

STAFF REPORT

Agenda Item No:	I
Title and # of Issue:	Forest Regulation – Issue 6
Objective # & Title:	Objective 3: Effective and efficient implementation of the Forest Practices Act
Date of Presentation:	June 4, 2008
Contact Information:	Peter Daugherty, Deputy Chief Private Forests Division 503-945-7482 pdaugherty@odf.state.or.us

SUMMARY

At the April 29, 2008 meeting, staff recommended that the Board direct the Department to develop a temporary rule to address Intermediate Down Slope Public Safety Risk sites for consideration at its June Board meeting. The Board approved development of temporary rule language for consideration at its April 29, 2008 meeting.

BACKGROUND

Severe storms in 1996 were followed by robust policy and science discussions about landslides and forest operations. The Forest Practices Act now includes rules governing practices for operating on slopes with high landslide hazard locations with and without downslope public safety risk.

The rules for timber harvesting, road construction and maintenance, and reforestation without public safety risk are designed to minimize surface erosion, prevent steepening of slopes, limit changes in water flow and promote re-vegetation. There are additional rules and voluntary measures related to leaving trees where landslides are likely to deliver them to fish bearing streams.

Division 623, Shallow, Rapidly Moving Landslides and Public Safety Rules, was an outcome of the 1996 storms. These rules recognize that shallow rapidly moving landslides might be a public safety risk affected by forest operations and also that there is a high natural landslide hazard in certain locations. These rules articulate that in the short term, forest practices regulations can reduce the risk to people who are present in locations prone to shallow, rapidly moving landslides. In the long term, effective protection of the public can only be achieved through the shared responsibilities of homeowners, road users, forestland owners, and local governments. The purpose of the shallow rapidly moving landslides and public safety rules is to reduce the risk of serious bodily injury or death caused by shallow rapidly moving landslides directly related to forest practices.

CONTEXT

At the November 2006 Board meeting, the Board directed staff to develop draft amendments to the rules in Division 623 (Shallow, Rapidly Moving Landslides and Public Safety) to improve the intermediate risk rules and to improve the overall clarity, efficiency and effectiveness of the whole rule package. The Department has not yet completed this work.

The practices allowed under current rules do not necessarily reduce the level of risk in intermediate sites, and may increase the risks in some cases. This temporary rule removes the current practices allowed in rule and replaces these practices with a requirement for a geotechnical report prior to harvesting in these areas. A detailed, site-specific geotechnical analysis provides the best option for determining whether proposed operations would maintain the level of risk intended in ORS 527.710(10).

Temporary rule making is needed in this instance for the following reasons:

- The existing Intermediate Down Slope Public Safety Risk rule has been found to be scientifically unsupportable. There is a strong likelihood that current rules might increase the public safety risk directly related to forest practices, under certain conditions, rather than reducing the risk as required by statute.
- Field surveys conducted by the Oregon Department of Forestry indicate that some landowners are reluctant to harvest under current rules because the perceived risk associated with current allowed practices is too high.
- A geotechnical report, prepared as per the proposed temporary rule, would provide the landowner with increased certainty that areas of substantial and intermediate risk have been identified appropriately, and that remaining areas could be operated in safely with respect to public protection.

DISCUSSION

A temporary rule lasts up to 180 days and may not be extended. During this time, staff will develop a permanent rule to replace the temporary rule. In the event the permanent rule cannot be completed in this time frame, the temporary rule will expire and the existing rules will continue.

RECOMMENDATION

The Department recommends the Board adopt temporary rules amending OAR 629-623-0400 and delete OAR 629-623-0500.

ATTACHMENTS

- (1) Proposed Temporary Rule Language