

## **Maine Forest Service Interpretations of MFS Rule – Chapter 23, Timber Harvest Standards to Substantially Eliminate Liquidation Harvesting**

These interpretations take into account the full context, meaning, and intent of 12 MRSA, Chapter 805, subchapter 3-A; Public Law 2003, chapter 422; the associated MFS Rule-Chapter 23 (aka the Liquidation Harvesting Rule); and the interpretations themselves, and must be used within that context.

### **Section 4. Definitions**

**Question 4.1. Landowner.** Several questions relate to the definition of **landowner**. Although **landowner** is specifically defined in the Forest Practices Act, the Liquidation Harvesting Rule adopts **all** of the FPA definitions by reference, and in addition identifies sixteen definitions specific to the Liquidation Harvesting Rule.

1. If a person retains the timber rights after buying and selling land within the 5 year window, could they still be considered an owner, and hence, part of a liquidation harvest? Or, because of the part of the definition which says “followed by,” does a liquidation harvest only exist if the harvest precedes the sale?
2. Likewise, what about the cut, buy, sell option – if the person owns the timber before buying the land, could this be captured by the liquidation harvest definition or not?

**Answer:** The definition of a landowner is the same as that in the FPA rule (incorporated by reference, MFS Chapter 20 Rule, Forest Regeneration and Clearcutting Standards, Section 2.A.29). A landowner is defined as, "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."

1. A person who retains timber rights following the sale of land to another party is a landowner and therefore a responsible party under the Liquidation Harvesting rule (Section 4.L.).
2. If a person owns an interest in the timber on a parcel of land, and they retain that interest while they purchase the underlying fee in the land, they are a landowner and therefore a responsible party under the Liquidation Harvesting Rule (Section 4.L. and MFS Chapter 20 Rule, Forest Regeneration and Clearcutting Standards, Section 2.A.29). If there is a break in ownership, the clock resets.

#### **Question 4.2. Parcel.**

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

FPA states that contiguous tracts separated by a public roadway are considered separate parcels.

The question is: If a landowner owned a parcel prior to the effective date of the Liquidation Harvesting Rule, and subsequently acquires an adjacent parcel after January 2, 2005, will MFS consider the two parcels to be one parcel subject to the rule?

**Answer:** MFS will consider the original parcel to be exempt from the Liquidation Harvesting Rule. Only that portion purchased after January 2, 2005 will be subject to the rule. The landowner may only use the acreage purchased after January 2, 2005 as a basis to determine the 50 percent removal.

#### **Question 4.3: High Grading.**

The LQH rule defines high grading as "timber harvesting that removes the most commercially valuable trees and leaves a residual stand composed primarily of trees of poor quality, poor condition, unable to respond to release from competition, and/or non-commercial species." The harvest standards prohibit high grading. How will MFS assess whether high grading has taken place on a parcel subject to the rule?

**Answer:** MFS will assess whether high grading has occurred using the following protocol:

1. Initial assessment for compliance with the rule will focus on percentage basal area removal on the entire parcel.
2. High grading will be determined by assessing the post harvest conditions of 2 metrics over the entire parcel. The metrics and tolerance limits below are established:
  - a. At least 66-2/3% (2/3) of the parcel's residual basal area stocking (trees 4.5" DBH or larger) must be Acceptable Growing Stock as defined by the FPA rule; and/or,
  - b. No more than 33-1/3% (1/3) of the parcel's residual stand basal area stocking (trees 4.5" DBH or larger) is composed of trees incapable of responding to release. Indicators of trees incapable of responding to release include:
    - i. Height/diameter ratio greater than 70; and/or
    - ii. Live crown ratio less than 30 percent; and/or
    - iii. Flat or crooked top, indicating loss of epinastic control.

#### **Question 4.4: Responsible Party.**

A person purchases a property that is encumbered by an existing lump sum sale agreement. Is this landowner subject to the LQH rules even though he has no control over the volume to be removed?

**Answer:** Yes. The LQH rule defines responsible party as follows:

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

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

#### **Section 5. Exemptions**

##### **Question 5.1: Date of Purchase.**

I'm planning to purchase a property from a logger who has purchased the property and begun logging it. He will continue logging it after the purchase closes. If the purchase closes after 01 January 2005, will any harvesting taking place on the property after that date be subject to the rule?

**Answer:** Yes. If you want harvesting conducted after 01 January 2005 to be exempt from the rule, you must close on the purchase prior to that date. If the purchase closes after 01 January 2005, and if harvesting continues on the lot, that harvesting will be subject to the rule (unless the property is otherwise exempt).

Please note, however, that if the previous owner retains any rights to the standing timber, the previous owner will also be treated as a new landowner and subject to the rule (because of the new combination of owners), and both parties are liable for compliance with the rule.

Also, the new landowner needs to resubmit a Forest Operations Notification or notify the Maine Forest Service that they are updating existing Forest Operations Notification information.

**Reminder:** If a harvest occurs after purchase, and the land is enrolled in the Tree Growth Tax Law program, the new landowner must develop a new forest management plan or agree to follow the existing forest management plan.

### **Question 5.2: Certification.**

The Liquidation Harvesting Rule provides Exemption B "where timber harvesting is on land that has received independent 3rd party certification." Do all participants in the American Tree Farm system qualify for the exemption B as certified forest land?

**Answer:** Only the Tree Farm lands that participated in the SWOAM/Tree Farm pilot project are certified by a 3rd party audit. The majority of Tree Farm lands in the state continue to be certified through a 2nd party audit. Therefore, only the SWOAM/Tree Farm pilot project lands are exempt from the Liquidation Harvesting Rule.

"Regular" Tree Farm is not "independent third party certification" as defined in the Liquidation Harvesting rule. Therefore, such lands are not exempt from the rule. The lands enrolled in the SWOAM/Tree Farm pilot project did undergo a third party audit; therefore, those lands are exempt.

### **Question 5.3: Date of Purchase.**

A large parcel is partially harvested. It is now in year two (2) of ownership and has had several lots sold off. Option 1 – Basal Area (BA) removal harvest standards of Section 6 have been met and no liquidation harvest (LQH) has occurred at this time. Following this scenario, do you reset the LQH clock so that every time a lot is sold off the original parcel, do you create a new parcel and start the 5 years over again?

**Answer:** The LQH clock (5 year period from the time of the original purchase) does not restart if you sell off lots.

### **Question 5.4: Certified Master Logger.**

When using a Master Logger (ML) to harvest for exemption (Section 5 – D), does the entire parcel have to be harvested by the Master Logger? Can the ML cut part of the parcel and you use that portion as exempt from LQH and then the rules only apply to the remainder of the parcel?

**Answer:** The entire parcel must be harvested by a Master Logger to qualify for the exemption.

### **Question 5.5: Certified Master Logger.**

A parcel is harvested by a Master Logger who signs a statement that attests that they are a certified ML and have completed the harvest of the parcel BUT they didn't sign the forest harvest operations notification (FON) prior to the harvest start. Can that FON be amended and signed by the ML after the cut so that the exemption applies?

**Answer:** The FON must be signed by the ML prior to the harvest and the ML must demonstrate that the harvest occupies an area 1,000 acres or less.

### **Question 5.6: Certified Master Logger.**

When a Certified Master Logger conducts a timber harvest and wishes to qualify for the exemption under Section 5(D) of the rule, can the Certified Master Logger utilize subcontractors to perform the harvest?

**Answer:** No. The definition of a “Certified Master Logger” in the rule does not refer to subcontractors [“Certified Master Logger means a timber harvester certified under the Master Logger Certification Program, a program administered by the Professional Logging Contractors of Maine, a non-profit corporation of Maine, according to standards promulgated by that program dated April 1, 2003.” Section 4(C)]. Section 4(L)(4) further identifies one of the “responsible parties” for a harvest subject to the rule as “[t]he timber harvester who conducted a timber harvest subject to this rule.” Again, there is no mention of subcontractors. Section 5(D) of the rule provides an exemption “[w]here the area affected by a harvest occupies 1,000 acres or less, and the harvest is conducted by a Certified Master Logger, and the Forest Operations Notification is signed by the Certified Master Logger. The Certified Master Logger involved shall be responsible for demonstrating to the satisfaction of the Maine Forest Service that the harvested area is 1,000 acres or less.” If a Certified Master Logger chooses to use a subcontractor or subcontractors to perform a harvest for which they seek the exemption under Section 5(D) of the rule, the subcontractor or subcontractors must also be Certified Master Loggers.

## **Section 6. Harvest Standards**

### **Question 6.1: Basal area removal limited.**

Section 6.A. states that, “Timber harvesting must not remove more than 50 percent of the basal area of trees 4.5” DBH and larger, present on the entire parcel at the time of purchase. Timber harvesting must not result in high grading and must include measures to protect advanced regeneration by minimizing the area damaged by logging equipment.” How will the Maine Forest Service interpret the 50 percent removal standard?

**Answer:** Landowners have several options to comply with this section of the rule. The following guidance assumes a uniform stand across the property:

1. Harvest the lot uniformly to remove up to 50% of the basal area, as long as there is no high grading and damage to regeneration is minimized. For the purposes of the rule, overstory removal harvests are treated the same as a clearcut since basal area determination for the rule begins at 4.5 inches DBH; or,
2. Conduct clearcut or overstory removal harvests on up to 50% of the acreage and leave the balance of the acreage, including clearcut separation zones, unharvested. Clearcuts must be adequately separated (per Forest Practices Act rule); or,
3. Any combination between the above two options that does not remove more than 50% of the basal area present on the entire lot, provided the stand is not high graded and damage to regeneration is minimized.

Less uniform stands should be cruised and the harvest well-planned to avoid inadvertent violations.

### **Question 6.2: Option 2. Accredited Timber Harvesters and Licensed Foresters**

Option 2 of the Harvest Standards provides a process to harvesters and foresters to exceed the limit on basal area removal by completing training approved by MFS and by signing an “attestation agreeing not to participate in liquidation harvesting.” Does the attestation apply to all harvesting, not just the harvest in question?

**Answer:** The attestation applies to all harvesting in the state by the party signing the document, not just a particular harvest. The attestation agreeing not to participate in liquidation harvesting will be collected by MFS at the time of training.

### **Question 6.3; Option 3. Timber harvest plan**

1. Must the harvester or forester submit the harvest plan to MFS?
2. A Licensed Forester must attest in writing within 60 days of completion of the harvest that the harvest complied with the harvest plan. Is the Licensed Forester required to submit the attestation to MFS?

**Answer:** Both the timber harvest plan and attestation must be kept on file by the landowner and made available to MFS upon request for seven years following the completion of the harvest or expiration of the notification, whichever is later. (See Section 6.C.4 on page 7 of the rule.)

### **Question 6.4: Option 1. Basal area removal limited**

A large parcel is partially harvested (less than 50% basal area removal). It is now in year two (2) of ownership and has had several lots sold off. Option 1 – Basal Area (BA) removal harvest standards of Section 6 have been met and no liquidation harvest (LQH) has occurred at this time. When calculating the 50% BA removal in the future (during the 5 year LQH period) will you look at the original parcel BA or the new parcel BA (minus the sold lots)?

**Answer:** The basal area removal will be calculated using the original parcel as it existed before the lots were sold. The rules specifically state: “Timber harvesting must not remove more than 50 percent of the basal area of trees 4.5” DBH and larger, present on the entire parcel at the time of purchase.”

### **Question 6.5: Option 3. Timber harvest plan elements**

How much information is required to satisfy the condition for a Chapter 23, Option 3 liquidation timber harvesting plan?

**Answer:** The Option 3 for harvest standards requires a timber harvest plan that is developed prior to the timber harvest. Section 6 (C)(1-4) lists all the required elements including the attestation. An example of one of these elements is stocking which is found in the stand specific narrative, Section 6 (C)(1)(f)(i). Stocking is defined as: a description of the number of trees, basal area, and volume per acre in a forest stand compared with a desired level for health and growth. The determination of stocking levels for tree species or forest types use stocking guides which require field data that is collected for basal area, trees per acre and tree diameters. A vague description of stocking that is expressed as understocked or adequately stocked is not specific enough and provides no quantitative data to qualify the statement as an acceptable element for the timber harvest plan. Narratives that do not include adequate data and background information will not satisfy or be accepted as a condition for the liquidation timber harvest plan.