

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 later date is cited at the end of a section.
[19.20.4.5 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.6 OBJECTIVE: 19.20.4 NMAC's objective is to require appropriate harvesting practices of commercial forest species be conducted in a manner that supports forest practices that assist in forest fire prevention and suppression and the control of forest pests, and maintain and enhance forest health to ensure the continued economic benefits of forests and forest resources to New Mexico.
[19.20.4.6 NMAC - N, 1/1/2002; A, 6/29/2007]

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. The applicant may request to use an alternate practice in the harvest permit application or at a later time. The alternate practice is not effective until the division provides written approval.
- C.** "Applicant" means the owner.
- D.** "Basal area" means the cross sectional area of the stem at diameter at breast height or at diameter at root collar of all trees in a stand, generally expressed as square units per unit area (*e.g.* square feet per acre).
- E.** "Cessation of harvest activities" means absence of harvesting within a cutting unit for six consecutive days.
- F.** "Closed road" means a road constructed for the harvest that will be closed upon the harvest's completion.
- G.** "Commercial forest species" means:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Abies concolor	white fir
Abies lasiocarpa	subalpine fir
Abies lasiocarpa var. arizonica	corkbark fir
Cupressus arizonica	Arizona cypress
Juniperus coahuilensis or erythrocarpa	redberry juniper/rose-fruited juniper
Juniperus deppeana	alligator juniper
Juniperus monosperma	one seed juniper
Juniperus osteosperma	Utah juniper
Juniperus pinchotii	Pinchot juniper/redberry juniper
Juniperus scopulorum	Rocky Mountain juniper
Picea engelmannii	Engelmann spruce
Picea pungens	Colorado blue spruce

Pinus aristata	bristlecone pine
Pinus arizonica	Arizona pine
Pinus cembroides	Mexican piñon
Pinus discolor	border piñon
Pinus edulis	piñon
Pinus engelmannii	Apache pine
Pinus flexilis	limber pine
Pinus leiophylla	Chihuahuan pine
Pinus monophylla	singleleaf piñon
Pinus ponderosa	ponderosa pine
Pinus strobiformis	southwestern white pine
Populus tremuloides	quaking aspen
Pseudotsuga menziesii	Douglas-fir
Quercus spp.	oak species when in tree form or when harvested with other commercial forest species

H. “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.

I. “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.

J. “Contract harvester” means a person or entity, other than the owner or the owner’s direct employees, harvesting commercial forest species.

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

L. “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. The applicant shall divide an area larger than 300 forested acres into two or more cutting units, unless the division determines that a larger area is appropriate because of the topography, equipment or the harvest’s objectives and number of persons to be participating in harvest activities.

M. “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.

N. “Deficient condition” means a harvest activity not in conformance with the act, 19.20.4 NMAC or a harvest permit. It also means the failure to have statements of understanding for each person or entity conducting major harvest activities.

O. “Diameter at breast height” means the tree’s outside bark diameter measured at four and one half feet above the forest floor on the tree’s uphill side. For the purposes of determining breast height, the forest floor includes the duff layer that may be present, but does not include unincorporated woody debris that may rise above the ground line.

P. “Diameter at root collar” means the diameter of the tree’s trunk measured outside the bark at ground level.

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

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

S. “Erosion control measure” means 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.

T. “Evidence of ownership” means a deed or other document, recorded with the county clerk in the county where the commercial forest species are located, containing a property description included in the harvest permit application evidencing ownership of the land surface 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. Evidence of ownership does not include commercial forest species purchased through a contract,

purchase agreement or similar document that indicates that the commercial forest species' ownership will transfer after the trees are harvested.

U. "Excessive slope" means a slope of more than 40 percent over a ground distance of 80 yards or more.

V. "Felling equipment" means equipment used to sever the tree stem from its stump such as chainsaws, feller-bunchers and harvesters.

W. "Firewood" means any part or portion of a tree that has been cut and removed from its original location and is to be used for heating or cooking in an open pit, grill, fireplace or stove. Firewood does not mean wood that is used in biomass facilities to create electricity or thermal heat or wood that is used to create ethanol.

X. "Forest" means an area of at least one acre with at least 10 percent tree crown cover.

Y. "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.

Z. "Harvest or harvesting" means activities related to removing a commercial forest species or its products from the property where the activities are occurring, including: constructing haul roads and skid trails; cutting and severing, pushing over, plucking, chipping or masticating standing trees; skidding or removing trees to landings; transporting the tree or wood products from the cutting site or landing; installing erosion control measures; or supervising or directing such activities. Harvest or harvesting does not mean digging commercial forest species that are planted and cultivated for balled and burlap stock, landscaping or live Christmas trees; or removal by any means during maintenance, renovation or removal of a windbreak.

AA. "Harvest permit" means the harvest permit application, the forest harvest practice plan and the harvest permit approval letter.

BB. "Intermittent watercourse" means a stream or reach of stream, as shown on a United States geological survey 1:24000 scale topographic map or as otherwise identified on the property by the division or the owner, that contains water only at certain times of the year, such as when it receives flow from springs, melting snow or precipitation.

CC. "Lake" means an inland body of freshwater, but does not include stock ponds or windmills.

DD. "Landowner" means a person or entity, or the person or entity's agent, owning or having a right to control the surface of the land where the commercial forest species to be harvested are located.

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

FF. "Leave trees" means those trees to be left in the cutting unit after the harvest is completed.

GG. "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.

HH. "Lop and scatter" means a hand method of removing the upward-extending branches from tops of felled trees to keep slash low to the ground, to increase the decomposition rate, to lower the fire hazard or as a pretreatment prior to burning.

II. "Major harvest activity" means felling trees; skidding or yarding; and construction of roads, skid trails and landings.

JJ. "Mineral soil" means the portion of the soil immediately below the litter and duff layers.

KK. "Multiple cutting unit permit" means a harvest permit for an area with two or more designated cutting units.

LL. "Municipal lands" means the territory a municipality has incorporated or annexed pursuant to NMSA 1978, Sections 3-2-1 *et seq.*, Sections 3-3-1 *et seq.* or Sections 3-7-1 *et seq.*

MM. "Noxious weed" means a plant species that is not indigenous to New Mexico and that has been targeted pursuant to the Noxious Weed Management Act, NMSA 1978, Section 76-7D-1 *et seq.* for management or control because of its negative impact on the economy or the environment.

NN. "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.

OO. "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 or as otherwise identified on the property where the harvest will occur by the division or the owner, that contains water 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.

PP. "Permittee" means an owner to whom the division issues a harvest permit.

QQ. "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.

RR. “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.

SS. “Pre-commercial thinning” means thinning that is made as an investment in the future growth of a stand of trees where the owner does not sell or exchange for service the utilized trees.

TT. “Responsible person or entity” means a person, partnership, corporation, association or other entity, other than the owner, required to sign a statement of understanding or, when Subsection A of 19.20.4.8 NMAC does not require a harvest permit, that have an active role in major harvest activities or a management role that may impact the harvest.

UU. “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.

VV. “Rub tree” means a tree used as a pivot in cable yarding or on skid trails to protect the remaining trees during extraction.

WW. “Silviculture” means the theory and practice of controlling forest establishment, composition, growth or harvesting.

XX. “Skid trail” means a path built for log skidding or caused by skidding equipment’s use.

YY. “Slash” means branches, boughs or pieces of a tree’s main stem severed or damaged as a result of the harvest.

ZZ. “State forester” means the director of the energy, minerals and natural resources department, forestry division or the state forester’s designee.

AAA. “Statement of understanding” means the statement that 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 shall sign verifying that they are aware that they must comply with the act, 19.20.4 NMAC and the harvest permit. A supervisor of a business entity conducting harvest activities may sign a statement of understanding accepting responsibility for the entity’s employees performing major harvest activities.

BBB. “Streamside management area” means the area near a lake, perennial or intermittent watercourse or a wetland designated for special protection in the forest harvest practice plan.

CCC. “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.

DDD. “Tree” means a woody perennial plant usually having a single main stem generally with few or no branches on its lower part; however, species such Gambel oak (*quercus gambelii*) and one seed juniper (*juniperus monosperma*) may be multi-stemmed and species such as fir (*abies*), spruce (*picea*) and juniper (*juniperus*) may have many branches on the stem’s lower part.

EEE. “Utilization” means the removal of trees, tree stems or portions of trees from areas within the harvest permit boundaries.

FFF. “Water bar” means a drainage structure such as a ditch, mounded earth or staked log installed across the entire width of a road or skid trail at an approximate 30-degree downslope angle that diverts water runoff into adjacent undisturbed areas.

GGG. “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.

HHH. “Working days” means Monday through Friday, excluding state holidays.
[19.20.4.7 NMAC - N, 1/1/2002; A, 6/29/2007; A, 9/14/2007]

19.20.4.8 HARVEST PERMITS:

A. **ACTIVITIES REQUIRING HARVEST PERMITS:** An owner shall obtain a harvest permit before harvest activities, except those listed in Subsection B of 19.20.4.8 NMAC, are conducted in the following circumstances:

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

(2) harvests in an area of less than 25 acres of forest 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: Owners are not required to obtain a harvest permit for:

- (1) cutting firewood for personal use;
- (2) cutting firewood for sale in compliance with 19.20.4.9 NMAC on up to 75 acres of forest in a calendar year or a combination of areas totaling up to 75 acres or more of forest in a calendar year if the harvest sites are on the same or adjacent property;
- (3) cutting Christmas trees;
- (4) pre-commercial thinning conducted in compliance with 19.20.4.9 NMAC;
- (5) harvest activities related to construction projects such as pipeline or powerline installation or maintenance, construction pursuant to a building permit, fence building or construction of roads unrelated to harvest activities;
- (6) clearing for defensible space within 100 feet of a building;
- (7) harvests for wildland urban interface projects or hazardous fuel reduction projects if conducted pursuant to a contract with the energy, minerals and natural resources department that requires compliance with 19.20.4.9 NMAC;
- (8) harvests conducted under a division funded or administered landowner assistance program in compliance with 19.20.4.9 NMAC; or
- (9) rangeland or meadow restoration performed according to a conservation plan reviewed by a soil and water conservation district and conducted in compliance with 19.20.4.9 NMAC where the owner does not sell or exchange for services the trees that are harvested during the restoration or the resulting wood products.

C. APPLICATION FOR HARVEST PERMIT:

(1) An owner shall 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 calendar days before the proposed harvest is to start. The owner may begin harvest activities when the division issues the harvest permit and the permittee or responsible person or entity gives appropriate notification.

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

- (a) the owner's name;
- (b) a legal description of the land where the harvest will occur;
- (c) sale name;
- (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 shall include names and mailing addresses of both the timber deed owner and the landowner);
- (f) the owner's e-mail address, if available (if the commercial forest species to be harvested are owned under a timber deed, the harvest permit application shall include e-mail addresses of both the timber deed owner and the landowner);
- (g) the names, mailing addresses and, if available, e-mail addresses of persons or entities that will directly manage the harvest;
- (h) the time schedule for harvesting (*i.e.* beginning and ending dates);
- (i) if the commercial forest species to be harvested are owned under a timber deed, the timber deed owner shall consult with the landowner about the land management goals and objectives included in the forest harvest practice plan; the landowner shall approve roads constructed for the harvest that will not be closed at the end of the harvest;
- (j) statements of understanding;
- (k) a forest harvest practice plan; and
- (l) the owner's signature and the date of application.

D. FOREST HARVEST PRACTICE PLAN: The forest harvest practice plan shall 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 the stocking level (*e.g.*, an estimate of trees per acre or square feet of basal area and average diameter at breast height or diameter at root collar, or green tons per acre, as applicable);
- (b) the owner's land management goals and harvest objectives such as forest management, forest production, wildlife habitat, dwarf mistletoe control, improved forage for wildlife or livestock or type conversion; the division shall 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 19.20.4 NMAC;

- (c) the harvest permit boundaries and cutting units to be established as shown on a United States geological survey topographic map with a scale no larger 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 excessive slopes located within the cutting unit;
- (f) identification of lakes, perennial or intermittent watercourses or wetlands located within the cutting unit on a United States geological survey topographic map with a scale no larger 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 the permittee or responsible person or entity will use during the harvest such as chainsaw, feller-buncher, skidder, delimber, plucker, forwarder or chipper;
- (i) the residual stand condition including types of tree species and an estimate of trees per acre and the trees' average diameter at breast height, or, if applicable, diameter at root collar; if the harvest method is a patchcut a description of the size of the area to be harvested, by length and width, and the adjacent stand's height; 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 forest regeneration 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 the permittee or responsible person or entity will take to comply with Subsection D of 19.20.4.9 NMAC.

(3) Skid Trails: Description of how the permittee or responsible person or entity will treat skid trails and landings 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 shall 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 the permittee or responsible person or entity will take to comply with Subsection G of 19.20.4.9 NMAC. If an existing road is located within a streamside management area, the applicant shall include a description of the road's location.

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

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

(8) Excessive Slopes: Description of how the permittee or responsible person or entity will meet forest harvest practices standards on excessive slopes.

E. HARVEST PERMIT ISSUANCE OR DENIAL:

(1) Within 30 calendar 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 applicant has submitted the statements of understanding and the planned harvest is expected to comply with the act and 19.20.4 NMAC; or

- (b) deny the harvest permit application in writing for 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 19.20.4 NMAC; 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 harvest 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 calendar days after receiving the additional information or revisions.

(3) When the division issues a harvest permit 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) A 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 shall sign a statement of understanding in a form provided and developed by the division. This includes the owner, the owner's direct employees, consultants involved in the harvest, contract harvesters and other contractors or subcontractors.

(2) Anyone who must sign the harvest permit application or a statement of understanding shall comply with the act, 19.20.4 NMAC and the harvest permit. A supervisor of a business entity may sign a statement of understanding for the business entity's employees if the supervisor accepts responsibility for the employees' actions. 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 shall be a division-provided form that includes:

(a) information identifying the person signing the statement such as name; birth date; social security, federal tax identification number or driver's license number; address and telephone number and, if applicable, the person's authority to sign for a partnership, corporation, association or other entity; the person's 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 the person must comply with the act, 19.20.4 NMAC and the harvest permit and shall be accountable as provided for in 19.20.4 NMAC for such compliance and acknowledges that the person 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 shall be accountable as provided for in 19.20.4 NMAC for such compliance; if a person is signing on behalf of the person's employees or a partnership, corporation, association or other entity's employees, a statement that the person is aware that the person is accepting responsibility for the person's own employees or the entity's employees and shall 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 division revise the harvest permit 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 calendar days after the request's receipt.

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 19.20.4 NMAC 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. The division may grant no more than three such extensions.

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 a cutting unit; or
- (2) when a unit is complete and the permittee is requesting the unit be closed.

[19.20.4.8 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.9 FOREST HARVEST PRACTICES STANDARDS:

A. APPLICABILITY: The forest harvest practices standards apply to harvests of commercial forest species, regardless of the acreage, except for activities listed in Subsection B of 19.20.4.8 NMAC that do not specifically require compliance with 19.20.4.9 NMAC.

B. MULTIPLE CUTTING UNITS: Unless the division provides written approval, the owner, permittee or responsible person or entity shall not commence harvesting under a multiple cutting unit harvest permit in a third cutting unit unless they have completed forest harvest practices standards, except for burning of slash piles, on at least one of the previous two active units.

C. MARKING:

(1) The division may require the permittee to mark the cutting unit boundary with flagging or tree marking paint if needed to meet the forest harvest practice plan's requirements.

(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) The owner, permittee or responsible person or entity shall implement erosion control measures to minimize channelized flow erosion such as rill and gully erosion.

(2) Erosion Control Measures:

(a) Time Limit: The owner, permittee or responsible person or entity shall install erosion control measures as soon as practical but no later than 30 calendar days after the cessation of major harvest activities within the cutting unit.

(b) Placement: The owner, permittee or responsible person or entity shall place water bars or other erosion control measures on closed roads and skid trails with mineral soil exposed by harvest activities. The owner, permittee or responsible person or entity shall place water bars 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

PERCENT GRADE	MINIMUM INTERVAL
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 a 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 a cutting unit, the owner, permittee or responsible person or entity shall seed closed roads, skid trails, landings and areas of mineral soil exposed by harvest activities within the cutting unit, 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 owner or permittee shall obtain the division's prior approval for the 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 not introduce noxious weeds. The owner or permittee shall provide proof of the

purchase date, the seed mix viability and germination rate. The owner or permittee may use the certification tag from the bag if it provides the required information.

E. SKID TRAILS AND LANDINGS:

(1) Skid Trails:

(a) The owner, permittee or responsible person or entity shall not locate skid trails on excessive slopes unless the owner or 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 stream channel's capacity to carry water.

(c) Skidding is not allowed within watercourses. Skidding shall not take place across perennial watercourses unless the owner or permittee shows that it is technically and economically infeasible to remove felled trees by other means. If the division approves skidding across a perennial watercourse, the owner, permittee or responsible person or entity shall limit skidding 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. The owner, permittee or responsible person or entity shall divert drainage at a distance from the stream that provides filtering of sediment.

(d) The owner, permittee or responsible person or entity should plan skid trails in advance to minimize damage to the residual stand, soil compaction and erosion.

(e) The owner, permittee or responsible person or entity should flag skid trails so skidder operators can easily follow them.

(f) The owner, permittee or responsible person or entity should keep skid trails as narrow as possible.

(2) Landings: The owner, permittee or responsible person or entity:

(a) shall provide adequate drainage for the landing and ensure that runoff does not discharge directly into a watercourse; and

(b) should plan landings in advance.

F. ROADS:

(1) The owner, permittee or responsible person or entity shall:

(a) design, construct and maintain roads used or constructed for a harvest of commercial forest species to minimize erosion and impact on soils and vegetation in areas adjacent to the road;

(b) construct and maintain roads to drain properly and not cause gully erosion; the division may require the owner, permittee or responsible person or entity to take action if rill erosion is frequent and the depth exceeds three inches;

(c) outslope or ditch roads on the uphill side and provide appropriate surface drainage by using adequate cross drains, ditches, drivable dips, culverts, water bars, diversion ditches or other structures demonstrated to be equally effective;

(d) construct and maintain roads so the stream channel or bank is not destroyed and the stream channel's capacity to carry water is not diminished; and

(e) design road widths excluding any portion not intended for travel to sufficiently carry the anticipated traffic load with reasonable safety, but not to exceed 24 feet.

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

(a) building the fewest roads necessary for the harvest;

(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.

(3) Road construction: The owner, permittee or responsible person or entity shall:

(a) not use organic debris as a fill material;

(b) prior to construction, remove and utilize or treat as slash trees or portions of trees within the road corridor;

(c) not windrow trees or portions of trees within the road corridor, unless used as filter strip and are less than three feet in height;

(d) remove debris in stream channels that is added during construction (natural materials may be used as part of a sediment control structure);

(e) deposit organic debris and surplus soil and rock where runoff will not be carried into a lake or watercourse;

(f) size culverts, if used, to handle a minimum 25-year flood event; in determining the appropriate size consider debris potential and the potential for increased runoff from a reduction in vegetation resulting from the harvest; and install them to prevent blockage and erosion of fill materials at the outlet;

(g) install bridges where drainage structures cannot carry the water flow; and

(h) divert road drainage at a distance from the stream that provides filtering of sediment such as through the use of cross drains.

(4) The owner, permittee or responsible person or entity shall close roads intended for closure when the cutting unit closes unless needed for other cutting units. Upon closure, the owner, permittee or responsible person or entity shall treat the road to control erosion and remove stream-crossing structures.

G. REQUIREMENTS FOR STREAMSIDE MANAGEMENT AREAS:

(1) Streamside management areas shall include the area within 50 feet of the ordinary high water mark of a lake or wetland or within 50 feet of both high water marks for a perennial or intermittent watercourse. When a preexisting road is within 50 feet of the ordinary high water mark the streamside management area ends at the road's edge nearest to the watercourse. The owner, permittee or responsible person or entity shall minimize disturbance in the streamside management area.

(2) The owner, permittee or responsible person or entity shall not harvest within 50 feet of the ordinary high water mark of a lake or watercourse or within 50 feet of both high water marks of a perennial or intermittent watercourse, unless the division has approved an alternate practice pursuant to 19.20.4.10 NMAC for activities such as riparian restoration or hazardous fuel reduction.

(3) Within streamside management areas, the owner, permittee or responsible person or entity:

(a) shall not locate landings;

(b) shall design and flag skid trails in advance to minimize disturbance;

(c) shall not construct new roads unless the permittee or owner 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; if 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, the owner, permittee or responsible person or entity shall limit stream crossings to those that are essential with crossings at a right angle to the main channel and the approach to the crossing at a minimal grade; and

(d) should use directional felling.

H. TREE UTILIZATION:

(1) Unless contract or market conditions require different utilization standards that are included in the harvest permit, the owner, permittee or responsible person or entity shall utilize

(a) commercial forest species 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); and

(b) the tree's main stem as stated above in Paragraph (1) of Subsection H of 19.2.4.9 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.

(2) Long Butting: Long butting is prohibited except when resulting from removal of defects up to the limit of Paragraph (1) of Subsection H of 19.20.4.9 NMAC.

(3) Stump Height: Stump height shall be half the diameter of the tree where severed or 12 inches, whichever is less, on the uphill side except when immovable objects such as rocks or other trees prevent operation of felling equipment. The owner, permittee or responsible person or entity shall ensure that stumps less than eight inches in diameter shall have a flat, horizontal top surface.

I. SLASH:

(1) The owner, permittee or responsible person or entity shall treat slash and damaged trees in a cutting unit, unless piled, to stand no higher than three feet above ground level, unless chipped or within one quarter of a mile of a structure. Chipped slash shall not exceed two inches in depth. The owner, permittee or responsible person or entity shall treat slash within one quarter of a mile of a structure to stand no higher than two feet above ground level.

(2) The owner, permittee or responsible person or entity shall:

(a) construct slash piles for safe and efficient burning; to be free of mineral soil and to cause no more than minimal soil sterilization; and

(b) locate slash piles to avoid damage to the residual stand.

(3) The owner, permittee or responsible person or entity shall treat slash, unless piled, no later than 30 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 30 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 calendar days from the start of harvesting within the cutting unit. The owner, permittee or responsible person or entity may allow piled slash to cure, but shall burn it 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 owner or permittee may request an extension of time.

(4) For the purpose of creating a fuel break along public roads, the owner, permittee or responsible person or entity shall eliminate slash greater than two feet 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 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. COARSE WOODY DEBRIS RETENTION AND RECRUITMENT: Where available, the owner, permittee or responsible person or entity shall retain one to five scattered down logs per acre in a variety of stages of decomposition, with preference for down logs that have a diameter at breast height of 15 inches or greater and a length of 15 feet or greater. If scattered down logs are not available but unmerchantable trees have been harvested, the owner, permittee or responsible person or entity may scatter one to five unmerchantable trees per acre, with preference for logs that have a diameter at breast height of 15 inches or greater and a length of 15 feet or greater.

K. LOG DECKS: The owner, permittee or responsible person or entity shall remove log decks no later than 365 calendar days from the start of harvesting within the cutting unit.

L. 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) The owner, permittee or responsible person or entity shall use uphill yarding unless the yarder cannot be located on a ridge top, bench or on top of a slope. If the owner, permittee or responsible person or entity must use downhill yarding, they shall suspend the leading end of the log above the ground.

(3) The applicant shall include corridor design in the harvest permit application and the owner, permittee or responsible person or entity shall mark actual corridors 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) The owner, permittee or responsible person or entity shall initially cut cable corridors 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 the owner, permittee or responsible person or entity has removed the rub trees.

(5) The owner, permittee or responsible person or entity shall fell harvested trees except corridor trees 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, the owner, permittee or responsible person or entity shall pull logs endwise from where they are felled. Lateral yarding distance shall be limited to no more than 75 feet.

M. DAMAGE: The owner, permittee or responsible person or entity shall remove trees damaged by harvest activities or treat them as slash. If the damaged trees were intended to be leave trees then the harvest is not in compliance with the harvest permit. If a leave tree is damaged the division may require that the owner, permittee or responsible person or entity leave additional trees as leave trees or require other means of regeneration.

N. TRASH AND LITTER: The owner, permittee or responsible person or entity shall remove all human-made trash and litter resulting from harvest and transportation activities from the harvest area and properly dispose of it.

O. SPILLS: The owner, permittee or responsible person or entity shall comply with 20.6.2.1203 NMAC with respect to discharge of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life or property, or unreasonably interfere with the public welfare or property use. The owner, permittee or responsible person or entity shall not service trucks, graders, dozers, felling equipment or other equipment where spills may contaminate soils, wetlands, lakes or watercourses.

P. MARKING OF LOG BUTTS:

(1) The owner, permittee or responsible person or entity shall mark one to five logs per load, if being transported in log form, or mark the load with a sign readable from 30 feet if the wood product is transported in another form such as chips, with the following information in the color of paint assigned to the district where the harvesting is occurring:

(a) if a harvest permit is required, with the two letter designator assigned by the district and the sequential load number (*i.e.* JV 011); or

(b) if a harvest permit is not required, with the landowner's first and last initials or the initial's of the ranch or property name and the abbreviation of the county in which the harvest is occurring (*i.e.*, if the landowner is Bill Smith and the harvest is occurring in San Miguel county the mark would be BS/SM).

(2) The following colors are assigned to the districts:

(a) Bernalillo - orange

(b) Capitan - red

(c) Chama - black

(d) Cimarron - blue

(e) Las Vegas - green

(f) Socorro - white.

Q. FIRE EQUIPMENT:

(1) The owner, permittee or responsible person or entity shall:

(a) have a long handled shovel; pulaski, McLeod or combi-tool; and a five-pound capacity ABC dry chemical fire extinguisher available at the harvest location when harvesting is occurring;

(b) ensure that each skidder, feller-buncher, delimber, dozer, log truck, etc. is equipped with a long handled shovel and a five-pound capacity ABC dry chemical fire extinguisher; and

(c) ensure each passenger vehicle, light truck or medium truck up to 40,000 GVW is equipped with a long handled shovel and a two and one half pound capacity ABC dry chemical fire extinguisher.

(2) The owner, permittee or responsible person or entity shall ensure that the tools and fire extinguishers are in good working condition.

[19.20.4.9 NMAC - N, 1/1/2002; A, 6/29/2007]

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 the applicant or permittee will take 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 calendar days after the request's receipt. The division's written approval or disapproval shall state the reasons why the division granted or denied the request. The division shall not allow the applicant or permittee to use an alternate practice if it is known to result in violation of other applicable state laws. The permittee may appeal the denial of a request to use an alternate practice to the state forester pursuant to Subsection A of 19.20.4.13 NMAC.

[19.20.4.10 NMAC - N, 1/1/2002; A, 6/29/2007]

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, 19.20.4 NMAC 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 may serve upon the permittee or responsible person or entity a notice of deficient condition if:

(a) there is a violation of the act, 19.20.4 NMAC or a harvest permit; or

(b) the violation or activity creates harm or the potential for harm to the forest or forest 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) The division shall serve the notice of deficient condition 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 shall 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 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 hearing's date, time and location.
 - (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. The division shall make a tape or stenographic record of the hearing.
 - (d) If the state forester finds that a preponderance of the evidence supports revocation, the state forester shall revoke the harvest permit.
 - (e) The state forester shall issue a written final decision within 10 working days after the close of the hearing or deadline for the submission of additional materials following the hearing.
- [19.20.4.12 NMAC - N, 1/1/2002; A, 6/29/2007]

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 shall submit a written request for review, which includes the reasons for requesting review, to the state forester within 15 calendar days after 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 Paragraph (2) of Subsection E of 19.20.4.8 NMAC the time period starts with the last denial.
- (2) The applicant or permittee and the district office shall submit written statements to the state forester within 10 working days after the applicant or permittee submits the request for review.
- (3) The state forester shall base the review 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 after the applicant or permittee submits the request for review. A request for a hearing shall explain the need for 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 after 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. The division shall make a tape or stenographic record of 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 shall submit a written request for a hearing, which specifically states the reasons for the review, to the district forester within 10 working days after the notice's receipt. 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 after the request's receipt.

(b) The district forester shall issue a written decision within five working days after 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 working days after 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 after the permittee or responsible person or entity submits the request for review.

(a) The state forester shall base the review 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 after the permittee or responsible person or entity submits the request for review. A request for a hearing shall explain the need for 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 after 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. The division shall make a tape or stenographic record of 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; A, 6/29/2007]

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 shall not be considered a cessation of harvesting pursuant to 19.20.4 NMAC.

[19.20.4.14 NMAC - N, 1/1/2002; A, 6/29/2007]

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, 19.20.4 NMAC or a harvest permit.

B. Violation of the act, 19.20.4 NMAC or a harvest permit is a misdemeanor punishable by a fine of not more than \$1000 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; A, 6/29/2007]

HISTORY OF 19.20.4 NMAC: [RESERVED]