# **01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

 **DIVISION OF REGULATION**

**Chapter 381: GENERAL REQUIREMENTS FOR WOOD TRANSACTIONS**

**SUMMARY**: This chapter of the *Wood Measurement Rules* covers the general requirements relating to the measurement of wood according to the type of wood transaction involved, and includes suspension of the privilege to measure wood out of state where payment for services is made.

SECTION 1: GENERAL PROHIBITIONS 1

SECTION 2: GENERAL REQUIREMENTS WHERE PAYMENT IS MADE FOR

 SERVICES IN HARVESTING WOOD 1

SECTION 3: GENERAL REQUIREMENTS WHERE PAYMENT IS MADE FOR SERVICES

 HAULING OR FOR BOTH HARVESTING AND HAULING 3

SECTION 4: REQUIREMENTS FOR WRITTEN CUTTING AND HAULING

 SPECIFICATIONS WHERE PAYMENT IS MADE FOR SERVICES 5

SECTION 5: GENERAL REQUIREMENTS IN THE SALE OF WOOD 6

SECTION 6: GENERAL REQUIREMENTS FOR A SALE OF STUMPAGE AND

 PAYMENT FOR SERVICES IN A COMBINED TRANSACTION 8

SECTION 7: SUSPENSION OF PRIVILEGE TO MEASURE WOOD OUT

 OF STATE WHERE PAYMENT IS MADE FOR SERVICES 8

**SECTION 1: GENERAL PROHIBITIONS**

A. **Underscaling or Overscaling**. In all wood transactions, no person who measures wood shall represent a weight, volume, quantity or dimension of wood which is less than or more than the weight, volume, quantity, or dimension of wood to be measured where the measurements made by that person are required to determine payment.

B. **Unauthorized systems of measurement**. In all wood transactions, no person who measures wood may use a system of measurement that is not authorized in Chapter 382 of these *Wood Measurement Rules*, except that the State Sealer WMR-381-1 may give temporary approval to a new system of measurement that has been proposed pursuant to 5 M.R.S.A. §8055 (Petition for rule-making). A temporary approval of a new system of measurement shall be based on a finding that

1. the parties to the transaction have agreed to use the proposed system; and

2. the proposed system appears reasonable and appropriate for its intended use.

 C. **Improper use of authorized measurement systems**. In all wood transactions, no person who measures wood shall use any authorized measurement system except in accordance with Chapter 382.

**SECTION 2: GENERAL REQUIREMENTS WHERE PAYMENT IS MADE FOR SERVICES IN HARVESTING WOOD**

 A. **Full Measure Required in Payment for Services in Harvesting**. All wood which is tendered for measurement shall be measured in full without regard to any scaling defects or other merchantability factors, and any deduction from gross scale is prohibited.

 1. The measurement procedures for gross scale are set forth in Chapter 382 §6. These measurement procedures provide for all reductions for quantity factors necessary for accurate measurement (e.g. excessive voids in a pile of wood).

 2. No reductions that are not provided for in these measurement procedures may be made by being described as a deduction for a quantity factor or by being described in any other way.

 B. **Limitations on Full Measurement Requirement**

 1. **Wood Not Designated to be Harvested**. Stems or pieces that were not designated to be harvested may be excluded from measurement provided the wood in question is handled as culled wood at the harvesting site, according to subsection D below.

 2. **Improperly Prepared Wood**. Stems or pieces that were not prepared as directed may be excluded from measurement provided the wood in question is handled as culled wood at the harvesting site according to subsection D below, and the person providing the services, after review of the wood in question, has not corrected the preparation after having been afforded a reasonable opportunity in which to do so.

 **NOTE**: The definition of "properly prepared" wood is in Chapter 380 §7. The determination of whether a piece or stem was properly prepared is based on whether it was prepared as directed, for example whether it was adequately butted back or out to the length designated in the cutting specifications. Under no circumstances may scaling defects, quality or grade considerations, or any other merchantability factors be treated as improper preparation.

 C. **Presumption**. All wood removed from the harvesting site is presumed to have been designated to be harvested and properly prepared except when the stems or pieces in question were handled as culled wood at the harvesting site, according to subsection D below. Any wood removed from the site without being handled as culled wood at the harvesting site according to subsection D below, shall be measured in full for purposes of payment for services.

 D. **Handling of Culled Wood**

1. **Determination of Culled Wood**. Any stem or piece that is tendered for measurement, but was not designated for harvesting or was improperly prepared may be culled provided the piece in question is culled at the harvesting site.

2. **Required Handling of Culled Wood**. The person requiring the services shall handle culled wood as follows:

(a) **Marking**. The person requiring the services shall mark the stem or piece in an easily visible and distinct manner. The culled wood shall be marked at the harvesting area and in advance of or at the time of measurement.

(b) **Reasonable Opportunity For Review and Correction**. The person requiring the services shall set the culled wood aside at the harvesting area so as to be accessible for review and correction, and after directing the attention of the person providing the service to the culled wood, shall afford the person providing the services a reasonable opportunity to review the wood and to correct the preparation. In the case of culled wood the preparation of which can not be corrected, the same opportunity for review shall be provided.

3. **Tally sheet Requirements for Culled Wood**. The person requiring the services shall indicate on the measurement tally sheet:

(a) the reason for culling based on the written cutting specifications,

(b) the number of culled pieces, and

(c) if the culled pieces are to be removed from the harvesting site, the total measurement of the culled pieces.

4. **Dispute on Culled Wood**. If the person providing the services believes the culled wood had been designated to be harvested and was properly prepared, he may file a complaint with the State Sealer and may give the person with possession or control of the wood notice to hold the wood because he will file or has filed a complaint. Chapter 384 of the *Wood Measurement Rules* governs such complaints and the notice to hold wood.

 **NOTE**: The culling of wood at the harvesting site does not require a licensed scaler, though it may be done by a scaler.

 E. **Cutting Specifications**

1. **Cutting Specifications Required**. Written cutting specifications shall be furnished to persons providing services in harvesting, in accordance with this Chapter, section 4.

2. **Measurement Required**. All wood that meets the cutting specifications shall be measured in full, regardless of whether the wood is hauled or otherwise processed.

3. **Failure to Provide**. When cutting specifications were not provided as set forth in this Chapter, section 4, all wood that was harvested and tendered for measurement shall be measured in full.

4. **Omission of Some Wood Designated to be Harvested**

When cutting specifications were provided but do not include some wood that was designated to be harvested, all of such wood that was designated in some other manner to be harvested shall be measured in full.

5. **Inclusion of Provisions for Taking Deductions**. The inclusion of any provision in the cutting specifications for taking deductions from gross scale is prohibited and shall be disregarded for purposes of payment.

F. **Prompt Measurement and Furnishing of Measurement Tally Sheet Required**. Prompt measurement and furnishing of the measurement tally sheets are required for payment for services in harvesting and shall be provided by the person requiring the service in accordance with Chapter 383.

**SECTION 3: GENERAL REQUIREMENTS WHERE PAYMENT IS MADE FOR SERVICES IN HAULING WOOD AND FOR SERVICES IN BOTH HARVESTING AND HAULING WOOD**

 A. **Full Measure Required**

 1. **Full Measure in Hauling**. All wood that was designated to be hauled and which was hauled, shall be measured in full without regard to any merchantability factor. Payment for services in hauling shall be based on the measurement procedure for gross scale set forth in Chapter 382 §6.

 2. **Full Measure in Both Harvesting and Hauling**. All wood that was designated to be harvested and hauled and which was harvested and hauled, shall be measured in full without regard to merchantability factor. Payment for services in harvesting and hauling shall be based on the measurement procedure for gross scale set forth in Chapter 382 §6 for each measurement system.

 B. **Limitation on Full Measurement Requirement**. Wood that was designated not to be hauled but was hauled may be subtracted from the total measure for purposes of payment for services to the person providing services in hauling, when

 1. the person providing the services was responsible for loading and he loaded wood which had been clearly marked as culled wood not to be hauled, or when the person providing the services was responsible for culling and marking the harvested wood that did not meet the written harvesting or hauling specifications and he loaded and hauled wood that did not meet the specifications, and

 2. the person requiring the services affords the person providing the services a reasonable opportunity to review the wood in question.

 C. **Culled Wood**

 1. **Method of Handling Culled Wood**. To subtract the culled wood from the total measure, the marked pieces may be measured separately or the person requiring the services may use an alternative method, provided the method of calculation is reasonable and furnished to the person providing services in writing in advance of performance of the services.

 2. **Dispute on Culled Wood**. If the person providing the services believes the culled wood had been designated to be hauled or harvested and hauled, he may file a complaint with the State Sealer and may give the person with possession or control of the wood notice to hold the wood because he will file or has filed a complaint. Chapter 384 of these *Wood Measurement Rules* governs such complaints and the notice to hold wood.

 D. **Written Specifications for Hauling or Both Harvesting and Hauling**

1. **Hauling**. The person requiring services in hauling shall furnish the person providing the services with written hauling specifications where required by this chapter §4(B).

2. **Harvesting and Hauling**. The person requiring in both harvesting and hauling shall furnish services the person providing the services with written cutting and hauling specifications in accordance with this chapter §4(A) and (B).

3. **Absence of Written Specifications**. In the absence of written specifications, all wood that was hauled shall be presumed to have been designated for hauling, or for both harvesting and hauling.

4. **Omission of Some Wood Designated To Be Hauled**. When hauling specifications were provided but do not include some wood that was designated in some other manner to be hauled, all of such wood that was hauled shall be measured in full.

5. **Inclusion of Provisions for Taking Deductions**. The inclusion of any provision for taking deductions in hauling specifications under any circumstances other than permitted in this section under paragraph B are prohibited and shall be disregarded for purposes of payment.

6. **Wood Harvested But Not Hauled**. In the event that a person requiring services in both harvesting and hauling designated in the written specifications wood to be harvested but not hauled, the person requiring the services shall measure that wood according to the requirements for payment for services in harvesting, set forth in section 2 of this chapter.

 E. **Prompt Furnishing of Measurement Tally Sheet Required**

 Prompt furnishing of the measurement tally sheets is required for payment for services in hauling and in both harvesting and hauling and shall be furnished by the person requiring the service in accordance with Chapter 383.

**SECTION 4: REQUIREMENTS FOR WRITTEN CUTTING AND HAULING SPECIFICATIONS WHERE PAYMENT IS MADE FOR SERVICES**

 A. **Cutting specifications**. Any person requiring services in harvesting wood shall furnish the person providing the services with written cutting specifications. The cutting specifications shall:

 1. Identify the trees that are to be harvested and yarded, such as by:

(a) species;

(b) Minimum butt diameter;

(c) Reference to a marked area in the case of clear cutting, or cutting a right of way; or

(d) Reference to marked trees in the case of selective cutting.

 2. Provide the directions for the preparation of the wood. Preparation of the wood may be by one or more of the following operations:

(a) Topping;

(b) Limbing, including the removal of forked stems;

(c) Butting back;

(d) Bucking; and

(e) Piling.

 3. Describe how culled wood will be marked.

 B. **Hauling specifications**. Whenever a person providing services in hauling wood is responsible for deciding which wood is to be hauled, the person requiring the services shall furnish the person providing the services with written hauling specifications which shall:

1. Designate the wood to be hauled, by species, production form, quality standards, type of marking, or otherwise.

2. Describe how culled wood that is not to be hauled will be marked.

3. Specify the hauling destination.

 C. **Form of cutting and hauling specifications**. Cutting and hauling specifications shall be:

1. Be in written or printed form;

2. Identify the person requiring the services; and

3. Be furnished in advance of performance of the services

 D. **Request by State Sealer**. Upon request, the person requiring the services shall provide the State Sealer with a copy of the written specifications.

**SECTION 5: GENERAL REQUIREMENTS IN THE SALE OF WOOD**

 A. **Wood Quality Specifications**

 1. **Requirements for wood quality specifications**. In a sale transaction, written wood quality specifications are required. The wood quality specifications shall:

 (a) Describe the wood which the buyer will purchase, including acceptable species, acceptable dimensions, and quality or grading standards. Any scaling defect or other merchantability factor for which a deduction may be taken shall be included in the wood quality specifications.

 (b) Describe how culled wood will be marked.

 2. **Sales contract terms control**. In the sale of wood, all wood that conforms to wood quality specifications which are included in a sales contract shall be measured by the terms of the sales contract and in accordance with the requirements of Chapter 382. Deductions from gross scale measurements are prohibited except for scaling defects or other merchantability factors where designated in the wood quality specifications.

 3. **Buyer's wood quality specifications**. In the absence of a sales contract, the measurement of wood tendered for sale shall be based on the buyer's wood quality specifications, provided the buyer furnishes the seller with the wood quality specifications in advance of either measuring or taking possession of the wood, whichever occurs first. To "furnish" the wood quality specifications includes handing a copy of them to the seller or his delivery agent at the time of his arrival at the delivery location, but does not include instructing the seller or delivery agent that the wood quality specifications are available or posted in some location.

 4. **Absence of buyer's wood quality specification**

 In the absence of wood quality specifications contained in a sales contract or furnished in advance by the buyer as required in paragraph (3), or when the wood quality specifications do not include scaling or other merchantability defects for which deductions will be made, all wood shall be measured in full using the measurement procedures for gross scale for the measurement system utilized, as provided in Chapter 382 §6, and no deductions from gross scale shall be taken.

 5. **Request by State Sealer**. Upon request, the buyer or seller shall provide the State Sealer with a copy of the wood quality specifications.

 B. **Handling of culled wood in a sales transaction**

 The parties may provide for the handling of culled wood in the sales contract or the wood quality specifications. In the absence of terms in the wood quality specifications providing for how the parties will deal with culled wood:

 1. The buyer shall notify the seller that he is holding culled wood (for example, notification may be a notation on the measurement tally sheet of the number of culled pieces).

 2 The buyer shall hold the culled wood for 10 days after giving the notice,

 3. The seller may deal with the culled wood by taking it back or by reaching another agreement with the buyer with respect to it; and

 4. If, after the expiration of 10 days, the seller has not dealt with the culled wood, the buyer may deal with it in any manner without measuring it for purposes of payment.

 C. **Measurement tally sheet requirements**. In the sale of wood, measurement tally sheets shall be provided in accordance with Chapter 383.

**SECTION 6: GENERAL REQUIREMENTS FOR A SALE OF STUMPAGE AND PAYMENT FOR SERVICES IN A COMBINED TRANSACTION**

 **Combined transaction**. Regardless of when title to the wood passes, whenever a buyer purchases stumpage from a contractor, landowner or other party and, as a part of the same transaction, that same contractor, landowner or other party (the seller) provides the services in harvesting the wood, or provides the services in both harvesting and hauling the wood,

 A. **Written specifications**. The stumpage buyer shall furnish that contractor, landowner or other party with written cutting, or cutting and hauling, specifications in advance of performance of the services, as provided in §4; and

 B. **Measurement in full**. The wood shall be measured in full using the measurement procedure for gross scale for the measurement system utilized, as provided in Chapter 382 §6, and no deductions from gross scale may be taken except as permitted in this chapter, Sections 2 and 3.

 **Note**: Ordinarily the purchase of stumpage is not combined with payment for services and is simply a sale transaction. See Chapter 380 §2(B) for further clarification of the purchase of stumpage or stumpage rights.

**SECTION 7. SUSPENSION OF PRIVILEGE TO MEASURE WOOD OUT OF STATE WHERE PAYMENT IS MADE FOR SERVICES**

 A. **In-state measurement required**. Under the following circumstances, wood harvested in the state of Maine shall be measured before being taken outside the state:

 1. Payment is made for services in harvesting or hauling, or in both harvesting and hauling, and is based on measurement of the wood; and

 2. The State Sealer, after investigation, has reason to believe that:

 (a) There has been inaccurate measurement of wood; or

 (b) The measurement of wood was inaccurately or incompletely represented on the measurement tally sheet; or

 (c) A measurement tally sheet was not promptly furnished, as required in §1 or 2, depending on the services provided; and

 (d) The occurrence of any of the alleged violations described in (a) through (c) above was not an inadvertent error.

 3. For purposes of paragraph (2), the State Sealer has "reason to believe" that one of the alleged violations described in paragraph (2), subparagraphs (a) through (c) has occurred, when, following an investigation in which the person requiring services has an opportunity to present evidence to the contrary, the State Sealer believes that the violation occurred and finds that the evidence to the contrary presented by the person requiring services is insufficient to rebut that belief.

 B. **Order suspending privilege to measure out of state**

 1. Where the State Sealer has reason to believe that a violation has occurred and was not the result of inadvertent error, the person requiring services, for a period of one year, is not allowed to remove wood from the state before it is measured. The State Sealer shall issue an order to that effect to the person requiring services which shall be sent by certified mail and shall state:

(a) That the order becomes effective 30 days from the date it is received;

(b) That the order requires measurement before wood leaves the state only where payment is made for services and is based on the measurement of the wood;

(c) That the order remains in effect for a one year period; and

(d) That the order shall not be stayed except by a request for bearing or an order of a court of competent jurisdiction.

 2. The State Sealer shall send a copy of the order to any person providing services whom he finds to have been aggrieved by the violation.

 C. **No order issued**. In a matter investigated under this section, if the state Sealer believes that a violation did not occur and he does not issue an order under subsection B, he shall so notify the person or persons, if any, whose allegations led to the investigation. The notice shall be in writing and shall be sent by certified mail.

 D. **Hearing**

 1. In a matter investigated under this section, following the State Sealer's decision whether to issue an order, a hearing may be requested:

 (a) If the State Sealer issues an order under subsection B, by the person to whom the order is directed; or

 (b) If the State Sealer issues a notice under subsection C, by a person to whom the notice is sent.

 2. The request for hearing shall be in writing and shall be delivered to the State Sealer or, if mailed, postmarked no later than 15 days after receipt of an order under subsection B or a notice under subsection C.

 3. The State Sealer shall hold a hearing within 30 days of receipt of a request, unless a later date is agreed to by the State Sealer and the parties. The hearing shall be an adjudicatory proceeding within the meaning of the *Administrative Procedure Act* (5 M.R.S.A. Chapter 375).

 4. An order issued under subsection B shall be suspended pending the outcome of the hearing.

 E. **Measurement tally sheet requirements**. Where an order suspending the privilege to measure out or state is in effect, measurement tally sheets shall be provided in advance of moving the wood out of state and in accordance with the general requirements for measurement tally sheet contained in Chapter 383.

STATUTORY AUTHORITY: 10 M.R.S.A. §2361-A *et seq*.

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