# **01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**BUREAU OF PUBLIC SERVICES**

**DIVISION OF REGULATIONS**

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**WOOD MEASUREMENT RULES**

Chapter 380: GENERAL PROVISIONS

Chapter 381: GENERAL REQUIREMENTS FOR WOOD TRANSACTIONS

Chapter 382: MEASUREMENT OF WOOD AND DECLARATION OF QUANTITY

Chapter 383: MEASUREMENT AND PROMPT FURNISHING OF MEASUREMENT TALLY SHEETS

Chapter 384: COMPLAINTS AND INVESTIGATIONS

Chapter 385: LICENSING OF WOOD-SCALERS

References are made to the *National Forest Log Scaling Handbook*. The current edition of this Handbook may be purchased for $9.55 from the:

Forest Service

United States Department of Agriculture

12th and Independence Ave., S.W.

P.O. Box 2417

Washington D.C. 20013

Telephone (202) 447-6101

NOTE: A French language version of these *Wood Measurement Rules* is available upon request.

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**01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

 **DIVISION OF REGULATIONS**

**Chapter 380: WOOD MEASUREMENT RULES - GENERAL PROVISIONS**

**SUMMARY**: This chapter of the *Wood Measurement Rules* covers the intent, applicability, and severability of the rules; sets out statutory provisions dealing with penalties for violations; provides for an informal advisory committee; and provides definitions of terms used in the rules.

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**SECTION 1. STATEMENT OF INTENT**

 A. **Accuracy and verifiability**. It is the intent of the State Sealer that all methods of determining the amount of wood in wood transactions shall provide an accurate and verifiable count of the volume, quantity, dimension, or weight measured.

B. **Suitability of measurements**. It is the intent of the State Sealer that wood be measured by a method which is suitable to the wood production form and type of wood transaction involved.

C. **Unfair or deceptive dealings**. It is the intent of the State Sealer that unfair deceptive dealings in the measurement of wood be prevented by requiring measurement tally sheets in sufficient detail.

D. **Uniform measurement standards and procedures**. It is the intent of the State Sealer to establish uniform measurement standards and procedures which provide for accurate and verifiable measurements that can be efficiently and conveniently applied in wood transactions.

E. **Licensing of scalers**. It is the intent of the State Sealer to establish a licensing program for persons who measure wood to promote independent accountability.

F. **Meaningful enforcement**. It is the intent of the State Sealer to establish an enforcement program that will deter violations of these *Wood Measurement Rules* and that will provide for the expeditious investigation of complaints.

G. **Construction**. it is the intent of the State Sealer that these *Wood Measurement Rules*, which the State Sealer is required to promulgate and adopt under 10 M.R.S.A. §2367, be construed in conjunction with and in light of the *Weights and Measures Law* (10 M.R.S.A. §2301 *et seq*.) and in particular with the requirements of the *Wood Measurement Law* (10 M.R.S.A. §2361-A *et seq*.). These rules are not to be construed as modifying any rights or obligations granted or imposed by the *Uniform Commercial Code* (11 M.R.S.A. §1-101 *et seq*.) or the labor laws of this State (26 M.R.S.A. §1 *et seq*.)

**SECTION 2. APPLICABILITY**

A. **Consumer transactions excluded**. These Wood Measurement Rules govern all wood transactions in which measurement forms the basis for payment, except that they do not apply to the measurement of firewood in consumer transactions on the retail market.

B. **Types of wood transactions**. For measurement purposes, the State Sealer recognizes two distinct types of wood transactions: payment for services and a sale involving transfer of title to the wood. These two types of wood transactions are treated differently in the *Wood Measurement Law* and these *Wood Measurement Rules*.

1. **Nature of transaction**. The determination of which type of wood transaction is involved is based on whether there in fact occurs the transfer of title to the wood. It is the nature of the transaction that is considered rather than the terminology used by the parties ordinarily, the determination can be made by asking the question: Was payment made for services or for wood?

2. **Payment for services**

(a) Payment for services includes payment for services in harvesting, for services in hauling, and for services in both harvesting and hauling.

(b) The parties to a payment for services transaction are the person providing services and the person requiring services.

**NOTE**: Woodcutters, truckers, and loader operators who are paid piece rate wages and equipment rental are all examples of persons providing services. Jobbers or logging service contractors who are paid to harvest wood and deliver it roadside or to a designated mill or other location are also persons providing services, and are not sellers.

 **3. Sale of wood**

(a) The sale of wood involves the exchange of payment for title to the wood.

(b) The parties to a sale transaction are the seller and the buyer.

 **NOTE**: For example, a landowner, contractor, or broker who has marketable title to wood in any form is a seller when the wood is tendered for sale in exchange for payment. A processing mill that purchases wood in any production form is a buyer when payment is tendered in exchange for title to wood.

 (c) The purchase of stumpage or stumpage rights is a sale transaction provided that the purchaser acquires title to the wood (that is, the purchaser is free to market the wood as he chooses). If the seller of the stumpage or stumpage rights controls the marketing of the wood (for example, by directing where or how it is to be marketed) the stumpage or stumpage, rights transaction is not a sale transaction involving transfer of title but is rather a payment for services transaction.

 **NOTE**: See Chapter 381, Section 6 for the requirements where the purchase of stumpage is combined with payment for services in one transaction.

 4. **Chain of wood transactions**. The State Sealer shall apply these *Wood Measurement Rules* to each transaction in a series of wood transactions, in light of its nature and the following understandings;

(a) Any wood may be dealt with in a series of wood transactions;

(b) The transactions in the series may involve payment for services, sale, or both;

(c) Any person may be involved in more than one of the transactions in the series and the nature of his involvement may be different in different transactions;

(d) Either the wood in question may be measured only once and those measurements used to calculate payment in several transactions, or it may be separately measured to calculate payment for separate transactions in the series.

**SECTION 3. TERRITORIAL APPLICATION**

A. **Wood measurement transactions within the state**. The measurement of wood within the State of Maine is subject to these *Wood Measurement Rules* regardless of where the wood was harvested or to what destination the wood will be delivered after measurement.

B. **Wood measured outside the State**. When wood harvested within the State of Maine is taken out of the state before measuring these *Wood Measurement Rules* apply as follows:

 1. **Payment for services**

(a) These *Wood Measurement Rules* govern the measurement of all wood in all transactions in which payment is made for services harvesting or hauling wood that is harvested within the state of Maine.

(b) The *Wood Measurement Law* and these *Wood Measurement Rules* allow persons requiring services the privilege of measuring outside of the state wood that is harvested in the state of Maine. Under certain conditions this privilege may be suspended.

 **NOTE**: The conditions under which this privilege may be suspended are provided in the *Wood Measurement* Law, 10 M.R.S.A. §2364-A(3) and in Chapter 381, section 7 of these Rules.

 2. **Sale of wood**. These *Wood Measurement Rules* govern the measurement of all wood in sales transactions involving the transfer of title to wood that is harvested within the state of Maine, except under the following conditions:

(a) The sale transaction bears a reasonable relation to another state or nation; and

(b) The parties agree in writing that the wood measurement laws of the other state or nation shall govern their rights and duties.

**SECTION 4. VIOLATIONS AND PENALTIES**

 A. **Penalties and private actions**. The *Wood Measurement Law*, in 10 M.R.S.A. §2368, provides:

 **STATUTORY PROVISION**

 §2368. Violations; penalties

 1. Civil violations. Violations of [the *Wood Measurement Law*] or any rule promulgated pursuant to [the *Wood Measurement Law*] shall be a civil violation punishable by a civil penalty not to exceed $1,000 for a first offense and $2,000 for each subsequent offense. These civil penalties may be recovered by the State Sealer on behalf of the State in a civil action.

 2. Private action. Any person who violates [the *Wood Measurement Law*] or any rule promulgated pursuant to [the *Wood Measurement Law*] shall be liable in a civil action to any person aggrieved by the violation, pursuant to the remedies set forth in Title 26, section 626-A. The civil action for damages may be brought by either the aggrieved party or, at the request of the State Sealer, by the Attorney General.

 B. **Denial, revocation, and suspension of license**. In addition to the above provisions, licensed scalers and licensed apprentice scalers are subject to 10 M.R.S.A. §2365-A(3) which provides:

  **STATUTORY PROVISION**

 License; denial; revocation; suspension. The State Sealer may take enforcement action against the licensee or may initiate proceedings in the Administrative Court, pursuant to Title 5, Chapter 375, to revoke or suspend a license for any of the following reasons:

A. The licensee has violated any condition of the license;

B. The licensee has obtained a license by misrepresentation or failure to disclose fully all relevant facts; and

C. The licensee has violated any provision of the laws within this chapter.

**SECTION 5. SEVERABILITY**

 If any provision of these *Wood Measurement Rules* is invalid, or if the application of any provision of the rules to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

**SECTION 6. INFORMAL ADVISORY COMMITTEE**

 The State Sealer may appoint and maintain an informal advisory committee composed of persons representing a cross section of interests governed by these *Wood Measurement Rules*, such as independent and service contractors, woods workers, land managers, land owners, and owners and operators of mills of various types, as well as representatives of interested government agencies.

**SECTION 7. DEFINITIONS**

 Unless the context clearly indicates otherwise, the following terms shall have the following meanings.

 A. **Agent**. "Agent" means a person that acts or is empowered to act for another person.

 B. **Agreement of the parties**. "Agreement of the parties" means the mutual agreement of the parties or their authorized representatives and is distinguished from a unilateral condition imposed by any party to the agreement. A party is a company or individual buying wood, a contractor, an individual providing services in or incidental to harvesting, hauling, or chipping wood or an authorized employee representative negotiating on behalf of the individual providing services. The term "party" also includes a landowner, a broker, or a person of any other designation who enters into an agreement involving wood measurement. The term "agreement of the parties" includes the term "agree" in any of its grammatical forms.

C. **Apprentice scaler**. "Apprentice scaler" means a person licensed to measure wood under the direct supervision of a licensed wood scaler.

D. **Authorized system of measurement**. "Authorized system of measurement" means a system of measurement of wood provided for in the *Wood Measurement Law* or in these *Wood Measurement Rules*, applied to a particular production form as set forth in Chapter 382.

E. **Bucking**. "Bucking" means sawing stems into specified lengths, as into logs or bolts of a specified length.

F. **Butt back**. "Butt back" means to remove a portion of a stem from its butt end.

G. **Butt diameter**. "Butt diameter" means the diameter of the severed stem butt, measured outside the bark, the short way through the center, disregarding crevices and cracks.

H. **Butt measure**. "Butt measure" means the lineal measure of the butt end of tree length wood, without subsequent conversion to volume by any means. This measurement may be represented in either the number of stems in each butt diameter class by species, or alternatively in the cumulative sum of the butt diameters by species, expressed in inches, without regard to the butt diameter class.

I. **Butt scale**. "Butt scale" means the volume measure of wood based solely on measurement of the butt end of individual trees and converted to volume by any means.

J. **Buyer**. "Buyer" means a person who purchases wood and to whom title to wood is transferred in exchange for payment.

K. **Chipcord**. "Chipcord" means a unit of measure equal to the Volume of sawdust, chips, bark, or shavings that are contained in 128 cubic feet at the time of the transaction. Chipcord is used synonymously with "standard cord of chips."

L. **Complainant**. "Complainant" means a person who is aggrieved by an alleged violation of the *Wood Measurement Law* or these *Wood Measurement Rules* and who files a complaint with the State Sealer or who gives notice to the person with possession or control of the wood to which the alleged violation relates that a complaint will be filed. A complainant may be an authorized employee representative who files a complaint on behalf of such a person.

M. **Culled Wood**

1. In payment for services in harvesting, "culled wood" means any stem that was not designated to be harvested and yarded, or was not prepared as directed in the cutting specifications.

2. In payment for services in hauling, "culled wood" means any stem that was designated, in the manner described in the hauling specifications, as not to be hauled.

3. In the sale of wood, "culled wood" means any stem that does not conform to the wood quality specifications.

N. **Cunit**. "Cunit" means a unit of measure equal to 100 solid cubic feet of either wood including bark or wood excluding bark.

O. **Cutting specifications**. "Cutting specifications" mean the written directions for the preparation of trees that were designated to be harvested and yarded. The requirements for cutting specifications are set forth in Chapter 381, section 4.

P. **Deduction from gross scale**. See Discounting.

Q. **Discounting**. "Discounting" means taking a deduction from gross scale on account of a merchantability factor or factors, including quality, grading, or utilization factors such as scaling defects. The amount of the discount, also referred to as the deduction from gross scale is the difference between gross scale and net scale.

R. **Disputed wood**. "Disputed wood" means specifically identified wood that is the subject of a complaint, under Chapter 384, based on an allegation of inaccurate measurement of the identified wood.

S. **Face cord**. "Face cord" means a unit of measure of wood, air, and bark, measuring 4 feet high and 8 feet long, or its equivalent, containing 32 square feet of surface area. A face cord is used only for stacked wood where the length of the bolts has been designated or agreed upon in advance of measuring the wood. The bolts may be up to 9 feet in length.

T. **Green wood**. "Green wood" means trees or parts of trees that have been freshly felled.

U. **"Grosenbaugh" methodology**. The "Grosenbaugh" methodology means the method of determining scaling deductions of tree and log length stems, adapted from Grosenbaugh, L.R., Shortcuts for Cruisers and Scalers, U.S. Forest Service, Southern Forest Experimental Station, Occasional Paper No. 126, March 1952. An application of the "Grosenbaugh" methodology is available upon request from the State Sealer.

V. **Gross scale**. "Gross scale" means the full measurement of wood in any production form, measured without regard to any scaling defects, according to the measurement procedure for gross scale provided in Chapter 382, section 6, for each measurement system.

W. **Hauling specifications**. "Hauling specifications" means the written designation of wood in any production form that is to be hauled. The requirements for hauling specifications are set forth in Chapter 381, section 4.

X. **Licensee**. "Licensee" means an individual licensed as a scaler or apprentice scaler in accordance with Chapter 384.

Y. **Merchantability factor**. A "Merchantability factor" means any characteristic of wood that affects its quality, grade, or utilization. "Merchantability factor" includes all scaling defects, such as sweep, crook, seams, and rot.

Z. **Measurement**. "Measurement" means the determination by whatever system of measurement of the quantity, dimensions, volume or weight of wood with or without regard to quality or merchantability factors.

A-1. **Measurement tally sheet**. "Measurement tally sheet" means a written or printed form or combination of forms which provides a readily understandable record of the measurement of the wood to which it relates contains the information required by Chapter 383 of these *Wood Measurement Rules*, and is prepared by the person who measures the wood, or the assisting tally person.

B-1. **National Forest Log Scaling Handbook**. "National Forest Log Scaling Handbook" means the log scaling handbook published by the United States Department of Agriculture, as amended in 1973.

 **NOTE**: A copy of the "National Forest Log Scaling Handbook may be obtained from the United States Department of Agriculture, at the address provided on the cover page to these Rules.

C-1. **Net scale**. "Net scale" means the quantity of wood after reducing the gross scale measurements by the deductions taken for scaling defects or other merchantability factors, as provided for in Chapter 382, section 6 under the heading Net Scale - Discounting for those measurement systems in which such deductions are allowed.

D-1. **Oven-dried wood**. "Oven-dried wood" means wood that has been oven-dried to remove its moisture content according to standards as adopted by the American Society of Testing and Materials.

E-1. **Payment for services**. "Payment for services" means payment made for services in or incidental to harvesting, hauling or chipping wood, and does not involve transfer of title to the wood.

F-1. **Person**. "Person" means an individual or an organization, including but not limited to, a partnership, a corporation, a company, a society, a governmental agency, and an association, or an agent of a person.

G-1. **Person providing services**. "Person providing services" means a person who performs services in or incidental to harvesting, hauling, or chipping wood.

H-1. **Person requiring services**. "Person requiring services" means a person who calls for or requests services in or incidental to harvesting, hauling, or chipping wood.

I-1. **Piece**. "Piece" of wood means a portion of a harvested tree stem.

J-1. **Production form**. "Production form" means the form in which harvested wood is tendered for measurement.

K-1. **Properly prepared wood**. "Properly prepared wood" means wood that was required to be harvested and yarded, and was prepared as directed, according to written cutting specifications.

L-1. "Quality factor". See "Merchantability factor".

M-1. **Quantity factor**. "Quantity factor" means a factor for which reductions are made in the process of determining full measure, or "gross scale", and is distinguished from a merchantability, or quality, factor. A reduction is made for a quantity factor where necessary to determine the accurate full measurement of the wood. Under no circumstances shall scaling defects, grading considerations, or any other quality or merchantability factor be treated as a quantity factor. The measurement procedures set forth in Chapter 382, Section 6 incorporate the necessary measurement adjustments to account for the relevant quantity factors.

 **NOTE**: An example of a quantity reduction is in stick cord scale, where a reduction in the measurements is made for loose piling which results in excessive voids.

N-1. **Sale of wood**. "Sale of wood" means a transaction involving transfer of title to wood.

N-2. **Sample scaling**. "Sample scaling" means the method of measurement as set forth in Chapter 382, Section 6 of these *Wood Measurement Rules*, where wood is count or weight scaled and a representative sample of the wood is then measured using other authorized systems of measurement. The final scale is the measurement of the sample expanded by the total count or weight of the wood being sample scaled.

O-1. **Sawlog**. "Sawlog" means a log length stem that is 8 feet long or longer, where the lengths over 8 feet correspond to standard lumber lengths.

P-1. **Scaler**. "Scaler" means a person who measures wood by any system of measurement.

Q-1. **Scaling defect**. "Scaling defect" means an unwanted quality characteristic of a harvested tree, such as rot, abnormal shapes, holes, and, where provided for in Chapter 382, section 6, may include bark. See "merchantability factor".

R-1. **Seller**. "Seller" means a person from whom wood is purchased and who transfers title to wood in exchange for payment.

S-1. **Services in harvesting wood**. "Services in harvesting wood" means any activity or process in or incidental to the harvesting of wood, such as felling, limbing, topping, skidding, chipping, forwarding, sorting, piling, bucking, or bunching. Services in harvesting wood are distinguished from services in hauling wood.

T-1. **Services in hauling wood**. "Services in hauling wood" means the transportation of wood by truck, railroad, or any other means, but does not include the yarding of wood for short distances incidental to harvesting. Services in hauling wood also includes the loading and handling of wood incidental to hauling. Services in hauling wood are distinguished from services in harvesting wood.

U-1. **Standard cord**. A "standard cord" means the cubic foot measurement of 4 foot long wood, ranked and well stowed, and stacked 4 feet wide, 4 feet high and 8 feet long, or its equivalent, which stack measure contains 128 cubic feet of wood, bark and air space. A "standard cord" when used in connection with sawdust chips, bark or shavings means the volume contained in 128 cubic feet at the time of sale.

V-1. **State Sealer**. "State Sealer" means the State Sealer of Weights and Measures or his designated agent.

W-1. **Stem**. "Stem" means the felled or fallen bole of a tree and may, in the case of unlimbed wood, include the limbs of the tree. "Stem" may refer to the entire stem or to segments of the stem.

X-1. **Stem unit**. "Stem unit" means a unit of measure equal to 100 lineal inches. "Stem unit" is the standard unit of measure where the cumulative sum method of butt measure scaling is used.

Y-1. **Squared-defect method**. "Squared-defect method" is a method of deduction from gross scale which is often used for measuring interior scaling defects in sawlogs. Using this method, defects showing in one or both ends are treated as sawn out in squares or rectangles.

Z-1. **Transfer of title**. "Transfer of title" means the complete transfer of ownership rights in the wood exchanged in a sale transaction.

A-2. **Trim allowance**. "Trim allowance" means the length in excess of standard lumber length intervals that may be specified where log scale is used.

B-2. **Wood**. "Wood" means the severed but unprocessed fibrous derivative of trees, without regard for quality or grade and also means the chipped fibrous derivative of trees.

C-2. **Wood Measurement Rules**. "Wood Measurement Rules" means Chapters 380 through 385 of these rules.

D-2. **Wood quality specifications**. "Wood quality specifications" means the written description of the wood that will be purchased or sold in a sale. The description may be by species, dimensions, production form, quality or grading standards, or other merchantability factors. The specifications must include any and all merchantability factors for which deductions will be made, or which determine the grade classification.

E-2. **Wood transactions**. "Wood transactions" means the “sale of wood" or "payment for services" as those terms are defined in this section.

F-2. **Yarding**. "Yarding" means the removal of a severed or fallen stem from the growing site by skidding or otherwise.

STATUTORY AUTHORITY: 10 M.R.S.A. §2361-A *et seq*.

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