

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 6 MINE SAFETY
PART 4 CERTIFICATION OF COAL MINE OFFICIALS

19.6.4.1 ISSUING AGENCY: New Mexico Mining Safety Board.
[19.6.4.1 NMAC - N, 09/30/08]

19.6.4.2 SCOPE: All persons subject to NMSA 1978, Article 14, Qualifications and Duties of Coal Mine Officials.
[19.6.4.2 NMAC - N, 09/30/08]

19.6.4.3 STATUTORY AUTHORITY: NMSA 1978, Section 69-5-1 et seq, Section 69-8-1 et seq and Section 69-14-1 et seq.
[19.6.4.3 NMAC - N, 09/30/08]

19.6.4.4 DURATION: Permanent.
[19.6.4.4 NMAC - N, 09/30/08]

19.6.4.5 EFFECTIVE DATE: September 30, 2008, unless a later date is cited at the end of a section.
[19.6.4.5 NMAC - N, 09/30/08]

19.6.4.6 OBJECTIVE: The objective of Part 4 of 19.6 NMAC is to establish rules pertaining to the certification of coal mine officials. Officials include, but are not limited to, mine examiners, underground mine foreman and surface mine foreman. Officials must obtain certification from the state mine inspector as required in NMSA 1978 69-14-1. NMSA Chapter 69, Article 14 also requires certain qualifications, that testing must be conducted, requires recertification and lists discipline procedures.
[19.6.4.6 NMAC - N, 09/30/08]

19.6.4.7 DEFINITIONS:

- A.** "Board" means the state mining safety board.
- B.** "Certificate" means a document issued by the state mine inspector, or certifying agency from another state, allowing the holder to be employed as a coal mine official in the state of origin.
- C.** "CFR" means Code of Federal Regulations.
- D.** "Days" means calendar days.
- E.** "Inspector" means the state mine inspector.
- F.** "Mining engineering graduate" means a person having a B.S. degree in mining or mineral engineering from an accredited college or university.
- G.** "Official" means coal mine official, including underground mine foreman, mine examiner or surface mine foreman.
- H.** "Revoke" means to permanently invalidate a certification.
- I.** "Service" means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.
- J.** "Suspend" means to invalidate a certification for a specified period of time.

[19.6.4.7 NMAC - N, 09/30/08; A, 10/01/10]

19.6.4.8 REQUIREMENT FOR CERTIFICATION BY STATE MINE INSPECTOR: The state mine inspector shall certify, recertify or discipline persons to act as mine foremen and mine examiners. No mine operator shall employ any person as underground mine foreman, mine examiner or surface mine foreman unless that person has been certified by the state mine inspector for such position.
[19.6.4.8 NMAC - N, 09/30/08]

19.6.4.9 METHODS AND REQUIREMENTS OF CERTIFICATION:

- A.** The state mine inspector may recognize the foreman's or mine examiner's certificate issued by another state and issue certificates accordingly when:

(1) the state mine inspector reviews the certification requirements of another state and determines that the requirements are equivalent or more stringent than New Mexico's, and are pertinent to the mining conditions found in New Mexico's coal mines; or

(2) an agreement of reciprocity is signed between the state mine inspector and the director of the certification agency from another state.

B. Persons with four or more years of experience in or about underground coal mines, and providing underground foreman certification from another state program or persons with four or more years of experience in or about surface coal mines, and providing surface foreman certification from another state program, meet the requirements for testing.

C. The state mine inspector shall hold written examinations, at times, dates and places to be given out at least sixty days in advance, to all persons desiring to secure mine foreman certificates or mine examiner certificates.

D. The state mine inspector shall require that any applicant for examination to the position of mine foreman or mine examiner submit a completed application at least thirty days prior to the examination date and shall meet the experience requirements of this section. Every person desiring to secure an underground mine foreman's certificate and not already in such position or not holding such certificate from another state shall first serve as a mine examiner for six months and shall have at least four years of underground coal mine experience to participate in the underground foreman's examination. Every person desiring to secure a surface mine foreman's certificate, and not already holding such certificate from another state, shall have at least four years of surface coal mine experience to participate in the surface foreman's examination. A person who holds a certificate for surface mine foreman who wishes to take the underground foreman test must have a minimum of four years of experience in underground mine workings. A person who holds an underground mine foreman certificate and who wishes to participate in the surface mine foreman examination must have at least two years of surface mine experience. Every person desiring to secure a mine examiner's certificate and not already in such position or not holding such certificate from another state recognized by the state mine inspector, shall have at least two years of coal mine experience to participate in the underground mine examiner's examination.

E. The state mine inspector may allow a mining engineering graduate to participate in the foreman's or examiner's examination if the mining engineering graduate meets at least one-half of the experience requirements listed in Subsections B and D of this section and a mining engineering graduate must pass the underground mine examiner's examination and shall first serve as an underground mine examiner for six months prior to taking the underground mine foreman examination.

[19.6.4.9 NMAC - N, 09/30/08]

19.6.4.10 FEES FOR CERTIFICATION AND EXAMINATION: The state mine inspector, after consultation with the mining safety board, may impose fees for examination and certification of officials. Current fees will be posted with examination notice given out as required in Subsection C of 19.6.4.9 NMAC.

[19.6.4.10 NMAC - N, 09/30/08]

19.6.4.11 CERTIFICATION PERIOD AND RECERTIFICATION PROCESS:

A. Certification of officials shall be issued for a period of five years. All officials certified by the state mine inspector prior to June 15, 2007 shall have their certification period extended five years. Each official is required to have retraining as a qualified/certified person on an annual basis from the mine in which they are employed as required in 30 CFR 75.160, 30 CFR 75.161 and 30 CFR 77.107 and 30 CFR 77.107-1. Failure to have re-training as a qualified/certified person on an annual basis may result in suspension of certification.

B. Each official has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of such change. Failure to provide current contact information may result in suspension of certification.

C. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector.

D. Recertification may be done by taking an exam every five years, prior to certification expiration, or an organization may submit an alternative plan for the inspector's approval as follows:

(1) officials taking an exam every five years will follow the same process required for original certification; or

(2) an organization may submit an alternative plan, for the state mine inspector's approval; the alternative plan may be carried out over the five year period; the alternative plan shall include the subjects to be covered, the minimum amount of time per subject, the methods of instruction, and the methods of participant evaluation during process completion; following completion, the applicant shall provide the state mine inspector with verification that all training for the recertification period is current; and

(3) applicants shall submit an application, pay the applicable fee, and provide all appropriate documentation as required by the state mine inspector, before receiving recertification.

E. Mine examiners may fulfill the recertification requirements for mine examiner by successfully completing the examination for mine foreman certification or recertification.

[19.6.4.11 NMAC - N, 09/30/08; A, 10/01/10]

19.6.4.12 REFUSAL TO CERTIFY OR RECERTIFY AND SUSPENSION OR REVOCATION OF CERTIFICATION:

A. The inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under 19.6.4 NMAC upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the New Mexico mine safety laws; or

(5) has been disciplined in another state that certifies mine personnel.

B. If the inspector contemplates taking any of the actions described in Subsection A of 19.6.4.12 NMAC for any of the reasons provided in that subsection, the inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the inspector has sufficient evidence that, if not rebutted or explained, will justify the inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or certified person at least twenty days to submit written evidence to rebut or explain the allegations.

C. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection B of 19.6.4.12, the inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act 69-8-1 NMSA 1978.

[19.6.4.12 NMAC - N, 10/01/10]

19.6.4.13 APPEAL TO MINING SAFETY BOARD OF CERTIFICATION ACTIONS BY INSPECTOR TO MINING SAFETY BOARD: An appeal of an inspector's action may be made to the board by the person affected by the action.

A. A person affected by the inspector's action shall file a written petition for review of the action within twenty days after service of the action. Unless a timely written appeal for review is made, the action of the inspector shall be final and not subject to judicial review.

B. The petition shall be filed in writing with the chair of the board or the chair's designee, and include the action number and the name of the appellate.

C. If a timely petition is made, the board shall consider the petition at a hearing held no sooner than thirty days and no more than ninety days after receipt of the written petition. The board shall notify the petitioner and the inspector of the date, time and place of the hearing at which the petition will be considered.

D. No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory proceeding may serve as a hearing officer in that proceeding or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.

E. The board shall review the record compiled before the inspector and shall allow any party to submit arguments at the hearing.

F. Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the action of the inspector, and stating reasons for that action. The decision shall be signed by the board chair or the chair's designee, and shall be served on both parties within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[19.6.4.13 NMAC - N, 10/01/10]

HISTORY OF 19.6.4 NMAC: [RESERVED]