

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 20 FOREST MANAGEMENT
PART 4 COMMERCIAL TIMBER HARVESTING REQUIREMENTS

19.20.4.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Forestry Division.
[19.20.4.1 NMAC – N, 1/1/2002]

19.20.4.2 SCOPE: This part applies to persons, partnerships, associations, corporations, and other entities engaged in harvests of commercial forest species on non-municipal or non-federal lands after the effective date except for those harvests permitted in accordance with 19.20.2 NMAC.
[19.20.4.2 NMAC – N, 1/1/2002]

19.20.4.3 STATUTORY AUTHORITY: This part is adopted pursuant to the authority granted the Energy, Minerals and Natural Resources Department in NMSA 1978, Section 9-1-5 and in the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25.
[19.20.4.3 NMAC – N, 1/1/2002]

19.20.4.4 DURATION: Permanent.
[19.20.4.4 NMAC – N, 1/1/2002]

19.20.4.5 EFFECTIVE DATE: January 1, 2002, unless a different date is cited at the end of a section.
[19.20.4.5 NMAC – N, 1/1/2002]

19.20.4.6 OBJECTIVE: The objective of this part is to require appropriate harvesting practices of commercial forest species to assist in forest fire prevention and suppression and the control of forest pests, and to maintain and enhance the economic benefits of forests and forest resources to New Mexico.
[19.20.4.6 NMAC – N, 1/1/2002]

19.20.4.7 DEFINITIONS:

- A.** “Act” means the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25.
- B.** “Alternate practice” means a forest practice standard used in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC. A request to use an alternate practice may be made in the harvest permit application or requested later by the permittee and is not effective until approved by the division in writing.
- C.** “Applicant” is the owner.
- D.** “Cessation of harvest activities” means absence of any harvesting within a cutting unit for six consecutive days.
- E.** “Closed road” means a road constructed for the harvest that will be closed upon the harvest’s completion.
- F.** “Commercial forest species” means:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Abies concolor	white fir
Abies lasiocarpa	corkbark fir/subalpine fir
Picea engelmannii	Englemann spruce
Picea pungens	Colorado blue spruce
Pinus aristata	bristlecone pine
Pinus ponderosa	ponderosa pine
Pinus flexilis	limber pine
Pinus strobiformis	southwestern white pine
Populus tremuloides	quaking aspen
Pseudotsuga menziesii	Douglas-fir

G. “Construction project” includes clearing of right of ways for utilities, pipelines, fences, or roads except for roads facilitating harvesting of commercial forest species; clearing for construction of residences or businesses with an approved building permit; or clearing related to the development of other regulated industries such as mining or landfills.

H. “Continuing violation” means that a permittee or responsible person or entity has received a notice of deficient condition and has failed to take corrective action.

I. “Contract harvester” means any person or entity, other than the owner or his direct employees, harvesting commercial forest species.

J. “Contractor” means a person or entity that the applicant or permittee has reached an agreement with to harvest or purchase commercial forest species.

K. “Cutting unit” means an area within the forest harvest practice plan not exceeding 300 forested acres. The designation of each unit is based on the topography of the area to be harvested, the number of persons to be engaged in the harvest, transportation, climate, and other relevant factors. Any area larger than 300 forested acres should be divided into two or more cutting units, unless the division determines that a larger area is appropriate because of the topography, equipment, or objectives of the harvest and number of persons to be participating in harvest activities.

L. “Damaged trees” means trees over three feet in height not intended for harvest that, as a result of the harvest, are damaged or knocked down to the extent that mortality or serious deterioration is likely to occur or partially pushed over so as to result in permanent lean or visible damage to the root system.

M. “Deficient condition” means any harvest activity not in conformance with the act, this part, or a harvest permit. It also means the failure to have statements of understanding for each person or entity conducting major harvest activities.

N. “District forester” is the supervisory forester of one of the six district offices located in Bernalillo, Capitan, Chama, Cimarron, Las Vegas, and Socorro.

O. “Division” means the forestry division of the New Mexico energy, minerals and natural resources department or forestry division personnel.

P. “Erosion control measure” is a method of reducing soil erosion including seeding, using mulch or slash for ground cover, reducing slope of roads and skid trails, installing water bars, crowning roads, outsloping roads, dipping roads with lateral relief ditches, culverts, and avoidance of excessive slopes.

Q. “Evidence of ownership” means a deed or other document containing a description of the property included in the harvest permit application evidencing ownership of the surface of the land or the right to control the land including harvesting commercial forest species, or a timber deed including the commercial forest species subject to the harvest permit application. All documents must be recorded with the county clerk in the county where the commercial forest species are located. Evidence of ownership does not include commercial forest species purchased through a contract, purchase agreement, or similar document that indicates that ownership of the commercial forest species will transfer after the trees are harvested.

R. “Excessive slope” means a slope of more than 40 percent over a ground distance of 80 yards or more.

S. “Gully erosion” means erosion caused by water accumulating in narrow channels and removing the soil from the channel to depths of one foot or more and that carries sediment downstream.

T. “Harvest or harvesting” means any and all activities related to removing a commercial forest species from its natural state, including, but not limited to: constructing haul roads and skid trails; cutting and severing or pushing over standing trees; skidding or removal of trees to landings; transporting harvest products from the cutting site or landing; installing erosion control measures; or supervising or directing such activities.

U. “Harvest permit” means the harvest permit application, the forest harvest practice plan, and the harvest permit approval letter.

V. “Intermittent watercourse” means a stream or reach of stream, as shown on a United States geological survey 1:24000 scale topographic map, that has a defined stream channel, that flows only at certain times of the year, such as when it receives flow from springs, melting snow, or localized precipitation.

W. “Lake” means an inland body of freshwater, but does not include stock ponds or windmills.

X. “Landowner” means any person or entity, or his agent, owning or having a right to control the surface of the land where the commercial forest species to be harvested are located.

Y. “Lateral yarding distance” means the maximum distance perpendicular to each side of a cable within which a log can be attached for yarding.

Z. “Leave trees” means those trees to be left in the cutting unit after the harvest is completed.

AA. “Long butting” means the cutting of a portion of the main stem that does not meet the utilization standards provided in subsection H of 19.20.4.9 NMAC.

BB. “Major harvest activity” means felling trees; skidding or yarding; and construction of roads, skid trails, and landings.

- CC.** “Multiple cutting unit permit” means a harvest permit for an area with two or more designated cutting units.
- DD.** “Non-forest type area” means an area of at least one acre with less than 10 percent tree crown cover.
- EE.** “Owner” means the landowner, unless there is a timber deed owner who owns the commercial forest species that are the subject of the harvest permit application. Then the timber deed owner is the owner.
- FF.** “Perennial watercourse” means a stream or river, or reach of a stream or river, as shown on a United States geological survey 1:24000 scale topographic map, that has a defined stream channel or river bed, that flows continuously throughout the years in all years; its upper surface, generally, is lower than the water table of the region adjoining the stream or river.
- GG.** “Permittee” means any owner issued a harvest permit by the division.
- HH.** “Personal delivery” means delivery to the individual personally; or if the individual is absent, delivery to a person residing at the individual’s usual residence who is over the age of 15 years.
- II.** “Public road” means a highway or road open for public motor vehicle access including federal highways, state highways, state roads, county roads, and United States forest service roads.
- JJ.** “Pre-commercial thinning” means thinning that is made as an investment in the future growth of a stand of trees where the felled trees are not sold.
- KK.** “Responsible person or entity” is any person, partnership, corporation, association, or other entity, other than the owner, required to sign a statement of understanding.
- LL.** “Rill erosion” means erosion that cuts a number of small channels less than one foot in depth into the soil by water moving over and concentrating in low places in the soil surface.
- MM.** “Rub tree” means a tree used as a pivot in cable yarding to protect the remaining trees during extraction.
- NN.** “Silviculture” is the theory and practice of controlling forest establishment, composition, growth, or harvesting.
- OO.** “Skid trail” means a path built for log skidding or caused by the use of skidding equipment.
- PP.** “Slash” means all branches, boughs, or pieces of a tree’s main stem severed, chipped, or damaged as a result of the harvest.
- QQ.** “State forester” is the director of the forestry division of the energy, minerals and natural resources department or his designee.
- RR.** “Statement of understanding” means the statement that all persons, partnerships, corporations, associations, or other entities that have an active role in major harvest activities or a management role that may impact the harvest must sign verifying that they are aware that they must comply with the act, this part, and the harvest permit. A supervisor of a business entity conducting harvest activities may sign a statement of understanding accepting responsibility for the employees of the entity performing major harvest activities.
- SS.** “Streamside management area” means the area near a lake, perennial or intermittent watercourse, or wetland designated for special protection in the forest harvest practice plan.
- TT.** “Timber deed owner” means the owner of a timber deed recorded with the county clerk in the county where the commercial forest species are located. It does not include a person, corporation, partnership, or other entity that has agreed to purchase commercial forest species through a contract, purchase agreement, or similar document with title to be transferred after the trees are harvested.
- UU.** “Utilization” means the removal of trees, tree stems, or portions of trees from areas within the harvest permit boundaries.
- VV.** “Water bar” means a drainage structure such as a ditch, mounded earth, or staked log installed on a road or skid trail at an approximate 30-degree downslope angle that diverts water runoff into adjacent undisturbed areas.
- WW.** “Wetland” means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico.
- XX.** “Working days” means Monday through Friday, excluding state holidays.

[19.20.4.7 NMAC – N, 1/1/2002]

19.20.4.8 HARVEST PERMITS:

A. ACTIVITIES REQUIRING HARVEST PERMITS: An owner must obtain a harvest permit before any harvest activities are conducted in the following circumstances:

(1) harvests by an owner in an area of 25 acres or more, or a combination of areas totaling 25 acres or more in any calendar year if the harvest sites are on the same or adjacent property; or

(2) harvests by an owner in an area of less than 25 acres in one calendar year if:

(a) the owner has been convicted of a criminal violation associated with harvest activities within the previous three years; or

(b) the owner is contracting with or employing a person or entity on the harvest that has been convicted of a criminal violation associated with harvest activities within the previous three years.

B. ACTIVITIES NOT REQUIRING HARVEST PERMITS: Harvest permits are not required for cutting firewood; cutting Christmas trees; pre-commercial thinning; harvest activities related to construction projects such as pipeline or powerline installation or maintenance, construction when a building permit is issued, fence building, or construction of roads unrelated to harvest activities; or clearing for defensible space within one hundred feet of a building.

C. APPLICATION FOR HARVEST PERMIT:

(1) An owner must file an application for a harvest permit in the district office in the district where the harvest will take place for approval at least 30 days before the proposed harvest is to start. Harvest activities may begin when the division issues the harvest permit and the appropriate notification is given.

(2) The harvest permit application must include the following, if applicable:

(a) the owner's name;

(b) a legal description of the land where the harvest will occur;

(c) name of the sale;

(d) evidence of ownership;

(e) the owner's mailing address. If the commercial forest species to be harvested are owned under a timber deed, the harvest permit application must include names and mailing addresses of both the timber deed owner and the landowner;

(f) the names and mailing addresses of persons or entities that will directly manage the harvest;

(g) the time schedule for harvesting (i.e. beginning and ending dates);

(h) if the commercial forest species to be harvested are owned under a timber deed, the timber deed owner must consult with the landowner about the land management goals and objectives included in the forest harvest practice plan. The landowner must approve any roads constructed for the harvest that will not be closed at the end of the harvest;

(i) statements of understanding;

(j) a forest harvest practice plan; and

(k) the owner's signature and the date of application.

D. FOREST HARVEST PRACTICE PLAN: The forest harvest practice plan must include the following information:

(1) Harvest Description: The harvest description shall include the following:

(a) a description of the current stand condition including types of tree species, any insect and disease occurrence, and an estimate of trees per acre and average diameter of the trees;

(b) the owner's land management goals and objectives for the harvest such as forest management, forest production, elk habitat, dwarf mistletoe control, improved forage for wildlife or livestock, or type conversion. The division will consider a forest harvest practice plan inadequate unless it contains a silviculturally sound method of achieving the described land management goals and objectives that complies with the act and this part;

(c) the harvest permit boundaries and cutting units to be established as shown on a United States geological survey topographic map of no smaller scale than 1:24000 (e.g., 7.5 minute quadrangle);

(d) the access route to and from the harvest permit area to a public road;

(e) identification of any excessive slopes located within the cutting unit;

(f) identification of any lakes, perennial or intermittent watercourses, or wetlands located within the cutting unit on a United States geological survey topographic map of no smaller scale than 1:24000;

(g) a description of the proposed harvest method such as seed tree, shelterwood, single tree or group selection, or patchcut;

(h) a description of the equipment to be used during the harvest such as chainsaw, feller-buncher, skidder, or delimeter;

(i) the residual stand condition including types of tree species and an estimate of trees per acre and average diameter of the trees. If the harvest method is a patchcut a description of the size of the area to be harvested, by length and width, and the height of the adjacent stand must be included; and

(j) a description of the regeneration method such as natural regeneration, natural seeding or vegetative reproduction, or artificial regeneration, planting, reasonably calculated to ensure adequate forest regeneration if this is the land management objective. If artificial regeneration is to be used the description shall include: when the planting will occur, the tree species to be planted, the seed source of the seedlings, the number of seedlings to be planted per acre, the method of seedling protection, and site preparation.

(2) Erosion Management: Description of the erosion management measures that will be taken to comply with subsection D of 19.20.4.9 NMAC.

(3) Skid Trails: Description of how skid trails and landings will be treated to control erosion and comply with subsection E of 19.20.4.9 NMAC.

(4) Roads: Description of road location, road erosion control measures, and post-harvest maintenance or closure. The description shall contain sufficient detail to indicate compliance with subsection F of 19.20.4.9 NMAC. If a road will be closed after harvest, the description must identify the closure method and erosion control measures.

(5) Streamside Management Area: Description of the streamside management area designating the area to be included and describing the measures that will be taken to comply with subsection G of 19.20.4.9 NMAC. If an existing road is located within a streamside management area, a description of the road's location shall be included.

(6) Slash Treatment: Description of the means of treating slash, such as chipping, lop and scattering, or pile burning, to comply with subsection I of 19.20.4.9 NMAC.

(7) Fire: Description of the precautions that will be taken and the modifications to harvesting operations to be taken during periods of high, very high, and extreme fire danger. Description of how the permittee or responsible person or entity will react to any fire caused by harvest activities including notice to local fire departments and the division. Additionally, if slash will be burned a description of whether the slash will be broadcast or pile burned and the precautions that will be taken when the burning occurs. Precautions shall include obtaining any necessary permits for burning and notifying the local governments and fire departments prior to burning.

(8) Excessive Slopes: Description of how the forest harvest practices standards will be met on any excessive slopes.

E. HARVEST PERMIT ISSUANCE OR DENIAL:

(1) Within 30 days after receipt of the harvest permit application, the division shall either:

(a) Issue a harvest permit approval letter including such conditions or recommendations as the division may deem necessary provided the harvest permit application contains the information required by subsections C and D of 19.20.4.8 NMAC, the statements of understanding have been submitted, and the planned harvest is expected to comply with the act and this part.

(b) Deny the harvest permit application in writing for any of the following reasons:

(i) the harvest permit application does not contain the information required by subsections C and D of 19.20.4.8 NMAC.

(ii) the applicant is not the owner, or the holder of a power of attorney or other authority sufficient to make decisions affecting the commercial forest species subject to the harvest permit application;

(iii) a material misrepresentation or false statement is included in the harvest permit application;

(iv) the proposed harvest would not comply with the act or this part; or

(v) the applicant or contractor currently has a continuing violation.

(2) If the division denies the harvest permit application, the applicant may provide additional information to complete the harvest permit application or revise the permit application to comply with the forest harvest practices standards. The applicant shall submit the additional information or revisions for reconsideration. If the division finds that the additional information or revisions correct the defects in the harvest permit application it shall issue the harvest permit. The division shall either issue the harvest permit or uphold the denial of the harvest permit application within 30 days after receiving the additional information or revisions.

(3) When a harvest permit is issued to a timber deed owner, the division shall provide a copy of the harvest permit to the landowner by first class mail or personal delivery.

F. STATEMENTS OF UNDERSTANDING:

(1) Any person, partnership, corporation, association, or other entity that has an active role in major harvest activities or a management role that may impact the harvest must sign a statement of understanding in a form provided and developed by the division. This includes the owner, direct employees of the owner, consultants, contract harvesters, and any other contractors or subcontractors.

(2) Anyone who must sign the harvest permit application or a statement of understanding shall comply with the act, this part, and the harvest permit. A supervisor of a business entity may sign a statement of understanding for the employees of the business entity if the supervisor accepts responsibility for the actions of the employees. Failure to keep statements of understanding current with the participation of new personnel or entities may result in violations or permit revocation.

(3) The statement of understanding will be a form provided by the division that includes:

(a) information identifying the person signing the statement such as name, social security or driver's license number, address and telephone number and, if applicable, his authority to sign for a partnership, corporation, association, or other entity; his own employees; or the partnership, corporation, association, or other entity's employees;

(b) the signature of the person signing the statement and date; and

(c) a statement that the person is aware that he must comply with the act, 19.20.4 NMAC, and the harvest permit and will be accountable as provided for in 19.20.4 NMAC for such compliance; and acknowledges that he has read and understands the requirements of 19.20.4 NMAC and the harvest permit. If a person is signing on behalf of partnership, corporation, association or other entity, a statement that the entity is aware that it must comply with the act, 19.20.4 NMAC, and the harvest permit and will be accountable as provided for in 19.20.4 NMAC for such compliance. If a person is signing on behalf of his employees or a partnership, corporation, association, or other entity's employees, a statement that the person is aware that he is accepting responsibility for his own employees or the entity's employees and will be accountable for the employees' compliance with 19.20.4 NMAC and the harvest permit.

G. PERMIT REVISIONS:

(1) The division may order revision of a harvest permit if it appears, after inspection, that the land management goals and objectives are not being met, if deficient conditions are occurring, or if there are mistakes in the harvest permit.

(2) The owner may request revision of the harvest permit if there are mistakes in the harvest permit, ownership will change, or other conditions make changes appropriate. The owner shall revise the permit during the harvest as needed to keep it current with operations.

(3) The owner may request the harvest permit be revised to include additional acreage if the acreage is located in an area that is adjacent to or in close proximity to the area included in the current harvest permit, the land management goals and objectives and the proposed harvest operation are similar to those in the current harvest permit, the cover type is the same as the cover type in the current harvest permit, and the same roads will be used to access the harvest area.

(4) The division shall approve or deny the owner's request for revision of the harvest permit within 30 days after receipt of the request.

H. HARVEST PERMIT EXTENSIONS: When unforeseen circumstances beyond the permittee's control prevent completion of the harvest or a portion of the harvest activities as required by this part within the time limits provided in the harvest permit, the division may, upon the permittee's written request, grant in writing additional time for completion of the harvest not to exceed one year. No more than two such extensions may be granted.

I. NOTIFICATIONS: A permittee or responsible person or entity shall inform the division prior to or, in no case later than 48 hours following the event, either by telephone, in person, or in writing of the following actions taken under the harvest permit:

(1) commencement or completion of major harvest activities in any cutting unit;

(2) when a unit is complete and the permittee is requesting the unit be closed.

[19.20.4.8 NMAC – N, 1/1/2002]

19.20.4.9 FOREST HARVEST PRACTICES STANDARDS:

A. APPLICABILITY: The forest harvest practices standards apply to all harvests of commercial forest species, regardless of the acreage, except for activities that do not require a harvest permit as provided by subsection B of 19.20.4.8 NMAC.

B. MULTIPLE CUTTING UNITS: Unless approved by the division in writing, no harvesting under a multiple cutting unit harvest permit shall commence in a third cutting unit unless all forest harvest practices standards, except for burning of slash piles, have been completed on at least one of the previous two active units.

C. MARKING:

(1) The division may require the cutting unit boundary to be marked with flagging or tree marking paint if needed to meet the requirements of the forest harvest practice plan.

(2) The division may require the permittee to mark leave trees or the trees to be cut with tree marking paint if needed to meet the land management goals and objectives in the forest harvest practice plan, particularly if the harvest method is group or single tree selection.

D. EROSION MANAGEMENT:

(1) Erosion control measures shall be implemented to minimize channelized flow erosion such as rill and gully erosion.

(2) Erosion Control Measures:

(a) Time Limit: Erosion control measures shall be installed as soon as practical but no later than 30 days after the cessation of major harvest activities within the cutting unit.

(b) Placement: Water bars or other erosion control measures shall be placed on closed roads and skid trails with mineral soil exposed by harvest activities. Water bars shall be placed at the locations or intervals and at the height and width necessary to minimize erosion considering grade, sidehill drainage, soil texture and structure, vegetation, and other pertinent factors.

PERCENT GRADE MINIMUM INTERVALS FOR WATER BARS

<u>PERCENT GRADE</u>	<u>MINIMUM INTERVAL</u>
0.0 -- 4.9	150 feet
5.0 -- 9.9	130 feet
10.0 --14.9	75 feet
15.0 --40.0	50 feet

The division may require additional water bars if the minimum intervals will not sufficiently minimize erosion. The division may require fewer water bars if a combination of soil properties, depth of duff layer, or amount of slash or other cover will minimize erosion.

(3) Seeding:

(a) Time Limit: After cessation of major harvest activities within any cutting unit and at the time best calculated to produce maximum germination, but in no event later than 180 calendar days following the cessation of major harvest activities within any cutting unit, all closed roads, skid trails, landings, and any areas of mineral soil exposed by harvest activities within the cutting unit shall be seeded, unless the division has approved other erosion control measures. Appropriate site preparation shall take place prior to seeding. For example, soil preparation would be needed prior to seeding a hard packed road that is to be closed upon completion of harvesting.

(b) Seed Mix: The division must approve any seed mix to be used. The seed mix shall be suitable for the land management goals and objectives specified in the forest harvest practice plan and shall avoid introducing noxious weeds. The permittee shall provide proof of the purchase date, the seed mix viability, and germination rate. The certification tag from the bag may be used.

E. SKID TRAILS AND LANDINGS:

(1) Skid Trails:

(a) Skid trails shall not be located on excessive slopes unless the permittee shows that it is technically or economically infeasible to remove the felled trees by other means.

(b) Skidding shall not destroy a stream channel or bank or reduce the capacity of the stream channel to carry water.

(c) Skidding is not allowed within watercourses. Skidding may not take place across perennial watercourses unless the permittee shows that it is technically and economically infeasible to remove felled trees by other means. When the division approves skidding across a perennial watercourse, the skidding shall be limited to designated crossings. Crossings shall be at a right angle to the main channel and the approach to the crossing shall be at a minimal grade. Drainage shall be diverted at a distance from the stream that provides filtering of sediment.

(d) Skid trails should be planned in advance to minimize damage to the residual stand, soil compaction, and erosion.

(e) Skid trails should be flagged so skidder operators can easily follow them.

(f) Skid trails should be kept as narrow as possible.

(2) Landings:

(a) Adequate drainage shall be provided for the landing and runoff shall not discharge directly into a watercourse.

(b) Landings should be planned in advance.

F. ROADS:

(1) Roads that will be used or constructed for a harvest of commercial forest species shall be designed, constructed, and maintained to minimize erosion.

(2) Roads shall be constructed to drain properly so that the road does not cause gully erosion. The division may require the permittee or responsible person or entity to take action if rill erosion is frequent and the depth exceeds three inches.

(3) Roads shall be outsloped or ditched on the uphill side and appropriate surface drainage shall be provided by using adequate cross drains, ditches, drivable dips, culverts, water bars, diversion ditches, or other structures demonstrated to be equally effective.

(4) Roads shall be constructed and maintained so the stream channel or bank is not destroyed and the capacity of the stream channel to carry water is not diminished.

(5) Road widths excluding any portion not used for travel should be designed to sufficiently carry the anticipated traffic load with reasonable safety, but shall not exceed 24 feet.

(6) Road location, design, and construction shall address:

(a) building the fewest roads necessary;

(b) locating the road to fit the topography to minimize alteration of natural features;

(c) avoiding road construction along or within narrow canyons;

(d) building roads on locations away from streams such as benches, ridge tops, and the tops of slopes unless there is no feasible alternative;

(e) the stability of slopes where roads are cut;

(f) avoiding slopes of 60 percent or greater; and

(g) keeping the road grade to a minimum, usually less than 10 percent.

(7) Road construction:

(a) Organic debris shall not be used as a fill material.

(b) Debris in stream channels that is added during construction shall be removed, but natural materials may be used as part of a sediment control structure.

(c) Organic debris and surplus soil and rock shall be deposited where runoff will not be carried into a lake or watercourse.

(d) If culverts are used they shall be sized to handle a minimum 25-year flood event. In determining the appropriate size, debris potential and the potential for increased runoff from a reduction in vegetation resulting from the harvest shall be considered. Culverts shall be installed to prevent blockage and erosion of fill materials at the outlet.

(e) Bridges are required where drainage structures cannot carry the water flow.

(f) Road drainage shall be diverted at a distance from the stream that provides filtering of sediment such as through the use of cross drains.

(8) Roads to be closed shall be closed when the cutting unit closes unless needed for other cutting units. Upon closure, the road shall be treated to control erosion and stream-crossing structures shall be removed.

G. REQUIREMENTS FOR STREAMSIDE MANAGEMENT AREAS:

(1) Streamside management areas shall include the area within 50 feet of the ordinary high water mark of any lake, perennial or intermittent watercourse, or wetland. When a preexisting road is within 50 feet of the ordinary high water mark the streamside management area will end at the road's edge nearest to the watercourse. Disturbance in the streamside management area shall be minimized.

(2) The following apply within the streamside management area:

(a) No landings shall be located within the streamside management area.

(b) Skid trails within the streamside management area must be designed in advance to minimize disturbance.

(c) No new roads shall be constructed within a streamside management area unless the permittee shows that it is technically or economically infeasible to construct the road elsewhere or that the damage to the environment would be greater if the road was constructed elsewhere. When the division approves construction of a new road within a streamside management area, in addition to other requirements in subsection F of 19.20.4.9 NMAC, stream crossings shall be limited to those that are essential, crossings shall be at a right angle to the main channel, and the approach to the crossing shall be at a minimal grade.

(d) Directional felling should be used.

(e) Sufficient shading of lakes and watercourses should be maintained to avoid adverse temperature changes in the lake or watercourse.

H. TREE UTILIZATION: Unless contract or market conditions require different utilization standards that are included in the harvest permit,

(1) All commercial forest species shall be utilized to a minimum six-inch top diameter (inside bark) except that harvesting for other than lumber production shall utilize trees to a minimum four-inch top diameter (outside bark).

(2) The tree's main stem shall be utilized as stated above in subsection H(1) of 19.20.4.9 NMAC when the net scale of the severed log or section of the main stem is more than 50 percent of the total gross volume using the Scribner Decimal C log scale table.

(3) Long Butting: Long butting is prohibited except when resulting from removal of defects up to the limit of subsection H(2) of 19.20.4.9 NMAC.

(4) Stump Height: Stump height shall not exceed 12 inches on the uphill side except when immovable objects such as rocks or other trees prevent operation of felling equipment.

I SLASH:

(1) Slash and damaged trees in any cutting unit, unless piled, shall be treated to stand no higher than three feet above ground level.

(2) Slash piles may stand more than three feet above ground level. Piles shall be constructed for safety and efficiency during burning. Piles shall be located to avoid damage to the residual stand.

(3) Time Limit: Slash, unless piled, shall be treated no later than thirty calendar days from the movement of harvest operations out of the subject cutting unit into another cutting unit under a multiple cutting unit permit, or no later than thirty calendar days following the cessation of major harvest activities within the cutting unit, whichever occurs first. In any event, the time shall not exceed 365 days from the start of harvesting within the cutting unit. Piled slash may be allowed to cure, but shall be burned no later than the end of the next winter burning season following the cessation of major harvest activities within that cutting unit. If weather conditions prevent piled slash from being burned by the end of the next winter burning season, the permittee may request an extension of time.

(4) For the purpose of creating a fuel break along public roads, slash greater than 24 inches in length or larger than one inch in diameter at the large end and within 50 feet of either side of the center line of a public road shall be eliminated by chipping, burning, removal, or equivalent means within 365 calendar days of cessation of major harvest activities within the cutting unit.

(5) Unless incorporated into a sediment control structure, slash is not allowed within the ordinary high-water mark of an intermittent or perennial watercourse, lake, or wetland.

J. LOG DECKS: Log decks must be removed no later than 365 days from the start of harvesting within the cutting unit.

K. CABLE YARDING: The following requirements apply to cable yarding:

(1) The yarding system shall have lateral yarding capabilities, using a carriage that can maintain a fixed position on the skyline during lateral pulls and shall keep one end of the log suspended above the ground during in-haul.

(2) Uphill yarding should be used unless the yarder cannot be located on a ridge top, bench, or on top of a slope. If downhill yarding must be used the leading end of the log shall be suspended above the ground.

(3) Corridor design shall be included in the harvest permit and actual corridors shall be marked on the ground prior to clearing and felling. Cable corridors shall not be closer than an average of 75 feet, center to center, at a point one-half way to the end of the corridor where radial corridors are required; and an average of 140 feet where parallel corridors are used. No more than four cable corridors shall radiate from a single yarder position.

(4) Cable corridors shall be cut initially to a maximum 12-foot width, prior to felling in the cutting unit, to allow passage of the carriage and turn of logs. Corridors shall not exceed 20 feet in width after yarding is completed and rub trees have been removed.

(5) Harvested trees except corridor trees shall be felled along the contour or diagonally to the slope to facilitate yarding and reduce damage to the residual trees.

(6) When topography and ground conditions permit logs shall be pulled endwise from where they are felled. Lateral yarding distance shall be limited to no more than 75 feet.

L. DAMAGE: Trees damaged by harvest activities must be removed or treated as slash. If the damaged trees were intended to be leave trees then the harvest is not in compliance with the permit. If a leave tree is damaged the division may require that additional trees be left as leave trees or require other means of regeneration. [19.20.4.9 NMAC – N, 1/1/2002]

19.20.4.10 ALTERNATE PRACTICES: An applicant or permittee may request to use an alternate practice in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC so long as equivalent or better protection regarding fire, insect and disease control, and erosion control measures is provided. The request to

use an alternate practice shall describe the mitigation measures that will be taken so that the division can determine that the proposal offers equivalent or better protection. The division shall make the decision to grant or deny the use of an alternate practice within 30 days after receipt of the request. The division's written approval or disapproval shall state the reasons why the request was granted or denied. The division shall not allow use of an alternate practice if it is known to result in violation of other applicable state laws. The denial of a request to use an alternate practice may be appealed to the state forester pursuant to subsection A of 19.20.4.13 NMAC.

[19.20.4.10 NMAC – N, 1/1/2002]

19.20.4.11 WEATHER CLOSURES: The division may temporarily close roads built for harvest activities, close streamside management areas, or suspend harvesting when adverse weather conditions exist such as flooding, heavy rain, or snowmelt.

[19.20.4.11 NMAC – N, 1/1/2002]

19.20.4.12 VIOLATIONS:

A. NOTICE OF DEFICIENT CONDITION: The division may issue a notice of deficient condition for violation of the act, this part, or a harvest permit. The division may issue a notice of deficient condition for violations that harm the forest or forest resources and will require the permittee or responsible person or entity to cease the violation and take corrective action to repair the deficient condition.

(1) The division shall have the authority to serve upon the permittee or responsible person or entity a notice of deficient condition if:

- (a) there is a violation of the act, this part, or a harvest permit; or
- (b) the violation or activity creates harm or the potential for harm to the forest or forest resource.

resource.

(2) The notice of deficient condition shall set forth:

- (a) the specific nature of the violation charged or harm to the forest or forest resources;
- (b) the specific course of action needed to correct such violation;
- (c) the date such correction shall be completed; and
- (d) the recipient's right to a hearing to review the notice of deficient condition.

(3) Service of the notice of deficient condition shall be made upon the permittee or responsible person or entity by personal delivery or certified mail return receipt requested. If the notice is not served upon the permittee the division will provide a copy to the permittee by first class mail or personal service.

B. REVOCATION OF A HARVEST PERMIT:

(1) The state forester may revoke a harvest permit for any of the following:

- (a) refusal to allow the division to enter and inspect a permitted area;
- (b) failure to timely complete corrective action after receiving a notice of deficient condition;
- (c) discovery that any of the reasons for harvest permit application denial exists; or
- (d) failure to keep statements of understanding current.

(2) To proceed with revocation of a harvest permit the division shall schedule a revocation hearing and provide written notice of intent to revoke to the permittee by personal delivery or certified mail return receipt requested at least 10 working days before the date set for the hearing. The written notice of the intent to revoke shall include the date, time, and location of the hearing.

(a) The hearing shall be held before the state forester.

(b) The division shall provide evidence as to the reasons to revoke the harvest permit and the permittee may provide evidence as to the reasons not to revoke the harvest permit.

(c) Oral testimony at the hearing shall be made under oath. A tape or stenographic record shall be made of the hearing.

(d) If the state forester finds that a preponderance of the evidence supports revocation, the harvest permit shall be revoked.

(e) The state forester shall issue a written final decision within 10 working days of the close of the hearing or any deadline for the submission of additional materials following the hearing.

[19.20.4.12 NMAC – N, 1/1/2002]

19.20.4.13 ADMINISTRATIVE REVIEW:

A. DENIAL OF PERMITS, REQUEST TO USE ALTERNATE PRACTICES, OR PERMIT REVISIONS:

(1) To request review of the denial of a harvest permit application, use of alternate practices, or a harvest permit revision, an applicant or permittee must submit a written request for review to the state forester within 15 days of the issuance and provide written notice to the district office that denied the harvest permit application, use of alternate practices, or harvest permit revision. If the applicant submitted additional information or revisions to the harvest permit application pursuant to subsection E(2) of 19.20.4.8 NMAC the time period starts with the last denial. A request must include the reasons for requesting the review.

(2) The applicant or permittee and the district office shall submit written statements to the state forester within 10 working days of the submission of the request for review.

(3) The state forester shall base his decision on the written statements unless the applicant or permittee or the district office requests the opportunity to call witnesses or make oral arguments within 10 working days of the submission of the request for review. A request for a hearing shall explain the need for any witness testimony or oral argument. If the applicant or permittee or the district office asks to make oral arguments or call witnesses, the state forester may set a hearing to be held within 10 working days of receiving that request and provide notice of the hearing date, time, and location to the applicant or permittee and the district office. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony.

(4) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10 working days after the date for submission of written statements, or a hearing, if any, and send copies to the applicant or permittee and the district office.

B. NOTICE OF DEFICIENT CONDITION:

(1) To request review of the issuance of a notice of deficient condition the permittee or responsible person or entity must make a written request for a hearing to the district forester within 10 working days of receipt of the notice. The request must specifically state the reasons for the review. If the district forester issued the notice of deficient condition, then the district forester from another district shall conduct the hearing.

(a) The district forester shall consult with the permittee or responsible person or entity to set a hearing to be held within three working days of receipt of the request.

(b) The district forester shall issue a written decision within five working days of the hearing.

(c) The permittee or responsible person or entity may appeal the district forester's decision to the state forester by submitting a written request for review to the state forester within 10 days of the decision and providing written notice to the district forester.

(2) The permittee or responsible person or entity and the district forester shall submit written statements to the state forester within 10 working days of the submission of the request for review.

(a) The state forester shall base his decision on the written statements unless the permittee or responsible person or entity or the district forester requests the opportunity to call witnesses or make oral arguments within 10 working days of the submission of the request for review. A request for a hearing shall explain the need for any witness testimony or oral argument.

(b) If the permittee or responsible person or entity or the district forester asks to make oral arguments or call witnesses, the state forester may set a hearing to be held within 10 working days of receiving that request and provide notice of the hearing date, time, and location to the permittee, responsible person or entity, and the district forester. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony.

(c) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10 working days after the date for submission of written statements, or a hearing, if any, and send copies to the permittee, responsible person or entity, and the district forester.

[19.20.4.13 NMAC – N, 1/1/2002]

19.20.4.14 FIRE RESTRICTIONS: Whenever the state forester declares restrictions on use of lands or use of fire within an area permitted under 19.20.4 NMAC, the restrictions shall apply to harvesting. If these restrictions require that harvesting stop, it will not be considered a cessation of harvesting pursuant to this part.

[19.20.4.14 NMAC – N, 1/1/2002]

19.20.4.15 CRIMINAL PENALTIES:

A. Following the procedures in 19.20.4.12 NMAC does not limit the division in its ability or authority to issue citations or otherwise enforce the possible criminal penalties for violating the act, this part, or a harvest permit.

B. Violation of the act, this part, or a harvest permit is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1000.00) or by imprisonment in the county jail not to exceed one year or both for each violation, NMSA 1978, Section 68-2-17.
[19.20.4.15 NMAC – N, 1/1/2002]

HISTORY OF 19.20.4 NMAC: [RESERVED]