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

 **DIVISION OF REGULATIONS**

**Chapter 384: WOOD MEASUREMENT RULES - COMPLAINTS AND INVESTIGATIONS**

**SUMMARY**: This chapter of the *Wood Measurement Rules* establishes procedures for filing complaints relating to violations of the *Wood Measurement Law* and these *Wood Measurement Rules* and for the handling of those complaints by the State Sealer, including investigation and check measurement. Also included are provisions dealing with investigations and check measurements on the State Sealer's own initiative.

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**SECTION 1. FILING OF WOOD MEASUREMENT COMPLAINTS**

 **NOTE**: A sample wood measurement complaint is in the appendix, page A-19.

 A. **Who may file a complaint**. Any person who believes that he has been aggrieved by a violation of the *Wood Measurement Law* or these *Wood Measurement Rules* may file a complaint with the State Sealer. The address and phone number of the State Sealer are:

State Sealer

Department of Agriculture, Conservation and Forestry

Division of Regulations

28 State House Station

Augusta, ME 04333

(207) 287-3841 (From 7:30 A.M. to 5:00 P.M. weekdays this number will be answered.)

 B. **Form of complaint**. The complaint may be made either orally or in writing. If the complaint is made orally:

 1. The State Sealer shall prepare a written complaint.

 2. The State Sealer may also require that the complainant submit his complaint in writing, postmarked no later than 5 days after the date of the oral complaint.

 C. **Contents of complaint**

1. Whether oral or written, the complaint shall contain, at minimum, the name, address, and phone number of the complainant and any other person on behalf of whom the complaint is filed and a brief statement of the facts surrounding the alleged violation.

2. If known, the complaint shall also contain the following information, except that if any of the information is not included or is later found to be in error a timely complaint will not be deemed invalid:

(a) The name and address of the other party to the wood transaction;

(b) The name and address of the person who measured the wood;

(c) The name and address of any other person whose conduct is also complained of;

(d) The name, address, and phone number of the owner of the stumpage;

(e) The date the complainant discovered the alleged violation or violations;

(f) If relevant, location and description of the wood in enough detail to identify the wood;

 (g) If relevant, whether the person in possession or control of the wood has been notified to hold the wood and, if so, the date that notification was made.

**SECTION 2. STATE SEALER'S DETERMINATION OF TYPE OF COMPLAINT AND OF RESPONDENT**

 Upon receipt of a complaint, the State Sealer shall determine whether the complaint is for disputed wood, or whether it is a general complaint.

A. **Disputed wood complaints**. Whenever the alleged violation is that specific wood was inaccurately measured, the complaint is for disputed wood.

B. **General complaints**. Any complaint which alleges any other type of violation is a general complaint. Examples of general complaints are:

1. Conversion from weight scale to another system of measurement for purposes of computing payment or price;

2. Use of an unauthorized system of measurement or improper use of an authorized system;

3. The taking of deductions for scaling defects where payment is made for services;

4. Refusal to measure wood that was designated to be harvested and yarded and was prepared as directed;

5. Failure to promptly furnish a measurement tally sheet, or

6. Non-compliance with licensing requirements.

C. **Complaints alleging more than one violation**. Whenever a complainant alleges more than one violation, the State Sealer shall separately consider and handle each of the alleged violations.

D. **Determination of respondent to the complaint**

1. In addition to the other party to the transaction, the State Sealer, based on the nature of the complaint, may name as a respondent any other party or person who may have participated in the alleged violation.

2. Following the investigation, the State Sealer, based on the information obtained during the course of the investigation, may name additional respondents.

**SECTION 3. TIME REQUIREMENTS FOR FILING COMPLAINTS**

A. **Disputed wood complaints**. A complaint that specific wood has been inaccurately measured shall be made within 15 days from the date on which the complainant discovered the alleged inaccurate measurement of the wood.

B. **General Complaints**. A complaint other than a disputed wood complaint shall be made within a reasonable time after the complainant discovers the alleged violation, as determined by the State Sealer.

C. **Consequences of filing a disputed wood complaint more than 15 days after discovery of the inaccurate measurement of the wood**

 1. Whenever the State Sealer receives a complaint that is for the inaccurate measurement of specific wood and the State Sealer determines that the complaint was made more than 15 days from the date of discovery of the alleged violation, the State Sealer shall notify the complainant that no investigation of the complaint will be made, stating:

(a) That the State Sealer has reasonable grounds to believe the complaint was not timely filed and stating the reasons for that belief;

(b) That the private right of action afforded under the *Wood Measurement Law* (10 M.R.S.A. §2368(2)) is not available to an aggrieved party in the case of an untimely complaint for disputed wood; and

(c) That the unavailability of a remedy under the *Wood Measurement Law* does not modify any contract rights or other remedies under law that may be available to the aggrieved party.

2. The notice that no investigation of the complaint will be made shall be sent to the complainant by certified mail. The notice will not be sent to any other person, except that if the person in possession or control of the wood was given a notice to hold wood or an impoundment order was issued, then the person in possession or control of the wood and any other party to the wood transaction shall also be notified in writing that the complaint has been dismissed.

**SECTION 4. ADDITIONAL PROCEDURES RELATING TO DISPUTED WOOD COMPLAINTS**

 A. **Notice to hold wood**

 1. **Notice by complainant**. The complainant may, if he chooses, give notice to the person with possession or control of the wood to which the alleged violation relates that a complaint has been or will be filed and that he wants the wood to be held. The notice is effective if the wood can be separately identified at the time the notice is received. Notice to hold wood may be oral or written.

2. **Notice given before complaint filed**. If the complainant gives notice to the person with possession or control of the wood before he files the complaint, he must file the complaint on or before the 4th day after the day on which he gives that notice, but in no case later than 15 days from the date of discovery of the alleged violation.

3. **Effect of notice**. If the complainant gives notice to the person with possession or control of the wood that a complaint has been or will be filed, that person may not thereafter cause or allow the wood, if it can be separately identified, to be removed, cut, or otherwise processed so that it can no longer be separately identified and check measured, until permitted to do so by an order of the State Sealer.

(a) However, if the person with possession or control of the wood does not receive an order impounding the wood from the State Sealer within 12 days after receiving the notice to hold wood from the complainant, he may, after the 12th day, remove, cut, or otherwise process the wood.

(b) The person with possession or control of the wood may move the wood, provided the following requirements are met:

(i) He must maintain the form of the wood and its separate identity.

(ii) He may move it only once and only to a place at which it is no less convenient for the State Sealer to check measure or otherwise investigate the wood.

(iii) At that time the wood is moved, he must inform the complainant and the State Sealer of the location to which the wood will be moved. He may inform them orally or in writing, but if he does so orally the State Sealer may require that he also provide the information in writing.

(iv) The wood may not be moved again unless written prior permission is obtained from the State Sealer.

(c) Upon receipt from a complainant of a notice to bold wood, the person in possession or control of the wood may himself contact the State Sealer. if notification from the person in possession or control of the wood is received before the complaint is filed, the State Sealer may not investigate until the complaint is made.

 B. **Impoundment of disputed wood**. Within 4 days of receipt of a complaint alleging that specific wood was inaccurately measured and stating that a notice to hold wood was given, the State Sealer may issue an order impounding the wood, as provided in subsection 5. However, if the State Sealer issues an impoundment order later than 4 days after receipt of the complaint, the order is still valid, provided the wood can be separately identified.

**SECTION 5. IMPOUNDMENT OF WOOD**

A. **Authority**. Whenever the State Sealer believes that a violation of these *Wood Measurement Rules* may have occurred and that impoundment of wood is reasonably necessary for the furtherance of the investigation, the State Sealer may issue an order impounding wood.

B. **Impoundment order**. To impound wood, the State Sealer shall issue an order to the person with possession or control of the wood, identifying the wood to be impounded and ordering the person not to remove, cut, or otherwise process the impounded wood until he is permitted to do so by further order of the State Sealer.

1. An impoundment order may be given either orally or in writing.

2. If the impoundment order is given orally, within 4 days of giving the oral order the State Sealer shall send a written order by certified mail to the person with possession or control of the wood.

3. The State Sealer shall send a copy of any written impoundment order to the parties to the wood transaction, if known.

C. **Release of impounded wood**

 1. Upon completion of the check measurement or other examination of the wood, the State Sealer shall issue:

(a) An order releasing any wood impounded in the investigation; or

(b) An order continuing the impoundment, if be determines that further investigation is likely and that continued impoundment is therefore reasonably necessary.

 2. At the time the State Sealer issues his determination and findings under section 12, he shall release any wood impounded in the investigation and not yet released. However, if the State Sealer determines that continued impoundment is necessary, he may apply to the court for an order continuing the impoundment and the State Sealer's impoundment order remains in effect until the application to the court is granted or denied.

**SECTION 6. NOTIFICATION TO RESPONDENTS**

 A. **Notification required**

 1. **Disputed wood complaint**. Following issuance of an impoundment order, and no later than the date of check measurement, the State Sealer shall furnish the respondents to the complaint with a statement of the alleged inaccurate measurement. If no wood is impounded or check measured, the State Sealer shall furnish the respondents with a statement of the alleged inaccurate measurement within 10 days of receipt of the complaint.

2. **General complaint**. The State Sealer shall furnish the respondents with a statement of the alleged violation within 10 days of receipt of the complaint and in no case later than the date a check measurement is undertaken.

3. **Spot checks**. Whenever the State Sealer conducts a spot check of the measurement of wood, and regardless whether the spot check is in response to a complaint, the State Sealer is not required to provide notice to the person with possession or control of the wood in advance of the date of the check measurement.

 B. **Disclosure of complainant**

 During the investigation of any complaint, the State Sealer shall not reveal the name of the complainant, except where reasonably necessary for the furtherance of the investigation and after obtaining consent from the complainant.

 C. **Method of notification**. The State Sealer shall notify the respondents in writing of the alleged violation, and this notification shall be made by certified mail postmarked no later than the date the State Sealer is required to furnish the notification.

**SECTION 7. INVESTIGATION OF DISPUTED WOOD COMPLAINTS**

A. **Investigation required**. Upon timely receipt of a complaint for disputed wood, the State Sealer shall investigate the complaint.

B. **Methods of investigation**. As part of the investigation the State Sealer may:

1. Subpoena such witnesses and documents as may be necessary for the furtherance of the investigation;

2. Cause the disputed wood to be impounded, in accordance with section 5, if it can be separately identified;

3. Conduct a check measurement of the wood in accordance with section 9;

4. Engage in informal fact-finding meetings and interviews with the complainant, the respondent, and any other person whose statement may provide information or evidence;

5. Use such other methods that are reasonably necessary for the furtherance of the investigation.

**SECTION 8. INVESTIGATION OF GENERAL COMPLAINTS**

 Whenever a general complaint is filed and the State Sealer determines that a violation may have occurred, he shall conduct an investigation of the complaint which may include any of the procedures or methods provided for in section 7, except that if the State Sealer determines that impoundment is reasonably necessary for the furtherance of the investigation, be shall impound only where the wood can be separately identified and he may impound wood no more than 24 hours in advance of examining the wood in question.

**SECTION 9. CHECK MEASUREMENT**

 A. **Licensed wood scaler required**. Whenever a check measurement is conducted, the State Sealer shall cause the check measurement to be performed by a wood scaler who is licensed to use the system of measurement involved, in accordance with Chapter 384 of these *Wood Measurement Rules*, and who is either a State employee or a person under contract to the State.

 B. **Check measurement procedures**

1. **System of measurement**. The State Sealer shall check measure the wood using the same system of measurement that was used or will be used to measure the wood, provided the method is authorized for the wood production form involved.

2. **Method of measurement**. The State Sealer shall conduct the check measurement according to the procedures set forth in Chapter 382. When a check measurement involves the use of butt scale, the provisions of subparagraph (a) shall also apply. When a check measurement involves a determination of moisture content of stems or pieces, the determination shall be made according to subparagraph (b).

 (a) **Butt scale check measurement**

 (i) The State Sealer shall measure the cubic volume of the wood by computing the cubic volume either of each individual stem, or of each individual stem in a representative sample, as the State Sealer determines to be appropriate, and adding together the individual cubic volumes. If the State Sealer chooses to use a representative sample, he shall select the individual stems which shall constitute the sample. When the check measurement is made in the investigation of a disputed wood complaint, the sample shall be representative of the stems the measurement of which is in dispute. In other investigations, the sample shall be representative of the wood involved in the investigation.

 (ii) The cubic volume of individual stems shall be conducted as follows:

 AA. Diameters shall be measured at the butt end, at two feet from the butt, at four feet from the butt, and at four foot intervals to the top. The length of the top segment, if less than four feet, shall be measured to the nearest one-tenth foot. Diameter measurements shall be taken outside the bark, except that inside bark measurements or volumes may be used where the wood quality specifications state that the factor used to convert cubic feet to standard cords is based on inside bark measurement or on inside bark volumes.

 BB. Unless an alternative formula been authorized by the State Sealer, the cubic foot content of each segment will be computed by means of the formula:

V = (A + a)/2 x L

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where V is the volume, in cubic feet, of the stem segment, A is the area in square feet of the large end, a is the area in square feet of the small end of the stems segment, and L is the length of the segment measured. The total cubic foot content of the separate segments shall be added together to compute the cubic foot content of the stem.

CC. Where the volume is represented in standard cords, the following conversion factors shall be used:

**softwood** - 85 cubic feet of wood including bark equals one standard cord,

**hardwood** - 80 cubic feet of wood including bark equals one standard cord,

except that where the parties have agreed to an alternative reasonable and appropriate conversion factor and that conversion factor is set forth in the wood quality specifications, then, this alternative factor shall be used to calculate the number of standard cords.

(b) **Moisture content determination**. Whenever a determination of the moisture content of stems or pieces is required, the check measurement shall be conducted as follows:

 (i) The State Sealer shall make his selection of sample points on a random basis, first selecting a minimum of ten stems or pieces and then selecting a specific sampling point on each stem. In cases where the removal of a sample disc would ruin a stem or piece for processing purposes, the sample point will be moved to the nearest end of the shortest standard length specified for the production form involved.

 (ii) The samples will immediately be placed in a Moisture proof bag. The bag shall be sealed after excluding excess air and a tag shall be attached giving the following information: Sample number, date sample taken, species of wood in the load, gross weight, tare weight, name of seller and buyer or name of person requiring services and person providing services, point of delivery, and name of person selecting and taking the sample discs. Samples will be stored in a cool, dark place until they are tested.

 (iii) The State Sealer will determine the weight of the sample prior to drying and its oven-dry weight. He will then compute the percent moisture content using the formula:

 C. **Tolerance for error**

1. **Acceptable tolerances**. Whenever a check measurement is conducted, the measurement of wood shall not be deemed to be inaccurate where the quantity computed on check measurement is within + 4% of that computed in the measurement of the wood.

2. **Error within acceptable tolerance**. Where the deviation is within the acceptable range of tolerance, the State Sealer may in any event require that any measuring equipment, volume tables, or methods of measurement be adjusted to have a value or give a performance closer to zero error.

**SECTION 10. INVESTIGATIONS AND CHECK MEASUREMENT ON THE STATE SEALER'S INITIATIVE**

 The State Sealer may, on his own initiative and without any complaint, conduct such investigations and check measurements as he deems necessary to verify and ensure compliance with the requirements of the *Wood Measurement Law* and these *Wood Measurement Rules*.

A. **Notice not required**. The State Sealer is not required to give notice to any person before undertaking an investigation or check measurement on his own initiative.

B. **Check measurement procedures**. Check measurements conducted under this section shall be performed in accordance with section 9.

C. **State Sealer's powers**. At any time during or after an investigation or check measurement under this section, the State Sealer may:

1. Notify any person whose interests may be affected by the matter investigated or the check measurement;

2. Invite persons whose interests may be affected to meet to discuss the matter investigated or the check measurement.

 D. **Violations**. Whenever, as a result of such an investigation or check measurement, the State Sealer has reason to believe that a violation of the *Wood Measurement Rules* has occurred, the State Sealer may issue preliminary findings and a determination and written findings as set forth in sections 11 and 12.

**SECTION 11. PRELIMINARY FINDINGS AND OPPORTUNITY FOR WRITTEN RESPONSE**

A. **Preliminary findings**. Within 20 days of the filing of the complaint the State Sealer shall send a copy of his preliminary factual findings to the complainant and respondents by certified mail, except that if the State Sealer cannot issue the findings within 20 days, he shall so advise the complainant and respondent in writing and shall state the date by which he expects to be able to issue them.

B. **Opportunity for written response**. Upon receipt of the preliminary findings the complainant and respondents shall have an opportunity to file a written response with the State Sealer, setting forth specific items of disagreement and grounds for the disagreement.

1. The written response must be received by the State Sealer no later than 10 days after receipt of the preliminary findings. Any extension shall be permitted only where agreed upon by both the complainant and the respondents.

2. The State Sealer shall only consider items of disagreement that are submitted in writing and which address:

(a) Relevant factual errors;

(b) Relevant omissions of facts, or

(c) Relevant issues and questions concerning interpretations of law.

3. The State Sealer shall mail a copy of any response received to the other parties to the complaint.

4. The State Sealer is not required to permit the other parties to a complaint the opportunity to rebut any written response, except where, as a result of the response, the State Sealer amends or reverses his preliminary findings.

C. **Amended or reversed Preliminary findings**. if, as a result of a written response, the State Sealer amends or reverses his preliminary findings, the revised preliminary findings are again subject to the requirements of subsection A and B relating to the opportunity for written responses.

**SECTION 12. STATE SEALER'S DETERMINATION AND WRITTEN FINDINGS**

A. **Determination and written findings required**. After considering the results of the investigation and any written response to preliminary findings, the State Sealer shall make and issue a determination whether there are reasonable grounds to believe a violation has occurred. The determination shall be accompanied by a written statement of findings.

B. **Contents of determination and findings**. The determination and findings of the State Sealer shall include:

1. A brief description of the alleged violation;

2. The results of the investigation and a summary of the evidence relied upon; and

3. Determinations reached on the allegations in the complaint.

C. **Mailing of determination and findings**. The State Sealer shall send a copy of the determination and findings by certified mail to:

1. The complainant;

2. The other parties to the wood transaction;

3. The person who measured the wood;

4. Any other person whose conduct was complained of;

5. If known, the owner of the stumpage of the wood to which the complaint relates, if other than one of the above named persons.

D. **Accompanying notice required**. The State Sealer shall send, with the written findings, a notice which shall indicate what further action will be taken, if any, and which shall state that:

1. A determination that a violation of the *Wood Measurement Law* or these *Wood Measurement Rules* occurred is not binding upon the parties except by order of a court of law. Regardless of the determination, the State Sealer has no power to order adjustments in payment to be made.

2. The State Sealer is authorized to apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of the *Wood Measurement Law* or these *Wood Measurement Rules*.

3. A violation of the *Wood Measurement Law* or these *Wood Measurement Rules* is punishable by the civil penalties of a fine not to exceed $1,000 for the first offense and $2,000 for each subsequent offense and that these civil penalties may be recovered by the State Sealer on behalf of the State in a civil action.

4. The complainant has a right to bring a civil action for damages against any person who has violated any provision of the *Wood Measurement Law* or of these *Wood Measurement Rules* and that the civil action for damages may be brought by either the aggrieved party or, at the request of the State Sealer, by the Attorney General.

5. A judgment in favor of a complainant in an action brought to recover damages may include, in addition to the actual damages adjudged to be due, a reasonable rate of interest, an additional amount as liquidated damages equal to twice the amount of actual damages, and costs of suit including a reasonable attorney's fee.

6. Both the District Court and the Superior Court have jurisdiction of cases under the *Wood Measurement Law* and these *Wood Measurement Rules*, depending on the nature of the case and the remedy sought.

 E. **Time requirements for determination and findings**

1. **No written responses submitted**. Where no written responses were filed under subsection B, the State Sealer shall issue the determination and findings within 15 days of issuance of the preliminary findings, except that if the State Sealer cannot issue the determination and findings within 15 days, he shall so advise the complainant and respondent in writing and shall state the date by which he expects to be able to issue them.

2. **Written response submitted**. Where a written response was filed under subsection B, the State Sealer shall issue the determination and findings, or the amended or reversed preliminary findings, as the case may be, within 20 days of receipt of the written response, except that if the State Sealer cannot issue the determination and findings of the amended or reversed preliminary findings within 20 days, he shall so advise the complainant and respondent in writing and shall state the date by which be expects to be able to issue them.

**SECTION 13. INFORMAL RESOLUTION OF DISPUTE**

 Throughout the complaint procedures, the State Sealer may assist the parties in reaching a voluntary resolution of the wood measurement dispute, including settlement of any payment alleged due.

**SECTION 14. ADDITIONAL CONSEQUENCES OF FAILURE TO FURNISH PROPER MEASUREMENT TALLY SHEET OR FAILURE TO OBEY AN IMPOUNDMENT ORDER OR A NOTICE TO HOLD WOOD**

A. **Separate Violation**. A person with possession or control of wood who received an impoundment order or a notice to hold wood, regardless of whether he is one of the persons whose conduct is complained of, is in violation of these *Wood Measurement Rules* if be causes or allows the wood to be removed, cut or otherwise processed such that it can no longer be separately identified.

B. **Presumption of Violations**

1. **Underscaling**. Where a person whose conduct is complained of for underscaling has not furnished a completed measurement tally sheet as required in Chapter 383, he shall be presumed by the State Sealer to have committed the violation of underscaling. The person whose conduct is complained of may offer evidence to rebut the presumption.

2. **Presumption of alleged violation**. Where in conjunction with an investigation of an alleged violation, a person has failed to obey an impoundment order or a notice to hold wood, the State Sealer shall presume that the person has committed the alleged violation. The person whose conduct is complained of may offer evidence to rebut the presumption.

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

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