

APPENDIX 1

MRS Title 26, Chapter 18: RATES OF COMPENSATION FOR FOREST PRODUCTS HARVESTING AND HAULING SERVICES

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26 §1351. Legislative findings

The Legislature finds that Maine's forest products industry is a vital component of Maine's economy and has a direct relationship to the economic health and welfare of workers, communities and businesses. Central to the viability of the forest products industry is a stable workforce of loggers and wood haulers available to harvest wood from Maine's forests and bring the wood to mills and other wood-using industry. The erosion of the logger and wood hauler infrastructure in any major region of the State can have a serious negative effect on wood products manufacturing throughout the State. The Legislature further finds that, based upon patterns and configurations of forest landownership, the harvesting and hauling of forest products are performed by numerous loggers and truckers who, in many cases, are not able individually to bargain effectively with forest landowners who possess overwhelming market power. The Legislature finds that such market power exists whenever one forest landowner owns, possesses or acquires economic control over more than 400,000 acres in a labor market area, which acreage constitutes more than 30% of the total land area in that labor market area. Accordingly, the Legislature finds it necessary, in the absence of sufficiently vigorous competitive market forces, to displace competition as provided in this chapter. The inequity of power in determining compensation and the lack of opportunity to join together in bargaining over compensation can result in unfair contract rates for the services of loggers and wood haulers. The Legislature finds evidence of unfairness in the fact that contract rates for harvesting and hauling services are considerably lower on the land of such owners. The Legislature finds that it is in the public interest to ensure a reasonable rate of compensation for harvesting and hauling services and therefore creates in this chapter a process whereby the State displaces existing market forces and, upon request, sets the rates of compensation for such services. [2003, c. 674, §1 (AMD) .]

SECTION HISTORY

2003, c. 670, §3 (NEW). 2003, c. 674, §1 (AMD) .

26 §1352. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 670, §3 (NEW) .]

1. Affiliated person. "Affiliated person" means a person in the same corporate system as a parent or member organization by virtue of common ownership, control, operation or management.

[2003, c. 670, §3 (NEW) .]

2. Association. "Association" includes an incorporated or unincorporated entity.

[2003, c. 670, §3 (NEW) .]

3. Economic control. "Economic control" means the legal right, whether through ownership, contract or otherwise, to make or influence decisions regarding the harvesting of trees and disposition in general of forest products on subject land.

[2003, c. 670, §3 (NEW) .]

4. Forest land. "Forest land" means land used primarily for growth of trees to be harvested for commercial use.

[2003, c. 670, §3 (NEW) .]

5. Forest landowner. "Forest landowner" means:

A. A person that owns directly or through affiliated persons, or possesses economic control over, more than 400,000 acres in a labor market area, which acreage constitutes more than 30% of the total land area in that labor market area; or [2003, c. 674, §2 (AMD) .]

B. An agent or subsidiary of a person described in paragraph A if that agent or subsidiary is involved in contracting or negotiating contracts or other arrangements, written or oral, with forest products harvesters or forest products haulers. [2003, c. 670, §3 (NEW) .]

[2003, c. 674, §2 (AMD) .]

6. Forest products harvester. "Forest products harvester" or "harvester" means a person having a place of business in this State who is engaged in harvesting trees from forest land in the State under a contract or subcontract, directly or indirectly, for a forest landowner.

[2003, c. 670, §3 (NEW) .]

7. Forest products hauler. "Forest products hauler" or "hauler" means a person having a place of business in this State who is engaged in hauling harvested trees to mills under a contract or subcontract, directly or indirectly, for a forest landowner.

[2003, c. 670, §3 (NEW) .]

8. Labor market area. "Labor market area" means an area designated as such by the United States Department of Labor, Bureau of Labor Statistics for purposes of implementing a comprehensive labor market information system.

[2003, c. 670, §3 (NEW) .]

9. Panel. "Panel" means the forestry rate proceedings panel, constituted under the State Board of Arbitration and Conciliation pursuant to section 931-B.

[2003, c. 670, §3 (NEW) .]

10. Person. "Person" includes one or more individuals, partnerships, corporations, limited liability corporations, business organizations and associations.

[2003, c. 674, §3 (AMD) .]

SECTION HISTORY

2003, c. 670, §3 (NEW). 2003, c. 674, §§2,3 (AMD).

26 §1353. State role in determining rates of compensation; panel powers and duties

1. Rate determinations. The panel, upon petition made pursuant to section 1357 and in accordance with the procedures and standards set forth in this chapter, shall determine reasonable rates of compensation to be paid by a forest landowner for forest products hauling services and forest products harvesting services in a specified area of the State.

[2003, c. 670, §3 (NEW) .]

2. Panel powers and duties. For the purposes of carrying out its responsibilities under this chapter, the panel has the powers of the State Board of Arbitration and Conciliation as set forth in chapter 9, subchapter 2-A. The State Board of Arbitration and Conciliation as established pursuant to section 931 may adopt rules to implement this chapter, including rules specifying what information held by the panel is confidential and not subject to public disclosure. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 670, §3 (NEW) .]

3. Compensation; costs of rate determination proceeding. Members of the panel are entitled to the compensation provided for in section 931-B for their services under this chapter. Costs incurred by the panel in making a rate determination under this chapter must be borne equally by the parties to the rate determination proceeding and may be collected by the Maine Labor Relations Board pursuant to section 931.

[2003, c. 670, §3 (NEW) .]

SECTION HISTORY

2003, c. 670, §3 (NEW) .

26 §1354. Participation of harvesters and haulers in rate determination process

For the purpose of effectively representing their interests in contemplated or pending rate determination proceedings under this chapter, 2 or more harvesters or haulers may join together and form an association to meet, confer, share information and take other collective action as may support their participation in rate determination proceedings. [2003, c. 670, §3 (NEW) .]

SECTION HISTORY

2003, c. 670, §3 (NEW) .

26 §1355. Negotiations preceding rate determination

One or more harvesters or haulers may meet and negotiate with a forest landowner on the issue of determining reasonable rates to be paid for harvesting services and hauling services in the State, as long as any agreement reached by the parties regarding rates of compensation is made contingent upon review and approval by the panel. [2003, c. 670, §3 (NEW) .]

SECTION HISTORY

2003, c. 670, §3 (NEW) .

26 §1356. Activities are not restraint of trade

The provisions of this chapter are intended to displace existing market forces based on a legislative finding that such forces are insufficient to permit the affected market to function normally. Activities carried out pursuant to this chapter do not constitute a conspiracy, or a combination in restraint of trade or an illegal monopoly, nor are they carried out for the purposes of lessening competition or fixing prices arbitrarily, as long as the activities are carried out for the purpose of preparing, initiating or participating in a rate determination proceeding under this chapter. A contract or agreement entered into pursuant to negotiations between a forest landowner and a group of harvesters or haulers is not an unlawful restraint in trade or part of a conspiracy or combination to accomplish an improper or illegal purpose or act, as long as the contract or agreement is approved by the panel as provided in section 1358. [2003, c. 670, §3 (NEW) .]

SECTION HISTORY

2003, c. 670, §3 (NEW) .

26 §1357. Rate determination petition

1. Who may file petition. A forest landowner or a person representing at least 3 harvesters or haulers may file a petition with the panel to initiate a proceeding to determine reasonable rates of compensation to be paid for harvesting or hauling services.

[2003, c. 670, §3 (NEW) .]

2. Required contents of petition. The petition under subsection 1 must include the following information:

- A. The service for which the rate is to be determined; [2003, c. 670, §3 (NEW) .]
- B. The identity of the forest landowner who owns or possesses economic control over the land on which the rates are to apply and the geographic area in which the rates are to apply; [2003, c. 670, §3 (NEW) .]
- C. The rate, if any, proposed by the filing party, including any rate agreed to in negotiations between forest landowners and harvesters or haulers; [2003, c. 670, §3 (NEW) .]
- D. Information relevant to the factors set forth in section 1358, subsection 4 needed for the panel to make a decision; [2003, c. 670, §3 (NEW) .]
- E. A summary of any negotiations between harvesters and haulers and forest landowners; and [2003, c. 670, §3 (NEW) .]
- F. Any other information the panel specifically requests. [2003, c. 670, §3 (NEW) .]

[2003, c. 670, §3 (NEW) .]

SECTION HISTORY

2003, c. 670, §3 (NEW) .

26 §1358. Rate determination proceedings

1. Public notice. Upon receipt of a properly filed petition, the panel shall publish notice in newspapers of general circulation in the areas of the State affected by the petition filing. The panel shall also provide notice to any person who has requested to be notified of filings. Notice must be provided at least 30 days before any hearing to be held, and at least 30 days before the close of a comment period on the filing, unless the panel determines that a shorter notice period is required by extraordinary circumstances.

[2003, c. 670, §3 (NEW) .]

2. Written comment; hearing. The panel shall solicit written comment from persons interested in the rates of compensation for harvesting and hauling services. The panel may also hold a public hearing to collect information and shall hold a public hearing if requested by any party to the proceeding.

[2003, c. 670, §3 (NEW) .]

3. Panel decision . After the close of the comment period and completion of any public hearing on the petition, the panel shall issue a decision determining reasonable rates to be paid by a forest landowner for services that are the subject of the petition and reasonable geographic applicability for the rates, as the panel determines appropriate. The panel's decision is a final agency action for purposes of Title 5, chapter 375, subchapter 7 and may be appealed pursuant to that subchapter. Rates determined by the panel are not stayed pending the appeal.

[2003, c. 670, §3 (NEW) .]

4. Standard for determining reasonable rate. In determining a reasonable rate to be paid by a forest landowner for harvesting or hauling services, the panel shall consider, to the extent relevant, the following factors:

- A. Prices or projected prices for the harvesting services or hauling services currently paid by forest landowners in the State and in other states; [2003, c. 670, §3 (NEW) .]
- B. The quantity of forest products available in the market area or competing areas; [2003, c. 670, §3 (NEW) .]

C. The relationship between the quantity produced and the quantity handled by the forest landowner; [2003, c. 670, §3 (NEW) .]

D. The harvester's or hauler's costs, including, but not limited to, wages, overhead, fuel, insurance and the cost of replacing equipment; [2003, c. 670, §3 (NEW) .]

E. Environmental and highway laws or rules; [2003, c. 670, §3 (NEW) .]

F. The impact of the rate determination on the competitive position of the landowner in the market area or competing market areas; [2003, c. 670, §3 (NEW) .]

G. A fair return on investment; [2003, c. 670, §3 (NEW) .]

H. The species of tree, type of machinery and method of tree harvesting involved; [2003, c. 670, §3 (NEW) .]

I. The extent to which hauling is conducted on private or public roads; [2003, c. 670, §3 (NEW) .]

J. Safety considerations; [2003, c. 670, §3 (NEW) .]

K. Prior agreements of the parties; and [2003, c. 670, §3 (NEW) .]

L. Any factors that are normally or traditionally taken into consideration when determining prices for the services involved. [2003, c. 670, §3 (NEW) .]

[2003, c. 670, §3 (NEW) .]

5. Interested panel members may not participate. A member or alternate member of the panel who has a financial interest in a rate determination proceeding brought before the panel, or in any party to the rate determination proceeding, may not participate in the proceeding affecting that financial interest.

[2003, c. 670, §3 (NEW) .]

6. Limitation on petitions. Unless the panel's rate determination decision specifies an earlier time, a person may not file a petition to change the rate set by that decision until one year after the rate determination decision was issued.

[2003, c. 670, §3 (NEW) .]

SECTION HISTORY

2003, c. 670, §3 (NEW) .

26 §1359. Violation

1. Violation. A forest landowner violates this chapter if that forest landowner:

A. Pays a rate for harvesting or hauling services in the State other than the applicable panel-determined rate, if any, for that service in that geographic area; or [2003, c. 670, §3 (NEW) .]

B. Discriminates against any person for initiating or participating in a rate determination proceeding under this chapter. [2003, c. 670, §3 (NEW) .]

[2003, c. 670, §3 (NEW) .]

2. Maine Unfair Trade Practices Act. Violation of this chapter constitutes a violation of the Maine Unfair Trade Practices Act.

[2003, c. 670, §3 (NEW) .]

SECTION HISTORY

2003, c. 670, §3 (NEW).

26 §1360. Other agreements not precluded

This chapter does not prohibit the negotiation and execution of a contract between a forest landowner and an individual harvester or hauler that provides for the payment of compensation rates other than those determined under this chapter, as long as there is no panel-determined rate applicable to the service being provided and as long as there is no properly filed rate determination petition that would apply to the service pending before the panel at the time the contract is entered into. [2003, c. 670, §3 (NEW).]

SECTION HISTORY

2003, c. 670, §3 (NEW).

PLEASE NOTE: Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve, To Temporarily Suspend the Rate-setting Procedures for the Forest Products Industry

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Maine is dependent on its natural resources-based economy; and

Whereas, the Legislature recognizes that fuel costs and other economic forces have a devastating impact on the Maine economy, especially with regards to loggers and truckers carrying forest products; and

Whereas, it is in the public interest to ensure a reasonable rate of compensation for wood harvesting and hauling services in all regions of the State and to assess the impact of the Maine Revised Statutes, Title 26, chapter 18 on those services; and

Whereas, ensuring a reasonable rate of compensation for wood harvesting and hauling services is achievable via a statewide market power study of the forest products industry; and

Whereas, fairness dictates that the provisions of the Maine Revised Statutes, Title 26, chapter 18, except certain portions of Title 26, section 1354, be suspended pending completion of such a study and enactment of legislation pursuant to that study; and

Whereas, a majority of the providers of wood harvesting and hauling services subject to the Maine Revised Statutes, Title 26, chapter 18 have voted to support the suspension of those statutory provisions until June 1, 2009; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Rates of compensation for forest products harvesting and hauling services termination. Resolved: That the operation of the Maine Revised Statutes, Title 26, chapter 18 is suspended until June 1, 2009, except that forest products harvesters and haulers may continue to join together and form an association to meet, confer and share information as provided in Title 26, section 1354. The Legislature may consider terminating the suspension described in this section on or after January 7, 2009 by resolve. The Governor may terminate the suspension described in this section at any time that the Legislature is not in session. The Governor shall make the termination in writing. The termination does not become effective until 60 days following the written notice; and be it further

Sec. 2 Department of the Attorney General to study the statewide market for forest products harvesting and hauling services. Resolved: That the Department of the Attorney General, referred to in this section as "the department," shall conduct a study of the statewide market for forest products harvesting and hauling services. The department shall examine competition

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Resolve, To Temporarily Suspend the Rate-setting Procedures for the Forest Products Industry

within the industry and determine what, if any, changes are necessary to ensure fair competition throughout the State. The department shall consider the relevance of and study at a minimum the following on a statewide basis:

1. Issues of market concentration and horizontal market power;
2. Issues of vertical market power arising from integrated ownership or control of hauling, harvesting and other related assets;
3. The existence of barriers to entry into the harvesting and hauling industry, including required capitalization;
4. The extent to which imbalances of supply and demand create opportunities for the unreasonable exercise of market power;
5. The advantages and disadvantages of altering the current market system in the harvesting and hauling of forest products;
6. The approaches taken in other states to address similar issues; and
7. The statewide market for such services.

In conducting the study, the department shall consult with the Executive Department, State Planning Office; the Department of Labor; forest landowners; industry representatives; and other parties as determined appropriate by the department. Records collected by the Department of the Attorney General pursuant to its responsibilities under this resolve are subject to the Maine Revised Statutes, Title 16, section 614, subsection 1.

The department shall use the services of the State Economist and may retain an independent expert as it determines necessary in order to conduct the study.

The department shall make available a draft interim report for public comment not later than December 1, 2008. The final report of its findings and recommendations must be submitted no later than January 15, 2009 to the joint standing committee of the Legislature having jurisdiction over forest products harvesting and hauling services. The interim and final reports must include any legislation necessary to implement the recommendations of the department. If the department requires an extension of time to make its reports, it may apply to the Legislative Council, which may grant the extension. Any legislation or recommendation of the department pursuant to the study must apply to all landowners in the State; and be it further

Sec. 3 Legislation. Resolved: That the joint standing committee of the Legislature having jurisdiction over the compensation of forest harvesters and haulers may submit a bill related to the study to the First Regular Session of the 124th Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPENDIX 2

METHODOLOGY OF STUDY

The Attorney General assembled a working group consisting of two Assistant Attorneys General, and representatives from the Maine State Planning Office, the Maine Department of Labor, the Maine Forest Service and the Governor's Office. The Attorney General retained The Irland Group, a Maine consulting firm with considerable experience in forest products industry analysis that previously assisted in preparing the Pan Atlantic Report (1999), which exhaustively reviewed woods labor issues for the Department of Labor. Collectively, we conducted confidential interviews with roughly 50 individuals working in all aspects of the forest products industry, including forest landowners, forest products harvesters, forest products haulers, trade associations representing the interests of these groups, harvesting equipment dealers and financiers, as well as private consultants, and former and present state employees with extensive knowledge of the history and workings of this sector of the Maine economy. We assembled state, federal, and private data and literature, and analyzed the information through the prism of microeconomic theories dealing with concentrated markets, as well as relying on practical experience. We distributed questionnaires to forest landowners and forest products harvesters and haulers, soliciting detailed data on phases of work performed, for whom, products harvested, volumes, rates of compensation, to whom the products are sold, how many workers within firms, whether workers are employees or contractors, productivity measures, terms of contracts and equipment expenses. Despite multiple requests, we received completed surveys from only three harvesters, two haulers and one landowner, an insufficient sample of actual data on rates and prices to support a meaningful statistical analysis.

After publishing the Attorney General's Draft interim Report for Public Comment, we solicited comments from everyone we interviewed. We also issued a press release and provided a link to the report on our website, as well as information on when and how to comment. We received two sets of written comments and several additional informal comments (*e.g.* through conversations or e-mails). We attempted to address the many legitimate issues and concerns raised by commenters in this final report.

**ATTORNEY GENERAL'S 2008 LOGGERS SURVEY
(RESOLVE 189)**

Work phases you perform directly or through subcontractors (Please check all that apply)												
	2003		2004		2005		2006		2007		2008	
	Direct	Sub	Direct	Sub	Direct	Sub	Direct	Sub	Direct	Sub	Direct	Sub
Roadbuilding												
Cut, skid & pile												
Load												
Haul												
Stump to mill												
Other logging combos												
Nonlogging (if so what)												

How many employees	2003	2004	2005	2006	2007	2008

Payment method (check if applicable)	2003	2004	2005	2006	2007	2008
Piece rate by product and grade						
Stump to mill						
Stump to truck						

Payment rate (per ton, cord or mile)	2003	2004	2005	2006	2007	2008
Roadbuilding						
Cut & skid						
Cut, skid & load						
Stump to mill						

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Under Resolve 189, Section 2 and 16 M.R.S.A. §614(1)

**ATTORNEY GENERAL'S 2008 LOGGERS SURVEY
(RESOLVE 189)**

Other (please describe)						
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Volumes Handled (please specify cords or tons)	2003	2004	2005	2006	2007	2008
Under CLS						
Stumpage						

Landowners Whose Land You Worked On (approx. %)	2003	2004	2005	2006	2007	2008
Irving						
Wagner						
Plum Creek						
Seven Islands						
GMO						
Katahdin						
Huber						
REITs						
Your own land						
State						
Other						

Which mills or woodyards did/ do you haul to primarily	2003	2004	2005	2006	2007	2008

Anonymous & Confidential
Under Resolve 189, Section 2 and 16 M.R.S.A. §614(1)

**ATTORNEY GENERAL'S 2008 LOGGERS SURVEY
(RESOLVE 189)**

Equipment	How Many	Owned or Leased	When Acquired	New or Used	Purchase Price	Who Financed (check or name)			
						Dealer	Financial Institution	Landowner	Other
Dozer									
Grader									
Pick-up									
Feller buncher									
Grapple skidder									
Cable skidder									
Processor									
Forwarder									
Limber									
Loader									
Log Trucks									

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Under Resolve 189, Section 2 and 16 M.R.S.A. §614(1)

**ATTORNEY GENERAL'S 2008 LOGGERS SURVEY
(RESOLVE 189)**

Other (describe)									
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Comments or additional information:

**ATTORNEY GENERAL'S 2008 TRUCKERS SURVEY
(RESOLVE 189)**

Work phases you perform directly (using owned trucks) or through subcontractors (Please check all that apply)												
	2003		2004		2005		2006		2007		2008	
	Direct	Sub	Direct	Sub	Direct	Sub	Direct	Sub	Direct	Sub	Direct	Sub
Log hauling												
Chip hauling												
Lumber hauling												
Pulp or Paper												
Woods to mill or yard (woods road)												
Other logging combos												
Other than logs/forest products (if so what)												
Maintain own shop												
Other...												

	2003	2004	2005	2006	2007	2008
How many employees						

Payment method (check if applicable)	2003	2004	2005	2006	2007	2008
Ton or cord						
Hour of running or other time						
Other (describe)						

Payment rate received (average revenue)	2003	2004	2005	2006	2007	2008

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**ATTORNEY GENERAL'S 2008 TRUCKERS SURVEY
(RESOLVE 189)**

per ton, cord or mile)						
Softwood pulp						
Hardwood pulp						
Spruce logs t/l						
Fitted sawlogs						
Chips						
Bark, biomass, or hog fuel						
Other (please describe)						

Volumes Hauled (please specify cords or tons, or no. of loads)	2003	2004	2005	2006	2007	2008
Logs						
Bark, biomass or hog fuel						
Lumber or paper/pulp						
Chips						
Other (identify)						
Productivity Measures, if available						
Miles per gallon						
Percent loaded						
Miles per truck per yr						

**ATTORNEY GENERAL'S 2008 TRUCKERS SURVEY
(RESOLVE 189)**

Landowners or contractors Whose Wood you hauled (approx. %)	2003	2004	2005	2006	2007	2008
Irving						
Wagner						
Plum Creek						
Seven Islands						
GMO						
Katahdin						
Huber						
REITs						
Contractors:						
Your own land						
State						
Other						

Which mills or woodyards did/ do you haul to primarily	2003	2004	2005	2006	2007	2008

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Under Resolve 189, Section 2 and 16 M.R.S.A. §614(1)

**ATTORNEY GENERAL'S 2008 TRUCKERS SURVEY
(RESOLVE 189)**

Operated Currently	How Many	Owned	Leased	Contracted	Owned: When Acquired	Owned: New or Used	Purchase price	Remarks
Self loading truck								
Off road tractor								
Over road tractor								
Trailers								
Chip vans								
B-train								
Other (describe)								

When did you start in trucking as a driver?

When did you own your first truck?

**ATTORNEY GENERAL'S 2008 TRUCKERS SURVEY
(RESOLVE 189)**

Is your business primarily:

- In the woods log hauling?
- Over the highway hauling, 100 mile radius?
- Over the highway hauling, more than 100 miles?

Are you ever able to negotiate rates with a customer, based on presenting facts about your costs?

If there are other things you'd like us to know, please use the comments section or separate sheets to tell us.

Comments or additional information:

Anonymous & Confidential

Under Resolve 189, Section 2 and 16 M.R.S.A. §614(1)

**ATTORNEY GENERAL'S 2008 LANDOWNERS SURVEY
(RESOLVE 189)**

Item	Logging Season Beginning in Year					
	2003	2004	2005	2006	2007	2008
End Product Delivered Prices						
Spruce fir logs						
White pine logs						
Hardwood logs						
Hardwood pulpwood						
Biomass chips						

Contract Rates	2003	2004	2005	2006	2007	2008
Roadbuilding						
Cut & Skid						
Cut, Skid & Load						
Stump to Mill						
Other (please describe)						

Volume Harvested Under CLS	2003	2004	2005	2006	2007	2008
Contracts						

**ATTORNEY GENERAL'S 2008 LANDOWNERS SURVEY
(RESOLVE 189)**

Comments or additional information:

APPENDIX 3



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January 28, 2009

Assistant Attorney General Christina Moylan
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Re: Attorney General's Draft Interim Report for Public Comment Resolve, Chapter 189

Dear Ms. Moylan,

The Maine Forest Products Council appreciates the opportunity to comment on the Attorney General's Draft Interim Report for Public Comment Resolve, Chapter 189.

The Maine Forest Products Council is a vital voice for the forests products community including forest landowners representing over 9.5 million acres, loggers, truckers, primary wood processors such as lumber mills, pulp and paper mills as well as secondary wood processors such as furniture manufacturers, biomass generators and related service industries representing over 350 companies. The primary purpose of the Council is to provide a supportive economic and public policy climate for the forest products community and additionally to promote a healthier, more vital forestry sector for Maine.

As a Council, we have significant concerns over the way data has been presented in the report and the subsequent conclusions that have been made based upon that data. Please find our concerns and comments below.

A. Executive Summary

Page 1

"Over the past 20-30 years, there has been a steady shift away from industrial landowners who employ harvesters and haulers directly, towards landowners who contract with self-employed providers of harvesting and hauling services. Furthermore, the independent contractors engaged by landowners may themselves enter into separate contractual agreements, rather than employment relationships, with those individuals who actually perform harvesting and hauling services."

MFPC Comment: The shift from paper-company logging crews to private contractors was largely complete by the early 1980's. Industrial landowners have used a combination of company operations and private contractors for the full spectrum of services required to feed mills for decades. This type of contractual relationship is very common in other trades requiring specialized services with limited capital outlays. You should correct the report that this is not a recent change and has in fact been stable this way for over 25 years. Many private contractors who run their own logging companies are much more financially successful compared to what their earnings potential may have been had they remained employees of the paper companies. Risk and reward come together as a package.

“Advances in harvesting technologies have steadily reduced the number of people employed in the industry, replacing labor with capital. While these advances have improved workplace safety and reduced environmental damage, their high cost brings significantly more financial risk to harvesting and hauling contractors and requires more frequent and specialized training for equipment operators.”

MFPC Comment: Reduced employment numbers in the logging sector should be viewed as a sign of progress and success rather than a criticism. Logging has matured like many other sectors - fewer companies, larger capitalization, and profoundly increased production per person. There are fewer logging companies out there to contract with but they are more capable, more dependable and produce better results than compared to just one generation ago. Productivity per man in the 60's with a pulp-hook and chainsaw with horse was 500 cords per man per year. With the advent of hydraulic loaders and cable skidders, productivity increased to 1500 cords per man per year. Today, with the feller bunchers and grapple skidders, productivity has increased to 5000 cords per man per year. Logging season has also extended to 43 weeks with injuries and fatalities being reduced to the lowest in history. The risks associated to paying capital acquisitions has been mitigated by a longer logging season, reduced workers compensation, and manpower requirements to service contracts volumes.

“Increasing costs have had the expected effect of reducing profitability. Among the results, rates of compensation have reportedly become set by the value of an overloaded truck.”

MFPC Comment: Standard rates are often set based on distance for truckers to haul wood from one location to another creating very little or no incentive to haul overloaded. Additionally, many landowners explicitly require adhering to all transportation laws, including weight laws. Contracts have been terminated for violations of weight laws.

“While facing these rising costs, harvesters are experiencing deteriorating harvesting conditions. Harvesters report that an increase in partial harvesting has reduced per acre harvest volumes, and that average tree size has declined. These changes in operating conditions mean that harvesters must work longer or travel farther to meet their quotas. Fuel, labor, and equipment maintenance costs rise with the additional effort, while yields remain the same.”

MFPC Comment: Increases in the amount of partial harvesting can be attributed more to public policy than individual landowner objectives. The premise that harvesters need to travel further or work longer to meet quotas is false as quota systems have become increasingly rare in today's market and successful contractors often negotiate their rates based upon the site and prescription.

“There is clear evidence of market concentration among landowners in certain regions of the state. However, due to our inability to obtain rate and other contract information, we were unable to determine whether those levels of concentration result in the landowners paying harvesters and haulers below-market rates.”

MFPC Comment: Lack of cooperation in obtaining rate and contract information may likely indicate that there is no problem, and, if there is a problem, it is occurring in isolated situations. Any evidence of market concentration is more likely a function of geography and logistics rather than restrictive influences on the market place.

Page 3

“Increase public safety resources, primarily in the form of state commercial vehicle enforcement troopers, to promote more frequent enforcement of highway load limit laws in areas where forest products operations are conducted.”

MFPC Comments: Any criticism of logging transportation safety should be coupled to a recommendation to allow heavy hauling on the interstate highway system. In addition, it is unfair to single out logging trucks. No data is presented that a logging truck is any more likely to be overweight than other vehicles.

B. Changes in Labor Markets for the Harvesting and Hauling Industries

Page 4

“Increases in technological efficiency and productivity have steadily reduced the number of people employed in the logging industry, while allowing overall harvest levels to remain roughly the same.”

MFPC Comments: Advances in harvesting technologies are again painted in a negative light. We should instead be championing the fact the businesses are learning how to be lean and efficient in a competitive global market. Increases in safety and productivity should also be highlighted in this section.

“The result of this change has been a transfer of risk from the landowner to the harvesters and haulers. By itself, this transfer of risk may not necessarily mean lower profits and wages. However, it does mean that success for contractors requires increased business and financial skills and the ability to withstand significant fluctuations in revenues and costs.”

MFPC Comment: The need for increased business and financial skills, along with the ability to withstand significant fluctuations in revenues and costs are skills that are needed in order to succeed in any market today, and should not be portrayed as distinguishable only in the forest products industry. The skill sets required to be a contractor today have been driven more by environmental and financial reporting regulations than any other stimulus. Gone are the days when contractors ran their operations out of a small notebook. State and landowner requirements for certification also demand the highest quality level of professionalism on forest operations which usually means some contractors won't make the grade. The Bureau of Parks and Lands usually keeps a preferred list of stumpage contractors that qualify, through training and past performance, to cut timber on State land. Certified Landowners cannot afford the risk of losing their certification due to poor workmanship in the forest. Landowners face huge risks, especially when they market their wood directly. They own an illiquid asset that is subject to a variety of risk, both human and natural. Loggers provide professional services- it is not an issue of transferred risk.

Page 5

“Evidence of workers who may be misclassified as independent contractors when they are actually in employment relationships comes anecdotally from harvesters, our own (limited) review of contracts, and previously documented studies (OPLA, 2004). For example, a landowner may actually finance the equipment the contractors must purchase to perform services, with repayment based on the contractors' weekly earnings. Unless and until the equipment is paid off, it is very difficult for the worker to leave the relationship. Moreover, some landowners require contractors to run double shifts. Also, the contractor may have little to no ability to influence the terms of the contract.”

MFPC Comments: We would encourage the Office to produce a history of citations and convictions of employee relationships to private logging contractors. We do not believe that data would support these conclusions.

Page 6

“Employment in goods-producing industries such as manufacturing and natural resources has fallen from half of salaried jobs 60 years ago to just 15% today, while jobs in service-providing industries have quadrupled.”

MFPC Comments: While the industry can suffer from volume volatility, there is on average still enough logging capacity to produce a sustainable harvest in Maine and sufficient logging capacity to meet demand. Fluctuations in weather patterns and fuel costs are much greater threats to the industry when compared to labor concerns. If Maine wishes to compete in a global economy, harvesting and manufacturing costs must remain competitive. Industry has been increasing productivity and reducing labor since at least the 1950’s. Unfortunately, new industries have struggled to grow in Maine and absorb these employment losses.

“Pulpwood usage is also affected by recycled paper use, which has become a significant part of the fiber mix.”

MFPC Comment: It is generally agreed within the industry that pulpwood usage in Maine has not been affected by recycled paper use which has not become a significant portion of any mill’s fiber mix and we feel this is irrelevant to the scope of this report.

“Total pulpwood use declined by 16% from 1990 to 2006. Consumption rebounded somewhat in 2007, but not to the levels experienced in the 1990s.”

MFPC Comment: Total paper mill consumption has dropped from about 4 million cords in 1990 to about 3.5 million cords now. However, that includes imported pulpwood. Take out the imported pulpwood and the Maine pulpwood harvest has stayed relatively stable at about 3 million cords. Also, pulp mills buy more of their furnish in the form of residual chips than in the past.

Page 7

“Perhaps the most significant change in recent years has been the dramatic expansion of biomass markets. The total tonnage of biomass chips processed has tripled since the market bottomed out six years ago (Figure 3). This is an important line of business for the harvesting and hauling sector; however, it provides low profit margins. In the past, biomass was reportedly handled at a loss, which was covered by the margins earned on sawlogs.”

MFPC Comment: The growth of biomass markets and associated fuel chip consumption has been of great benefit to the logging sector. Despite the prevalence of partial cuts to 20 years ago, the biomass demand has allowed for increased productivity and utilization. It is also important to point out that biomass consumption is of sufficient total volume that it certainly is in direct competition with pulpwood markets and this is a primary reason why delivered round-wood costs in Maine are 20 - 25% higher than any other forest products region in North America. It is important to note that loggers have become more efficient in many cases due to the fact that biomass is now being sold and handled by separate contractors who often work for biomass plants.

C. Increased Pressures on Logging Harvesters and Haulers

Page 8

"The rapid increases of the past two years have had major impacts on costs at all levels in the supply chain (Figure 4). Whereas in the past, fluctuations in diesel fuel prices were modest and readily accommodated by six-month contract updates, they now generate major struggles over methods of adjusting payments for fuel costs."

MFPC Comment: It is common for landowners to adjust fuel rates as they change and not wait until contracts come up for renewal. This can be confirmed by individual landowners.

Page 9

"Further, the risks of high fuel prices seem to be borne predominately by the contractors." See figure 4.

MFPC Comment: During 2008 pulp wood prices in Maine rose much quicker than did the diesel fuel to produce it, and since have fallen close to 2007 levels. Not only were fuel surcharges generous and frequent from receiving mills and landowners during the 2008 spikes but most mills opened up shorter haul purchase points to gain competitive advantage by offering much shorter haul requirements compared to previous years.

Page 10

"The intended useful life for major pieces of harvesting equipment is about 4 or 5 years (about 10,000 hours). They should be replaced thereafter. However, due to the high replacement cost, we did not find a single example of an operator who was doing this."

"Many operators are now running machines for 8 to 9 years. Others are using equipment purchased on the used market and already well past normal replacement age, measured either in years or hours."

MFPC Comment: These two comments are purely anecdotal. When dealing with equipment, one must either consider the lower initial cost of used equipment versus higher maintenance costs, or a higher initial cost of new equipment versus lower maintenance costs. It is difficult to portray the life span of any piece of equipment as variables ranging from maintenance schedules to operator skill to the geography of the land the piece of equipment operates on are on contributing factors to the life of harvesting equipment.

3. The existence of barriers to entry into the harvesting and hauling industry, including required capitalization.

Page 15

"Similarly, integration at the landowner to labor level has decreased dramatically in Maine. With limited exceptions, those who own the land contract with harvesters and haulers (as opposed to employing them outright). Some contractors, with the resources and foresight to diversify their operations in recent years, have purchased their own land, affording them opportunities to harvest their own wood to sell when it makes business-sense to do so. These contractors, generally larger and well-established, have been in a much better position to weather the recent storms of escalating costs. Their size, coupled with the ability to harvest their own wood, in some instances has afforded a certain degree of success in bargaining with landowners that small independent contractors have been unable to achieve."

MFPC Comment: From a buyers perspective, it appears to us that the consolidation of the logging industry (fewer but larger logging contractor companies to buy from), has significantly increased their market leverage and ability to influence the price of their wood and harvesting services. Independent contractors continue to account for the majority of loggers across the United States.

6. The approaches taken in other states to address similar issues

Page 17

“Recent legislative initiatives have been proposed in the States of both Washington and Oregon that reflect different state regulatory approaches to counterbalance perceived market power in the forest products industry. In both instances, the pending legislation addresses log hauling only, not harvesting. Both states’ bills are currently still in committee.”

MFPC Comment: Section 6 seems to be outside the scope of the purpose of this report and we would ask that any comments on Western legislative trends be removed. Policy recommendations or insinuations based upon economies in different states may have undo-adverse implications here in Maine.

b. Highway weight limits.

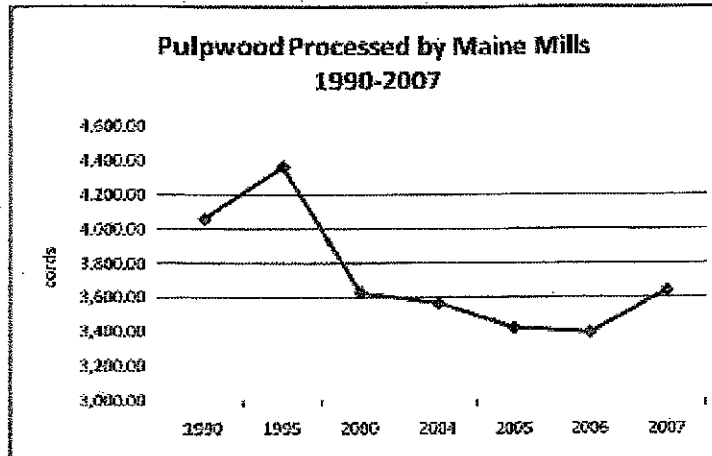
Page 19

(Footnote) ⁹“Mills weigh trucks before and after unloading. They pay based on the weight of the load. If mills limited payment to the weight of a legal load, haulers would have no incentive to overload their trucks.”

MFPC Comment: We believe that the suggestion to pay for only the legal weight portion of the load delivered in the footnote on page 19, would be illegal, and in direct violation of the Maine Scaling Laws. We ask that this section be removed.

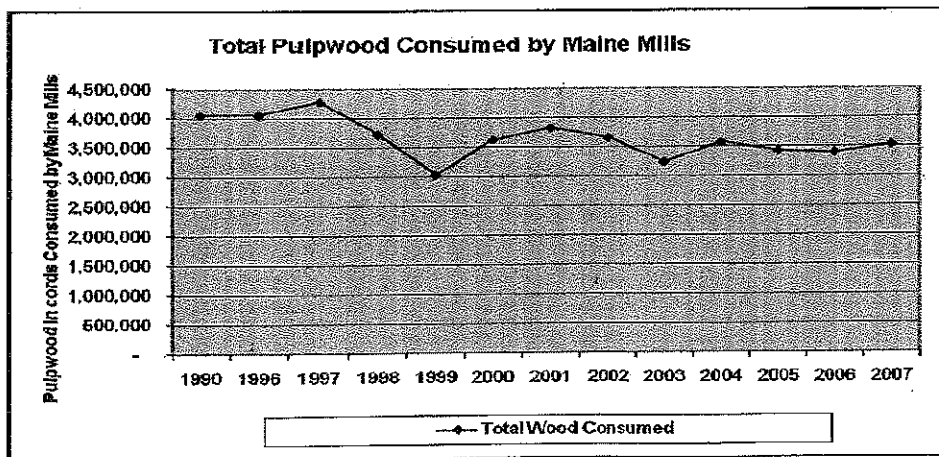
Graphics

AG Draft Report Figure 2.



MFPC Comment: We believe that this graph presents an inaccurate portrayal of pulpwood processed by Maine mills during the specified time period. By specifying coordinates of the Y Axis more correctly, we believe the graph should look more like the one presented below.

MFPC Revised Figure 2.



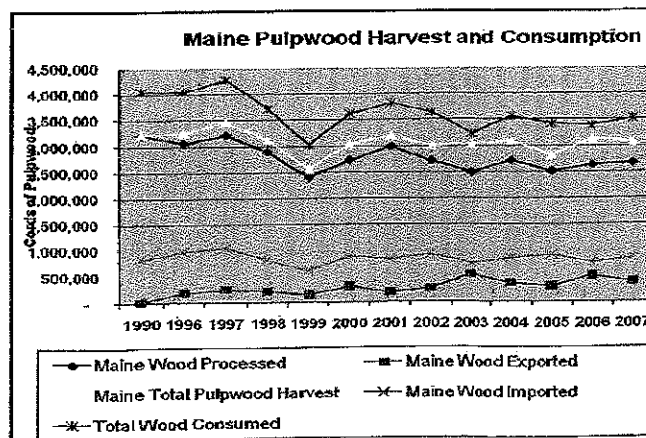
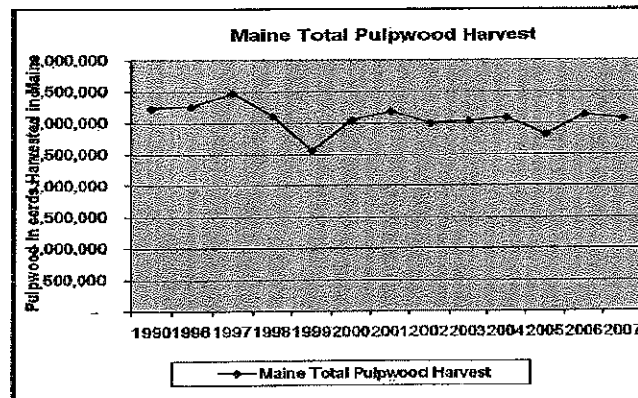
Data for this graph is derived from the State's online Wood Processor Reports. (See table below.) We have also provided two other graphs for your consideration based upon the same information.

Maine Online Wood Processor Report Data

	1990	1996	1997	1998	1999
Maine Wood Processed	3,216,242	3,063,014	3,215,860	2,895,712	2,407,658
Maine Wood Exported	18,256	196,361	254,247	214,322	150,799
Maine Total Pulpwood Harvest	3,234,498	3,259,375	3,470,107	3,110,034	2,558,455
Maine Wood Imported	840,198	991,024	1,063,952	825,031	620,699
Total Wood Consumed	4,056,440	4,054,038	4,279,812	3,720,743	3,028,355

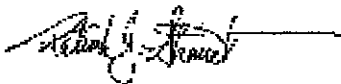
2000	2001	2002	2003	2004	2005	2006	2007
2,739,141	2,989,680	2,726,303	2,496,510	2,718,289	2,513,197	2,627,821	2,671,035
301,213	195,170	269,091	534,015	365,730	302,284	501,242	395,717
3,040,354	3,184,850	2,995,394	3,030,525	3,084,019	2,815,481	3,129,063	3,066,752
886,858	831,656	921,733	742,647	848,952	908,648	768,348	853,675
3,625,999	3,821,336	3,648,036	3,239,157	3,567,242	3,421,845	3,396,169	3,524,710

MFPC Graphs



Once again, we appreciate your consideration of our comments. Please contact us if you have any questions, and we look forward to working with you towards the final report.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Strauch", followed by a horizontal line extending to the right.

Patrick J. Strauch
Executive Director



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Christina M. Moylan
Assistant Attorney General
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Augusta, Maine 04333-0006

Dear Christina:

We would like to thank you and Linda Conti for meeting with us last July and staying in touch throughout this process. We appreciate the inclusion of logger's opinions and your understanding that this was a new experience for even the most savvy of business people. So many know better what loggers should want and need. This was a real first in reaching out to the people who really know the issues, and who struggle to work with them every day. Thank you for showing such respect.

After reviewing the Attorney General's report, the strongest collective reaction from our members addressed the suggestion that our industry needs more regulations and/or increased monitoring. Solutions which would increase fines and coffers for a State agency creates negative reactions to our trying to develop healthy partnerships between small businesses and the State. We do support the consistent and fair application of laws. How many times do we hear our loggers complain that they are penalized for doing the right thing and not cutting corners, while others who break the law make out better? The Professional Logging Contractors of Maine would support the enforcement of the laws if they were applied fairly across all regions of the State. Unfortunately the lack of State agency training, an accountability system that measures the performance of the state employee to the execution of fines has not been fair or consistent in all regions. The fairness of the law should not be based on who happens to stop you or visit your job site.

We are designing a series of seminars for logging business owners to take place this summer and fall focusing on contract law, negotiation skills and mediation services. We are seeking funding for this now and will work with the Maine Forest Service's Kevin Doran and Maine Court Mediator and Director, Diane Kenty to develop a "Harvard-like" mediation scenario based professional development experience. We will follow up this series of seminars with inviting a voluntary group of retired professionals to act as an advisory board to loggers needing direction in formulating contracts and have four meetings a year where loggers can come and get advice/suggestions pro bono. I hope you feel this might be a good follow-up to what both of you heard from loggers and how to address some of these issues in less of a confrontational manner.

The only other issue is the ongoing misuse of independent contractor in some instances by large landowners and their foresters. The IRS is very clear on this and we have worked with logging companies in Maine for them internally to address issues with temporary sub-contractors. If better training were available on this issue with TIMOs and REITs perhaps some of the other issues about contracts would get addressed. Just a suggestion.

Thank you for focusing on helping to keep the forest products industry accountable to fair labor practices for all entities.

Sincerely,


Thomas Eushman
President

Professional Logging Contractors of Maine

CONSUMER PROTECTION DIVISION
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FEB 3 2009

OFFICE OF ATTORNEY GENERAL



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