of operations. Generally, SFs should approve a PFAP for such conversion harvests to create openings exceeding 120 acres, even if that acreage includes openings created by previously logged regular harvest type 3 unit. While it may not seem logical to allow this outcome when...
Situations 1 and 2 are not allowed, the law is written that way. **However, if the SF encounters a situation where it is clear the operator is trying to purposely circumvent the law and you can reasonably demonstrate this is the operator's intent, then the SF is justified in not approving the PFAP for the conversion unit to create a larger than 120-acre opening.** It is recommended that specific cases be discussed with Salem Private Forests Division staff before not approving the PFAP or issuing citations.

Refer to Guidance for ORS 527.740(2), Table 1. for measurement criteria to determine the 120 acres and 300 foot buffer between harvest type 3 units.

Natural openings or forestlands converted to non-forest land uses located adjacent to, or within, type 3 harvest units should not be considered when determining the acreage of the type 3 harvest units. If any combination of non-type 3 forestland, natural openings, or non-forest land uses separates type 3 harvest units by more than 300 feet, the units may be considered separately when applying the statute's unit size limitations. If the distance is less than 300 feet at any point on a single ownership, then the acreage of separate type 3 harvest units must be combined.

**Beyond the Landowner’s Control:**

When a disaster occurs beyond the landowner’s control will “*substantially impair productivity, impair safety, or jeopardize nearby forestland,*” these terms can mean, but are not limited to the following:

- **“Impaired productivity”** means any condition that constrains the establishment, management, or harvest of forest tree species. **Example:** Blown down or burned trees may interfere with the establishment or growth of a well-stocked stand of trees with good form and the capacity to fully use the site consistent with the landowner’s objectives and forest practices regulations.

- **“Impaired safety”** means any condition that imposes abnormal safety limitations on a landowner’s objectives for use of their forestland. **Example:** Weakened or partially blown down trees may be unsafe to be near to conduct establishment, management, or harvest of trees.

- **“Jeopardy to nearby forestland”** means any condition that has potential to cause or contribute to interference with the landowner’s objectives for establishment, management, or harvest of forest tree species on nearby forestland. **Examples:** Fire-killed or wind-thrown trees may harbor and spread insect or disease infestations or wildfire to nearby forestland.
APPLICATION

Subsection (5) is not subject to enforcement action.

ADMINISTRATION:

Subsection (5) allows for a grandfather clause for harvest contracts and cutting rights, which were signed prior to October 1, 1990.

The operator must meet two requirements.

- First, the operator must provide the SF with proof that a valid contract with timber rights was signed prior to October 1, 1990. The important point is that the contract must have been signed prior to October 1, 1990, and compliance to this subsection restricts the holder of the contract from harvesting the timber prior to the expiration date. This usually applies to contracts sold on a cash for timber basis and does not apply to contracts sold on a recovery basis.
  - Second, operators must show that compliance to this subsection causes a default on the contract because they cannot reasonably finish the harvest.

In cases where the operator demonstrates these two requirements, the SF can waive the 120-acre limit. SFs should be careful not to get involved in contract disputes between landowners and timber purchasers. Example: If the contract allows cutting over a 10-year period, it is probably reasonable that the operator can comply with the 120-acre limit.
(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.
**REFORESTATION OF CERTAIN HARVEST TYPES; ADOPTION OF STANDARDS; RULES**

**ORS 527.745**

(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.

(6) Notwithstanding subsections (1), (2) and (3) of this section, at the request of the Department of Transportation, the State Forester shall consult with the department concerning reforestation requirements for harvest type 1 and harvest type 3 in areas that are within or adjacent to a state highway right of way. The State Forester shall waive reforestation requirements in areas deemed to be unsuitable for reforestation by the department in order to maintain motorist safety and to protect highways, bridges and utility lines.

**APPLICATION:**

ORS 527.745 is not subject to enforcement action.

**ADMINISTRATION:**

Subsection (6). The SF may grant a written waiver of the reforestation requirement after consultation with Oregon Department of Transportation (ODOT) determines that state highway roadside forest cover is not compatible to maintain motorist safety and to protect highways, bridges and utility lines, per the interagency agreement, between ODF and ODOT, March 2016.

The 2012 legislature passed SB 1546, which gave ODF the authority to waive reforestation requirements for portions of harvest operations along state highways where ODOT informed the ODF that roadside forest cover is not compatible with motorist or infrastructure safety.
As described in the intergovernmental agreement between ODF and ODOT:

- ODF informs ODOT foresters of harvest operations near highways, through notification alerts as part of an ODOT FERNS subscription or otherwise.
- ODOT informs the SF in writing with a map showing the smallest portion of operations where and why reforestation waivers are to be issued.
- SF inform landowners in writing of that portion of the operation where reforestation is waived. ODOT reforestation assessment and ODF reforestation waiver should be uploaded to the notification in FERNS.
  - ODOT reforestation assessment and map as “Other Document.”
  - ODF reforestation waiver as “Formal Comment.”
- A PFAP to exempt reforestation is not required.
- Landowners shall ensure sufficient revegetation of the site where reforestation is not required to provide continuing soil productivity and stabilization within 12 months of the completion of the operation. Revegetation may be planted or naturally established (OAR 629-610-0080).
- Landowners are not required to honor these reforestation waivers and may still reforest.

E-Notification, aka “FERNS” (Forest Activity Electronic Reporting and Notification System) is the “department reporting system.”
EXCEEDING HARVEST TYPE 3 LIMITATION; CONDITIONS
ORS 527.750

(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:
   (a) The prior harvest type 3 unit has been reforested by all applicable regulations;
   (b) At least the minimum tree stocking required by rule is established per acre; and
   (c) (A) The resultant stand of trees has attained an average height of at least four feet; or
         (B) 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) 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.

APPLICATION:
Subsection (1) is subject to enforcement action.
COMPLIANCE:

Subsection (1). Noncompliance of ORS 527.750 occurs when:

- A single “harvest type 3” unit or harvest type 3 units are within 300 feet of each other on a “single ownership,” as defined in ORS 527.620,
- One of the harvest type 3 units has not met the "green-up" standards in paragraphs (1)(a), (b) and (c) as further described in OAR 629-610-0020,
- The total size of the harvest type 3 area exceeds 240 acres, or
- A PFAP has not been approved to exceed 120 acres, OAR 629-605-0175.

All harvest type 3 units areas that exceed 240 acres on any single ownership are in violation, unless a PFAP to exceed 120 acres has been approved as allowed under OAR 629.605-0175.

ADMINISTRATION:

Subsection (1). Exception to the 120-acre limitation on the size of "harvest type 3 units", allowing up to 240-acre units through an approved PFAP. Refer to the guidance for ORS 527.740 for information on harvest type 3 criteria, "single ownership" interpretation, buffer requirements, and "green-up" requirements.

Before approving a PFAP the SF must determine if the larger harvest unit provides "overall better results" in resource protection under the FPA. The burden of proof is placed upon the operator to show the SF through the PFAP how the requested larger unit provides a clear improvement in overall resource protection. Economic savings or benefits cannot be considered.

Section (2). Exceptions are allowed as outlined in ORS 527.740(4) and (5) and OAR 629-605-0175, otherwise there are no exceptions to exceed harvest above 240 acres. Consult with the FP Field Coordinator as needed to make a determination.

See examples and situations of exceeding the 120 acre harvest limitation in guidance for ORS 527.740.
SCENIC HIGHWAYS; VISUALLY SENSITIVE CORRIDORS; OPERATIONS
RESTRICTED
ORS 527.755

(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 subsections (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.

APPLICATION:

Subsections (1), (2), and (3) are not subject to enforcement action.

ADMINISTRATION:

Only Oregon legislators’ designated highways listed in subsection (1) are "scenic highways."

ORS 527.755 directs the Board in consultation with ODOT to establish procedures and regulations to protect areas adjacent to designated scenic highways within the 150 foot “visually sensitive corridors” and the “adjacent stand” (150 to 300 foot buffer). “Visually sensitive corridors” is defined in ORS 527.620. It also identifies specific interstate and state highways,
which are considered visually sensitive. The overall intent of the law is to create a buffer on designated scenic highways, which limits the visual impact of harvesting operations on the traveling public.

When a Notification of Operation is received for an operation along a scenic highway, the SF should inform the operator of the scenic highway designation, which is protected by the FPA. If the SF does not provide written documentation that the scenic highway is protected by the FPA, it does not preclude taking enforcement action under subsection (4) for removing trees required to be retained for the scenic highway, not for failure to submit a PFAP. The situation is comparable to the clear requirements of the written plan rule. The statutory written plan rule requires the department to inform the operator of the protected resource in writing, but the resource protection rules are enforceable regardless. The department is precluded from citing for failure to submit a statutory written plan.

Subsection (3). A PFAP may be approved to waive or modify the visually scenic corridor requirements provided the operator satisfy one or more of the findings listed in subsection (3). Consultation with the ODOT is encouraged before approving a PFAP that describes:

- Maintenance of motorist safety;
- Protection of improvements such as dwellings and bridges; or
- Provision of additional scenic benefits to the motoring public.

If the ODOT representative concurs that compliance with the statute is inconsistent with any of these listed factors, the SF shall then determine with the ODOT representative if the proposed PFAP is a viable option to retain scenic protection. If the proposed PFAP is not a viable option, the SF shall not approve the PFAP, but recommend the better option to the operator. Example: To reduce risk to transmission power lines and motorist from trees impacted by windstorms and ice and snow, ODOT approves removal of trees within the first 100 feet of the 150-foot visual scenic corridor.

Paragraph (3)(c), "not visible" means the topography blocks the view of the harvest area.

Paragraph (3)(e). If more than 50 percent of a landowner's property is within the visually scenic corridor, (150-foot buffer) then a "severe economic hardship" exists, and the requirements of ORS 527.755(4), (5), and (6) may be waived or modified through an approved PFAP.

Example: The 2020 catastrophic wildlands fires resulted in extensive areas of hazard trees along state highways, including some scenic highways. ODF received a letter from ODOT giving ODF a blanket “waiver” for salvage of dead/dying trees within the visual scenic corridors without having to receive concurrence with ODOT prior to approving PFAPs for these areas.

SF shall provide the landowner a written waiver of reforestation requirements where ODOT determines an area is unsuitable for reforestation because of the motorist road hazard. An approved PFAP is not required for the reforestation waiver because of an agreement between ODOT and ODF.
SCENIC HIGHWAYS; VISUALLY SENSITIVE CORRIDORS; OPERATIONS
RESTRICTED
ORS 527.755

(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.

APPLICATION:

Subsection (4) is subject to enforcement action.

COMPLIANCE:

Failure to leave the required number of trees or structural elements within the designated visually sensitive corridor (150 foot buffer) or within the “adjacent stand” (150 to 300 foot buffer) is a violation of this law.

Harvesting the required overstory trees within the visually scenic corridor is a violation if:

• The understory is not stocked to at least the standards set in the reforestation rules and reaches 10 feet in height; or
• The adjacent timber stand (150 to 300 foot buffer) has not met specific structural requirements in paragraph (4)(c).
ADMINISTRATION:

The overall intent of subsection (4) is to create a buffer on designated scenic highways, which limits the visual impact of harvesting operations on the traveling public.

“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. ORS 527.620. "Edge of the roadway" means the fence for interstate highways and the outermost edge of pavement for other paved state highways. ORS 527.620

Paragraph (4)(a). Operator shall temporarily retain on each acre within the 150-foot visually sensitive corridor, at least 50 healthy trees of at least 11 inch DBH or at least 50 healthy trees that measure at least 40 square feet of basal area. Note: Tree spacing that is 30 feet by 30 feet equals 48 trees per acre. Fifty trees per acre is 17 trees per 100 feet of scenic corridor length.

Each Acre: Leave trees are to be distributed so that there are 50 plus trees on each acre (not an average) throughout the visual corridor. Trees are not required to be well-distributed on each acre, though that may provide the visual intention of this subsection, the trees may not be windfirm. Delineated each acre by starting at one end of the visually sensitive corridor and measuring 290-foot segments along the edge of the roadway. The other measurement would be 150 feet perpendicular from the roadway at the point of measurement. Measure all distances as slope.

The species of the 50 plus trees to be left on the site are not designated in the law, so the type of individual leave trees is the operator's choice. Hardwoods can make good visual buffers, so conifers do not necessarily need to be left.

Paragraph (4)(b) directs that overstory trees required to be left initially may be removed when the reproduction understory is stocked to the standards established in the reforestation rules (OAR 629-610-020) and reaches an average of 10 feet in height.

Paragraph (4)(c) directs that no trees are required to be left in the visually sensitive corridor, or that trees initially required to be left may be removed, when the “adjacent stand” (150 to 300 foot buffer) has attained:

- An average of 10 feet in height and is stocked to the standards established in the reforestation rules; or
- At least 40 square feet of basal area per acre.

The SF and operator need to carefully review harvest operation plans in the corridor before felling begins. Example: If a scenic highway realignment changes the extent of the scenic highway right of way, the previously designated scenic highway segment is not protected as such, once the scenic highway realignment segment is fully functional.

Many visually sensitive highway corridors will fall within ODOT rights-of-way. This statute will be applied within these rights-of-way the same as on private lands.
APPLICATION:

Subsection (5) is subject to enforcement action.

COMPLIANCE:

Failure to accomplish the required cleanup within the specific 30 or 60-day time frames is a violation of subsection (5).

ADMINISTRATION:

Subsection (5) directs that harvest areas within the 150-foot visually sensitive corridor shall be cleared of major harvest debris within:

- 30 days after the completion of the operation, or
- 60 days after the cessation of active harvesting on the site, regardless if completed or not.

Note: Apply the 60-day period when the operator has begun work in the operation unit but is taking a break from work that is generally more than 30 days with the intention of returning to complete the operation.

Subsection (5) is very specific regarding the time frames for the cleanup. Harvesting the corridor leave trees again triggers the 30 or 60-day cleanup requirement. Cleanup in this area must be accomplished within the required time frame. There is no opportunity to waive this timing requirement.

Slash cleanup is accomplished when slash visible from the roadway is less than one foot in depth, evenly distributed over the operation area within the corridor. Large logs lying on the ground that provide wildlife benefits are not considered slash. Slash can be physically pulled back into the operation area, which is outside the 150-foot visually sensitive corridor, or slash can be lopped and scattered. Full tree-length yarding may be a viable option to minimize slash creation in the corridor. All leave trees must be protected during slash reduction work.

Note: Burning within the visually sensitive corridor must be done within 30 days of the completion of the operation (within 60 days, when activity ceases). Planning must consider fire season, fire safety, smoke management and weather, which may restrict the burning option.
SCENIC HIGHWAYS; VISUALLY SENSITIVE CORRIDORS; OPERATIONS RESTRICTED; EXEMPTIONS
ORS 527.755

(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.

APPLICATION:

Subsection (6) is subject to enforcement action.

COMPLIANCE:

A harvest operation within the 150-foot visually sensitive corridor that required reforestation is in compliance when by the end of the first planting season the site has been planted, seeded or naturally reforested with acceptable seedlings. A harvest operation is in compliance when after the sixth calendar year following the completion of operation, the site has adequate stocking of well-distributed trees that are free to grow. Non-compliance of either time frame is a violation.

ADMINISTRATION:

All requirements of the reforestation rules in OAR 629-610-0000 to 0090 apply, except that planting or seeding must be completed after the first full planting season rather than after two years to make sure the visually sensitive corridor is reforested and "free-to-grow" as soon as possible. This is designed to reduce the visual impact of the harvest operation.

Planning a harvest within the visually sensitive corridor is important due to the strict reforestation requirements. SFs should work closely with landowners to coordinate timing of the harvest with the reforestation of the area and warn them about compliance deadlines. There is no opportunity to waive these requirements and enforcement actions will take place when violations occur. Landowners should be sure that seedlings are available so planting can be accomplished within the first planting season after harvest. This cooperative effort between the SF and the landowner, early in the planning stages of the harvesting operation, can offset problems after harvesting is complete. As with the rest of this subsection, timing is everything.

If a landowner plans an operation, but does not have the seedlings, the SF should warn the operator of a potential violation of the law.
SCENIC HIGHWAYS; VISUALLY SENSITIVE CORRIDORS; OPERATIONS RESTRICTED; EXEMPTIONS
ORS 527.755

(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) The following are exempt from this section:
   (a) Harvest on single ownerships less than five acres in size;
   (b) Harvest within an urban growth boundary, as defined in ORS 195.060; and
   (c) Harvest within zones designated for rural residential development pursuant to an exception adopted to the statewide land use planning goals under ORS 197.732.

APPLICATION:

Subsection (7) and (8) are not subject to enforcement action.

ADMINISTRATION:

Subsection (7) relieves landowners and operators of liability for injury or damage caused by trees left in compliance with this subsection. This subsection is for the lawyers who may be handling personal injury or property claims. SFs have no responsibilities related to subsection (7). Safety is still a critical concern along scenic highways. Note: SFs should not advise operators and landowners as to their legal liabilities.

Paragraph (8)(a). An exemption is to be applied based upon the total combined acreage of a “single ownership,” as defined in ORS 527.620. That is, a separate parcel of land smaller than five acres in size that is part of a larger single ownership that is greater than five acres in size (regardless of whether the rest of the parcel is forestland or not) is not exempt. Single ownerships that are less than five acres can be either partially or wholly within a visually sensitive highway corridor and still be eligible for the exemption in ORS 527.755(8).

Note: The SF should apply the general rules for compliance time periods for slash treatment and reforestation for small tracts of land that qualify for exemption.

Paragraph (8)(b) and (c). An exemption applies to timber harvested along designated scenic highways within a UGB or lands zoned as rural residential development pursuant ORS 197.732.
### EXEMPTION FROM LIABILITY FOR TREES OR DEBRIS LEFT ON PROPERTY

**ORS 527.780**

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.

### APPLICATION:

ORS 527.780 is not subject to enforcement action.

### ADMINISTRATION:

The State of Oregon’s policy is to encourage operators, timber owners and landowners to voluntarily improve fish and wildlife habitat. ORS 496.270 establishes immunity for liability for damages resulting from habitat improvement projects, except for claims for death or personal injuries. As described in ORS 496.270, consistent with the limitations of ORS 105.672 to 105.696, a landowner is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land by: a fish and wildlife habitat improvement project done in cooperation and consultation with ODFW and OWEB, or conducted as part of a forest management practice in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

Department personnel should not provide any legal advice relating to liability for damages relating to large wood placement projects. See also guidance for OAR 629-642-0200 and -0300(3).
EXEMPTION FROM LIABILITY FOR LARGE WOOD DEBRIS LEFT ON PROPERTY
ORS 527.785

(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.

APPLICATION:
ORS 527.785 is not subject to enforcement action.

ADMINISTRATION:
The State of Oregon’s policy is to encourage operators, timber owners and landowners to voluntarily improve fish and wildlife habitat. ORS 496.270 establishes immunity for liability for damages resulting from habitat improvement projects, except for claims for death or personal injuries. As described in ORS 496.270, consistent with the limitations of ORS 105.672 to 105.696, a landowner is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land by: a fish and wildlife habitat improvement project done in cooperation and consultation with ODFW and OWEB, or conducted as part of a forest management practice in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

Department personnel may inform landowners and operators of the existence of this statute, but should not provide any legal advice relating to liability for damages relating to large wood placement projects. See also guidance for OAR 629-642-0200 and -0300(3).
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

DEFINITIONS
ORS 527.786

(1) “Department reporting system” means a forest activity electronic reporting and notice system operated by the State Forestry Department.

(2) “Nearby recipient” means a person registered under ORS 527.787:
   (a) Whose parcel location information is reconciled under ORS 527.787 (2) with a tax lot that is in whole or in part less than one mile from the edge of a proposed or scheduled pesticide application by helicopter to forestland; or
   (b) Whose water intake location noted under ORS 527.787 (4) is less than one mile from the edge of a proposed or scheduled pesticide application by helicopter to forestland.

(3) “Pesticide”:
   (a) Except as provided in this subsection, has the meaning given that term in ORS 634.006.
   (b) Does not include “fertilizer.” As used in this paragraph, “fertilizer” means any substance, or any combination or mixture of substances, that is designed for use primarily as a source of plant food, for inducing increased plant growth or for producing any physical, microbial or chemical change in the soil.

(4) “Water use qualifying for a spray buffer” means the use of water:
   (a) For watering not more than one-half acre of lawn or noncommercial garden;
   (b) By one or more dwelling units for domestic animal consumption ancillary to residential or related use of a property;
   (c) By one or more dwelling units for household purposes or human consumption;
   (d) For livestock watering; or
   (e) Supplied for community purposes through a municipal water system, a system operated by a federally recognized Indian tribe or a system operated by a private corporation. As used in this paragraph, “community purposes” includes, but is not limited to, uses described in paragraphs (a) to (d) of this subsection, commercial or industrial use, fire protection, watering of public parks and street cleaning.

APPLICATION:

Terms in subsections (1) through (4) apply to ORS 527.786 through ORS 527.793. This statute is not used for enforcement. In June 2020, the Oregon Legislature held a special session, passing Senate Bill 1602 with broad support. The governor signed the bill into law on July 7, 2020, which was later codified as ORS 527.786 through 527.798. The law increases buffers around
homes, schools, water intakes, and some streams for helicopters spraying pesticides. The law provided funds to update the E-Notification system to improve communication among helicopter pesticide sprayers, neighbors, and water users. December 15, 2021 was the effective date for the helicopter spray laws to use E-notification as the “department reporting system.”

ADMINISTRATION:

“Nearby recipient” means a person registered in E-Notification whose:

a. Parcel location information (reconciled by ODF) is less than one mile from the edge of a proposed helicopter pesticide application to forestland; or

b. Water intake location is less than one mile from the edge of a proposed helicopter pesticide application to forestland.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

REGISTERING TO RECEIVE NOTICE OF PESTICIDE APPLICATION
ORS 527.787

(1) A person may register with the State Forestry Department to receive notices of proposed or scheduled pesticide applications by helicopter to forestland near the residence of the person. To obtain registration, the person must provide the department with:
   (a) A description of the parcel where the person resides;
   (b) Proof satisfactory to the department that the person resides at the parcel; and
   (c) Contact information for the person that, at a minimum, includes:
       (A) A mailing address; and
       (B) An electronic mail address or telephone number.

(2) Upon the receipt of information under subsection (1) of this section, the department shall reconcile the parcel location information with tax lot information and note the tax lot in a geospatial layer maintained within a “department reporting system.”

(3) A person appropriating surface water for a “water use qualifying for a spray buffer” may register with the department to receive notices of proposed or scheduled pesticide applications by helicopter to forestland near the water intake used by the person. To obtain registration, the person must provide the department with:
   (a) The global positioning system coordinates for the water intake;
   (b) If the “water use qualifying for a spray buffer” is subject to water right requirements, a permit, certificate, registration, limited license or order of determination for the water use;
   (c) If the “water use qualifying for a spray buffer” is exempt from water right requirements, a description of the spring box or other type of water intake and of the type of water use;
   (d) Unless established in documentation described in paragraph (b) of this subsection, an attestation that the person believes the person has a lawful entitlement to make the “water use qualifying for a spray buffer”;
   (e) An attestation that the person controls the works at the point of diversion for the “water use qualifying for a spray buffer”; and
   (f) Contact information for the person that, at a minimum, includes:
       (A) A mailing address; and
       (B) An electronic mail address or telephone number.

(4) Upon the receipt of information under subsection (3) of this section, the department shall note the location of the water intake in a geospatial layer maintained within a “department reporting system.”
APPLICATION:

This statute is not used for enforcement action. This statute allows person to register with the Oregon Department of Forestry (ODF) to receive status of helicopter pesticide applications to forestland near person’s residence or water intake. On December 1, 2021 the new E-Notification, the “department reporting system,” aka “FERNS,” was opened to receive water intake (“water uses qualifying for a spray buffer”) and residential registrations. Additionally, ODF will add to the new E-Notification database the water intake points from OWRD for “water uses qualifying for a spray buffer.” “FERNS” means ODF’s Forest Activity Electronic Reporting and Notification System.

It is optional to register in the new E-Notification to receive automatic communications about proposed and scheduled helicopter pesticide applications. Registration is allowed but not required by statute.

Note: An application for registration person’s residence or water intake in E-Notification is approved or not by ODF, based on the applicant submitting the appropriate documentation and making the appropriate attestation.

ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

Paragraph (1)(a). An applicant for registration may enter their physical address, e.g., 2600 State Street, Salem, Oregon, or their Tax Lot ID, e.g., 073W25C00100. Both these examples are for the ODF campus in Salem.

Here is an infographic showing how to find your Tax Lot ID using the State of Oregon web page, ORMAP.net. Note: The Tax Lot portion of the Tax Lot ID contains leading zeroes for the full five digits required.
Paragraph (1)(b). Acceptable documentation includes one or more of the following: lease agreement, Oregon driver license, recent utility bill, property tax record, rent receipt, mortgage document, or homeowner insurance policy. The document must demonstrate that the person applying to register a residence lives at the residence.

**Note:** A renter, not the landlord, must register for themselves.

Paragraph (1)(c)(B). A registrant may request communications by email, text, or both.

Subsection (3). A water intake (point of diversion) qualifies for registration only if it meets these two criteria:

1. The water intake pulls from a surface water source, not ground water. Surface water sources include streams, springs, lakes, and other surface water sources. Someone describing their “surface water” source as any of the following would not qualify to register their water intake: a well, any artificial opening in the ground, an artificially altered natural opening (this may not include development of a natural spring), tile lines placed beneath the surface, or a sump.

2. The water must be used for a “water use qualifying for a spray buffer” as defined in ORS 527.786(4):
   a. For watering not more than one-half acre of lawn or noncommercial garden; or
   b. By one or more dwelling units for domestic animal consumption ancillary to residential or related use of a property; or
   c. By one or more dwelling units for household purposes or human consumption; or
   d. For livestock watering; or
   e. Supplied for community purposes through a municipal water system, a system operated by a federally recognized Indian tribe, or a system operated by a
private corporation. As used in this paragraph, “community purposes” includes, but is not limited to, uses described in paragraphs (a) to (d) above, commercial or industrial use, fire protection, watering of public parks, and street cleaning.

Paragraph (3)(a). A person applying to register their water intake must provide latitude/longitude coordinates to six places past the decimal, e.g., latitude = 44.929966, and longitude = 123.007344 for the communication tower on the ODF campus in Salem.

**Note:** The leading (-) is omitted from longitude.

**Determining latitude and longitude coordinates using LocatOR**

One way to find the coordinates for your water intake is to use Oregon Department of Forestry’s latitude/longitude locator, LocatOR.

1. Go to the LocatOR website (https://gisapps.odf.oregon.gov/LocatOR/).

2. Enter your target location (e.g. Vernonia, Oregon) or physical address (e.g. 2600 State Street, Salem, OR) into the search bar at the top of the screen.

3. Pan and zoom to navigate to the water intake location, zooming in as much as possible without the aerial image getting too grainy to pick out the water intake on the map. **NOTE:** Stream lines on the map may not always reflect actual stream locations.

4. Notice that the latitude/longitude values displayed at the bottom left of the screen change as you move your cursor in the map. To capture the exact coordinates of your intake, first click on the crosshair icon.

5. Next click on the water intake location in the map. An icon will appear showing your clicked location, and the crosshair symbol will change from white to blue.

6. Record the latitude and longitude of the location, and return to your Registration to enter the values in for the water intake. Enter all six places past the decimal, for example 44.010157 for latitude and 123.263367 for longitude.
Paragraph (3)(b). In Oregon, all water is publicly owned. With some exceptions, cities, farmers, industrial or other users must obtain a water right from the Oregon Water Resources Department (OWRD) to use water from any source - whether underground, or surface (lakes or streams). Landowners with water flowing past or through their property do not automatically have the right to divert the water without a permit from OWRD.

A permitted water right is a type of property right and is attached to the land where it was established. If land is sold, the water right goes with the land to the new owner, unless it is transferred to new land beforehand. Land with an attached water right may be more than 500 feet from the point of diversion or water intake.

Note: SB 1602 limits registrations to surface water, including stored surface water. The discussion below addresses ground water for information purposes only.

If the water use is subject to water right requirements, then the applicable document from OWRD must be provided to substantiate the applicant’s right to use the water. If the water use is not exempt from water right registration requirements, then the applicant must demonstrate their legal use by uploading one of these documents for the water use:

1. Permit. Water use permits are generally needed to use groundwater, surface water, and to construct and store water in a reservoir. Applying for and obtaining a water use permit is the first step of securing a water right. A water use permit generally requires the water user to develop the water use within four or five years. The water user must notify OWRD if the surface water right is moved more than 500 feet from the permit location.

2. Certificate. A certificate is the final stage of developing a water right. A certificate is issued following the review of a Claims of Beneficial Use and the OWRD determining that the water use authorized under a permit has been completed under the terms and conditions of the permit.

3. Registration. A registration is a statement of a surface water use that began prior to February 24, 1909 (Oregon’s water right laws), or a groundwater use that began prior to August 3, 1955. These statements are also known as Surface Water Registrations and Groundwater Registrations. These registrations have not been adjudicated yet, so the water use is not a formal right. However, water use is allowed.

4. Limited license. A limited license for water provides a short-term authorization for temporary use of water, for example, road construction. Limited licenses are typically for a fixed duration and cannot be issued for more than five consecutive years.

5. Order of determination. Findings of fact and final orders of determination are the final documents issued by OWRD during the administrative process of water right adjudication. These documents are essentially OWRD’s findings of who has claim to a water right before it is referred to the courts. Claims to the use of surface water that predate water laws are quantified and documented through a formal administrative and judicial process known as adjudication and are eventually regulated according to priority date. The first phase is administrative wherein OWRD undertakes work to determine if the claims are valid, which may include contested case hearings before an administrative
law judge. After OWRD determines a claim is valid, it issues and files the findings of fact and final order of determination with a circuit court; the court then begins the judicial phase of the process, which eventually results in the issuance of a final decree. OWRD issues water right certificates in accordance with the decree.

Paragraph (3)(c). Water pulled from a spring that does not form a natural channel and flow off the property where the spring is located is exempt from OWRD water right registration requirements. A person may apply to register this type of water intake in E-Notification, if the use made of the spring water is for one of the “water uses qualifying for a spray buffer.”

Registration applicants must describe their water intake they believe is exempt from OWRD water right registration requirements, and the use they make of that water, so ODF can determine if the water intake qualifies for registration.

Paragraph (3)(d). A person applying to register their water intake is required to attest to their legal use of the water when that water use is exempt from OWRD water right registration requirements. In general, ODF will abide by the attestation, and approve the “water use qualifying for a spray buffer” if all the other conditions are met. However, there are certain instances where it is apparent that the use may not be legal.

Note: These water intakes do not confer “Type D stream” classification upstream, though there may be some registered water intakes that are already in ODF’s system because they have a permit from OWRD to pull surface water from a stream for domestic uses. These permitted intakes for stream water to be used for domestic purposes do confer “Type D stream” classification upstream.

OWRD guide for adding water rights to the WRIS database:

"Ground Water Right - A ground water right allows use of water from an underground source. With some exceptions, any person intending to use ground water must obtain a permit from the OWRD before using water from any of these sources: A well, any artificial opening in the ground, an artificially altered natural opening (this may not include development of a natural spring), tile lines placed beneath the surface, a sump."

Note: The WRIS database is for ground water sources, so the sources would not be eligible for registration of surface water intakes.

Paragraphs (2) and (4). The Salem Forest Resources Division staff will administer paragraphs (2) and (4) to reconcile the registrants’ information described in paragraphs (1) and (3) in the geographic information system (GIS) database maintained within the E-Notification.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

NOTICE TO STATE FORESTRY DEPARTMENT OF PROPOSED PESTICIDE APPLICATION
ORS 527.788

(1) To the extent of any conflict between this section and ORS 527.610 to 527.770, the provisions of this section prevail.

(2) Notwithstanding ORS 527.670, an operator, timber owner or landowner proposing to conduct a pesticide application by helicopter to forestland shall send the State Forestry Department notice of the proposed pesticide application that includes the following:
   (a) Identification of the pesticides likely to be used. The notice may not identify any pesticides that are not likely to be used.
   (b) Identification of the forestland units to receive pesticide application.
   (c) Identification of a 90-day period within which the pesticide application is to occur.
   (d) Contact information for the operator, timber owner or landowner providing the notice that, at a minimum, includes a mail address, electronic mail address and telephone number.
   (e) Any information required by State Board of Forestry rules.

(3) Except as provided in subsection (4) of this section, if the “department reporting system” indicates that the location of the proposed pesticide application has one or more “nearby recipients,” the beginning of the 90-day period identified in the notice under subsection (2)(c) of this section must be 30 or more days after the date the notice is provided to the department.

(4) If a pesticide application is not completed during the 90-day period identified in a notice, the operator, timber owner or landowner must send a new notice before commencing or completing the pesticide application. Notwithstanding ORS 527.670, if the new notice is sent in the same calendar year as the original notice, the 90-day period identified in the new notice must be seven or more days after the date the new notice is provided to the department.

APPLICATION:

This statute provides the framework to enforce the timelines for filing and waiting periods associated with SB 1602 requirements. Failure to notify for a helicopter pesticide application or submit a required written plan would support enforcement action under the forest practices rules, see guidance for OAR 629-605-0140 and -0170 respectively. December 15, 2021 was the effective date for the helicopter spray laws to use E-Notification as the “department reporting system.”

Note: Helicopter spray notifications may not be continued into the next calendar year.
COMPLIANCE:

Subsection (2). An operator, timber owner or landowner (notifier) is in non-compliance for failure to notify in E-Notification of a helicopter pesticide application, including identification of the 90-day application period in the proposed application.

A notifier is in non-compliance with OAR 629-605-0150(1) when E-Notification determines there is not a “nearby recipient” in a forestland unit, but the notifier failed to wait after 15 or more days of the notification submission date to begin the 90-day helicopter pesticide application period.

Subsection (3). A notifier is in non-compliance when E-Notification determines there is a “nearby recipient” in a forestland unit, but the notifier failed to wait after 30 or more days of the notification submission date to begin the 90-day application period. See subsection (4) exception.

Subsection (4). A notifier is in non-compliance when the helicopter pesticide application was done outside the 90-day application period identified in the notification and the notifier failed to indicate a new 90-day application period within the same calendar year or the new 90-day application period began less than seven days after the new 90-day application period.

ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

The 90-day application period can span two “spray seasons” in one calendar year. The notifier penalty for failure to update status as pending, complete or incomplete is based on one “spray season” activity, which is the “spray season” first to have a status as pending for next day spray.

Extensions. The notifier may file for an extension when a helicopter pesticide applicate is not completed within the 90-day application period identified in the notification, provided the new 90-day application period is at least 7-days after the notification extension date. The request for an extension may be made 14-days before the end of the 90-days application period. For extensions or new 90-day application period, there is no 14-day wait for registrants to view the notification and written plan (if submitted). There is no 15-day or 30-day wait period for the “pesticide operator,” only 7-days if the 90-day application period had expired before requesting an extension. An “e” will be added to the notification number indicating an extension of the helicopter pesticide application. See ORS 527.792.

E-Notification for helicopter pesticide applications will automatically take multi-part shapefile that a user uploads into FERNS of multiple spray units and assign a unique identifier for each forestland unit to enable spray status. A new notification is required to the change pesticide application method, i.e., helicopter to ground application. Notification updates about chemicals to apply or change of operator may occur without a new notification.

The 90-day application period may be restarted after the notification submission date within the calendar year, even if the 90-day application period has expired.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

NOTICE TO NEARBY RECIPIENT OF PROPOSED PESTICIDE APPLICATION
ORS 527.789

(1) Upon receipt of a notice under ORS 527.788 (2), a State Forestry “Department reporting system” shall provide the operator, timber owner or landowner that provided the notice with a list of, and contact information for, any “nearby recipients” for the proposed pesticide application.

(2) Two weeks after receiving a notice under ORS 527.788 (2), and on the date of receipt of any new notice under ORS 527.788 (4), the department shall send notice of the proposed pesticide application to the electronic mail address or telephone number of each “nearby recipient” for the application. The notice sent by the department must include, but need not be limited to, the location and nature of the proposed pesticide application and the 90-day period within which the pesticide application may occur, and the mailing address, electronic mail address and telephone number supplied as contact information by the operator, timber owner or landowner that provided notice of the proposed pesticide application under ORS 527.788.

APPLICATION:

This statute is not used for enforcement actions. December 15, 2021 was the effective date for the helicopter spray laws to use E-Notification as the “department reporting system.”

ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

E-Notification will automatically send the operator, timber owner and landowner the contact information of “nearby recipients” who registered to receive notification of proposed helicopter pesticide applications.

After 14 calendar days from the date an operator, timber owner or landowner (notifier) submitted a proposed helicopter pesticide application to forestland, E-Notification will automatically send an email or text to the “nearby recipients” the notification and written plan (if submitted), including the 90-day application period when the pesticide application may occur, including the notifier contact information.

“Nearby recipient” is defined in ORS 527.786(2).
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

NOTICE TO STATE FORESTRY DEPARTMENT PRIOR TO PESTICIDE APPLICATION
ORS 527.790

(1) An operator, timber owner or landowner that sends notice under ORS 527.788 of a proposed pesticide application by helicopter to forestland shall notify the State Forestry Department prior to the pesticide application by helicopter being made. A notice under this section must:
   (a) Be made by electronic communication to a “department reporting system”;  
   (b) Be sent to the department no later than 7 p.m. on the day preceding the pesticide application;  
   (c) Specify the day following the notice as a day for pesticide application by helicopter;  
   (d) Identify the forestland units to receive pesticide application on the specified day; and  
   (e) Contain any additional information required by State Board of Forestry rules.

(2) The sending of a notice under subsection (1) of this section does not limit the number of days on which a pesticide application by helicopter may be made. However, a separate notice is required for each day that a pesticide application by helicopter is to be made. The sending of a notice under subsection (1) of this section does not require that a pesticide application identified in the notice be conducted.

(3) Upon receipt of a notice under this section, the department shall send the schedule information for the pesticide application and forestland unit identification to the electronic mail address or telephone number of each “nearby recipient” to which the department sent notice of the proposed pesticide application under ORS 527.789.

APPLICATION:

The statute is used for enforcement against the landowner. Use this statute if an operator, landowner or timber owner fails to status a forestland unit as pending in E-Notification by 7 p.m. for a next day spray.

COMPLIANCE:

Subsection (1) allows for operator, landowner or timber owner to update the “department reporting system.” The landowner is responsible for the failure to status a forestland unit as pending in E-Notification by 7 p.m. for a next day spray per ORS 527.793 (2).
ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

Subsection (3). When E-Notification receives from the notifier a pending status for next day spray, E-Notification will automatically send “nearby recipients” the notification and written plan (if submitted), including the forestland unit(s) to be sprayed and the notifier contact information.

The Salem Forest Resources Division staff will take progressive enforcement action for each day of non-compliance with subsection (1) based on helicopter pesticide applications conducted statewide by the landowner in a single “spray season” (either spring or fall) as described in ORS 527.792.

“Nearby recipient” is defined in ORS 527.786 (2).
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

VERIFYING COMPLETION OF PESTICIDE APPLICATION
ORS 527.791

(1) If a forestland unit identified in a notice sent under ORS 527.790 receives an incomplete pesticide application on the date specified in the notice, the operator, timber owner or landowner shall send a notice of incompletion to a State Forestry “Department reporting system” no later than 24 hours after the end of the date specified for the application in the notice. The notice of incompletion shall consist of designating the forestland units to which an incomplete pesticide application by helicopter was made. Entry of a notice of incompletion does not affect the requirement to send notice under ORS 527.790 before completing the pesticide application.

(2) An operator, timber owner or landowner that sends a notice under ORS 527.790 shall send a completion verification to a “department reporting system” no later than 24 hours after the completion of the pesticide application. The completion verification shall consist of designating the forestland units to which the pesticide application by helicopter was made.

(3) The department shall make an electronic listing of the forestland units that were identified in the notice ORS 527.790 available to the operator, timber owner or landowner in a format that allows the operator, timber owner or landowner to electronically designate:
   (a) Forestland units from the list that have received an incomplete pesticide application, when sending a notice of incompletion; and
   (b) Forestland units from the list on which pesticide application is complete, when sending a completion verification.

APPLICATION:

This statute is used for enforcement action against the landowner. Use this statute if the operator, timber owner or landowner fails to report a complete or incomplete spray status.

COMPLIANCE:

Subsection (1). Allows for operator, landowner or timber owner to update the spray status in E-Notification. The landowner is held responsible for the failure to status a forestland unit as incomplete in E-Notification by 11:59 p.m. the day after the spray date per ORS 527.793 (2).

Subsection (2). Allows for operator, landowner or timber owner to update the spray status in E-Notification. The landowner is held responsible for the failure to status a forestland unit as complete in E-Notification within 24 hours the day after the spray date per ORS 527.793 (2).
ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

Subsection (1). A status entry of incomplete helicopter pesticide application to a forestland unit does not cancel the status requirement for completing a proposed helicopter pesticide application on a forestland unit.

Subsection (3). E-Notification will provide the notifiers of a helicopter pesticide application a dashboard to status the forestland unit(s) as pending (planning to spray the next day), complete (spray was completed) or incomplete (partial spray).

The Salem Forest Resource Division staff will take progressive enforcement action for non-compliance with subsection (1) or (2) based on operations conducted statewide by the landowner in a single “spray season” (either spring or fall) as described in ORS 527.793.

Compliance for failure to notify of spray status as complete or incomplete will be administered by ODF staff using progressive enforcement as described in ORS 527.793. The notifier is not required to status in E-Notification if a forestland unit was not sprayed.
   a. Alerts of non-compliance will be posted on E-Notification for the Stewardship Forester (SF) review, which should initiate discussions between the notification parties.
   b. Division 670 Forest Practices Administration: Enforcement and Civil Penalties rules do not apply.
   c. Oregon Chapter 183 — Administrative Procedures Act; Review of Rules; Civil Penalties would still apply, which has provisions addressing contested hearings.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

DESIGNATION OF FORESTLAND UNITS
ORS 527.792

(1) If the State Forestry Department receives a notice under ORS 527.790, at the beginning of the 90-day period identified in the notice, the department shall designate the forestland units identified in the notice as being in available status. Except as provided in subsection (2) of this section, the department shall terminate the available status of a forestland unit after 90 days.

(2) Upon receiving a notice under ORS 527.790 specifying a date on which a pesticide application by helicopter is to be made, the department shall change the designation of any forestland unit identified in the notice to pending status.

(3) Upon receiving a notice of incompletion under ORS 527.791, the department shall change the designation of any forestland unit identified in the notice to incomplete status.

(4) Upon receiving a completion verification under ORS 527.791, the department shall change the designation of any forestland unit identified in the completion verification to completed status.

(5) The department shall change the designation of a forestland unit from pending status if, at 11:59 p.m. on the day following the pesticide application date specified for the forestland unit in a notice under ORS 527.790, the department has not received a notice of incompletion or completion verification for the forestland unit. Subject to subsection (1) of this section, the department shall return a forestland unit described in this subsection from pending status to available status.

APPLICATION:

This statute provides the enforcement framework for enforcement penalties for violations of ORS 527.790 and 527.791.

ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

When a “nearby recipient” is located outside the “sixth-level hydrologic unit” receiving the application of helicopter pesticide, they will receive E-Notifications alerts within one mile of their residence or surface water right (“water use qualifying for a spray buffer”) but will not receive buffer protections.
Within 14-days after the notification of helicopter pesticide application, new registrants considered “nearby recipients” will receive E-Notification communications about the spray operation and will receive buffer protection for a residence within 300 feet or surface water intake (“water use qualifying for a spray buffer”) if located within 300 feet of a forestland unit and the same “sixth-level hydrologic unit.” E-Notification will alert the notification parities of the new “nearby recipients.” An updated GIS database of “nearby recipients” will be made available to the notification parties.

After 14-days since a notification was submitted, new registrants will not receive spray status E-Notification communication but will receive buffer protections for a residence within 300 feet or “water use qualifying for a spray buffer” if within 300 feet of a forestland unit and within the same sixth-level hydrologic unit.”

The 90-day application period may be extended but requires a 7-day wait. The request for an extension may be made within 14-days before the end of the 90-day application period. An “e” is attached to the notification number to indicate a 90-day application period extension. There is no 14-day wait for registrants to view the notification and written plan (if submitted). There is no 15-day or 30-day wait period for the “pesticide operator,” only 7-days if the 90-day application period had expired before requesting an extension. See also ORS 527.788.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

FAILURE TO SEND NOTICE; PENALTIES
ORS 527.793

(1) As used in this section, “spray season” means a period that:
   (a) Begins on January 1 and ends on June 30 in the same calendar year; or
   (b) Begins on July 1 and ends on December 31 in the same calendar year.

(2) If an operator, timber owner or landowner fails to timely send a notice under ORS 527.790 or timely send a notice of incompletion or completion verification under ORS 527.791 for one or more forestland units, or any combination of such failures on the same day:
   (a) For the first day during a “spray season” on which one or more failures occur, the State Forestry Department shall issue the landowner a warning.
   (b) For the second day during a single “spray season” on which one or more failures occur, the department shall assess the landowner a civil penalty of $1,000.
   (c) For a third day or any subsequent day during a single “spray season” on which one or more failures occur, the department shall assess the landowner a civil penalty of $5,000 per day.

APPLICATION:

This statute is not used for enforcement action but provides the framework for enforcement penalties for violations of ORS 527.790 and 527.791.

COMPLIANCE:

Subsection (2). SB 1602 established predetermined fines with no flexibility for local ODF districts to determine civil penalties. A landowner is in non-compliance for failure to provide timely status in E-Notification of a proposed helicopter pesticide application to forestland, as described in:

- ORS 527.790, pending next day spray by 7 p.m. the prior day or
- ORS 527.791, spray application was completed by 24 hours after spray or
- ORS 527.791, spray application was incomplete by 11:59 p.m. the day after spray.

Regardless of resource damage, in a single day and single “spray season,” an individual landowner in non-compliance with ORS 527.790 and 527.791, will receive:

1. 1st day of failure - warning notification
2. 2nd day of failure - $1,000 civil penalty
3. 3rd day of failure - $5,000 civil penalty
4. Additional day of failure - $5,000
ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

Enforcement. The Salem Forest Resources Division staff, with verification by the local SF, will take progressive enforcement action to administer ORS 527.793, based on statewide operations conducted by the landowner in a single “spray season” (either spring or fall). The spring “spray season” starts on January 1st and ends on June 30th, and the fall “spray season” starts on July 1st and ends on December 31st.

SB 1602 was written with a pre-determined fine schedule for failure to report timely statuses, which does not include any flexibility for districts to determine issuance of a civil penalty. SB 1602 does not require damage prior to the issuance of a civil penalty for failing to report timely statuses.

The notifier should contact the local SF if they have technical difficulties entering information to E-Notification. If they are unable to reach an ODF employee and there is no option to change the status of units before the required deadline, document the reasons in the box that pops up after they try to report complete or incomplete spray, without first marking the unit as pending for next day spray by 7 p.m.

For rare situations where the notification party can’t update spray status, they may contact the SF or the Salem Forest Resources Division staff to update the spray status and explain the reason for the request. ODF must acknowledge the request for the spray status to be updated. Notifying parties must contact “nearby recipients” about the spray status because the status hasn’t been updated in E-Notification.

Note: No action is necessary by the notifier if a pending status for a forestland unit was not initiated.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

DEPARTMENT REPORTING SYSTEM
ORS 527.794

(1) As used in this section, “department reporting system” has the meaning given that term in ORS 527.786.

(2) The State Forestry Department shall develop a system to allow nondepartment messages to “nearby recipients” described in ORS 527.789 (1), notices under ORS 527.790 and notices of incompletion or completion verifications under ORS 527.791 to be sent electronically using mobile telephone equipment to access a “department reporting system.” The department shall make the access system compatible with, at a minimum, the two most commonly used types of mobile telephone operating systems.

APPLICATION:

This statute is not used for ODF enforcement. December 15, 2021 was the effective date for the helicopter spray laws to use E-Notification as the “department reporting system,” aka “FERNS,” Forest Activity Electronic Reporting and Notification System.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

DAILY SPRAY RECORDS; PENALITIES
ORS 527.795

(1) As used in this section:
   (a) “Daily spray records” means records required of a “pesticide operator” under ORS 634.146.
   (b) “Geographic information system data” means the electronic location data recorded during a pesticide application by helicopter.
   (c) “Health provider” means a person holding a license, certificate or permit issued under Oregon law to provide the diagnosis, treatment or care of disease or injury in the ordinary course of business or practice of a profession, when seeking to provide diagnosis, treatment or care of a patient in response to a suspected exposure of the patient to pesticide.
   (d) “Pesticide operator” has the meaning given that term in ORS 634.006.

(2) The Pesticide Analytical and Response Center shall accept requests for a “pesticide operator’s” “daily spray records” and “geographic information system data” concerning a pesticide application by helicopter to forestland from:
   (a) A unit of state government, as defined in ORS 174.111;
   (b) A law enforcement agency, as defined in ORS 181A.010; or
   (c) A “health provider.”

(3) (a) The center shall forward a request received under subsection (2) of this section to the “pesticide operator” that is the subject of the request. A “pesticide operator” that receives a request from the center shall send the center the “daily spray records” and “geographic information system data” possessed or accessible to the “pesticide operator” concerning pesticide applications by helicopter to forestland identified in the request.
   (b) The “pesticide operator” shall send the requested daily spray record information to the center no later than 24 hours after receiving the request. The “pesticide operator” shall send the requested “geographic information system data” to the center no later than five business days after receiving the request.
   (c) Upon receiving requested information from a “pesticide operator,” the center shall forward the information received to the requesting unit of state government, law enforcement agency or health provider.”

(4) Failure of a “pesticide operator” to timely send records or data as required under subsection (3) of this section is a violation subject to a fine of $1,000 per request.

(5) Records and data sent or received under this section are not public records for purposes of ORS 192.311 to 192.478.
APPLICATION:

This statute is not used for ODF enforcement action but provides a framework for the Pesticide Analytical and Response Center (PARC) jurisdiction. This statute addresses time frames for the operator to provide PARC requested pesticide “daily spray records” and “GIS data” that they possess to avoid fines.

COMPLIANCE:

Subsection (3)(a) and (b). A “pesticide operator” is in non-compliance when the “daily spray records” are not sent to PARC within 24 hours after receiving the request from PARC. A “pesticide operator” is in non-compliance when the “GIS data” that they possess requested by PARC is not sent to PARC within five business days after receiving the request from PARC.

Subsection (4). Failure of a “pesticide operator” to timely send “daily spray records” or “GIS data” that they possess as requested by PARC is in violation subsection (3) subject to a fine of $1,000 per request, as enforced by PARC.

ADMINISTRATION:

Subsection (1)(a) “Daily spray records,” as defined in ORS 634.146,

(1) “Pesticide operators” shall prepare and maintain records on forms approved by the State Department of Agriculture. Such records shall include:
   (a) The name of the person for whom the pesticide was applied.
   (b) The approximate location of the land or property on which the pesticide was applied.
   (c) The date and approximate time of application.
   (d) The person who supplied the pesticides.
   (e) The trade name and the strength of such pesticides.
   (f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).
   (g) The specific property, crop or crops to which the pesticide was applied.
   (h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the Federal Aviation Administration number.
   (i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the “pesticide operator” within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in subsections (1)(a), (b), (c), (e), (f) and (g) of this statute.

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.
Subsections (2) and (3)(a) and (c). PARC must forward to the “pesticide operator” requests received from state government, law enforcement agency or a “health provider,” related to the “daily spray records” and “GIS data” for helicopter pesticide application to forestland. After requested by PARC, the “pesticide operator” must provide PARC the “daily spray records” within 24 hours and “GIS data” that they possess within 5 business days. When such information is received, PARC must forward it to the requested entity.

**Note:** OAR 629-620-0600(4) requires the operator maintain aerial pesticide application “daily spray records” for three years from the date of application and be made available at the request of the State Forester.

**Note:** All “daily spray records” and “GIS data” that they possess are confidential information, exempt from public access.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

INTERFERENCE WITH PESTICIDE APPLICATION; PENALTIES
ORS 527.796

(1) As used in this section:
   (a) “Interfere”:
       (A) Means to use force, violence or action that impedes a pesticide application by helicopter to forestland.
       (B) Does not mean:
           (i) The memorializing of pesticide application activities through photography, videotaping, audiotaping or other creation of an electronic record by a person on public property or on private property where the person has a lawful right to be present; or
           (ii) Other activities to the extent that the activities are protected under the First Amendment to the United States Constitution or Article I, section 8, of the Oregon Constitution.
   (b) “Nearby recipient” has the meaning given that term in ORS 527.786.

(2) A person that intentionally interferes with a pesticide application by helicopter to forestland commits an unclassified violation punishable by a fine of:
   (a) $1,000, if during the five years before the date of the interference the person has not previously been found to have committed a violation under this section; or
   (b) $5,000, if not more than five years before the date of the interference the person was found to have committed a violation under this section.

(3) For purposes of this section, there is a conclusive presumption that interference is intentional if performed by a “nearby recipient” who was sent information under ORS 527.790 (3) concerning the pesticide application.

APPLICATION:

This statute is not used for ODF enforcement action but provides a framework for local law enforcement jurisdiction. This section makes intentional interference a violation, enforceable by the local law enforcement, e.g., local county sheriff, not ODF. This statute does not provide ODF with any specific role or obligation.

COMPLIANCE:

A person is in non-compliance with this section when a person intentionally interferes with a helicopter pesticide application to forestland, which is an unclassified violation punishable by a fine of:
   (a) $1,000, if there was compliance with this section in the previous five years; or
   (b) $5,000, if there was non-compliance with this section in the previous five years.
ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications.

Subsection (3) clarifies that intentionality is certain when a “nearby recipient” interferes with a helicopter pesticide application.

The local law enforcement administers compliance with this section, with ODF’s support. Local law enforcement will issue a uniform citation to suspect with a court date. The courts will issue the fine and manage the case load.

There are three scenarios that could arise:

1. An operator or landowner observes an apparent violation and reports directly to local law enforcement.
   a. ODF provides local law enforcement with the correct statutory reference and provides background information as requested.

2. An operator or landowner observes an apparent violation and reports it to ODF.
   a. ODF advises the operator or landowner to contact local law enforcement directly. Since any prosecution will rely on participation by a willing witness or victim, it is best if the witness or victim makes the initial contact with the local law enforcement, rather than having ODF serve as an intermediary.
   b. ODF provides support and background information as requested by law enforcement.

3. ODF observes the apparent violation directly.
   a. ODF has the discretion to decide whether the interference rises to the level that it should be reported to the local law enforcement.
   b. If possible in a timely manner, the ODF employee who observes the apparent violation should speak with their supervisor before contacting the local law enforcement.

“Nearby recipient” is defined in ORS 527.786 (2).
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

LIMITATIONS ON PESTICIDE APPLICATION; PENALITIES
ORS 527.797

(1) As used in this section:
   (a) “Department reporting system,” “pesticide” and “water use qualifying for a spray buffer,” have the meanings given those terms in ORS 527.786.
   (b) “Flowing water” means surface water is present at the time of a pesticide application.
   (c) “Inhabited dwelling” means a structure or part of a structure used as a home, residence or sleeping place by a person maintaining a household or by two or more persons maintaining a common household, but does not include outbuildings, yard areas or other land associated with the structure.
   (d) “School” means the campus of:
      (A) A Head Start program;
      (B) A public or private institution offering instruction for all or part of prekindergarten through grade 12;
      (C) The Oregon School for the Deaf;
      (D) A regional residential academy operated by the Oregon Youth Authority;
      (E) An education service district or community college; or
      (F) A public or private college or university.
   (e) “Sixth-level hydrologic unit” means the cataloging unit level of the 12-digit hydrologic unit mapping system developed by the Federal Geographic Data Committee.
   (f) “Type D stream” means a stream that has domestic use, but does not have fish use.
   (g) “Type F stream” means a stream that has fish use or has both domestic use and fish use.
   (h) “Type N stream” means a stream that does not have domestic use or fish use.

APPLICATION:

Subsection (1) provides the framework for enforcing the resource buffers associated with SB 1602 requirements. The definitions are used for administration and not subject to enforcement action.

ADMINISTRATION:

Subsection (1). SB 1602 defined many terms, which are further expanded.

“Pesticide” is defined in ORS 527.786 has the meaning given in ORS 634.006, which matches the definition of “pesticide” embedded in the definition of “chemicals” in OAR 629-605-0100(11). For purposes of FPA administration, “pesticide” includes:

- Herbicides
Insecticides (both biological and non-biological)
Fungicides
Rodenticides
Animal repellents

The ORS 634.006 definition of “pesticide” does not include “fertilizers.” Further, ORS 527.786 specifically excludes “fertilizer” from the scope of the helicopter pesticide regulations.

SB 1602 applies to the helicopter application of any of the pesticides noted above, and any others within the ORS 634.006 definition of “pesticide” (The bullet list above captures all the pesticides presently used in forestry in Oregon).

“Water use qualifying for a spray buffer” means the use of water:
- For watering not more than one-half acre of lawn or noncommercial garden;
- By one or more dwelling units for domestic animal consumption ancillary to residential or related use of a property;
- By one or more dwelling units for household purposes or human consumption;
- For livestock watering; or
- Supplied for community purposes through a municipal water system, a system operated by a federally recognized Indian tribe, or a system operated by a private corporation. As used in this paragraph, “community purposes” includes, but is not limited to, uses described in the four bullet points above, plus commercial or industrial use, fire protection, watering of public parks, and street cleaning.

“Flowing water” means surface water is present in the stream at the time of the helicopter pesticide application. The stream water does not need to be flowing to be considered “flowing water.” Any surface water—flowing or not—constitutes “flowing water.”

“Inhabited dwelling” means a structure or part of a structure used as a home, residence, or sleeping place by a person maintaining a household or by two or more persons maintaining a common household, but does not include outbuildings, yard areas, or other land associated with the structure. This definition is based on, and has essentially the same meaning as, that provided for the same term in ORS 527.672 guidance for Aerial Herbicide Application, Table 1. ORS 527.672, Definitions for Aerial Herbicide Application other than Helicopter.

“Structure” has the same definition referenced in ORS 527.672 guidance: Any temporary or permanent building or improvement to real property of any kind that is constructed on or attached to real property, whether above, on or beneath the surface. The key concepts here are “temporary or permanent,” “building or improvement to real property,” and “constructed on or attached to real property.” These are key concepts to keep in mind for enforcement situations, as is the purpose of this SB 1602 element—protection of human safety (This is the assumed purpose because the statute does not include a purpose for the regulation or a description of the resource being protected).

“School” has the same meaning provided in ORS 527.672 guidance for Aerial Herbicide Application, Table 1. ORS 527.672, Definitions for Aerial Herbicide Application other than
Helicopter, except the definition herein includes all the campuses of educational service districts (ESD), whereas the ORS 527.672 definition includes only the educational facilities of ESDs.

“School” means the campus of:
- A Head Start program
  - Head Start programs provide pre-school education for children of disadvantaged families.
  - There are dozens of Head Start facilities statewide.
- A public or private institution offering instruction for all or part of prekindergarten through grade 12
  - To qualify as a “school,” this type of institution must:
    - Offer full-year (school year) instruction for at least one grade level from prekindergarten through grade 12
    - Have education as a primary purpose (home schools are not an institution)
  - Charter schools are included in this “school” definition
  - Oregon Department of Education (ODE) web page may be useful to identify educational institutions meeting the above definition of “school”:
    https://www.ode.state.or.us/instid/
    - Not all entities on this web page qualify as a “school”
    - Some entities that do qualify as a “school” may not be on this web page
  - A “school” does not include homes where education is ancillary to the use of the house as a “dwelling” as defined elsewhere in this guidance
  - To request verification of out if an in-home daycare center provides state certified prekindergarten curriculum:
    - Contact Robin Oden, ODE, robin.oden@state.or.us
    - Comply with ORS 192.363
      (1) A request for the disclosure of such information must include the following information:
        (a) The names of the individuals for whom personal information is sought;
        (b) A statement describing the personal information being sought; and
        (c) A statement that satisfies subsection (2) of this section.
      (2) The party seeking disclosure shall show by clear and convincing evidence that the public interest requires disclosure in a particular instance.
  - “School” does not include these entities:
    - Home schools (functionally, the same protection as “inhabited dwelling”)
    - Sunday schools
    - Summer camps
    - Outdoor schools, e.g., Forests Today and Forever
    - Presentations at facilities such as ODF’s Tillamook Forest Center
- The Oregon School for the Deaf
  - Located at 999 Locust St NE, Salem, OR 97301
  - Oregon School for the Deaf is a state school serving deaf and hard of hearing students from kindergarten through high school
- A regional residential academy operated by the Oregon Youth Authority
  - There are nine such Oregon Youth Authority facilities statewide
Five are correctional
Four are transitional

- These facilities are generally not located near forestland

- An education service district
  - Education service districts provide regional educational services to component school districts
  - There are 19 educational service districts statewide, each with their own primary office, and some with “satellite” service center offices. See Oregon Association of Education Service Districts.org

- A community college; or
  - There are 17 community colleges in Oregon. See Oregon.gov
  - All community colleges in Oregon are public

- A public or private college or university

SB 1602 buffers apply to a “school” at all times, regardless of formal “school” hours or the timing of scheduled or unscheduled events at the school.

“Campus” means the buildings, other structures, playgrounds, athletic fields and parking lots of a “school” and any other areas on the school property that are accessed by students on a regular basis.

- “Campus” includes undeveloped, school-owned areas such as forested areas that are geographically connected to the developed campus and that are used for instruction of students. In most instances, ODF will consider that if such an undeveloped property has a direct, geographic connection to the developed campus, the property will be considered part of that campus. One example would be a forested area that is contiguous to a high school campus and that may have students present at times.

- “Campus” does not include undeveloped school-owned areas such as forested areas that are geographically disconnected from the developed campus. Undeveloped parcels that are not geographically connected or adjacent to a developed campus will not be considered part of the school campus. An example would be Oregon State University’s McDonald-Dunn Forest, which is used for student instruction, but is not geographically connected to the developed Oregon State University campus.

- “Campus” does not include buildings such as school district administrative facilities that are typically not used for instruction.

When is a Campus no longer a “School?”
There may be instances where school campuses are not used as schools for some period, e.g., for a period of years when enrollment in a district has decreased. In some cases, the campus will again be used as a “school”; in others, the campus may remain dormant or may be converted to some other use, e.g., office buildings. Once a campus has been used as a “school,” ODF will consider that it is a “school” for the purposes of SB 1602 until the campus is used for a different purpose, or it deteriorates to the point that it is no longer reasonable to consider that it would be used as a “school.”

“Sixth-level hydrologic unit” is a sub-watershed and is usually between 10,000 and 40,000 acres in size and like all watersheds, these sub-watersheds have pre-defined boundaries. There are 3,128 “sixth-level hydrologic units” in the state of Oregon. This data will be made available
in Vantage and ODF’s “GIS data” webpage. “Sixth-level hydrologic units” or “Sixth-level watersheds as they are commonly referred to are also known HUC 12 watersheds because they are assigned 12 digit Hydrologic Unit Code, sub-watersheds pre-defined by the Federal Geographic Data Commission.

“Types D stream,” “Type F stream,” and “Type N stream” have the usual meaning. *Consider “Type F streams” to include “Type SSBT streams.”* In the case where ODF’s regulatory stream layer shows a “Type SSBT stream” extending further upstream than the “Type F stream” classification, resolve the discrepancy between the two layers per OAR 629-635-0200(12) and its guidance.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

LIMITATIONS ON PESTICIDE APPLICATION; PENALTIES
ORS 527.797

(2) Notwithstanding ORS 527.672, a person may not directly apply pesticide by helicopter to forestland:
   (a) Less than 300 feet from an “inhabited dwelling,” unless the landowner is the requester of the application;
   (b) Less than 300 feet from a “school,” unless the school board or other governing body for the “school” is the requester of the application; or

APPLICATION:

Subsections (2)(a) and (b) provide the framework for enforcing the resource buffers associated with SB 1602 requirements. January 1, 2021 was the effective date for the helicopter spray laws to buffer “schools,” “inhabited dwellings” and some streams.

COMPLIANCE:

Subsections (2)(a) and (b) are subject to enforcement action. A “pesticide operator” is in non-compliance for failure to provide the required no-direct-application buffers.

ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications, Table 2. Communication Responsibilities for Helicopter Pesticide Applications and Table 3. Chemical Application Buffer Requirements.

Written plans are not required for SB 1602 300- foot buffers. The new buffer requirement does not add additional classification of “Type D streams.”

The “school” and “inhabited dwelling” provisions in SB 1602 – effective January 1, 2021 – are additive to the current school and “inhabited dwelling” protections in ORS 527.672, which was based on House Bill 3549 and took effect January 1, 2016.

Taken together, here are the “school” and “inhabited dwelling” protections:

- Direct applications of pesticides by helicopter are not allowed in the 0- to 300-foot buffer around “schools” and “inhabited dwellings.”
- Direct applications by UAS (unmanned aerial systems, or “drones”) or fixed-wing of any pesticide except herbicides are allowed in the 0- to 60-foot buffer around “schools” and “inhabited dwellings.”
- Direct applications by UAS (unmanned aerial systems, or “drones”) or fixed-wing of any pesticide, including herbicides, are allowed in the 60- to 300-foot buffer around “schools” and “inhabited dwellings.”
Note: *Ground applications of pesticides are not regulated by SB 1602 or ORS 527.672.*

"Direct application" means chemical is applied at the same concentration, or higher concentration, as applied to the target area. To visually assess if direct application of herbicides has occurred, compare vegetation within the target unit and within the buffer strip. If the chemical effects are the same or similar between the two areas, then direct application and damage has occurred in the buffer.

These no-direct-application buffers in SB 1602 took effect on January 1, 2021. *The no-direct-application buffers required by this statute apply only to helicopter applications of pesticides, not to any other aerial application method or ground method.*

**Measuring the No-Direct-Application Buffer**

**Horizontally measure** the no-direct-application buffers. Though SB 1602 does not specify how the distance is to be measured, there is a related standard in the forest practices rules for Chemical and Other Petroleum Product, that specify in OAR 629-620-0000(4) to measure all distances horizontally.

Starting point for measurement of the no-direct-application buffer:

- “Inhabited dwellings.” The 300-foot no-direct-application buffer is measured starting from the nearest edge of the dwelling structure itself. See also ORS 527.672 guidance.
- “Schools.” The 300-foot no-direct-application buffer is measured starting at the nearest property boundary of the school campus, i.e., the tax lot boundary.

See definitions of “inhabited dwelling” and “school” in the guidance text for ORS 527.797 (1).

**Exception:** SB 1602 allows the landowner of the “inhabited dwelling,” and the school board/school governing body of a “school,” to forego the no-direct-application buffers in SB 1602. However, the same allowance is not made for the 0- to 60-foot portion of the 0- to 300-foot buffer, i.e., to the portion of the buffer addressed by ORS 527.672. *A helicopter application of a pesticide may not be made in the 0-to 60-foot portion of the buffer, even if the subject landowner or school board wishes to forego the buffer protection.*

SB 1602 allows the landowner or school board/school governing body to forego the outer 240 feet of the 300-foot buffer without an ODF approved Plan for Alternate Practice (PFAP). If the SF becomes aware of a landowner’s or school board’s interest in foregoing this outer 240 feet of buffer protection, the SF should document same as an E-Notification Formal Comment within the NOAP. However, the landowner or school board is not required to inform ODF of their plans to not provide the outer 240-foot buffer.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

LIMITATIONS ON PESTICIDE APPLICATION; PENALTIES
ORS 527.797

(2) Notwithstanding ORS 527.672, a person may not directly apply pesticide by helicopter to forestland:
   (c) Subject to subsection (4) of this section, less than 300 feet from a water intake for a “water use qualifying for a spray buffer”:
      (A) Within the same “sixth-level hydrologic unit” as a water source for “water use qualifying for a spray buffer” that is registered under ORS 527.787; or
      (B) Within the same “sixth-level hydrologic unit” as a water source for “water use qualifying for a spray buffer” that is identified by the State Forestry Department and for which the location has been recorded in the “department reporting system.”

APPLICATION:

Subsection (2)(c) provides the framework for enforcing the resource buffers associated with SB 1602 requirements.

January 1, 2021 was the effective date for the helicopter spray laws to buffer “schools,” “inhabited dwellings” and some streams. On December 1, 2021 the new E-Notification, was opened to receive water intake (“water uses qualifying for a spray buffer”) and residential registrations. Additionally, ODF will add to the new E-Notification database the water intake points from OWRD for “water uses qualifying for a spray buffer.” December 15, 2021 was the effective date for the helicopter spray laws to use E-notification.

COMPLIANCE:

Subsection (2)(c) are subject to enforcement action. A “pesticide operator” is in non-compliance for failure to provide the required no-direct-application buffers.

ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications and Table 3. Chemical Application Buffer Requirements.
The owner of a water point of diversion can’t waive the 300 foot buffer requirement.

Buffer protection is provided for two types of water intakes for “water uses qualifying for a spray buffer”:
   • Water intakes that have been registered in E-Notification to receive announcements of pending helicopter sprays.
These water intakes – once the registration is approved by ODF – also receive the 300-foot no-direct-application buffers. These are the water intake that is a “water use qualifying for a spray buffer”.

Water intakes are for surface water only per SB 1602.

**Note:** The water intakes require a 300-foot buffer as soon as the registration request is approved, even if the approval is made during the 90-day application period.

ODF began taking water intake registration applications on December 1, 2021 using E-Notification.

- Water intakes from OWRD that are in ODF’s protected resources database.
  - These water intakes originate with OWRD. ODF will add to its protected resources database those water intakes that are “mapped with sufficient precision to allow the State Forestry Department to implement buffers…,” ORS 527.798 subsection (2)(b).
  - The SB 1602 is silent on the source of this water – surface water or ground water. However, ODF has determined these OWRD water intakes are limited to surface water only, not ground water.
  - December 1, 2021, OWRD water intakes were added to ODF’s E-Notification GIS database of protected resource.

**Note:**
- Ground applications of pesticides are not regulated by SB 1602 or ORS 527.672.
- Formally, the no-direct-application buffers for water intakes took effect on January 1, 2021. Water intakes were not protected until they were brought into the E-Notification GIS database on December 1, 2021, from OWRD (with periodic updates), and starting on December 1, 2021 (and ongoing thereafter), for registrants.

The no-direct-application buffers required by this statute apply only to helicopter applications of pesticides, not to any other aerial application method or ground method.

**Measuring the No-Direct-Application Buffer**

**Horizontally measure** the no-direct-application buffers. Though SB 1602 does not specify how the distance is to be measured, there is a related standard in the forest practices rules for Chemical and Other Petroleum Product, that specify in OAR 629-620-0000(4) to measure all distances horizontally.

For water intakes – both from OWRD and registrants, the 300-foot no-direct-application buffer is measured starting at the water intake infrastructure, i.e., the point of diversion is where the physical infrastructure exists on the ground. The starting point for the 300-foot measurement is always the actual location of the structure itself, not the mapped location. **Note:** Protect the actual water intake point registered with OWRD, even though the visible water intake structure is withdrawing ground water, not surface water.

Landowner must make a reasonable effort to locate the water intake physical point of diversion requiring buffer. Landowner uses the best available information to determine the location of the water right and informs the SF when a water intake can’t be located. The SF will consult
Salem staff in such situations, and Salem staff will contact OWRD. When directed by Salem staff the SF must document a no buffer requirement in the E-Notification formal comments.

The 300-foot no-direct-application buffer applies whenever a water intake for a “water use qualifying for a spray buffer” and a helicopter spray unit – in part or in whole – are within the same “sixth-level hydrologic unit.”

Note: Points of diversion (PODs) that confer “Type D stream” classification to the stream upstream of the POD are a subset of the “water uses qualifying for a spray buffer.” For a POD to confer “Type D stream” classification upstream, the water use must be domestic, the POD must be in a stream (as opposed to a spring or a well or a lake), and the water user must have a permit for that domestic use from the OWRD. See OAR 629-635-0200(5 through 8).

Apply the current rules and the new rules to registered domestic surface water points of diversion in streams. Nothing changes the classification of “Type D streams” and protection within the FPA under the current rules.

The water intakes requiring a 300-foot buffer per SB 1602 will generally not add any “Type D stream” classification to any streams upstream of the water intakes. This is because ODF should already have in its system all the PODs that confer “Type D stream” classification upstream – those PODs in streams and with a permit from OWRD for domestic use. However, it is possible ODF’s system is missing one or more water intakes from one of the SB 1602 sources – OWRD or registrants – that are of the type that would confer “Type D stream” classification upstream, i.e., located within a stream and used for domestic purposes. SFs should be mindful of this possibility and confer with the Salem Field Support Unit when they believe they have encountered such a situation.

Only surface water intakes require the 300 foot buffer if they are mapped within our system as a “SW” right, and they meet one of the qualifying uses then they receive protection.

Apply SB 1602 rules to surface water intakes that are “water uses qualifying for a spray buffer” and mapped in E-Notification. This will include domestic points of diversion which are in a stream and received “Type D stream” classification. There are three types of water intakes:

1. Points of Diversion (pre-SB 1602): ODF has already been using OWRD’s registered points of diversion to determine “Type D stream” classification. Some of those points did not require protection (for example springs with no stream channel).

2. New points: The new points are coming from OWRD’s water intake database that represent registered “water uses that qualify for a spray buffer,” which may not be a domestic use points regulated before SB 1602. The landowner and operator will be responsible for locating these water intakes. These points will be available on ODF’s website for landowners and operators to download soon.

3. Points added by SB 1602 registrants: Registrants submit GPS coordinates of their water intake to E-Notification. These points are not typically field verified and may be a registered water right. Certain water uses are exempt from needing to be registered by
OWRD such as seeps or springs that originate on a person’s property. An ODF approved registrant’s water intake is a protected resource added to the E-Notification GIS database. The notifier will receive new “nearby recipients” contact information for new registrants within one mile of forestland units that were added within 14-days of the notification submission date. The SF will receive an ODF staff email when there is a new registrant that has a “water use that qualifies for a spray buffer.”

**Note:** SF must inform the notifier if a new registrant has a “water use that qualifies for a spray buffer” after 14-days from the notification submission date provided:

a. The water intake that wasn’t already in the system,
b. The unit affected had not been reported as complete or
c. The 300 foot buffer may impact the application area.

Mapping and inventorying accurate intake data will be an ongoing effort for OWRD & ODF will periodically review and import new data from OWRD as it becomes available.

Domestic POD’s in the stream would require a 75 foot spray buffer if there were summer surface flow above the intake however, they also require the 300 foot buffer regardless of the stream classification.

Recommend reviewing locations of water intakes beyond the required 300 foot buffer, since the accuracy of the water intake may vary for map and site locations.

If surface water intakes that are “water uses qualifying for a buffer spray” and mapped in E-Notification, they receive protection. If an intake is registered as a surface water right, even though subsurface infrastructure, it requires protection.

**Note:** The registrant of a surface water right can move the point of division up to 500 feet without notifying OWRD to find water, except a drilled well would be a different water right type.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

LIMITATIONS ON PESTICIDE APPLICATION; PENALTIES
ORS 527.797

(3) On forestland that is subject to ORS 527.610 to 527.770, a person may not directly apply pesticide by helicopter near a stream:
   (a) That is identified by the department as a “Type D stream” or “Type F stream,” within the greatest of:
       (A) 75 feet;
       (B) The required vegetated buffer; or
       (C) A riparian management area existing in State Board of Forestry rules on the July 7, 2020, within which vegetation retention and special management practices are required; or
   (b) That is identified by the department as a “Type N stream” and has “flowing water,” within 50 feet.

(4) The restrictions in subsection (2)(c) of this section are contingent upon the water intake location being recorded in the “department reporting system.”

APPLICATION:

Subsection (3) provides the framework for enforcing the resource buffers associated with SB 1602 requirements. January 1, 2021 was the effective date for the helicopter spray laws to buffer “schools,” “inhabited dwellings” and some streams. December 15, 2021 was the effective date for the helicopter spray laws to use E-notification, aka the “department reporting system.”

COMPLIANCE:

Subsections (3) and (4) are subject to enforcement action. A “pesticide operator” is in non-compliance for failure to provide the required no-direct-application buffers.

ADMINISTRATION:

See Table 1. FERNS Workflow for Helicopter Pesticide Applications and Table 2. Communication Responsibilities for Helicopter Pesticide Applications and Table 3. Chemical Application Buffer Requirements.

For “Type D stream” and “Type F streams,” including “Type SSBT streams,” no-direct-application buffers are the greatest of these three distances:

Subsection (3)(a)(A). 75 feet;

Subsection (3)(a)(B). The required vegetated buffer; or
“Required vegetated buffer” is a catch-all term for all future buffer requirements, e.g., vegetation retention where a term other than "RMA" might be used, and a term to capture any wider RMAs of the future.

July 7, 2020 SB 1602 was signed — making “the required vegetated buffer” and “a riparian management area existing in State Board of Forestry rules on the July 7, 2020…” one and the same.

Subsection (3)(a)(C). A riparian management area existing in State Board of Forestry rules on the July 7, 2020, within which vegetation retention and special management practices are required.

- This provision means the stream RMA width as identified on July 7, 2020, in Division 642, Table 1. Riparian Management Area Width for Streams of Various Sizes and Beneficial Uses, e.g., 80 feet for a medium size, Type “SSBT” stream.
- July 7, 2020 SB 1602 was signed — making “the required vegetated buffer” and “a riparian management area existing in State Board of Forestry rules on the July 7, 2020…” one and the same.

For “Type N streams” with surface water at the time of application (“flowing water”), the no-direct-application buffer is 50 feet. Any surface water — whether flowing or ponded – receives the 50-foot no-direct-application buffer protection. Portions of a “Type N stream” that are dry at the time of the application need not be buffered unless the pesticide label requires buffer protection.

In Figure 1. “Type N stream” 50-foot buffer below, the small “Type N stream” is dry at the time of the helicopter application of pesticides, except for the two areas of “flowing water,” i.e., surface water. The 50-foot no-direct-spray buffer applies to the two areas of “flowing water.”

Figure 1. “Type N stream” 50-foot buffer.

Other important things to know:
- There is no minimum volume or surface area of “flowing water” that triggers the buffer requirement.
The operator is responsible for providing the buffer protection. ODF is not obligated to determine which streams have “flowing water” at the time of the helicopter application.

Streamflow conditions vary from season to season, and from year to year. Each spray application stands on its own as far as assessing the presence of “flowing water” and the need for the 50-foot buffer.

Fifty-foot buffers on “Type N streams” do not need to be addressed in a written plan.

SB 1602 applies to helicopter applications of all pesticides, not just herbicides. For fungicides and non-biological insecticides, there is a discrepancy between the 75-foot no-direct-application buffers called for in SB 1602 and the 300-foot no-direct-application buffers required per OAR 629-620-0400(7)(a) for fish-use and domestic-use streams. Likewise, there is a discrepancy between the 50-foot no-direct-application buffers called for in SB 1602 and the 60-foot no-direct-application buffers required per OAR 629-620-0400(7)(b) for non-fish/non-domestic streams with “flowing water” (water that is actually flowing downstream in the stream, as opposed to the “flowing” water defined in the SB 1602 as simply having surface water at the time of the application, whether flowing or not).

In both these cases of discrepancy, the wider no-direct-application buffers in existing rule prevail. The rationale here is that the intent of SB 1602 is to provide greater protections than existed prior to the SB 1602. Thus, it would be counter to bill intent to replace existing wide buffers with narrower buffers.

See also Forest Practice Note 3, Chemicals and Other Petroleum Products, located on the ODF public page under Forest Practices Act / Key Elements / Chemicals.

Note: Ground applications of pesticides are not regulated by SB 1602 or ORS 527.672.

Existing buffer rules in Division 620 remain as-is for all ground-based pesticide applications, as well as for all aerial pesticide applications except those applied by helicopter. The no-direct-application buffers required by this statute apply only to helicopter applications of pesticides, not to any other aerial application method or ground method.

Measuring the No-Direct-Application Buffer

**Horizontally measure** the no-direct-application buffers. Though SB 1602 does not specify how the distance is to be measured, there is a related standard in the forest practices rules for Chemical and Other Petroleum Product, that specify in OAR 629-620-0000(4) to measure all distances horizontally.

For streams, all pesticide and “fertilizer,” the no-direct application buffers are horizontally measured starting at the stream’s high water level.
PESTICIDE APPLICATIONS BY HELICOPTER, ORS 527.786 TO 527.798

REPORTING POINTS OF DIVERSION
ORS 527.798

(1) As used in this section, “department reporting system” and “water use qualifying for a spray buffer” have the meanings given those terms in ORS 527.786.

(2) The State Forestry Department shall record in the “department reporting system” any points of diversion inventoried by the Water Resources Department that are:
   (a) For a “water use qualifying for a spray buffer”; and
   (b) Mapped with sufficient precision to allow the State Forestry Department to implement buffers under ORS 527.797 (2)(c).

(3) The State Forestry Department shall periodically review Water Resources Department inventory information for points of diversion and update State Forestry “Department reporting system” information as necessary to comply with subsection (2) of this section.

APPLICATION:

This statute is not used for ODF enforcement action. December 15, 2021 was the effective date for the helicopter spray laws to use E-Notification as the “department reporting system.”
Table 1. FERNS Workflow for Helicopter Pesticide Applications

- **Usual 15-day waiting period applies**
- **Registered parcel or water intake within 1 mile?**
  - **Yes**
    - **Wait ≥30 days before start of 90-day spray window**
    - **FERNS provides list of “nearby recipients” to notifier upon NOAP submission**
    - **FERNS sends NOAPs of “proposed” sprays to “nearby recipients” 14 days after NOAP submission (and immediately for new 90-day spray window)**
  - **No**
    - **90-day spray window begins**
    - **FERNS assigns “available to spray” status to all units in NOAP**

- **Wait ≥7 days before start of new 90-day spray window**
  - **Within 90-day spray window?**
    - **Yes**
      - **Notifier reports complete spray in FERNS by 11:59 p.m. day after spray (mobile device capable)**
      - **FERNS changes unit status to “complete” if unit status was previously “incomplete”**
    - **No**
      - **Did not spray**
      - **FERNS resets unit status to “available to spray” at end of day after scheduled day (no reporting by notifier necessary)**

- **Notifier reports “incomplete” spray in FERNS by 11:59 p.m. day after spray (mobile device capable)**
  - **Unit partially sprayed (plan to return)?**
    - **Yes**
      - **FERNS changes unit status to “incomplete” if unit status was previously “complete”**
    - **No**
      - **Did not spray**

- **Notifier sends updated list of registrants to notifier 14 days after NOAP submission**
  - **FERNS changes unit status to “pending” announcement in FERNS, unit by unit, by 7:00 p.m. day before spray (mobile device capable)**

- **Unit spray complete (no plan to return)?**
  - **Yes**
    - **FERNS sends “pending” units to “nearby recipients” (via email or text)**
    - **Notifier makes “pending” announcement in FERNS, unit by unit, by 7:00 p.m. day before spray (mobile device capable)**
  - **No**
    - **Did not spray**
    - **FERNS changes unit status to “pending”**

- **90-day spray window begins**
  - **Notifier reports incomplete spray in FERNS by 11:59 p.m. day after spray (mobile device capable)**
    - **Yes**
      - **Unit partially sprayed (plan to return)?**
        - **Yes**
          - **FERNS changes unit status to “incomplete” if unit status was previously “complete”**
        - **No**
          - **Did not spray**
      - **No**
        - **Did not spray**

- **NOAP is “expired,” must notify for new 90-day spray window**
  - **Wait days before start of new 90-day spray window**
  - **FERNS sends NOAPs of proposed sprays to “nearby recipients” days after NOAP (and immediately for new 90-day spray window)**

*Registered in FERNS (E-Notification) parcel or water intake within 1 mile = nearby registrant
**FERNS sends updated list of registrants to notifier 14 days after NOAP submission
***FERNS changes unit status back to “incomplete” if unit status was previously “incomplete”
### Table 2. Communication Responsibilities for Helicopter Pesticide Applications

<table>
<thead>
<tr>
<th>Registrant</th>
<th>E-Notification</th>
<th>Notifier</th>
<th>Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1 ORS 527.787</strong>&lt;br&gt;December 1, 2021</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| • Any person at any time may register in E-Notification their residence parcel information and a water intake for notification alerts about helicopter pesticide applications | **Step 2** (ORS 527.787) December 1, 2021<br>• Reconcile the registrant’s parcel and “water use qualifying for a spray buffer” into the E-Notification database - potential “nearby recipients” within 1 mile | **Step 3** (ORS 527.788) December 15, 2021<br>• Submit helicopter pesticide notification<br>• Set 90-day application period | **ORS 527.788**
• ODF will enforce if the notifier sprayed before the 15-day or 30-day wait periods or outside the 90-day application period |
| | **Step 4** (ORS 527.789)
• Send notifier “nearby recipient” contacts within 1 mile of spray unit | **Step 5**
• Begin 90-day application period 15-days after notification submission date if no “nearby recipient” is within 1 mile of spray unit | **ORS 527.793**
• ODF will fine the landowner if the notifier failed to status pending by 7 p.m. for next day spray; or failed to status complete spray within 24 hours or incomplete by 11:59 p.m. day after |
| | **Step 6**
• Send “nearby recipients” within 1 mile, 14-days after the notification submission date, the notification, written plan, 90-day application period and notifier contacts | **Step 5, Step 7 and Step 9**
• May contact “nearby recipients” about the spray activity | **ORS 527.795**
• PARC will fine the “pesticide operator” if they fail to provide requested “daily spray records” within 24 hours or accessible “GIS data” within 5 days |
| | **Step 7**
• Send new “nearby recipients” contacts within 1 mile that registered within 14-days after the notification submission date. | **Step 11** (ORS 527.790)
• Status pending by 7 p.m. next day spray | **ORS 527.796**
• Local law enforcement will issue a citation to the person interfering with the spray activity |
| **Stewardship Forester (SF)** | **Step 8**
• Inform notifiers of new “water use that qualify for a spray buffer” who registered after 14-days from the notification submission date (Salem will first inform the SF) | **Step 12** (ORS 527.790)
• Assign available spray unit status at start of 90-day application period | **ORS 527.797**
• ODF will enforce required buffers for streams, “schools” and “nearby recipients” within 1 mile and “water qualifying for spray buffer” within 1 mile and the “sixth-level hydrologic unit” |
| | **Step 10** ORS 527.792<br>• Assign available spray unit status at start of 90-day application period | **Step 13** (ORS 527.797)
• Buffer as required: streams, “schools,” and “nearby recipients” within 1 mile | **ORS 527.797**
• ODF will enforce required buffers for streams, “schools” and “nearby recipients” within 1 mile and “water qualifying for spray buffer” within 1 mile and the “sixth-level hydrologic unit” |
| | **Step 12** (ORS 527.790)
• Send “nearby recipients” pending status for next day spray | **Step 14** (ORS 527.791)
• Status complete unit within 24 hours of spray or incomplete unit by 11:59 p.m. the day after spray<br>• Status pending by 7 p.m. next day spray<br>• Status not required if didn’t spray “Pesticide operator” (ORS 527.795) | **See Table 3. Chemical Application Buffer Requirements** |
| | **Step 15** (ORS 527.792)
• Assign spray units as complete or incomplete per notifier status<br>• Assign pending status to available if did not spray within the 90-day application period | **Provide PARC requested “daily spray records” within 24 hours and accessible “GIS data” within 5 days |
Table 3. Chemical Application Buffer Requirements

<table>
<thead>
<tr>
<th>Waters of the State</th>
<th>Herbicides, Rodenticides, and Biological Insecticides</th>
<th>Fungicides and Non-Biological Insecticides</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Helicopter Applications</td>
<td>Other Aerial Applications</td>
</tr>
<tr>
<td>Type D Streams</td>
<td>75 feet or RMA width¹</td>
<td>60 feet</td>
</tr>
<tr>
<td>Type F and Type SSBT Streams</td>
<td>75 feet or RMA width¹</td>
<td>60 feet</td>
</tr>
<tr>
<td>Type N Streams w/ flowing surface water at time of application</td>
<td>50 feet</td>
<td>0</td>
</tr>
<tr>
<td>Type N Streams w/ ponded surface water at time of application</td>
<td>50 feet</td>
<td>0</td>
</tr>
<tr>
<td>Significant Wetlands</td>
<td>60 feet</td>
<td>60 feet</td>
</tr>
<tr>
<td>Stream-Associated Wetlands</td>
<td>Buffer according to the stream type</td>
<td>Buffer according to the stream type</td>
</tr>
<tr>
<td>Large Lakes (&gt;8 acres, with or without fish)</td>
<td>60 feet</td>
<td>60 feet</td>
</tr>
<tr>
<td>Other Lakes w/ fish use</td>
<td>60 feet</td>
<td>60 feet</td>
</tr>
<tr>
<td>Areas of standing open water &gt;1/4 acre at time of application</td>
<td>60 feet</td>
<td>60 feet</td>
</tr>
</tbody>
</table>

**Infrastructure and Structures**

<table>
<thead>
<tr>
<th>Water Intakes² (start at the physical structure on the ground)</th>
<th>All distances are horizontal distances from HWL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schools (start at boundary of school campus tax lot)</td>
<td>300 feet³</td>
</tr>
<tr>
<td>Inhabited Dwellings (start at edge of dwelling structure)</td>
<td>300 feet³</td>
</tr>
</tbody>
</table>

**Statutory Written Plans are required for all chemical applications:**
- Within 100 feet of a Type F, Type SSBT, or Type D stream
- Within 100 feet of significant wetland:
  - Wetland >8 acres that is not an estuary
  - Bog
  - Important springs in eastern Oregon
- Within 300 feet of:
  - Sensitive bird nesting, roosting, and watering sites
  - Resource sites used by threatened and endangered fish and wildlife species
  - Significant wetland >8 acres that is an estuary

¹ Apply the wider buffer width, either 75 feet or the RMA area width, excludes SSBT streams in Siskiyou Georegion, ORS 527.768 to 527.798, effective July 7, 2020.
² Protected water intakes mean “water uses qualifying for a spray buffer” (defined in SB 1602 and ORS 527.786(4) and identified from Oregon Water Resources Dept. and registrations in E-Notification, effective December 15, 2021.
³ Buffer is required when helicopter pesticide application unit and water intake are in the same “sixth-level hydrologic unit,” SB 1602, effective January 1, 2021.
⁴ The landowner or school board requesting the pesticide application may choose to forego all but the inner 60 feet of this buffer, SB 1602, effective January 1, 2021.
⁵ Other aerial applications of herbicides only, ORS 527.762, effective January 1, 2016.

Notes: Comply with the pesticide label, which may require wider buffers than shown in the Table 3. Direct application of pesticides and fertilizers is not allowed within the minimum buffers in the tables.