

Agenda Item No:	6
Title and # of Issue:	Forest Regulation - Issue #6
Objective # & Title:	Obj. 2 -Effective and Efficient Implementation of the Forest Practices Act <i>Implications of the 2007-09 Budget</i>
Date of Presentation:	September 5, 2007
Contact Information:	Peter Daugherty, Program Director Private Forest Program 503-945-7482 pdaugherty@odf.state.or.us

SUMMARY

Pursuant to the discussions at the September 2006 Board meeting, the purpose of this agenda item is to discuss the outcome of the legislative session regarding Private Forests Program workload and staffing with consideration of the administrative rules adopted in September 2006. The two administrative rules are:

- Water classification: Riparian Management Areas Above Fish Barriers - amends OAR 629-635-0200(12)
- Leaving Green Trees and Snags Along Small Type N Streams Subject to Rapidly Moving Landslides - adopts OAR 629-640-0210

The Department requests Board approval to continue the implementation of the two rules as scheduled, while also using, if needed, the discretion within OAR 629-640-0210 to ensure that procedures and training are fully in place prior to “directing” retention. The Department believes that these rules can be implemented effectively and efficiently, and that impacts to other Department activities do not warrant less than full implementation of these rules.

CONTEXT

Objective 2 of the Forest Regulation Work Plan states that “When forest practice regulations are necessary, minimize the adverse financial effects of regulations that require private landowners to contribute forest resources to provide increased public benefits (*Forestry Program for Oregon* Action A.5).” This objective encompasses the completion of the revisions to the forest practices rules related to water protection. This objective is to be achieved through a science-based approach to rulemaking, as well as through an active monitoring program that provides a continuous evaluation of the Water Protection Rules.

In consideration of ORS 527.714, the Board has responsibility to decide on the implementation of revised water protection concepts through rule or other means. At its September 2006 meeting, the Board approved two rules to become effective on October 1, 2007. This implementation was contingent upon adequately addressing concerns regarding

workload given staff and budget reductions in the Private Forests Program and upon developing the necessary rule guidance and other supporting elements to implement the rules. The Board directed the Department to prepare a report discussing implementation of these rules in context of the 2007-09 budget and the outcome of the 2007 Legislative Session.

BACKGROUND

The Department and Board have been developing a revised set of draft water protection measures based on recommendations from the following:

- The Forest Practices Advisory Committee (FPAC) and the Eastside Riparian Functions Advisory Committee (ERFAC)
- Independent Multidisciplinary Science Team (IMST), which has scientific oversight of the Oregon Plan for Salmon and Watersheds
- The Water Quality Sufficiency Analysis completed by the Departments of Forestry and Environmental Quality in 2002.

Based on these recommendations, the Department developed a set of 18 concepts for revisions to the Water Protection Rules. The Board first reviewed the concepts in April and June 2003, and directed the Department to return with proposed rule language for each concept. Through 2003 and 2004, the Board considered each concept. The Department reviewed the concepts with the Regional Forest Practices Committees, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, and other interested parties. The Board has considered comment from these and other sources. By July 2004, the Board had completed its initial determinations on each of the concepts. For some concepts, the Board determined that more monitoring information was needed before the requirements in ORS 527.714 could be satisfied. The Board determined that other concepts were more appropriate as voluntary measures.

At its July 2004 meeting, the Board approved the proposed rule language for Rule Concept 1, Clarify Policy Statement, and Rule Concept 18, Small Type N Stream Monitoring.

The Board deferred action on Rule Concept 12, related to small non-fish-use streams (small Type N). At its November 2005 meeting, the Board also deferred action on Rule Concept 8 (basal area target increase for medium and small Type F streams in Western Oregon), directing the Department to return with alternatives for meeting the purpose of the proposed rule change. The Board, Department, and other interested parties are working on alternatives for Concepts 8 and 12, with the former receiving priority at this time.

At the November 2005 meeting, the Board also directed the Department to begin formal rulemaking for the following concepts:

- Rule Concept 3: Riparian Management Areas above Fish Barriers.
- Rule Concept 4: Wood from Debris Flows and Landslides.

For Rule Concepts 1, 3, 4, and 18, the Department issued public notice, with the comment period beginning on March 1, 2006. The Department held public hearings at the following times and locations:

- March 21, 2006 at Roseburg
- March 22, 2006 at Salem
- March 23, 2006 at Prineville

The Department received a few public comments at the hearings, but landowners, operators, and environmental interests submitted written comments through the public comment period that ended at 5:00 p.m. on April 17, 2006. The Department received written public comment for each of the four rule concepts.

At the July 28, 2006 meeting, the Board adopted rule language for Rule Concepts 1 and 18.

The Board also issued a statement of support for Rule Concepts 3 and 4 and asked that the Department return to the September 2006 Board meeting with information on the staff resources to implement these rule concepts. This discussion was to address:

- The workload associated with implementing these new rules and how this will be distributed between the Department and private landowners.
- The resources necessary to effectively implement these new rules.
- A discussion of priority and the effect on services if staff shifts resources to accommodate these new rule concepts.

At the September 6, 2006 Board meeting, the Department discussed these points. The Department estimated that the workload to be four full-time equivalents (FTE) for both private landowners and for the Department. The workload is shared by many individuals at different companies and at different District offices, and therefore cannot be addressed simply by adding staff. The effect on services within the Department will be to shift resources from discretionary tasks such as operation inspections, education, and assistance to administering this non-discretionary rule. The manner in which private landowners would handle the workload was not addressed.

The Board discussed scheduling implementation after the 2007 Legislative Session, the cumulative effect of additional tasks for staff, and the critical relationship with the landowners. Implementation of both rules was set for October 1, 2007, allowing additional time to develop maps and guidance, to incorporate the rules into private landowner planning processes, and to assess the outcome of the Legislative Session on the Department budget and staffing levels.

DISCUSSION

While developing maps and guidance has proven to be more difficult than originally thought, significant progress has been made on both fronts. Landowners have continued to work with staff, and the maps and guidance are now close to completion.

The 2007 Legislature partially funded the restoration of essential baseline level for the Private Forests Program. The Legislature funded seven out of fourteen requested positions (7 out of 13.69 FTE), and approximately 53 percent of the desired budget. The Department is currently planning the allocation of these resources, and tentatively plans to add two program staff and five field positions to address administration of the Forest Practices Act. The Department plans to restore the Stewardship Training Coordinator position and add a Geographic Information System (GIS) specialist to the Salem staff to support stewardship foresters. In retrospect, the loss of the training coordinator has had negative impacts on the capacity of stewardship foresters to carry out their duties. The training coordinator should improve the capacity of the existing stewardship foresters by ensuring training is offered on a regular basis and in a timely manner. The GIS specialist will also add capacity, by providing stewardship foresters with timely spatial information needed to carry out their duties. The Department is tentatively planning to allocate the field positions as three Riparian Specialists, one in each field area, and two additional stewardship foresters. The Forest Practices Advisory Committee recommended the development of the three riparian specialists. The riparian specialists are envisioned to be advanced-stewardship foresters, with proficiencies in riparian area management and administration of the Forest Practices Act. These positions are designed to assist landowners in addressing riparian rules in conjunction with local stewardship foresters. This approach will assist in the implementation of new rules while improving the capacity of all stewardship foresters to address these rules. The Department anticipates locating the two additional stewardship foresters in areas with the greatest challenges /workloads.

The Department reviewed the previous workload analysis of the new rules, and the estimate remains unchanged. The cumulative workload for the two new rules is estimated at approximately 4 FTE for the Department and 4 FTE for private landowners. The workload is distributed over many positions throughout western Oregon. The new positions partially offset this workload. While there is not additional staff capacity in each district that will be administering the rules, the additional support from the riparian specialists should help every office. In those Districts that do not receive additional stewardship foresters, these new rules will add workload to the non-discretionary tasks and reduce the discretionary time of the local stewardship foresters.

As described in Agenda Item 5, “Major Forestry Related Legislation”, additional unfunded workload has been created by several actions of the Legislature or by direction of the Governor to work on issues raised during the session (i.e., pesticide use). Implications of the referral to the voters to modify Ballot Measure are uncertain since the will of the voters will not be known until November 2007. Nonetheless, implementation of new rules carries some risk in terms of both workload and claims that might be made under either BM 37 or BM 49.

NEXT STEPS

The Department will continue work on the rule guidance and will give an update on progress of the guidance and maps as part of this agenda item. As part of the update, the Department will apprise the Board of issues about the guidance that reflect areas of concern by involved

parties and how those areas will be addressed by the implementation date. When completed, the Department will disseminate the maps and guidance for the new rules to all interested parties. The Department has scheduled training for Stewardship Foresters at the end of September 2007. Following this training and dissemination of the maps, the Department will be ready to implement these new rules. Stewardship foresters will communicate these changes to their local landowners and operators and prepare them for implementation.

The target date to begin implementation of these new rules remains October 1, 2007. The water classification rule change (OAR 629-635-0200 (12)) becomes effective on that date. In the event that the Department has not adequately prepared landowners and stewardship foresters for the landslides rule (OAR 629-640-0210) by October 1, the Department will not direct landowners to leave trees pursuant to the rule. The rule language gives the Department this discretion. The rules will not apply to notifications filed before the rules are implemented.

As a feedback loop, staff will conduct a survey of stewardship foresters and operators in April 2008 on the success and problems with implementation, and report the results of the survey to the Board at its June 2008 meeting. This will also allow staff to report on the impacts of the areas, such as BM 37/49, where workload and consequences remain uncertain.

RECOMMENDATION

The Department requests Board approval to continue the implementation of the two rules as previously scheduled for October 1, 2007. The Department believes that these rules can be implemented effectively and efficiently, and that impacts to other Department activities are not sufficient to warrant delay in implementation. The Department requests this approval, with the understanding that the Department will not direct action under rule OAR 629-640-0210, until the maps and guidance are completed, training is accomplished, and information has been shared with the landowner community.