

04-058

Maine Forest Service

Chapter 20

Forest Regeneration &

Clearcutting Standards

MAINE DEPARTMENT OF CONSERVATION

MAINE FOREST SERVICE

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04 DEPARTMENT OF CONSERVATION

058 BUREAU OF FORESTRY

Chapter 20: FOREST REGENERATION AND CLEARCUTTING STANDARDS

AUTHORITY: 12 MRSA c. 805, sub-c. III-A

Summary: This rule establishes the procedures for notifying the Department of Conservation, Bureau of Forestry, of proposed commercial timber harvesting activities, and sets the standards for clearcutting and for forest regeneration following timber harvesting. In general, landowners are required to notify the Bureau of Forestry, in writing, before timber is cut or removed, when the primary purpose of the harvest is to sell or use the timber as forest products. If the harvesting activities result in a clearcut larger than five acres, there must be a separation zone between clearcuts and regeneration standards must be met. No clearcut can be greater than 250 acres.

SECTION 1. SCOPE AND APPLICABILITY

A. Scope:

This rule governs all forest lands within Maine, including those owned by state and local governmental units, nonprofit organizations, and private forest lands. It does not govern federal forest lands, or research forests exempted by the Department of Conservation under Section 1.C. of this rule.

B. Applicability:

1. Unless specifically exempted in these rules, this rule applies to any timber harvesting when the primary purpose is to sell the timber or the timber is processed into forest products for sale.
2. The clearcutting standards of this rule apply to clearcuts larger than five acres in size.
3. All timber harvesting activities must comply with other applicable laws, rules, and standards, including but not limited to: The Natural Resource Protection Act [38 MRSA § 480 A to 480 Z], the Shoreland Zoning Act [38 MRSA § 435 to 449], and Maine Land Use Regulation Commission Law [12 MRSA § 681 *et seq.*] and Standards, Chapter 10.

C. Research Forests: Owners or managers of research forests may make application for exemption to the Bureau of Forestry.

1. Applications shall contain a description of the property; a map showing the location or locations of the research area to be exempted; a demonstration of Right, Title or Interest in the property; and a statement certifying the purposes, uses and restriction to research of the property.
 2. The Bureau of Forestry shall make a recommendation, including recommended terms and conditions, to the Commissioner concerning the conformance of the proposed research with generally accepted research practices and the standards of these rules.
 3. The exemption shall remain in effect for the term stated in the exemption, or until such time as there is a change in use of the property that is inconsistent with the terms and conditions of the exemption, whichever is sooner; at such time the normal rules shall apply.
 4. Failure to comply with the terms and conditions of the written exemption shall render it null and void; at which time all normal rules shall apply.
- D. Municipal Ordinances: Municipalities regulating timber harvesting must adopt definitions that are consistent with those contained in these rules.

SECTION 2. DEFINITIONS

- A. For the purpose of 12 MRSA, Chapter 805, sub-chapter III-A and for these rules, the following terms have the following meanings unless the context otherwise requires:
1. Acceptable growing stock means live trees of commercially valuable species that are not culls, are capable of developing into trees suitable for producing merchantable products, and which:
 - A. Have survived at least two full growing seasons (April 1 through October 1);
 - B. Do not lean more than 30 degrees from vertical;
 - C. Do not have a broken, dead, or missing main stem;
 - D. For trees 8 inches DBH or larger, have not suffered scrapes from timber harvesting that penetrate the cambium on more than one half of the stem circumference at any point on the tree;

- E. 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 circumference at any point on the tree; and
 - F. Have not suffered visible severing, mutilation, or exposure from timber harvesting of more than one third of the root spread.
2. Basal area means the area of cross-section of a tree stem at Diameter Breast Height (4.5 feet above the ground) and includes bark.
3. Bureau means the Bureau of Forestry, Department of Conservation.
4. Change Of Land Use means that following timber harvesting the subsequent use for a particular area does not include growing forest products. Change of land use may include, but is not limited to, conversion to farm pasture, site for growing agricultural crops, residential dwelling unit, development site, or gravel pit. The division of forest land into smaller units does not by itself automatically constitute a change of land use.
5. Clearcut means any timber harvesting on a forested site greater than 5 acres in size that results in a residual basal area of acceptable growing stock trees over 4.5 inches DBH of less than 30 square feet per acre unless the following condition exists: after harvesting, the site has a well-distributed stand of acceptable growing stock as defined in these rules of at least 3 feet in height for softwood trees and 5 feet in height for hardwood trees.
6. Commercially Valuable Species means any tree species capable of growing as a tree in Maine, and which is not listed below:
- | | |
|---------------------|--------------------------|
| Acer pensylvanicum | striped maple, moosewood |
| Acer spicatum | mountain maple |
| Salix spp. | willow |
| Cornus florida | flowering dogwood |
| Betula populifolia | grey birch |
| Prunus pensylvanica | pin cherry, fire cherry |
7. Coniferous (Softwood) Type means a forest type of which pine, spruce, fir, hemlock, cedar, larch and other softwood species, singularly or in combination, comprise 75% or more of the stocking.
8. Cord means a unit of measure of wood products 4 feet wide, 4 feet high and 8 feet long, or its equivalent, containing 128 cubic feet when the wood is ranked and well stacked. Any voids that will accommodate a stick, log

- or bolt of average dimensions to those in that pile shall be deducted from the measured volume.
9. Cull means a tree where 50% or more by volume fails to meet pulpwood grades.
 10. Development Site means the ground area where any significant earth moving, grading, dredging, filling, building, construction, mining operation, or deposition of refuse, solid or liquid waste other than agricultural waste will occur. It does not include forest land areas where bioash or sludge are spread as a soil additive or fertilizer.
 11. Designated Agent means a person, company or other entity who is authorized by the landowner to act on the landowner's behalf for timber harvesting on the landowner's property.
 12. Diameter Breast Height (DBH) means the diameter of a standing tree measured 4.5 feet from ground level.
 13. Essential Wildlife Habitat means areas identified by the Commissioner, Maine Department of Inland Fisheries and Wildlife in accordance with the provisions of 12 MRSA, § 7754 (2,3) and/or § 7755-A (1,2,3).
 14. Forest Land means land used primarily to grow trees to be harvested for commercial use, but does not include marsh, open swamp, bog, water and similar areas, which are unsuitable for growing a forest product or for harvesting for commercial use even though these areas may exist within forest lands.
 15. Forest Management Activities include cruising and other forest resource evaluation activities, pesticide or fertilizer application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and other similar or associated activities, but not the construction, creation, or maintenance of land management roads.
 16. Forest Plantation: See "Plantation".
 17. Forest Management Plan: See "Harvest Plan".
 18. Forest Products means logs, pulpwood, veneer, boltwood, wood chips, stud wood, poles, pilings, biomass fuel wood, fuel wood or other products commonly known as forest products. It does not include Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, bough material, cones or other seed crops.

19. Forest Stand means a community of trees possessing sufficient uniformity as regards composition, construction, age, spatial arrangement, or condition, to be distinguishable from adjacent communities, so forming a silvicultural or management entity.
20. Forest Type means a stand of trees characterized by the predominance of one or more groups of key species which make up 75 percent or more of the sawlog volume of sawlog stands, or cordwood in pole timber stands, or of the number of trees in seedling and sapling stands.
21. Forested Wetland means a freshwater wetland dominated by woody vegetation that is at least 20 feet tall.
22. Freshwater Wetland means freshwater swamps, marshes, bogs and similar areas that are:
 - A. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
 - B. Not considered part of a great pond, coastal wetland, river, stream or brook.
23. Great Pond means any inland bodies of water which in a natural state have a surface area in excess of 10 acres, and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.
24. Hardwood Type means a forest type in which maple, birch, beech, oak, elm, basswood, poplar, ash or other broadleaf species of trees, singularly or in combination, comprise 75% or more of the stocking.
25. Harvest Area means an area of forest land where timber harvesting has occurred or is occurring.
26. Harvester means a person, company, or other entity who harvests, or contracts to harvest, a forest product.
27. Harvest Plan means a site specific document signed by a Licensed Professional Forester outlining proposed activities to ensure compliance with performance standards and regeneration requirements of 12 MRSA c. 805, sub-c III-A and this rule.
28. Landing: See "Yard".

29. Landowner means a person, company, or other entity which holds title to land, including joint ownership or tenants in common. Where the ownership of the timber located on a parcel is different than the fee ownership of the land, the owners of the timber are deemed to be a landowner and are jointly and severally responsible with the fee landowner to comply with this rule. Where a corporate landowner is a wholly owned subsidiary of another corporation, both parent and subsidiary are deemed to be the same landowner.
30. Land Management Road means a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for forest management activities, including associated log yards, but not including skid trails or skid roads.
31. Licensed Professional Forester means a forester licensed under 32 MRSA c. 75.
32. Management Plan: see “Harvest Plan”.
33. Mixedwood Type means a forest type in which neither hardwoods nor softwood comprise 75% or more of the stocking.
34. Overstory Removal means a timber harvest that is not a clearcut, that removes the overstory component of a stand, leaving a stand of advanced regeneration that is stocked with at least 450 trees per acre, well distributed on the harvest area, that meet the acceptable growing stock standards, as defined in these rules, and which are at least 3 feet in height for softwood trees and 5 feet in height for hardwood trees.
35. Parcel means a contiguous tract or plot of forest land owned by a landowner. Multiple contiguous tracts, plots or parcels of forest land owned by the same landowner are considered a single parcel. Contiguous tracts completely separated by a public road or roadway are considered to be separate parcels under these rules. Tracts of land joined only at a single point are not contiguous.
36. Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.
37. Plantation means a stand of commercially valuable tree species predominately artificially seeded or planted. It does not include

supplemental or “fill” plantings within an otherwise natural stand unless the artificially established trees total 50% or more of the stand.

38. Poletimber means a live tree of commercially valuable species meeting regional specifications of soundness and form and at least 4.5 inches DBH, but smaller than a sawtimber tree.
39. Precommercial Silvicultural Activities means chemical or mechanical thinning treatments, planting, stand conversion or timber stand improvement activities provided that no forest products are removed.
40. Public Road or Roadway means any roadway that is owned or leased by a governmental unit or public entity.
41. Regeneration means the renewal of a tree crop of acceptable growing stock, whether by natural or artificial means.
42. Residential Dwelling Unit means a room or group of rooms designed and equipped exclusively to use as permanent, seasonal, or temporary living quarters for one or more families. It includes mobile homes, but not recreational vehicles.
43. Residual Basal Area means the average of the basal area of trees remaining on a harvested area.
44. Residual Stand means a stand of trees remaining in the forest following timber harvesting.
45. Sapling means a live tree of commercially valuable species between 1.0 and 4.4 inches DBH.
46. Sawtimber means a live tree of commercially valuable species, suitable in size and quality for yielding sawlogs under current mill specifications.
47. Seedling means a live tree of commercially valuable species less than 1.0 inch DBH and at least 6 inches tall.
48. Separation Zone means an area that immediately surrounds a clearcut and separates it from any other clearcut. A separation zone must consist of forest land, and must meet the standards and requirements of this rule. The separation zone may include forested wetlands, and skid roads or skid trails, provided these skid roads or skid trails are not immediately adjacent to a clearcut. A separation zone does not include other non-forest areas such as non-forested wetlands, public and private roads, land management

- roads, winter haul roads, driveways, utility lines, development sites, pipelines or railroad rights-of-way.
49. Significant wildlife habitat is defined by Title 38 Ch. 3 Article 5-A.
 50. Skid Road or Skid Trail means a route used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing.
 51. Softwood Type means a forest type in which pine, spruce, fir, hemlock, cedar and larch, singly or in combination, comprise 75% or more of the stocking.
 52. Stand: see "Forest Stand".
 53. Timber Harvest means the cutting or removing of timber for the primary purpose of selling or processing forest products.
 54. Winter Haul Road means a route or track across frozen ground or compacted snow and ice used primarily for access to a yard or landing. It does not include a road with a gravel surface.
 55. Wood means the severed but unprocessed fibrous derivative of trees, or the chipped fibrous derivative of trees, regardless of quality or grade.
 56. Yard, Log Yard, Landing means the area where forest products are hauled by forwarding machinery or animals for deposition or storage before transfer to trucks or other means of conveyance.

SECTION 3. NOTIFICATION PROCESS FOR LANDOWNERS INTENDING TO HARVEST FOREST PRODUCTS

- A. **NOTIFICATION FORM AND PROCESS:** Prior to conducting a timber harvest a landowner or designated agent must notify the Bureau in writing. The landowner or designated agent must submit a "Forest Operations Notification" on a form specified by the Bureau.
 1. Signature required: All parties named by a landowner or designated agent on a notification (landowner, designated agent, forester, and harvester) must sign the notification. A notification submitted without one or more signatures of named parties will be considered incomplete.

Exception: A landowner with a licensed professional forester in its employ is exempt from the requirement for landowner signature,

provided the landowner maintains with the Bureau a list of licensed professional foresters authorized to sign for the landowner.

2. Designated Agent requirement: Unless exempted under Sec. 3. A.1, a notification that names a designated agent must include a clause, signed by the designated agent and landowner, stating that the designated agent has the authority to act on behalf of the landowner to harvest forest products on the landowner's property.
3. Additional notification requirement for Category 3 clearcuts (clearcuts larger than 75 acres).
 - a. Prior to conducting a timber harvest that creates a Category 3 clearcut (larger than 75 acres), the landowner or designated agent must submit to the Bureau a Forest Operations Notification at least 60 days prior to commencing the timber harvest.
 - b. Every Forest Operations Notification that results in a Category 3 clearcut must also include a harvest plan. The harvest plan must include the information specified in Sec.5.C.1 (Harvest Plans for Category 2 and Category 3 clearcuts).
 - c. The Bureau will review each notification and harvest plan submitted under this provision for completeness. Either shall be deemed incomplete if the Bureau finds that the required information is missing, inadequate, or inaccurate.
 - d. A Bureau Forester and the landowner or the landowner's representative must have a meeting at the proposed harvest site to review the harvest plan. This meeting must take place during normal working hours and within the 60 day notification period, unless extended by agreement of the parties.

Following this meeting, a Bureau Forester will have 10 working days to make a written determination whether the notification and harvest plan comply with requirements of this rule. If a Bureau Forester finds that the harvest plan does not comply, the Bureau Forester shall identify in writing any inadequacies in the harvest plan or Notification and/or, as appropriate, request more information.

A landowner must provide the information requested or address any inadequacies and receive written confirmation from the

Bureau that the Notification and harvest plan are in compliance prior to commencing the harvest.

4. Completed Notification: The Bureau will acknowledge receipt of a complete notification by returning a copy of the notification in a format suitable for posting.

EXEMPTION FROM NOTIFICATION REQUIREMENT: The following types of timber harvests are exempt from the notification requirements of this section, even if the forest products harvested are sold commercially:

- 1) Removal of single trees or small groups of trees from residential yards, roadsides, and similar urban or suburban settings where the tree removal occurs on an area two acres in size or less, and is conducted for the purposes of hazard tree removal, right of way and driveway clearance, and lot clearance for the construction of residential dwelling units. This exemption applies only to land on which a person resides, or for lot clearing operations for a landowner who possesses a building permit, or where such lot clearance does not exceed the necessary construction footprint.
- 2) Timber harvests where the forest products harvested or processed are for personal use by the landowner.

B. LANDOWNER/AGENT REQUIREMENTS AFTER NOTIFICATION IS ACKNOWLEDGED: The landowner or designated agent is responsible for complying with the following notification standards:

1. The returned notification, a copy of the original notification, or the notification number shall be posted and maintained in a conspicuous location at or near the principal landing or yard associated with the timber harvest.
2. Where a parcel is accessed by a private road system, a single notification may be posted in a conspicuous location at the parcel boundary on the principal access road leading into the parcel.
3. Notifications shall remain posted at the timber harvest site until the harvest is completed, at which time the notification may be removed.
4. The Bureau will provide replacement forms upon written request stating the need and reason for needing a replacement.

SECTION 4. REGENERATION STANDARDS

A. OVERSTORY REMOVAL STANDARDS:

To qualify as an overstory removal, a harvest area must be stocked with at least 450 trees per acre, well distributed on the harvest area, of acceptable growing stock trees that are at least 3 feet in height for softwood trees and 5 feet in height for hardwood trees. The Bureau may verify that the harvest area qualifies as an overstory removal through a field procedure that uses sample plots that are randomly or systematically located to provide a fair representation of the entire harvest area.

B. CLEARCUT REGENERATION STANDARDS:

Within five years of completing a timber harvest that creates a clearcut, the harvest area must be stocked with at least 450 trees per acre of acceptable growing stock trees. The harvest area may not contain any contiguous area greater than 5 acres that does not meet this condition.

C. CERTIFICATION OF REGENERATION:

For Category 2 and Category 3 clearcuts, attainment of this general standard must be certified by a Licensed Professional Forester. (See Section 5.C.3. Reporting Requirements.) A field procedure shall be used to certify regeneration that uses sample plots that are randomly or systematically located to provide a fair representation of the entire harvest area.

EXEMPTION FROM CERTIFICATION OF REGENERATION:

Landowners who own 100 acres or less, total ownership statewide, are exempt from Section 4.C. Certification of Regeneration.

D. EXEMPTIONS FROM REGENERATION STANDARDS:

1. Natural Disaster: Regeneration standards do not apply to a harvested area if the regeneration is destroyed by fire, disease, insect infestation or other natural disaster provided the landowner promptly thereafter notifies the Bureau in writing of the location, size, approximate date, and cause of the disaster. The regeneration requirement does not apply to the area affected by the disaster. Vegetative cover sufficient to prevent accelerated erosion must be established on the affected area as soon as possible.
2. Change of Land Use: Regeneration standards do not apply to the portion of a harvested area where there is a change of land use, provided:
 - a. The change of land use must be completed by the end of the second full calendar year following the year of the timber harvest.

- b. The intent to change land use must be stated on the "Forest Operations Notification" form submitted to the Bureau of Forestry or other format approved by the Bureau.
- c. If the change of land use is to residential dwelling units, the exemption from regeneration standards is limited to the actual size of the residential lot or five acres, which ever is smaller.

E. MITIGATION FOR INADEQUATE REGENERATION:

1. **CERTIFIED PLAN:** In the event of a failure to meet regeneration standards, in addition to being potentially liable for civil penalties and other remedial action, the landowner shall, within 30 days of notification by the Bureau, submit to the Bureau a mitigation plan certified by a Licensed Professional Forester that will enable the landowner to attain compliance with the regeneration standards as soon thereafter as possible. At a minimum, the mitigation plan shall include:
 - a. Specification of commercial tree species to be planted or regenerated;
 - b. Consideration of the site physiographic conditions;
 - c. Specific procedures to insure satisfactory growth and survival of specified commercial tree species; and
 - d. An action plan outlining all necessary actions and an expeditious timetable to complete the mitigation measures.
2. **LANDOWNER RESPONSIBILITY:** Following approval of the mitigation plan by the Bureau, the land owner shall ensure that the mitigation plan and its actions are implemented.
3. **CERTIFICATION BY LANDOWNER:** When the plan has been implemented the land owner shall submit to the Bureau certification by a Licensed Professional Forester that the plan has been completed and that the regeneration standards have been met.

SECTION 5. CLEARCUT STANDARDS

If a landowner's timber harvesting activities on a parcel result in a clearcut, the following standards apply.

A. MAXIMUM SIZE OF CLEARCUT: No clearcut shall be larger than 250 acres in size.

B. CATEGORY 1 CLEARCUT: A Category 1 clearcut is any clearcut that is greater than 5 acres and less than or equal to 20 acres.

1. SEPARATION ZONE STANDARDS - Category 1 Clearcuts

a. A Category 1 clearcut must have a separation zone of at least 250 feet from any other clearcut (separation zones may be shared).

Exception: A Category 1 clearcut may be created adjacent to a property line between two or more different landowners. The landowner must comply with all other requirements for a Category 1 clearcut.

b. A separation zone for a Category 1 clearcut must meet one of the following requirements:

(1). The separation zone shall contain an average basal area greater than 30 square feet per acre of acceptable growing stock, well distributed on the separation zone;

OR,

(2). The separation zone shall contain at least 450 trees per acre of acceptable growing stock, well distributed on the separation zone; softwood trees must be at least 3 feet in height and hardwood trees must be at least 5 feet in height.

c. Separation zones must be maintained to meet the standards of Sec.5.B.1.a and Sec.5.B.1.b until one of the following conditions is met:

(1). The regenerated clearcut contains a minimum of 300 trees per acre of acceptable growing stock trees, well distributed on the harvest area; softwood trees must be at least 10 feet in height and hardwood trees must be at least 20 feet in height;

OR

(2). At least 10 years have elapsed from the date the clearcut was completed.

C. CATEGORY 2 AND CATEGORY 3 CLEARCUTS:

A Category 2 clearcut is any clearcut greater than 20 acres but less than or equal to 75 acres in size.

A Category 3 clearcut is any clearcut greater than 75 acres but less than or equal to 250 acre.

1. HARVEST PLANS FOR CATEGORY 2 AND CATEGORY 3 CLEARCUTS:

- a. For all Category 2 and Category 3 clearcuts, the landowner shall develop, prior to harvest, a site specific harvest plan signed by a Licensed Professional Forester that demonstrates compliance with the standards of Section 4 (Regeneration Standards) and Section 5 (Clearcut Standards) of this rule.
- b. MINIMUM ELEMENTS OF HARVEST PLAN: The following minimum elements are required in the harvest plan for each Category 2 and Category 3 clearcut:
 - (1). Landowner's name, address, and telephone number.
 - (2). If applicable, designated agent's name, address and telephone number.
 - (3). Signature of Licensed Professional Forester preparing the plan.
 - (4). Date and Intent to Harvest Notification Number.
 - (5). Anticipated dates of harvest(s).
 - (6). A certification signed by a Licensed Professional Forester or, if required under this section, a certified wildlife professional, attesting that the clearcutting is needed to improve the health, productivity or wildlife habitat of the forest.
 - (7). An explanation of how the standards of Section 4 (Regeneration Standards) and Section 5 (Clearcut Standards) of this rule will be met.
 - (8). The reason for the creation of the clearcut, which must be one of the following four reasons:

- (a). Removal of poor quality, intolerant, understocked, short lived or mature overstories where the retention of the residual overstory trees is not justified for further increase in value, as a source of seed, or for protection of the new stand;
 - (b). Ecologically appropriate improvement or creation of wildlife habitat, with accompanying prescription and justification from a certified wildlife professional;
 - (c). Removal of timber stands that, if partially harvested according to accepted silvicultural practice, are at high risk for windthrow due to factors such as soils, rooting depth, crown ratio or stem quality; or,
 - (d). Harvesting of an existing plantation or other forest stands established by or previously treated with precommercial silvicultural activities.
- (9). An assessment of the soil erosion potential of the harvest area, and any actions that will be taken to protect riparian zones and minimize erosion into water bodies.
- (10). An assessment of the windfirmness of the separation zone associated with the clearcut and the steps that will be taken so that the standards for separation zones will be maintained.
- (11). A certification, from the Licensed Professional Forester or certified wildlife professional preparing the plan, that the proposed harvest does not occur within significant or essential wildlife habitats, or if the harvest does occur within such areas, a certification that all appropriate approvals, permits or variances have been obtained.
- (12). A map showing the location of the clearcut and the separation zone associated with the clearcut. The map should be on the current edition of the United State Geological Survey topographic map (U.S.G.S.) or other format as approved by the Bureau. The landowner shall promptly update the map as needed.

- (13). Certification by a Licensed Professional Forester that the landowner has a plan to manage the regeneration consistent with the regeneration standards of this rule. The plan shall indicate what measures the landowner will take and a time frame for carrying out those measures in order to meet the stocking and other regeneration standards.
- (14). ADDITIONAL REQUIREMENT FOR CATEGORY 3 CLEARCUT HARVEST PLAN: For all Category 3 clearcuts, the harvest plan must include a summary of how the proposed clearcut and other adjacent harvest activities collectively provide for water quality protection and wildlife habitat needs.

c. **CATEGORY 2 CLEARCUTS - HARVEST PLAN KEPT ON FILE:**

For all Category 2 clearcuts, the harvest plan must be kept on file by the landowner and be made available for on-site inspection by the Bureau until regeneration standards are achieved.

d. **CATEGORY 3 CLEARCUTS - HARVEST PLAN FILED WITH BUREAU AND ON-SITE HARVEST PLAN REVIEW:**

For all Category 3 clearcuts, the harvest plan must be submitted to the Bureau with the Forest Operations Notification at least 60 days prior to commencing the timber harvest, as specified in Sec.3.A.3 (Notification Process for Landowners Intending to Harvest Forest Products).

A Bureau Forester and the landowner or the landowner's representative must have a meeting at the proposed harvest site to review the harvest plan. This meeting must take place during normal working hours and within the 60 day notification period, unless extended by agreement of the parties.

Following this meeting, a Bureau Forester will have 10 working days to make a written determination whether the notification and harvest plan comply with requirements of this rule. If a Bureau Forester finds that the harvest plan does not comply, the Bureau Forester shall identify in writing any inadequacies in the harvest plan or Notification and/or, as appropriate, request more information.

A landowner must provide the information requested or address any inadequacies and receive written confirmation from the

Bureau that the Notification and harvest plan are in compliance prior to commencing the harvest.

- e. **LANDOWNER RESPONSIBILITY:** The landowner is responsible for ensuring that the harvest plan and its recommended actions are implemented.

2. **SEPARATION ZONE STANDARDS - Category 2 and Category 3 Clearcuts**

- a. A Category 2 or Category 3 clearcut must have a separation zone of at least 250 feet from any other clearcut (separation zones may be shared).

Exception: A Category 2 or Category 3 clearcut may be created adjacent to a property line between two or more different landowners. The landowner must comply with all other requirements for Category 2 and Category 3 clearcuts, including but not limited to the requirement that the area of the separation zone be at least equal to the area of the clearcut [Section 5.C.2.b].

- b. The area of the separation zone must be equal to or greater than the area of the clearcut.
- c. The separation zone must meet one of the following requirements:
 - (1). Contain at least 60 square feet basal area per acre of trees 1.0 inches DBH or larger, well distributed on the separation zone. A minimum of 40 square feet basal area per acre must be comprised of acceptable growing stock trees, and a minimum of 40 square feet basal area per acre must be comprised of trees 4.5 inches DBH or larger;

Exception: Areas not capable of growing at least 60 square feet basal area per acre due to poor soils or other site conditions may be used as part or all of a separation zone, provided this condition is documented and mapped by a Licensed Professional Forester in a harvest plan available for inspection by agents of the Bureau.

OR,

- (2). Contain at least 300 trees per acre of acceptable growing stock trees, well distributed on the separation zone;

softwood trees must be at least 10 feet in height and hardwood trees must be at least 20 feet in height.

Exception: A clearcut that was created between January 1, 1991 and the effective date of this rule, that meets the regeneration standard of this rule (Section 4) and that does not meet the requirement of Sec.5.C.2.c.(2) above may be used as all or part of a separation zone, provided that 10 years have elapsed since the completion of the clearcut.

- d. Separation zones must be maintained to meet the standards of Sec.5.C.2.a through Sec.5.C.2.c until one of the following conditions is met:
 - (1). The regenerated clearcut contains a minimum of 300 trees per acre of acceptable growing stock trees, well distributed on the harvest area; softwood trees must be at least 10 feet in height and hardwood trees must be at least 20 feet in height;

OR,

 - (2). At least 10 years have elapsed from the date the clearcut was completed.
3. REPORTING REQUIREMENTS
- a. For all Category 2 and Category 3 clearcuts, the landowner must file with the Bureau, in a format specified by the Bureau, a certification that the regeneration standards of Section 4 of this rule have been met. The certification must be filed prior to 30 days following the end of the regeneration period specified in Section 4, and be certified by a Licensed Professional Forester.
 - b. For all Category 2 and Category 3 clearcuts, the landowner must file with the Bureau, no later than September 30, in a format specified by the Bureau, the following information for each Category 2 and Category 3 clearcut created during the preceding calendar year:
 - (1). The clearcut location, drawn on the most recent edition of United States Geological Survey topographic map or equivalent, or other format approved by the Bureau; or the

longitude and latitude of the approximate center of the clearcut.

- (2). The size of the clearcut.
- (3). The name of the city, town, plantation or township, and county in which the clearcut occurs.
- (4). The reason for the creation of the clearcut, which must be one of the four reasons specified in Sec.5.C.1 of this rule (Harvest Plan for Category 2 and Category 3 clearcuts).

D. EXEMPTION FROM CLEARCUT STANDARDS:

1. Landowners who own 100 acres or less, total ownership statewide, are exempt from the clearcut standards Sec.5.A through Sec.5.C.
2. Change of Land Use: Clearcut standards do not apply to the portion of a harvested area where there is a change of land use, provided:
 - a. The change of land use must be completed by the end of the second full calendar year following the year of the timber harvest.
 - b. The intent to change land use must be properly indicated on the "Forest Operations Notification" form submitted to the Bureau of Forestry or other format approved by the Bureau.
 - c. If the change of land use is to residential dwelling units, the exemption from clearcut standards is limited to the actual size of the lot or five acres, which ever is smaller.

SECTION 6. VARIANCE

- A. PETITION: Any forest landowner may petition the Commissioner of the Department of Conservation for permission to operate in a manner inconsistent with these rules.

B. BURDEN OF PROOF: The burden of proof is on the petitioner to demonstrate that:

1. Strict compliance with the regulations or standards would, because of unique conditions of topography, access, location, shape, size, or other physical features of the site or forest condition, cause unusual hardship or extraordinary difficulties;
2. The unusual hardship or extraordinary difficulties claimed as a ground for variance have not been created by the owner or a predecessor in title;
3. The proposed use meets the purpose and intent of 12MRSA c. 805 (the Forest Practices Act); and
4. The public interest is otherwise served.

C. PUBLIC INPUT ON VARIANCE REQUESTS:

1. The Bureau maintains a list of persons interested in being notified of variance petitions (Forest Practices Variance List). Persons interested in being notified of variance petitions must request such notification from the Bureau in writing.
2. When the Department receives a petition for variance the Bureau will notify all persons on the Forest Practices Variance List and all landowners within 1,000 feet of the parcel or parcels for which the variance is being requested, as shown on municipal or state tax maps. The notice will include the name of the petitioner, the location of the proposed harvest area, and the section(s) of this rule for which the petitioner requests a variance. Such notice generally will be sent by regular mail within five working days from the date the Department receives the petition for variance.
3. The petition for variance, including all supporting information supplied by the petitioner, will be available for examination by appointment during regular business hours at the offices of the Bureau in Augusta. Copies of the full variance petition and supporting documents will be made available upon request at a cost as determined by Bureau policy in effect at the time of the request.
4. Any person may submit written comments regarding the variance petition to the Bureau. Unless otherwise indicated by the Bureau, in order to be considered written comments must be received no later than 15 calendar days after the Bureau mails the notification of petition for variance.

- D. **BUREAU RECOMMENDATIONS:** The Bureau shall make a recommendation to the Commissioner indicating such facts, findings, terms and/or conditions as may be appropriate.
- E. **COMMISSIONER'S FINDINGS:** The Commissioner may issue a variance only after making written findings of fact and conclusions supporting the determination that the petitioner has met the burden of proof. The variance may be issued upon such terms and conditions as the Commissioner deems appropriate and the landowner shall comply with the terms and conditions. If the variance is not issued as requested, the Commissioner shall provide the petitioner with written notice of the reasons for denial. The variance or denial shall be issued in a timely fashion.

SECTION 7. [Reserved: Silvicultural Best Management Practices].

SECTION 8. EFFECTIVE DATE

- A. **EFFECTIVE DATE:** The effective date of these rules shall be October 1, 1999.

Timber harvests for which notification has been filed and timber harvesting has begun prior to the effective date are not subject to these rules.

STATUTORY AUTHORITY: 12 MRSA c. 805, sub-c. III-A

EFFECTIVE DATE:

January 1, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:

August 7, 1997 - minor spelling and formatting.

REPEALED AND REPLACED:

October 1, 1999