

**MFS Rule - Chapter 23
Timber Harvesting Standards
to Substantially Eliminate
Liquidation Harvesting**

Effective Date: 02 January 2005

**MAINE DEPARTMENT OF CONSERVATION
MAINE FOREST SERVICE**

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04 DEPARTMENT OF CONSERVATION
058 BUREAU OF FORESTRY
Chapter 23: TIMBER HARVESTING STANDARDS TO SUBSTANTIALLY
ELIMINATE LIQUIDATION HARVESTING

AUTHORITY. 12 MRSA, c. 805, sub-c. 3-A; Public Law 2003, c. 422.

SUMMARY. This rule establishes standards for timber harvesting on lands that are sold or offered for sale within five years of the date of purchase of the parcel. It also specifies circumstances which are exempt from these rules.

SECTION 1. PURPOSE

The purpose of this rule is to substantially eliminate the practice of liquidation harvesting. The Legislature has defined liquidation harvesting as “the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years.”¹

SECTION 2. AMENDMENTS TO MAINE FOREST SERVICE CHAPTER 20 (FOREST REGENERATION AND CLEARCUTTING STANDARDS)

Sections 4.D. and 4.E. of this rule constitute amendments to Sections 2.A.14, and 2.A.19 of MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards) as adopted on April 28, 1999.

SECTION 3. SCOPE AND APPLICABILITY

A. SCOPE. This rule establishes timber harvesting standards for forest lands in Maine which are purchased or acquired after the effective date of this rule, and harvested and sold or offered for sale within five years of acquisition.

Unless an exemption applies, it is a violation of this rule and of the statute if a landowner conducts timber harvesting on a parcel without complying with this rule and then sells, offers for sale, the parcel, or any portion thereof, within five years of its acquisition.

B. APPLICABILITY. Whenever provisions of this rule are less stringent than corresponding provisions of applicable federal, state, or municipal law or regulations, the more stringent provisions apply.

SECTION 4. DEFINITIONS

For the purpose of 12 MRSA, Chapter 805, sub-chapter 3-A and this rule, the following terms are defined as follows. Unless otherwise provided herein, this rule incorporates by reference the definitions contained in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards).*

A. **Acceptable Residual Trees** means live trees of commercially valuable species that are not culls, are capable of developing into trees suitable for producing merchantable products, and which:

1. Have survived at least two growing seasons (April 1 through October 1);
2. Do not lean more than 30 degrees from vertical;
3. Do not have a broken, dead, or missing main stem;

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4. For trees 8 inches DBH or larger, have not suffered scrapes from timber harvesting that penetrate the cambium on more than one third of the stem circumference at any point on the tree;
5. For trees less than 8 inches DBH, have not suffered scrapes from timber harvesting that penetrate the cambium on more than one third of the stem circumferences at any point on the tree; and
6. Have not suffered visible severing, mutilation, or exposure from timber harvesting of more than one third of the root spread; and
7. Trees have thirty-five percent or greater evidence of insect, disease, or other defect in the crown or bole are not acceptable; and
8. There are a minimum, on average, of six hundred trees per acre that are at least three feet in height for softwood trees and five feet in height for hardwood trees meeting the requirements of 1 through 7 above; or
9. A minimum, on average, of three hundred and seventy-five trees per acre at least ten feet in height for softwood trees, and twenty feet in height for hardwood trees meeting the requirements of 1 through 7 above; or
10. A minimum, on average, of thirty square feet of basal area of trees having a DBH of 4.5 inches and larger meeting the requirements of 1 through 7 above.

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B. Certified Master Logger means a timber harvester certified under the Master Logger Certification Program, a program administered by the Professional Logging Contractors of Maine, a non-profit corporation of Maine, according to standards promulgated by that program dated 01 April 2003.

C. Certified Resource Manager means a licensed forester whose sustainable forest management of a client's forest lands is verified by an independent 3rd party audit.

D. Forest Land means land primarily covered with trees, and where commercial timber harvesting is not precluded by legal requirement.

E. Forest Stand means a contiguous group of trees sufficiently uniform in age class, distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

F. Independent 3rd Party Certification means a system that verifies that forest management is consistent with a certification program's standards through an independent 3rd party audit of the management of forest lands. To be considered an "independent 3rd party certification" system:

1. The certification program, including but not limited to the standards for awarding certification and the protocols for ascertaining compliance must be developed and administered by an entity with no financial interest in the entity seeking certification except by reason of the contract for certification services;
2. The organization retained to perform the certification audit must receive no financial benefit from timber harvesting on the land or by the entity being audited, except for the contractual relationship for the audit service.

H. Liquidation Harvesting means the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest manage-

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ment principles, and the subsequent sale or attempted resale of the harvested land within 5 years.

I. Internal Transfers. The following transactions shall not be considered a sale, offer for sale or conveyance:

- Any transfer of title in connection with a merger, consolidation or reorganization of the landowner;
- Transfer of title to a parent, subsidiary sister corporation or other affiliated company of the transferor; or
- Any transfer of ownership interest among current owners of the timberland.

H. Parcel means the contiguous area within one municipality, township, or plantation owned by one person or group of persons in common or joint ownership.

I. Responsible party means all of the following persons or entities, jointly and severally:

1. The landowner, or landowners, who owned the property at the time a timber harvest subject to this rule was conducted;
2. The landowner's designated agent at the time a timber harvest subject to this rule was conducted;
3. The Licensed Forester and/or the employer of the Licensed Forester who:
 - a. Signed the harvest plan for a timber harvest subject to this rule; or
 - b. Supervised a timber harvest subject to this rule; or
 - c. Certified that a timber harvest subject to this rule was conducted in accordance with a timber harvest plan required by this rule.
4. The timber harvester who conducted a timber harvest subject to this rule.

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M. Timber Harvesting means the cutting or removing of timber for the primary purpose of selling or processing forest products.

N. Timber Harvest Plan means a site specific document signed by a Licensed Forester outlining proposed timber harvesting activities that are consistent with the standards established in this rule.

O. Timberland has the same meaning as "forest land" in this rule.

SECTION 5. EXEMPTIONS

This chapter does not govern timber harvesting on forest lands that meet one or more of the following conditions:

A. Where the land is purchased before or held for at least 5 years following the effective date of these rules. Any land that is exempt from this rule remains exempt, notwithstanding the acquisition of contiguous land subject to this rule;

B.

Where the harvesting is on land that has been purchased and received independent 3rd party certification, provided that, within 5 years of a land purchase, the landowner can produce a

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certificate at the request of the Maine Forest Service.

- C. Where the land is managed and the timber harvest is supervised by a Certified Resource Manager;
- D. Which are within a parcel of land containing 1,000 acres or less that is harvested by a Certified Master Logger according to a forest management plan prepared by a Licensed Forester, and the Forest Operations Notification is signed by the Certified Master Logger;
- E. Where the landowner owns less than 100 acres of timberland, total ownership statewide;
- F. Where the landowner has obtained, prior to commencing timber harvesting, the necessary permit or permits from a federal, state, and/or local governmental entity to change the land use from forest land to a nonforest use (i.e., for development or agriculture). The area exempted shall be that area that is actually to be converted. A copy of the permit or permits must be submitted with the Forest Operations Notification. If the land use change is conversion to a subdivision, the exemption for each lot is limited to 5 acres or the lot size specified in the permit granted by the appropriate governmental entity, whichever is smaller;
- G. Where the parcel, is less than 20 acres in size;
- H. Where the parcel is conveyed to another party due to inheritance, court order, transfer of deed in lieu of foreclosure, or bona fide gift without any consideration to a person related to the landowner by blood, marriage, or adoption. The exemption for a bona fide gift is conditioned upon the land not being further conveyed by the donee in a non-exempt transaction within 5 years from the date of the gift;
- I. Where the parcel is conveyed to a government entity exercising the power of eminent domain, or the transfer is under threat of the exercise of such authority;
- J. Where the parcel is conveyed to another party as a result of partitioning lands held in common and undivided ownership, sales of common and undivided interests in such lands, and trading common and undivided interest in lands;
- K. Where the parcel is conveyed for bona fide roads and rights of way;
- L. Where the forest products harvested or processed are for personal use by the landowner.

SECTION 6. HARVEST STANDARDS

Timber harvesting on a parcel of land, any portion of which is sold, offered for resale, within five years of the date of purchase or acquisition of the parcel, and which is not exempted by Section 5 of this rule, must satisfy the following condition:

A. Option 1. Acceptable residual trees

Timber harvesting must, except for clearcuts and their separation zones, leave a residual stand meeting the definition of acceptable residual trees, and must include measures to protect advanced regeneration by minimizing the area damaged by logging equipment.

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SECTION 7. RESPONSIBILITY

All responsible parties may be jointly and severally responsible for compliance with this rule, and liable for violations of this rule.

SECTION 8. VARIANCE

A variance to the strict applications of these rules may be granted as specified in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards, Section 6).

SECTION 9. VIOLATIONS

Any responsible party involved in any activity in violation of this rule commits a civil violation, and shall be penalized in accordance with 12 MRSA, Chapter 809, and other applicable law.

SECTION 10. EFFECTIVE DATE

The effective date of this rule is January 2, 2005.

STATUTORY AUTHORITY: 12 MRSA, Chapter 805, sub-chapter 3-A; Public Laws 2003, Chapter 422.

¹The term “timberland” has the same meaning as “forest land” as defined in this rule.

* A copy of the Forest Practices Act rule may be obtained from: Maine Forest Service, 22 State House Station, Augusta, ME 04333-0022, Ph: 207-287-2791, Internet: www.maineforestservice.org.

* Note: Landowners may request assistance from the Maine Forest Service in reviewing their proposed timber harvesting activities to ensure compliance with this rule.