

Agenda Item No.	7
Work Plan:	Forest Resources Division
Topic:	Modifying an Administrative Deadline in Rule
Date of Presentation:	September 3, 2025
Contact Information:	Josh Barnard, Division Chief, Forest Resources Division, ODF, <a href="mailto:josh.w.barnard@odf.oregon.gov">josh.w.barnard@odf.oregon.gov</a> , Nicole Stapp, Policy Advisor, Forest Resources Division, ODF, <a href="mailto:nicole.l.stapp@odf.oregon.gov">nicole.l.stapp@odf.oregon.gov</a>

**SUMMARY**

This agenda item requests the Board consider a minor rule modification related to an administrative deadline, determine the type of forest practice rule being considered and direct the Oregon Department of Forestry (Department) to take the next steps in rulemaking. This is a decision item.

**CONTEXT**

In 2020, conservation and forest industry groups offered to revise the Forest Practices Act (FPA) and forest practice rules through a memorandum of understanding to include mediated discussions, known as the Private Forest Accord (PFA). Later that year, the Legislature passed [SB 1602](#) which set helicopter pesticide application requirements and required the Governor to facilitate mediated sessions between conservation and forest industry groups. As a product of this collaborative process, the [2022 PFA Report](#) was drafted and released by an author group comprised of representatives from those discussions. During the 2022 Legislative Session, [SB 1501](#) and [SB 1502](#) passed making substantial changes to the FPA and requiring the Board to incorporate the recommendations of the PFA Report into the forest practice rules through the adoption of a single rule package to support the development of the PFA habitat conservation plan (HCP) and prescribed two additional rulemaking efforts.

**BACKGROUND**

Within the PFA single rule package adopted by the Board in November 2022 and effective January 2024, Oregon Administrative Rule (OAR) 629-635-0200 (18) set the process and timeline for the Department to update and publish maps related to perennial flow of streams. The rule text is shown below for reference:

(18) By July 1, 2023, the State Forester shall update all published maps and the department's reporting and notification system to include flow duration for streams in Western Oregon and Eastern Oregon. The State Forester shall maintain in the department's reporting and notification system a map of perennial flow utilizing the following:

(a) Phase 1 Initial Mapping. The State Forester shall initially map perennial flow of Type N Streams using U.S. Geological Survey NHD high resolution data. The NHD stream layer may assist operational field surveys as described in OAR 629-643-0130 or 629-643-0143 but shall not provide for a modeled end. During this phase landowners shall apply the riparian management area prescriptions to all small Type N streams as described in OAR 629-643-0130 and OAR 629-643-0143, whether or not a stream is mapped as perennial. This requirement ends once the State Forester implements the Phase 2 model.

(b) Phase 2 Model. When advised by Department of Fish and Wildlife that an approved flow duration model sufficient for regulatory purposes is available, the State Forester shall promptly publish the information, including the modeled end, in all maps and the department's reporting and notification system, and in no event later than July 1, 2025.

(c) Field Verification. The operator may conduct field surveys for verification of the modeled end in accordance with Department of Fish and Wildlife field protocols for model verification. Once the verified end is approved by the Department of Fish and Wildlife, the State Forester shall substitute the verified end for the modeled end in all maps and the department's reporting and notification system.

OAR 629-635-0200 (18)(b) provides that Phase 2 involves shifting to a model after a flow duration model sufficient for regulatory purposes is available and sets a deadline of July 1, 2025. Currently, the Oregon Department of Fish and Wildlife (ODFW) and the Department are in agreement there is not a sufficient model available to be implemented and are collaborating to develop a conforming, viable model.

Development of this model is estimated to take about one year. Therefore, the Department is requesting the Board amend OAR 629-635-0200 (18)(b) in the following way:

- (b) Phase 2 Model. When advised by the Department of Fish and Wildlife that an approved flow duration model sufficient for regulatory purposes is available, the State Forester shall promptly publish the information, including the modeled end, in all maps and the department's reporting and notification system, and in no event later than July 1, 2025~~6~~.

## ANALYSIS

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

The rule types are summarized below:

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

The Department believes the proposed rule is a Type 1(a) rule as OAR 629-635-0200 (18)(b) establishes a procedure that supports but does not directly regulate the standards for forest practices. If the Board concurs and determines the proposed rule is a Type 1(a) rule, under ORS 537.714 (3), rulemaking may proceed under the typical APA rulemaking process and additional Forest Practices Act rulemaking requirements do not apply to the rulemaking.

## RECOMMENDATIONS

The Department recommends the Board:

- 1) Determine that OAR 629-635-0200 (18) is a Type 1(a) rule; and
- 2) Direct the Department to file a notice of proposed rulemaking to amend OAR 629-635-0200 (18)(b) as reflected in the background section of this staff report.

## NEXT STEPS

If the Board adopts the above recommendations, the Department will continue with rulemaking under the APA process and return to the Board for a decision regarding adoption following the close of the public comment period.