

DIVISION 600
DEFINITIONS

DEFINITIONS

629-600-0100

As used in OAR Chapter 629, Divisions 605 through 669 and Divisions 680 through 699, unless otherwise required by context:

- (1) *"Abandoned resource site" means a resource site that the State Forester determines is not active.*
- (2) *"Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. 'Recent past' shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.*
- (3) *"Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.*
- (4) *"Aquatic area" means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.*
- (5) *"Artificial reforestation" means restocking a site by planting trees or through the manual or mechanical distribution of seeds.*
- (6) *"Basal area" means the area of the cross-section of a tree stem derived from DBH.*
- (7) *"Basal area credit" means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a stream, or conducting other enhancement activities such as side channel creation or grazing exclosures.*
- (8) *"Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.*
- (9) *"Channel" is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.*
- (10) *"Chemicals" means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliant, plant desiccants, and plant regulators, as defined in ORS 634.006 (8); fertilizers, as defined in ORS 633.311; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives,*

anti-foam agents, wetting agents, and spreading agents.

GUIDANCE:

Chemicals – The definition of “chemicals” includes animal repellents. Adjuvants are ingredients added to a pesticide formulation to make it more effective. More information on "chemicals" is provided in the guidance for OAR 629-620-0000.

(11) "Commercial" means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity undertaken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.

GUIDANCE:

Commercial - Note the discussion of this term in guidance for the definition of an “operation”.

(12) "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.

GUIDANCE:

Completion of the operation - Generally, the completion of yarding is considered completion of disturbance.

(13) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.

(14) "Debris torrent-prone streams" are designated by the State Forester to include channels and confining slopes that drain watersheds containing high landslide hazard locations that are of sufficient confinement and channel gradient to allow shallow, rapid landslide movement.

(15) "Department" means the Oregon Department of Forestry.

(16) "Diameter breast height" (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.

(17) "Domestic water use" means the use of water for human consumption and other household human use.

GUIDANCE:

Domestic water use - Irrigation and livestock watering are not considered domestic water use.

- (18) *"Dying or recently dead tree" means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.*
- (19) *"Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.*
- (20) *"Exposure categories" are used to designate the likelihood of persons being present in structures or on public roads during periods when shallow, rapidly moving landslides may occur.*
- (21) *"Filling" means the deposit by artificial means of any materials, organic or inorganic.*
- (22) *"Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.*
- (23) *"Fledgling tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.*
- (24) *"Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.*
- (25) *"Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.*
- (26) *"Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.*

GUIDANCE:

Forestland - Note the discussion of this term in guidance for the definition of an "operation."

- (27) *"Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.*

GUIDANCE:

Free to grow - The definition of "well distributed" trees says it is acceptable if ten percent of the area subject to reforestation is at less than one-half the minimum per acre stocking. That does not mean landowners need not attempt reforestation on ten percent of the operation area that is

below the reforestation threshold. An operator must have made an effort to reforest the entire area suitable for reforestation before being able to qualify for the “well-distributed” and “close enough” standards in the definition.

- (28) *"Further review area" means an area of land that may be subject to rapidly moving landslides as mapped by the State Department of Geology and Mineral Industries or as otherwise determined by the State Forester.*
- (29) *"Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.*

GUIDANCE:

Geographic region - should not be confused with "Forest Practices Regions" in OAR 629-605-0160.

- (30) *"High landslide hazard location" means a specific site that is subject to initiation of a shallow, rapidly moving landslide.*
- (31) *"High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.*
- (32) *"Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.*
- (33) *"Important springs" are springs in arid parts of Eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.*
- (34) *"Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.*
- (35) *"Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledgling trees or perching trees.*
- (36) *"Lake" means a body of year-round standing open water.*
- (a) *For the purposes of the forest practice rules, lakes include:*
- (A) *The water itself, including any vegetation, aquatic life, or habitats therein; and*
- (B) *Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.*
- (b) *"Lakes" do not include water developments as defined in section (81) of this rule.*
- (37) *"Landslide mitigation" means actions taken to reduce potential landslide velocity or re-direct shallow, rapidly moving landslides near structures and roads so risk to persons is*

reduced.

- (38) *"Large lake" means a lake greater than eight acres in size.*
- (39) *"Live tree" means a tree that has 10 percent or greater live crown.*
- (40) *"Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.*
- (41) *"Main channel" means a channel that has flowing water when average flows occur.*

GUIDANCE:

Main channel - Channels scoured down to river rock or bedrock, or with any significant soil scour are considered main channels. Usually there is little perennial vegetation in main channels, although it is sometimes present in smaller main channels. See the definition of "side channel" in section (62) of this rule. Oxbows or beaver pond complexes that are connected to main channels are considered part of main channels.

- (42) *"Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.*
- (43) *"Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.*
- (44) *"Nest tree" means the tree, snag, or other structure that contains a bird nest.*
- (45) *"Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.*
- (46) *"Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:*
- (a) *The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.*
 - (b) *The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:*
 - (A) *Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;*
 - (B) *Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;*
 - (C) *Harvested on a rotation cycle that is 12 or fewer years after planting; and*
 - (D) *Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.*
 - (c) *The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.*

- (d) *The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.*
- (e) *The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.*
- (f) *The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.*
- (g) *The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.*

GUIDANCE:**APPLICATION:**

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

ADMINISTRATION:

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

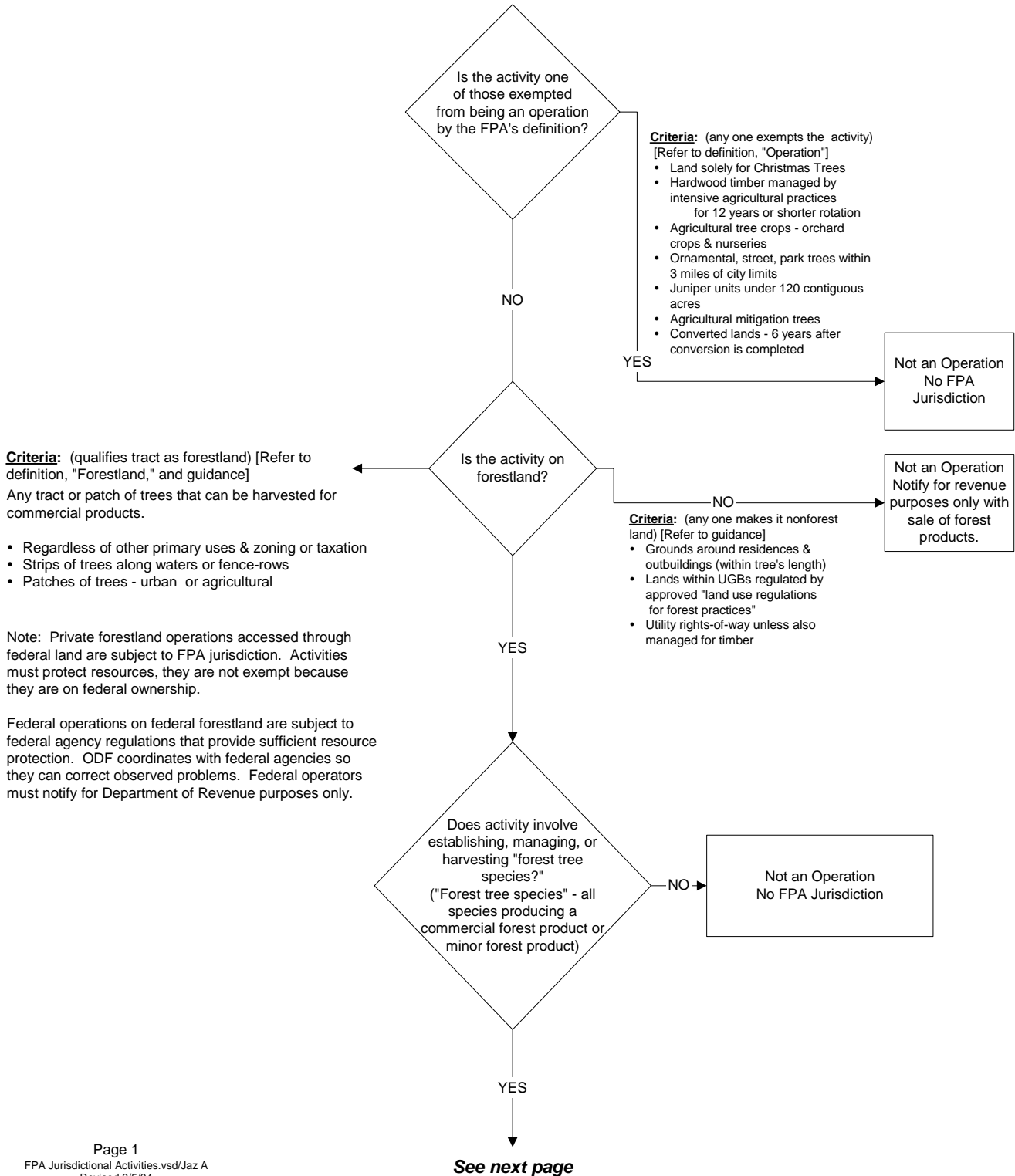
This guidance uses the definitions of **"forestland," "forest practice"(as found in ORS 527.620), "forest tree species"(as found in ORS 527.620), “commercial”, and "operation." (in ORS 527.620)** These definitions are key in **determining if forest practice regulations apply to a specific activity.**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

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

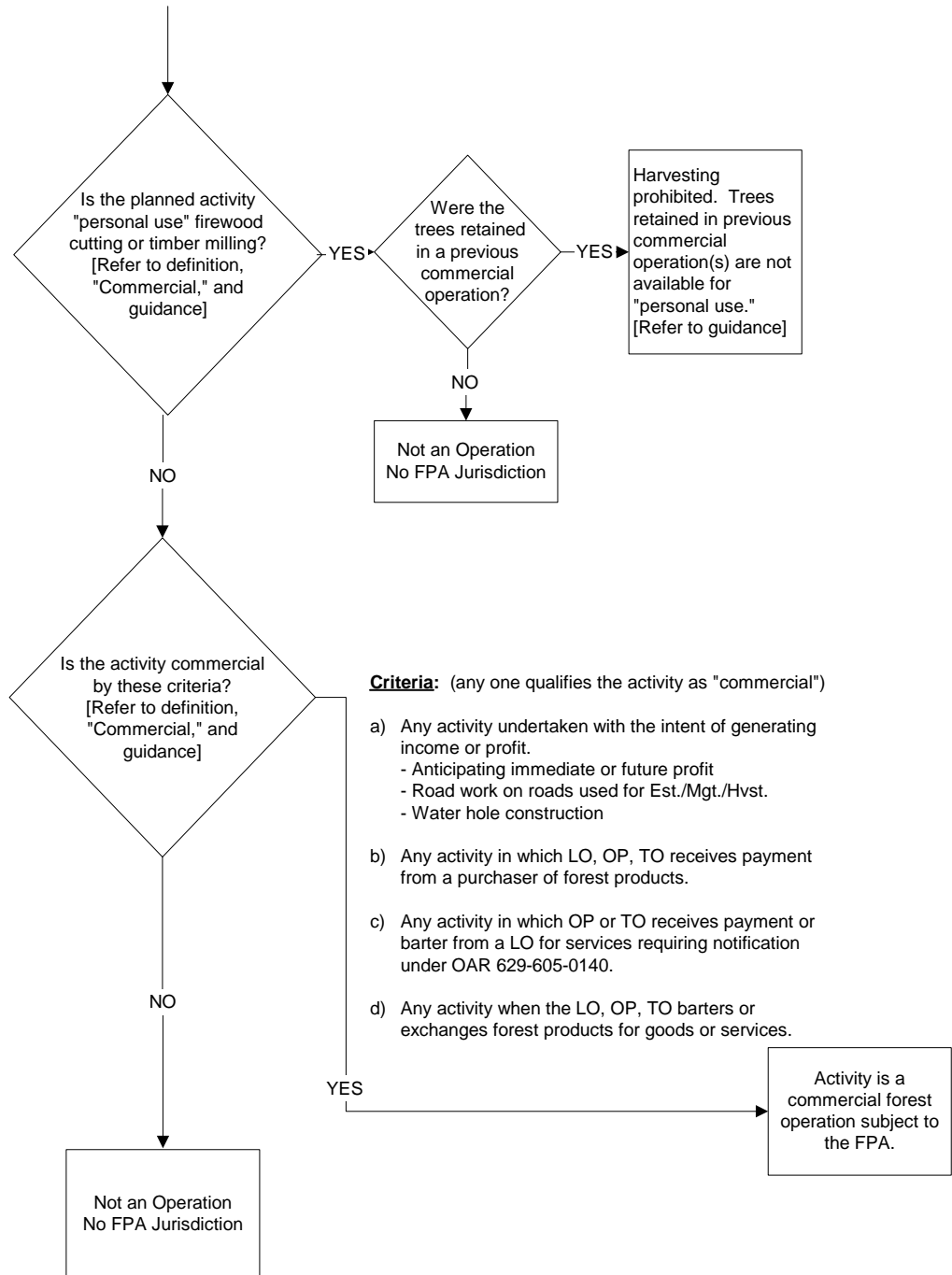
The following flowchart illustrates these decision checkpoints for determining whether an activity is an operation within the jurisdiction of the FPA.

Identifying Commercial Forest Operations

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



Identifying Commercial Forest Operations



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

The statute and rule defining an “operation” lists seven exemptions. An activity that is on this list is generally, but not always, excluded from forest practice’s authority. Approved land use changes are an example. Note the explanation under that exemption (g) below.

OAR 629-605-0140(2) “Notification to the State Forester - Types of Operations” lists activities that are “operations” but do not require notification. OAR 629-600-0100(46) takes some of those same activities which do NOT require notification and exempts them from being considered as “operations”, and therefore explicitly exempt from FPA jurisdiction.

(a) Land devoted solely to Christmas tree growing.

“Operation” means any commercial activity . . . except. . . :

“The establishment, management or harvest of Christmas trees, as defined in ORS 572.505, on land used solely for the production of Christmas trees.”

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

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

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

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

(2) “Christmas tree” means a cut evergreen tree:

(a) Of a marketable species;

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

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

(b) Hardwoods intensively managed for fiber.

“Operation” means any commercial activity . . . except. . . :

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

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

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

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

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

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

ODF will not consider hardwood fiber plantations left to grow past 12 years to be automatically subject to forest practice harvesting regulations. These remain agricultural lands, not forestland.

Determine what the hardwoods are to be used for and contact program staff for further coordination with the Department of Agriculture. Notification for harvesting would be required by the Oregon Department of Revenue if timber were the product harvested. Clarification with the Department of Revenue will be necessary.

(c) Agricultural tree crops.

“Operation” means any commercial activity . . . except. . . :

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

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

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

(d) Ornamental, street, or park trees.

“Operation” means any commercial activity . . . except. . . :

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

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

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

Furthermore, “city” is defined also:

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

The first category of trees exempted from “operations” in urbanized areas is “ornamental trees.” Ornamental trees are interpreted by ODF to be those in the “yard” immediately surrounding a house and its associated outbuildings. The “yard” is the area within any on-site tree’s length of these buildings, sometimes enclosed by a fence, hedge or other recognizable boundary. Harvesting in this area is often done because of windthrow threats to the buildings. ODF will not dispute these homeowner concerns. **ODF does not consider the area within the “yard” to be forestland.** Note: “yards” as nonforest land are discussed in detail under the topic, “Is the activity on “forestland?”

However, outside of the “landscaped and maintained yard,” such as on large lots with a house or undeveloped lots, harvesting groups of trees for sale as a commercial forest product is an operation.

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

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

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

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

Notification is still required when any urban trees are going to be sold. Such notification will often be solely for the purposes of the Department of Revenue as stated in ORS 321.550 “Notice of intent to harvest; rules; effect of failure to file notice.” as follows:

“(1) No person shall harvest or cause to be harvested any timber from land in Oregon without first having notified the State Forester in writing with a copy to the Department of Revenue on forms prepared by the State Forester and the department of intent to harvest pursuant to ORS 321.005 to 321.185, 321.257 to 321.390, 321.405 to 321.515 and 321.560 to 321.600.”

Prior to 2003’s legislative changes to the forest tax law, ORS 321, operators had to have a notification number to supply to mills and other log buyers before the logs could be received. The Department of Revenue no longer can require a notification number for each transaction. The Department of Revenue encourages mills to maintain a record of notification numbers, but it is not mandatory. This reduces the usefulness of the one “sort yard” notification specifically for operators who make a business of collecting small batches of logs from numerous landowners and selling them as a batch. Because of the difficulty of ensuring forest resource protection and the statute change, **“sort yard” notifications should no longer be accepted.** This activity will be edited out of the notification form at the next opportunity.

FPA statutes require an operator to have a notification for each site that qualifies as an “operation.” An operator, whether logger or tree-service company, that collects logs from sites that are **not** operations will need to notify for Revenue purposes only. They must do this for each accumulated batch of logs. ODF will no longer accept open-ended “sort yard” notifications. Until they learn of this change, operators may become less consistent in notifying for small harvest areas.

There is some need for vigilance by ODF to prevent operators from taking advantage of the change in the statute to market logs harvested from sites not listed on a notification to avoid filing multiple notifications on small jobs or to avoid applying forest practice resource protection requirements on those sites.

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

“Operation” means any commercial activity . . . except. . . :

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

Landowners may separate juniper harvest units by breaks of any width to keep the adjacent unit acreages from being counted together. The 120-acre exemption is meant to apply to lands where juniper dominates. Harvesting that includes components of ponderosa pine or other non-juniper forest tree species is subject to the FPA regardless of harvest unit size.

The 120-acre exemption originated with Senate Bill 1151 (1999), which directed ODF to review department programs related to juniper management and to recommend changes to benefit landowners and improve watershed health. The department convened an ad hoc juniper issues group to help conduct the review. The group concluded that juniper management was needed, but that rangeland owners might see FPA regulatory procedures as a disincentive. The group recommended that juniper harvests be regulated only by Agricultural Water Quality Management Plans (administered by the Oregon Department of Agriculture), not by the FPA. The 120-acre threshold figure was introduced during legislative negotiations in 2001, and is the standard below which juniper harvest units are exempt from the FPA.

Juniper harvest units 120 acres or larger **are** subject to the FPA. However, because juniper tends to grow on low-productivity sites, some of the FPA requirements may not apply. The following table provides more detail.

Statutory and Rule Standards for Commercial Juniper Harvests exceeding 120 acres	
Statutory or Rule Standard	Standard applies to juniper harvest?
Notification (OAR 629-605-0140, 629-605-0150)	Yes. The activity is an operation, and is not exempted from notification.
Written plans (OAR 629-605-0170)	Yes, if a statute or rule requires a written plan for the specific activity and location, e.g., operations within 100 feet of a Type F stream.
Retain trees along scenic highways listed in ORS 527.755(1)	Yes, but the landowner may file a plan for alternate practices to remove the trees and convert to grazing land.
120-acre size limitation on harvest type 3 units (ORS 527.740, 527.750)	No, if below cubic foot site class VI; Yes, if site class VI or above. Harvest type definitions do not include lands below site class VI (ORS 527.620).
Retain green trees, snags, and down wood in harvest type 2 or type 3 units exceeding 25 acres (ORS 527.676)	
Reforestation rules (OAR 629-610)	No, reforestation is not required after juniper-only harvesting on lands below cubic foot site class VI; there are no stocking standards for these low-productivity lands. Reforestation stocking standards apply on lands at site class VI or higher.
Protection of waters and specified resources sites during slash treatment, chemical application, harvesting, and road construction and maintenance	Yes. The activity is an operation.

Juniper harvesting is by law (ORS 321.005(6) and 321.405(7)) exempt from harvest taxes and privilege taxes; therefore, notification to the Department of Revenue is not required for harvesting of any amount of juniper acreage. Notifications on juniper-only tracts larger than 120 acres need not be sent to the Department of Revenue.

Juniper management activities in or within one-eighth mile of a fire protection district will require application to ODF for a permit to operate power-driven machinery to comply with fire prevention rules.

(f) Trees mitigating agricultural practices.

“Operation” means any commercial activity . . . except . . . :

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

Forest practices regulation does not apply to establishing and managing trees to mitigate agricultural practices. Site preparation, planting, chemical vegetation control, and non-commercial thinning are exempt from forest practice regulations. However, “harvesting” is not included in the exemption wording. This was intentional and means that any commercial harvesting among such trees is an operation subject to the forest practice rules. Non-commercial removal of such trees would be subject to the Department of Agriculture’s (ODA) Water Quality Management Area Plans for the basin. ODF will contact and inform ODA when learning of such activities.

(g) Approved land use change.

“Operation” means any commercial activity . . . except. . . :

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

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

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

A. Emergency insect eradication projects sponsored or conducted by the Oregon Department of Agriculture are not regulated by the FPA. Examples are applications of B.t. for gypsy moth eradication, even if portions of the application take place on forestland. This conclusion is based on the finding that these types of projects are not commercial activities directly related to growing and harvesting forest tree species.

Insecticide applications that are conducted by forest landowners and that are clearly related to growing and harvesting forest tree species remain subject to the FPA. An example of this type of activity would be a pesticide application on forestland for control of Douglas-fir tussock moths.

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

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

Examples of this type of activity are knotweed control projects in coastal streamside areas. These projects are coordinated by local weed control organizations in cooperation with the Oregon Department of Agriculture.

Vegetation control activities that are done or directed by the landowner and that are clearly connected to the purpose of growing and harvesting forest trees species are subject to the FPA, even though control of invasive weeds might be involved. Control of overtopping Scotch broom in a conifer plantation is an example of this type of activity.

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

2. Is the activity on "forestland?"

Forestland defined for Forest Practices Administration.

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

ODF interprets these lands to be included as forestland:

- Any size tract or patch of trees that can be harvested as a commercial forest product regardless of the surrounding land use or zoning of the land including
 - Strips of timber along streams on farm or range land (See exemption for harvesting of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.)
 - Patches of timber that remain inside urbanized areas that are not exempted by the definition of "operations" or that are within the UGB of local governments that have not adopted land use regulations for forest practices and timber patches in rural areas on larger lots, farms, or ranches.

ODF interprets these to be already converted to non-forest land uses:

- The "yard" or grounds around residential structures and their outbuildings to the extent of the height of on-site trees that could fall on a structure
- Utility rights-of-way such as power line or gas pipeline corridors

Because the definition of an "operation" reads ". . . activity relating to the establishment, management or harvest of forest tree species . . .," forest practice's jurisdiction extends to adjacent land crossed in order to access forestland. An example is a road, used however occasionally in forest operations, that crosses residential or agricultural land to reach forestland. In another example, ODF will regulate the resource-affecting activities on a road crossing federal land to access an operation on private forestland.

Local Government Regulation.

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

Forestland Conversions.

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

Landowners who intend land use conversions must first obtain approval of a plan for an alternate practice for the exemption from reforestation requirements. This requires written approval from ODF and other agencies as appropriate. Refer to the guidance for OAR 629-610-0090, Exemption from Reforestation for Land Uses Not Compatible with Forest Tree Cover, for details.

Afforestation.

Where a landowner is converting non-forest land to forestland, the forestland designation applies when the afforestation activity (clearing, piling, spraying, for example) begins. These activities require notification and observance of the relevant rule requirements, such as water quality protection practices.

ODF should use investigate to determine whether the rules apply in cases where the landowner's intent to convert to forest tree species is not clear (for example, they may be only growing Christmas trees).

FPA Authority and Federal Forestland.

Though federal forestlands fit under the FPA’s definition of forestland, the State Forester does not generally administer the FPA on federal lands. The topic of federal lands is not addressed directly by ORS 527.620. Compliance with resource protection standards similar to the FPA is achieved on federally-owned lands through their forest planning and environmental assessment processes. However, activities conducted by the BLM, Forest Service, or other federal agencies on private lands are directly subject to all requirements of the FPA as administered by the State Forester. An example is construction of a road for access to federal lands through an easement on the private lands.

Operations on Private Land that Cross Federal Land.

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

If, for example, a private operator is hauling on a federally-controlled road and causes or contributes to a turbidity standard violation, they will be required by ODF to stop the damage by adequate road maintenance practices or by ceasing use of the road. Failure to comply will result in enforcement action by ODF against the operator.

To correct the problems, the private operator may attempt to apply the terms of the road use agreement with the federal agency or otherwise negotiate with them to correct the unsatisfactory condition.

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

An operator, harvesting on federal forestlands, must file a notification with ODF for Department of Revenue purposes only.

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

3. Does the activity involve establishing, managing, or harvesting "forest tree species?"

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

"Forest tree species" includes all tree species that can produce a commercial forest product, including minor forest products. Forest trees grown as Christmas trees on land dedicated wholly to growing Christmas trees are excluded from this definition. However, "forest tree species"

does include those planted as Christmas trees that are allowed to outgrow their initial purpose and are instead managed for timber or other forest products.

4. Is the activity a “commercial” “operation?”

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

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

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

- Operations are commercial when they include activities that are being conducted because of the anticipation of either immediate or future profit. Therefore, precommercial thinning, fire prevention, chemical release, fertilizing, and site preparation are commercial operations.
- Construction or reconstruction of any road on or accessing forestland that was built for or has been used as part of a commercial forest operation is a commercial operation. For example, industrial forest landowners are in the “business” of growing trees, thus any road on their ownership is part of their commercial operation. This also includes any roads used by non-industrial landowners that are or have been used for harvesting trees and managing timber, notwithstanding other additional uses such as agriculture.
- Excavating water holes for fire protection “pump chances” or for chemical mixing water sources is a commercial activity. It’s an aspect of forest management, ultimately for income or profit. ODF may determine that a plan for an alternate practice is required for machine work in the stream in order to minimize the activity as required in OAR 629-625-0430(2), Stream Protection.

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

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

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

- Except when firewood cutting or timber milling for personal use is involved, there is a commercial operation any time an activity occurs on forestland and someone is paid or in some way compensated for conducting forest practices requiring notification under OAR 629-605-0140. Note that if the activity occurs on land already converted to non-forest use, such as a residential yard or a utility right-of-way, the activity will not be considered an “operation” because it is not on forestland; therefore, notification will not be required by OAR 629-605-0140. However, notification for Department of Revenue (DOR) purposes will be needed when any saleable or personal use, timber or firewood is produced. Have the operator check only block 2C on the notification form.

Examples:

- It is a commercial activity when an operator is hired to rebuild a road for access to a woodlot for planting and further forest management.
- It is not a commercial activity if a landowner pays a logger to cut trees from their woodlot solely for the landowner's personal use as firewood or milled timber, but a notification for DOR use is required.
- It is a commercial activity if a landowner pays a logger to cut trees from their woodlot to be sold or traded.
- It is not a commercial activity when a landowner pays someone to cut, with the intent to leave trees lie unused on the landowner's forestland. Note: This is an extreme example, but one that has been brought up by a few disgruntled landowners.
- It is commercial if a landowner pays to have danger trees cut from within reach of the structures around his house. However, this is not an operation because the land is considered non-forest land by ODF. The landowner may need a notification for DOR purposes because they sell the logs, but forest practices regulations will not be enforced.
- It is a commercial operation to cut and clear trees, whether they are sold or not, from existing forestland in order to clear the land for conversion to a non-forest use (OAR 629-605-0140(e)).

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

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

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

- If all criteria are met, this exclusion overrides any of the above conditions in this definition that might be present. It is intended to allow individual landowners to cut their own trees for firewood or lumber they process, or to pay someone to do so, solely to obtain these products for their personal use. It is important to use a standard meaning for the term "personal use". ODF interprets "personal use" to mean that the landowner makes use of the firewood or lumber from their land for its primary purpose. That is, the landowner burns the firewood in their structures or builds on their own land with the lumber. A key criterion is that they use the firewood or lumber themselves and do not sell it or barter it for any other purpose than to obtain the products for their personal use. This means they do not give these products away, even as a charitable donation. Any use outside this meaning of "personal use" is "commercial", and if all other criteria for an "operation" are met, the activity is an "operation" that must comply with appropriate forest practice regulations. Although this may seem strict, it is necessary to prevent attempts by some landowners to evade protecting forest resources by claiming personal use, exempt from regulation.

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

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

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

Note: Trees retained as required in a commercial operation, such as in-unit wildlife leave trees or riparian trees, remain part of that commercial operation until they would otherwise become available for harvest under rule (usually this is when replacement trees have grown in the stand). If the land use is changed to non-forest use, the removal must be approved by the appropriate agency with regulatory jurisdiction over the non-forest use. Such trees are not available for personal use harvesting for firewood or lumber. This is because leave tree requirements would be meaningless if the trees can be harvested for some non-commercial purpose. Interpretations of legal requirements that result in a meaningless outcome are generally not supported by courts during legal actions.

Non-commercial activities include the following.

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

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

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

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

The examples below show how to apply the guidance to determine if an activity is a commercial operation.

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

Analysis:

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

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

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

- (2) Situation: A landowner plans to hire a faller to cut down five large trees which the landowner will process into lumber on site with his own portable sawmill. The lumber will be used to build a barn on the property. The landowner will do all the yarding and processing work. The trees are within 100 feet of a large Type F stream, but there has never been a commercial operation along this riparian area.

Analysis:

- (a) *Is the activity exempt from being a forest operation?*
The activity is not exempt in the definition of “operations”.
- (b) *Is the activity on “forestland”?*

The activity occurs on forestland, used (at least in part) for growing and harvesting forest trees.

- (c) *Does the activity relate to the “establishment, management or harvesting” of “forest tree species”?*

The activity is related to harvesting forest trees.

- (d) *Is the activity “commercial”?*

- (A) The Department of Revenue rules require reporting the value of the lumber as income.
- (B) The landowner would receive no payment for the lumber.
- (C) Money or barter would change hands for services, and harvesting requires a notification under OAR 629-605-0140.
- (D) The landowner plans to mill the wood for personal use.
- (E) The trees planned for harvest were not retained as obligations under a previous commercial operation.

Conclusion: **This activity is not commercial because of factor (d)(D).** (Note: The landowner is required by Department of Revenue rules to report the value of the lumber as income.)

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

Analysis (applies to the firewood cutting):

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

Conclusion: **The activity is not commercial, because of factor (d)(E). It’s not commercial in itself, but the RMA trees must be maintained as part of the preceding commercial operation under the applicable forest practice requirements.** While the woodcutting is separated in time from a specific harvest activity, it would take trees that are being maintained as

part of a commercial operation; this cannot be overridden by claiming non-commercial status for this activity.

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

Analysis:

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

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

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

- (47) *"Operator" means any person, including a landowner or timber owner, who conducts an operation.*
- (48) *"Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.*
- (49) *"Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.*
- (50) *"Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted to the State Forester for written approval describing practices different than those prescribed in statute or administrative rule.*
- (51) *"Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.*
- (52) *"Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.*
- (53) *"Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.*
- (54) *"Resource site" is defined for the purposes of protection and for the purposes of*

requesting a hearing:

- (a) ***For the purposes of protection:***
 - (A) ***For threatened and endangered bird species, "resource site" is the nest tree, roost trees, or foraging perch and all identified key components;***
 - (B) ***For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components;***
 - (C) ***For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.***
- (b) ***For the purposes of requesting a hearing under ORS 527.670(4) and ORS 527.700(3), "resource site" is defined in OAR 629-680-020.***

GUIDANCE:

Resource site - is defined here for protection, with the area subject to protection described in (A), (B), or (C). When a person requests a hearing, the definition in OAR 629-680-0020 is applied. That definition limits the area that is subject to appeal.

For those sites that have not gone through technical analysis and rulemaking, such as mineral watering places, we have only the inventory of sites in the 1984 Cooperative Agreement between the Board of Forestry and the Fish and Wildlife Commission and the interim process in OAR 629-605-0180 to go on in identifying sites and key components.

(55) ***"Riparian area" means 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.***

(56) ***"Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and fish and wildlife habitat.***

GUIDANCE:

Riparian management area - The following waters have riparian management areas: Type F and D streams; large and medium size Type N streams; significant wetlands; large lakes; lakes that have fish (regardless of size); and lakes larger than one-half acre.

Small Type N streams, lakes less than one-half acre with no fish, other wetlands, seeps and springs do not have riparian management areas. Table 5 and OAR 629-640-0200(6) specify vegetation retention along perennial small Type N streams in selected geographic regions.

(57) ***"Roosting site" means a site where birds communally rest at night and which is unique for that purpose.***

(58) ***"Roost tree" is a tree within a roosting site that is used for night time roosting.***

(59) ***"Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.***

- (60) *"Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.*
- (61) *"Shallow, rapidly moving landslide" means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel at a velocity difficult for people to outrun or escape.*
- (62) *"Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.*

GUIDANCE:

Side channel - This definition describes channels with infrequent flows, perhaps during only a few events each year. Perennial vegetation is often growing in side channels. Minor soil scour is usually evident. Channels with scour down to river rock or bedrock, or with any significant soil scour are considered main channels. See the definition of "main channel" in section (41) of this rule. Oxbows or beaver pond complexes connected only to side channels are considered part of side channels.

- (63) *"Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection.*

GUIDANCE:

Significant wetlands are further defined in OAR 629-645-0000.

- (64) *"Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.*
- (65) *"Sound snag" means a snag that retains some intact bark or limb stubs.*
- (66) *"Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.*
- (67) *"Stream" means a channel, such as a river or creek, that carries flowing surface water during some portion of the year.*
- (a) *For the purposes of the forest practice rules, streams include:*
- (A) *The water itself, including any vegetation, aquatic life, or habitats therein;*
 - (B) *Beds and banks below the high water level which may contain water, whether or not water is actually present;*
 - (C) *The area between the high water level of connected side channels;*
 - (D) *Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and*
 - (E) *Stream-associated wetlands.*
- (b) *"Streams" do not include:*
- (A) *Ephemeral overland flow (such flow does not have a channel); or*
 - (B) *Road drainage systems or water developments as defined in section (81) of this rule.*

- (68) *"Stream-associated wetland" means a wetland that is not classified as significant and that is next to a stream.*
- (69) *"Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.*
- (70) *"Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.*
- (71) *"Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.*
- (72) *"Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.*
- (73) *"Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.*
- (74) *"Tye Core Area" means a location with geologic conditions including thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in shallow soils creating a higher shallow, rapidly moving landslide hazard. The Tye Core area is located within coastal watersheds from the Siuslaw watershed south to and including the Coquille watershed, and that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5. Within these boundaries, locations where bedrock is highly fractured or not of sedimentary origin as determined in the field by a geotechnical specialist are not subject to the Tye Core area slope steepness thresholds.*
- (75) *"Type D stream" means a stream that has domestic water use, but no fish use.*
- (76) *"Type F stream" means a stream with fish use, or both fish use and domestic water use.*
- (77) *"Type N stream" means a stream with neither fish use nor domestic water use.*
- (78) *"Unit" means an operation area submitted on a notification of operation that is identified on a map and that has a single continuous boundary. Unit is used to determine compliance with ORS 527.676 (down log, snag and green live tree retention), ORS 527.740 and ORS 527.550 (harvest type 3 size limitation), and other forest practice rules.*
- (79) *"Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.*
- (80) *"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.*
- (81) *"Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use*

by human activity.

GUIDANCE:

Water developments – are water bodies like those specifically mentioned in this definition that are not constructed in a stream. "Not part of a stream" means the man-made water bodies are not installed in any part of a stream nor in an area that was part of a stream before development (sloughs, flood channels, oxbows and the like). A heli-pond, excavated and maintained for that purpose where it collects runoff from a small swale, is a water development. In contrast, a pump chance built by excavating in a streambed above a road crossing culvert is part of the stream, and is part of a "water of the state", not a separate "water development."

A manmade, and maintained water body is a water development even though it receives water from or delivers water to a stream, such as drainage or irrigation ditches or canals that branch off of, but do not overlay or follow a natural stream channel.

"Maintained for the intended use" means that actions required to maintain the intended use are undertaken when needed.

By definition, water developments are not lakes, streams, or wetlands. However, some water developments are waters of the state, and protection practices described in rule for waters of the state would apply.

See the following definition of "waters of the state" for a discussion on the relationship of "waters of the state," "lakes," "streams," "wetlands," and "water developments."

(82) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

GUIDANCE:

Waters of the state- This is a standard definition used by state agencies. As shown in the following, this definition is related to the definitions for "lakes," "streams," "wetlands," and "water developments."

"Waters of the state" defines a broad category of waters, including all natural or artificial waters that form junctions with natural surface or underground waters. The definition exempts from this category any private waters that are isolated from natural surface or underground waters. Road drainage ditches are not waters of the state, provided that the ditches do not intercept water from or discharge water directly into lakes, streams, or wetlands. In addition, puddles on landings or roads are not waters of the state.

"Waters of the state" is used in many of the forest practice rule divisions requiring specific practices for resource protection. The rules typically (1) identify waters of the state as an umbrella category to generally describe waters that must be protected, and then (2) identify

specific protection practices that are applied only to defined **subsets** of the “waters of the state” category, i.e., lakes, streams, and wetlands. The Water Protection Rules (OAR 629-635 and 629-640) are an example of this method. In contrast, some rules require specific practices for protection of waters of the state **in general**; these rules usually involve keeping sediment or chemicals out of those waters. An example of this method is OAR 629-625-0400, which requires operators to keep road construction debris, sidecast, or waste from entering waters of the state.

(83) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in section (81) of this rule.

GUIDANCE:

Wetland - In some cases, wetlands may appear seasonally dry on the surface. Some wetlands may not show surface water at any time of the year. Surface water may be an indicator of wetland status, but the key factors are the presence of wetland vegetation and wetland soils.

ODF designates wetlands using procedures in the *1987 U.S. Army Corps of Engineers Wetland Delineation Manual (Manual)* along with any supporting technical or guidance documents issued by the department and other state or federal agencies for making wetland determinations for the area in which the wetlands are located. The *Manual* describes certain biologic and physical features, namely plants, soils, and signs of hydrology to establish criteria for verifying the presence or absence of wetland.

(84) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted

GUIDANCE:

Written plan - A written plan requires certain information to be included in the document in order for it to be considered a complete written plan. The purpose of a written plan is found in OAR 629-605-0170(6) and states that the written plan must contain enough information to allow the Forester to evaluate the likelihood that the operation or practice described in the plan would comply with the FPA.

The required elements of a written plan are identified in OAR 629-605-0170(7). This rule outlines the basic information required in the written plan to make such an assessment. If a document is submitted that does not contain this information, it is not considered a complete written plan and therefore does not satisfy the requirement to submit a written plan.