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Volume: XXXVII **Issue:** 21 **Publication date:** 11/3/2026 **Number of pages:** 5 **(ALD Use Only) Sequence No.**

Issuing agency name and address: Energy, Minerals and Natural Resources Department, Forestry Division, 1220 S. St. Francis Dr., Santa Fe, NM 87505 **Agency DFA code:** 521

Contact person's name: Erin McElroy **Phone number:** 5054907378 **E-mail address:** erin.mcelroy@emnrd.nm.gov

Type of rule action:

New [✓] **Amendment** [ ] **Repeal** [ ] **Emergency** [ ] **Renumber** [ ]

(ALD Use) Recent filing date:

Title number: 19 **Title name:** Natural Resources and Wildlife

Chapter number: 20 **Chapter name:** Forestry

Part number: 7 **Part name:** Timber Grading Certificate Program

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Yes [ ] **No** [X]

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? **Yes** [ ] **No** [ ] **Public domain** [ ]

Specific statutory or other authority authorizing rulemaking:

The Timber Grading Act, NMSA 1978, Sections 68-6-1 through 68-6-4.

Notice date(s): 7/14/2026 **Hearing date(s):** 8/14/2026 **Rule adoption date:** 10/8/2026 **Rule effective date:** 11/3/2026

Concise Explanatory Statement For Rulemaking Adoption:

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Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

See six page document attached, titled "Statement of Reasons_NMAC 19.20.7_FINAL"

Issuing authority (If delegated, authority letter must be on file with ALD):
Name:

Erin Taylor

Check if authority has been delegated

Title:

Acting Cabinet Secretary, Energy, Minerals and Natural Resources Department

Signature: **(BLACK ink only OR Digital Signature)**

Date signed:

10/9/26

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STATEMENT OF REASONS FOR ADOPTION OF 19.20.7, TIMBER GRADING CERTIFICATE PROGRAM

1) This Concise Explanatory Statement provides the basis upon which the Energy, Minerals and Natural Resources Department (EMNRD) adopts 19.20.7 NMAC, Timber Grading Certificate Program.

2) Statutory Authority

a) The Timber Grading Act, NMSA 1978, Sections 68-6-1 through 68-6-4, directs the Energy, Minerals and Natural Resources Department, Forestry Division, to establish a statewide Timber Grading Certificate Program. Section 68-6-3(A)(4) authorizes the Division to promulgate rules governing certification requirements, training components of the program, qualification standards for program instructors, and grounds and processes for the suspension or revocation of certificates. The statutory authority for adoption of this rule is reflected in 19.20.7.3 NMAC.

3) Process

a) The notice of the rulemaking and public hearing were published in the Albuquerque Journal on July 12, 2026 and in the New Mexico Register on July 14, 2026. In addition, the EMNRD, Forestry Division distributed notice of the rulemaking by emailing to the Legislative Council Service on July 6, 2026; posting on the Department of Information Technology's Sunshine Portal on July 7, 2026; posting on EMNRD's website on July 6, 2026; emailing to all Forestry Division staff on July 14, 2026; emailing to the Small Business Regulatory Advisory Commission through the Economic Development Department on June 24, 2026; and emailing to interested stakeholders on July 14, 2026. On August 14, 2026, EMNRD held a public hearing at 9:00 a.m. EMNRD received six written comments and two oral comments at the hearing regarding the proposed rule.

b) These procedural steps, including notice, publication, and hearing logistics, are detailed in the Hearing Officer Report (Exhibit 10) and documented in Exhibit 3.

4) Reasons and Evidence for Adopting the Rule

a) The Forestry Division is adopting 19.20.7 NMAC to establish the Timber Grading Certificate Program required under the Timber Grading Act. The rule creates a comprehensive and accountable system through which sawmill owners and employees may become certified to grade and label structural timber milled in New Mexico. The rule defines program eligibility, training requirements, instructor qualifications, labeling procedures, recordkeeping standards, and certificate suspension and revocation processes. These components ensure that structural

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pathways for the safe and consistent use of locally produced structural timber. Further, the Division considered Exhibit 8, the Citizen Portal Legislative Summary, which provides legislative context for the Timber Grading Act and supports the development of statewide grading, certification, and wood-product utilization mechanisms to strengthen New Mexico's forest sector and rural economies.

e) This broad public support confirmed EMNRD's determination that the rule will enhance statewide wood-products utilization, strengthen local economies, support forest restoration work, and promote sustainable and resilient use of New Mexico timber while ensuring accountability and compliance with building-code requirements.

5) <u>Reasons for Changes Between Proposed Rule and Final Rule</u>

a) The final version of 19.20.7 NMAC differs from EMNRD's initially proposed version as EMNRD made several revisions based upon public comments received. After consideration of public comments (Exhibit 4), EMNRD is adopting the following revisions:

i) Practical Examination Requirement (19.20.7.10(B))

(1) The Division revised the language from "may include" to "shall include" a practical examination in addition to the written examination. This change ensures the program evaluates both the theoretical knowledge and the applied grading competency necessary to safely and accurately grade structural timber. The Division determined that requiring both examinations provides a reasonable and necessary assurance of grader proficiency and is consistent with standard grading practices used nationally.

ii) Clarification of Design Values (19.20.7.13(D))

(1) This section was revised to explicitly require that all grades and sizes comply with product- and species-specific requirements recognized in the version of the National Design Specification for Wood Construction adopted under applicable building codes. While the proposed rule referenced design values generally, the final language clarifies the relationship between the grading program and applicable building codes. The revision ensures that the state program's grading outputs correspond to structural design expectations used by building officials, engineering professionals, and construction inspectors. This adjustment improves clarity for builders and building officials and reinforces alignment with nationally recognized structural standards.

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(2) The Division did not adopt this recommendation. In evaluating the statutory language and legislative purpose, the Division determined:

(a) The Timber Grading Act does not define "employee," nor does it expressly prohibit the inclusion of independent contractors. The commenter's interpretation is not compelled by the text of the Act.

(b) Many small and rural New Mexico sawmills rely on independent contractors, seasonal workers, and temporary workers due to variable production schedules and workforce needs. Excluding contractors would undermine the Act's purpose of establishing a functional statewide grading program accessible to the mills that need it.

(c) The Division's interpretation, allowing contractors who work "for or on behalf of" a sawmill, is reasonable, consistent with the Act's broad intent, and necessary to make the program workable for New Mexico's timber industry.

(d) Including contractors does not expand eligibility beyond sawmill-associated personnel, because independent contractors must still be performing work for the sawmill and are subject to all program requirements, oversight, and enforcement provisions.

(3) Accordingly, the Division retained a definition of "employee" that includes permanent employees, seasonal employees, temporary workers, and independent contractors who perform work for or on behalf of the sawmill.

ii) Mandatory Annual Unannounced Site Visits (19.20.7.14(C))

(1) One commenter, ALSC, recommended revising the rule to require annual unannounced inspections, asserting that regular oversight is necessary to ensure adherence to grading standards consistent with nationally recognized inspection programs (Exhibit 4).

(2) The Division did not adopt this recommendation because:

(a) The Timber Grading Act does not mandate annual inspections or require the Division to adopt a minimum inspection frequency, and the Division has determined it will not impose new obligations not contained in the Act.

(b) The Division must retain discretion to prioritize inspections based on risk, compliance concerns, resource availability, production volume, and other relevant factors.

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(a) A formal application establishes the official certification record required under the Uniform Licensing Act and provides the basis for issuance, renewal, denial, suspension, or revocation of a certificate.

(b) Training records alone do not create a legally sufficient administrative file documenting grader identity, sawmill affiliation, contact information, and examination results.

(c) Retaining the application requirement ensures clear documentation for building officials, purchasers, homeowners, and Division personnel, and supports traceability and accountability throughout the grading and labeling process.

(d) The application requirement is necessary for program integrity, compliance monitoring, and the ability to respond to public inquiries or initiate enforcement actions.

(3) The Division therefore retained the application requirement as originally proposed.

7) Effects on Small Businesses

a) EMNRD does not expect significant adverse effects to small businesses from the proposed action. The Timber Grading Certification Program is designed to expand economic opportunities by supporting the use of New Mexico-produced structural timber in residential and commercial construction. By providing a clear training and certification pathway, the rule is expected to increase market access, support sawmills and wood-processing facilities, and strengthen statewide utilization of locally produced wood products. These economic benefits were highlighted in written comments submitted by the Forest Stewards Guild and the Lincoln County Home Builders Association (Exhibit 4).

8) Conclusion and Effective Date

a) After conducting a public meeting and receiving six written and two oral comments, EMNRD adopts 19.20.7 NMAC for reasons discussed above. The attached Rule 19.20.7 NMAC, Timber Grading Certificate Program shall become effective on _____, 2026.

_____ Date: _____

Deputy Cabinet Secretary
Energy, Minerals and Natural Resources Department

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TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 20 FORESTRY
PART 7 TIMBER GRADING CERTIFICATE PROGRAM

19.20.7.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Forestry Division.
[19.20.7.1 NMAC – N, 11/03/2026]

19.20.7.2 SCOPE: 19.20.7 NMAC applies to sawmill owners and employees of sawmills who apply for or hold a structural timber grading certificate issued pursuant to the Timber Grading Act, Sections 68-6-1 to 68-6-4 NMSA 1978.
[19.20.7.2 NMAC – N, 11/03/2026]

19.20.7.3 STATUTORY AUTHORITY: 19.20.7 NMAC is adopted pursuant to the Timber Grading Act, Paragraph (4) of Subsection A of Section 68-6-3 NMSA 1978, which authorizes the forestry division of the energy, minerals and natural resources department to promulgate rules to carry out the provisions of the Timber Grading Act, including rules for the awarding of certificates, training components of the program, qualification of program instructors, and grounds and processes for the suspension or revocation of certificates.
[19.20.7.3 NMAC – N, 11/03/2026]

19.20.7.4 DURATION: Permanent.
[19.20.7.4 NMAC – N, 11/03/2026]

19.20.7.5 EFFECTIVE DATE: November 03, 2026, unless a later date is cited at the end of a section.
[19.20.7.5 NMAC – N, 11/03/2026]

19.20.7.6 OBJECTIVE: To establish a structural timber grading certificate program for sawmill owners and employees of sawmills in New Mexico, including requirements for certification, training, instructor qualifications, labeling, liability, records retention, and the suspension or revocation of certificates.
[19.20.7.6 NMAC – N, 11/03/2026]

19.20.7.7 DEFINITIONS: As used in 19.20.7 NMAC:

A. **"Act"** means the Timber Grading Act, Sections 68-6-1 to 68-6-4 NMSA 1978.

B. **"Applicant"** means a person who has submitted an application to the division for a structural timber grading certificate.

C. **"Building inspector"** means a person certified by the construction industries division of the regulation and licensing department and certified by one or more trade bureaus to conduct inspections of permitted construction work to ensure that all work performed by a contractor or homeowner complies with applicable building codes.

D. **"Certificate"** means the document provided to a person after completion of the program that allows that person to engage in timber grading and labeling as a grader.

E. **"Division"** means the forestry division of the energy, minerals and natural resources department.

F. **"Employee"** means any individual who performs work for or on behalf of a sawmill, including permanent employees, temporary or seasonal workers, and independent contractors.

G. **"Grader"** means the owner of a sawmill or a person employed by a sawmill who is certified to inspect, grade, and label structural timber at that sawmill.

H. **"Label"** means a document that provides information on the grade of structural timber that was milled in-state.

I. **"Program"** means the structural timber grading certificate program established by the division pursuant to the Act.

J. **"Structural timber"** means dimensional lumber, structural beams, and vigas milled in-state.

K. **"Uniform Licensing Act"** means the Uniform Licensing Act, Chapter 61, Article 1 NMSA 1978.
[19.20.7.7 NMAC – N, 11/03/2026]

19.20.7.8 PROGRAM ESTABLISHMENT AND DIVISION RESPONSIBILITIES:

A. The division shall establish and administer the structural timber grading certificate program pursuant to the Act.

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B. The division shall:

(1) create a structural timber grading certificate program accessible to sawmill owners and employees of sawmills to provide training on structural timber grading and labeling;

(2) develop a state-specific system to grade and label structural timber based on the system used by the American lumber standard committee;

(3) issue a structural timber grading certificate to a person who completes the program and meets all requirements set forth in 19.20.7 NMAC; and

(4) promulgate rules to carry out the provisions of the Timber Grading Act, including for the:

(a) awarding of certificates;

(b) training components of the program;

(c) qualification of program instructors; and

(d) grounds and processes for the suspension or revocation of certificates.

(5) maintain records in accordance with 19.20.7.14 NMAC and applicable state records retention requirements.

C. The program may be provided by a public post-secondary educational institution. To become an approved provider, the institution shall submit a letter to the state forester requesting approval and identifying the institution's qualifications to effectively deliver the program as defined in 19.20.7 NMAC.

[19.20.7.8 NMAC – N, 11/03/2026]

19.20.7.9 ELIGIBILITY AND APPLICATION FOR CERTIFICATION:

A. To be eligible for a certificate, an applicant shall:

(1) be at least 18 years of age at the time of application;

(2) be the owner of a sawmill or an employee of a sawmill; and

(3) successfully complete all training and examination requirements of the program as set forth in 19.20.7.10 NMAC.

B. Individuals between the ages of 15 and 17 may attend classroom-based training components of the program but shall not take the written or practical examination, shall not receive a certificate, and shall not perform any hands-on activities associated with logging or sawmill operations or any other tasks prohibited by federal or state law.

C. An applicant shall submit a completed application to the division on a form developed by the division. The application shall include:

(1) the applicant's full name, mailing address, telephone number, and electronic mail address;

(2) the name and location of the sawmill at which the applicant is the owner or is employed;

(3) documentation of successful completion of the program; and

(4) payment of the applicable certification fee as set forth in 19.20.7.11 NMAC.

D. The division shall review completed applications and issue a certificate or provide written notification of denial and the reasons for denial. An applicant may appeal a denial in writing to the state forester within 15 days of receipt of the denial notification.

[19.20.7.9 NMAC – N, 11/03/2026]

19.20.7.10 TRAINING AND INSTRUCTOR QUALIFICATIONS:

A. The program shall include training on at minimum the following components:

(1) the state-specific structural timber grading and labeling system developed by the division;

(2) species identification and characteristics of structural timber milled in-state. Species identification may include recognition of species groups consistent with nationally recognized lumber grading systems, provided such groupings are consistent with the Act and this rule.

(3) grading criteria for dimensional lumber, structural beams, and vigas;

(4) moisture content measurement and documentation. Moisture content measurement refers to identification of moisture-content categories consistent with nationally recognized lumber grading systems;

(5) labeling requirements and procedures under the Act and 19.20.7 NMAC;

(6) applicable legal requirements, including requirements for use of graded and labeled timber in residential and commercial construction; and

(7) records retention requirements applicable to graders under 19.20.7.14 NMAC.

B. The program shall include a written examination and shall include a practical examination. An applicant shall pass each examination with a minimum score established by the division before a certificate may be issued.

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C. To qualify as a program instructor, an individual shall possess demonstrated expertise in structural timber grading, wood science, or a related field, including a minimum of six months of work experience in lumber grading; preference may be given to individuals holding current or former credentials from an American lumber standard committee-accredited agency. An associate degree in wood science, engineering, or a related academic field may be substituted for the work experience requirement, as determined by the division.

D. The division may approve instructors employed by or contracted through a public post-secondary educational institution or other qualified entity. The division shall maintain and post on the division's website a list of approved instructors and approved program providers.

[19.20.7.10 NMAC – N, 11/03/2026]

19.20.7.11 CERTIFICATION FEES:

A. The division may charge a fee not to exceed two hundred fifty dollars ($250) for the issuance of a certificate, certificate renewal, mid-term examinations, and reinstatement after suspension.

B. The division shall post the current fee schedule on the division's website. Fees shall be paid at the time of application submission and are non-refundable unless the division determines the application was not accepted for processing.

C. Institutions of higher education providing the training may charge an additional fee at their discretion.

[19.20.7.11 NMAC – N, 11/03/2026]

19.20.7.12 CERTIFICATE REQUIREMENTS AND RENEWAL:

A. A certificate issued by the division shall include:

(1) the name of the certificate recipient;

(2) the date of issuance; and

(3) the expiration date, which shall be five years from the date of issuance.

B. A certificate shall expire five years from the date of issuance. A grader who wishes to renew a certificate shall apply for renewal prior to the expiration date and shall demonstrate continued qualification in a manner determined by the division, which may include completion of a refresher course or examination approved by the division.

C. The division may require a mid-term evaluation, continuing education, and/or skills assessment to ensure grading quality. Requirements shall be posted on the division's website. Failure to meet these requirements shall result in suspension of the certificate until compliance is achieved. The division shall provide notice to the grader at least 30 days prior to any suspension resulting from noncompliance with these requirements.

D. A grader shall not engage in structural timber grading or labeling under the program after the expiration of the grader's certificate unless and until a renewed certificate is issued by the division.

[19.20.7.12 NMAC – N, 11/03/2026]

19.20.7.13 STRUCTURAL TIMBER GRADING LABEL REQUIREMENTS:

A. A grader shall prepare a label for each lot of structural timber that has been graded and shall provide the label to the purchaser of the structural timber. The label shall include:

(1) the name of the grader;

(2) the name and location of the sawmill where the timber was processed;

(3) the name of the timber species;

(4) the quantity and type of structural timber that was graded and labeled;

(5) the location where the timber is to be used. The location where the timber is to be used refers to the destination or invoice number associated with sale, if known at the time of grading;

(6) the date that the timber was cut and processed. The date the timber was cut and processed refers to the calendar year and month the product was manufactured to its final form;

(7) the date on which the timber was graded; and

(8) the moisture content of the timber at the time of grading.

B. A grader shall only grade and label structural timber that the grader has processed at the sawmill the grader owns or is employed by.

C. The end user of structural timber that has been graded and labeled in-state shall provide the label to the building inspector in lieu of a grade stamp. A label issued pursuant to the Act and 19.20.7 NMAC shall be accepted as proof of grading and is equivalent to structural timber grade-stamped by an accredited lumber grading or inspection agency.

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(1) For the purpose of this rule, "equivalent" as used under Subsection C of 19.20.7.13 NMAC means structural timber manufactured in accordance with 19.20.7 NMAC may substitute directly for grade-stamped lumber of corresponding grade, size, and species group.

(2) Nothing in this rule limits the authority of a local building official to accept or reject the use of materials under applicable building codes.

D. All grades and sizes shall be in accordance with product- and species-specific requirements recognized in the version of the National Design Specification for Wood Construction adopted under applicable building codes.

E. Structural timber milled in New Mexico shall be graded and labeled in-state by a certified grader at the sawmill where the timber was processed. Timber milled in New Mexico that is graded or labeled outside the state shall not be represented as structural timber under the New Mexico timber grading certificate program. Timber originating from outside New Mexico may be milled, graded, and labeled in-state, by a certified grader at the sawmill where the timber was processed.

F. Structural timber that has been graded and certified in-state under this program may be used in all residential and commercial buildings in New Mexico.

[19.20.7.13 NMAC – N, 11/03/2026]

19.20.7.14 RECORDS RETENTION AND QUALITY CONTROL:

A. The division shall maintain records relating to the program in accordance with the State Records Retention and Disposition Schedule, 1.21.2 NMAC, including:

(1) records relating to individual grader certificates including applicable grade(s), size(s), and species for which grader certification applies, which shall be retained for 10 years from the date the individual is no longer certified, pursuant to 1.21.2.667 NMAC;

(2) records relating to the certification of timber grading products, which shall be retained for five years from the date the file is closed, pursuant to 1.21.2.661 NMAC;

(3) records relating to disciplinary proceedings, including suspension or revocation files, which shall be retained for 25 years from the date the file is closed, pursuant to 1.21.2.656 NMAC; and

(4) records relating to any agricultural inspections the division may conduct, which shall be retained for five years from the date the file is closed, pursuant to 1.21.2.071 NMAC.

B. As a condition of certification, a grader shall retain records of all structural timber graded and labeled under the program, including copies of all labels issued, for a minimum of five years from the date of sale. Records shall be made available to the division upon request.

C. The division or its authorized representative may perform unannounced site visits and "check-grading" of labeled inventory to verify the accuracy and adherence to state-specific standards.

[19.20.7.14 NMAC – N, 11/03/2026]

19.20.7.15 LIABILITY DISCLAIMER:

A. The division disclaims liability for any costs or damages incident to inspection, certification, or compliance with the provisions of 19.20.7 NMAC, to the extent permitted by the Tort Claims Act, Sections 41-4-1 to 41-4-27 NMSA 1978.

B. A certificate issued under 19.20.7 NMAC:

(1) signifies that the grader has completed the required training and is authorized to grade and label structural timber under the program;

(2) is not a warranty or guarantee of the structural performance of any graded timber;

(3) does not constitute approval by the division of any specific piece of graded lumber for any specific construction purpose; and

(4) does not shift the responsibility for safe design and construction away from the parties responsible under applicable law.

C. As a condition of certification, each applicant shall acknowledge in writing, on a form provided by the division, that the applicant:

(1) understands that the certificate is not a warranty or guarantee of the structural performance of graded timber;

(2) is responsible for compliance with all applicable laws, codes, and standards; and

(3) agrees to comply with the division's standards and requirements for the program.

[19.20.7.15 NMAC – N, 11/03/2026]

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19.20.7.16 SUSPENSION AND REVOCATION OF CERTIFICATES:

A. The division may suspend or revoke a certificate for good cause, including:

(1) fraud, misrepresentation, or material omission in the application for a certificate;

(2) violation of the Act or 19.20.7 NMAC;

(3) grading or labeling structural timber in a manner that does not conform to the state-specific grading and labeling system established under the Act;

(4) grading or labeling structural timber at a sawmill other than the sawmill the grader owns or is employed by;

(5) failure to maintain required records as set forth in 19.20.7.14 NMAC; or

(6) failure to complete the mid-term examination or skills assessment required by Subsection C of 19.20.7.12 NMAC.

B. Procedures for notice, hearing, and final decision for suspension or revocation of a certificate shall be conducted in conformity with the Uniform Licensing Act, Chapter 61, Article 1 NMSA 1978. A final agency decision may be appealed as provided in Section 39-3-1.1 NMSA 1978.

C. Before suspending or revoking a certificate, the division shall provide the grader with written notice of the contemplated action. The notice shall include:

(1) a statement of the grounds for the contemplated suspension or revocation;

(2) the specific facts alleged to support the action;

(3) a statement of the grader's right to request a hearing; and

(4) the deadline and process for requesting a hearing.

D. The division may conduct hearings directly or may elect to use a hearing officer. If a hearing officer is used, the hearing officer shall submit findings of fact and a recommendation to the division. The division shall issue the final decision.

E. The division may enter into a memorandum of agreement with the administrative hearings office to provide hearing officers for the conduct of administrative hearings under 19.20.7 NMAC, pursuant to 22.600.1.28 NMAC.

[19.20.7.16 NMAC – N, 11/03/2026]

HISTORY OF 19.20.7 NMAC:

Pre-NMAC History: None

History of Repealed Material: [RESERVED]

Other History: