

MAINE FOREST SERVICE, DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
22 SHS, Augusta, Maine 04333 (207) 287-2791 or in-state 1-800-367-0223  
**INSTRUCTION FOR COMPLETING THE  
PETITION FOR VARIANCE FROM PERFORMANCE  
STANDARDS FOR MFS RULES**

pursuant to 12 M.R.S. § 8869

**Excerpt from the 1999 Forest Practices Act and Rules Chapter 20**

**§ 8869. FOREST HARVEST REGULATIONS**

2. Performance standards for clearcuts. The Director of MFS shall establish, by rule, performance standards for clear-cuts, including limitations on size. These standards shall protect water quality, minimize soil erosion, ensure adequate regeneration, address adverse impacts on wildlife habitat and provide for a healthy and sustainable forest. The Director shall incorporate regional variations in developing performance standards that consider growing conditions, tree species and site quality.

5. Variance. The Director shall establish, by rule, standards to permit activities that exceed the standards set forth under subsection 2. In developing standards, the Director shall consider the unique characteristics of a site and any related economic hardship which would result from noncompliance with these standards.

**RULES CHAPTER 20**

**TITLE:** Forest Regeneration and Clearcutting Standards.

**AUTHORITY:** 12 M.R.S. § 8869

**SECTION 6.** VARIANCE

**A. PETITION THE DIRECTOR:** Any forest landowner may petition the Director of the Maine Forest Service, Department of Agriculture, Conservation & Forestry for permission to operate in a manner inconsistent with Maine Forest Service rules.

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

1. Strict compliance with the regulations and standards would, because of unique conditions of topography, access, location, shape, size, or other physical features of the site or forest conditions 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 12 M.R.S. c. 805 (the Forest Practices Act) and/or other MFS Rules and Standards for timber harvesting and timber harvesting related activities; 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 Director indicating such facts, findings, terms and/or conditions as may be appropriate.

**E. DIRECTOR'S FINDINGS:** The Director 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 Director deems appropriate and the landowner shall comply with terms and conditions. If the variance is not issued

as requested, the Director shall provide the petitioner with written notice of the reasons for denial. The variance or denial shall be issued in a timely fashion.

## GENERAL INSTRUCTIONS

### Variance for Clear-cuts, Timber Harvesting and Timber Harvesting Related Activities

**Standards.** The Director is authorized by 12 M.R.S. §8869 (5) to grant variances to permit activities that exceed the performance standards for clear-cuts, timber harvesting and timber harvesting related activities. These standards are found in MFS Rules: Chapter 20, Chapter 21, Chapter 23, and Chapter 27.

**Burden of Proof.** The burden of proof rests upon the landowner to demonstrate the need for this variance. The more information and evidence you can provide with the application, the faster the Department can act on your request. It is likely that your petition will result in a site visit by an agent of the Director along with other appropriate professionals.

**Must Comply With All Other Regulations.** Variances may be issued only to Standards as set forth in MFS Rules: Chapter 20, Chapter 21, Chapter 23, and Chapter 27. If a variance is issued the landowner must still comply with all other applicable regulations such as those of L.U.P.C, D.E.P, Municipal Ordinances, etc.

**File Your Petition Early.** The Department of Agriculture, Conservation & Forestry is required to act on a variance petition in "a timely fashion." We will make a sincere effort to advise you of approval or denial within 30 days of receipt of your completed petition. However, for your own convenience we urge you to file your petition at the earliest possible date to allow for unforeseen delays.

## SPECIFIC INSTRUCTIONS

1. Provide complete legal address including P.O. Box, R.F.D., H.C.R., route and box numbers and zip code.
2. Cite the specific standard such as "Section 5C, Category 2 and Category 3 Clear cuts number 2.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)".
3. Explain what you propose to do: ..."Would like to place a new Category 2 clearcut up against an old Category 2 with no separation between them".
4. Explain the basis for this request. For example, "Crown damage due to the 1998 ice storm has left the stand with over 60% dead or broken tops. This extensive damage has eliminated the potential for future growth and value. A total salvage harvest is warranted at this time".
5. Provide here any and all supporting information. In the above example this may include a stand type map showing species group, density and height of stand, soils map and/or the harvest plan for the site. **For any variance, it will be mandatory that the applicant or the applicant's agent provide a detailed description of the present condition of the site and the expected condition after the implementation of all requested activities if the variance is approved.** The information should include but is not limited to: Forest Operations Notification number, pre-harvest and post-harvest stand conditions (acres affected, basal area, stand and stocking data, species, justification for the harvest), condition of trees (insect and disease, decay, growth, wind firmness), soils information (dry, wet, ledge), terrain (steep, flat, erosion potential), harvest techniques and type of equipment to be utilized, Best Management Practices to be installed (before, during and after the harvest), identify water bodies/wetlands and practices used to protect them, effect on wildlife and habitat, etc...
6. Document the kind and extent of economic hardship. Show math and specific amounts. The economic hardship should be over-and-above the ordinary course of business and so high that no one could reasonably expect a landowner to do what is required in the regulation. This would include the lost value of the wood that will continue to die and the cost to revisit the site to salvage what little will be left once it can be legally cut.
7. The standards rule out variances for problems that you or a previous owner caused. Show how the stand was being managed before the ice storm and how the damage has altered that plan. The Department will give serious consideration to legitimate situations that the law or regulations did not foresee.
8. There may be more than one possible solution to the problem but good reasons why you chose the one you propose. Use this section to document your thought process in arriving at the proposed activity.

9. List only those landowners close enough to be potentially impacted by the activity on your property. For small lots, you may list owners on all sides. For larger lots or if activity is located near only one boundary line, only one or two nearby owners may be listed. [Large landowners: list only adjacent owners within 1000 feet of the area covered by the variance.] Be sure to supply complete mailing addresses; John Doe Portland, Maine will not be sufficient.

10. For the beginning date, enter the date on which you would like to start, allowing at least 30 days following submission of your petition. For the ending date, estimate as nearly as possible.

11. Your map may be the most critical part of your petition. Do not slight this section. The map should be large enough to show sufficient detail to know where the lot is, what is around it in ownership, natural features, stand types, and any other pertinent information. You may in fact be able to use it to answer other elements of this petition such as part of item 5. Ideally, you will have a forest management plan that will have a map that will supply most, if not all of the detail required for this section. **The map will identify the specific area of activity for the variance request.**

12. Mail the completed form.

Mail the completed variance application form and supporting documents to the Regional Enforcement Coordinator (REC) that covers the town where the activity will be performed. The application will be reviewed and processed by the REC and forwarded to the Director for approval or denial. All correspondence or inquiries should be addressed to the REC.

***Mail the completed form and all supporting attachments to:***

Director, Maine Forest Service  
Maine Department of Agriculture, Conservation & Forestry  
22 State House Station  
Augusta, Maine 04330-0022  
Attention: (Variance Request)

or

Maine Forest Service  
Regional Enforcement Coordinator  
(addressed to the REC for your area)