

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 6 MINE SAFETY
PART 2 EMERGENCY NOTIFICATION

19.6.2.1 ISSUING AGENCY: New Mexico Mining Safety Board.
[N, 08/31/06; 19.6.2.1 NMAC - Rn, 11.8.2.1 NMAC & A, 9/30/08]

19.6.2.2 SCOPE: All persons subject to NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq. and all mines as defined in NMSA 1978, Section 69-8-2.D.
[N, 08/31/06; 19.6.2.2 NMAC - Rn, 11.8.2.2 NMAC & A, 9/30/08]

19.6.2.3 STATUTORY AUTHORITY: NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq.
[N, 08/31/06; 19.6.2.3 NMAC - Rn, 11.8.2.3 NMAC, 9/30/08]

19.6.2.4 DURATION: Permanent.
[N, 08/31/06; 19.6.2.4 NMAC - Rn, 11.8.2.4 NMAC, 9/30/08]

19.6.2.5 EFFECTIVE DATE: August 31, 2006, unless a later date is cited at the end of a section.
[N, 08/31/06; 19.6.2.5 NMAC - Rn, 11.8.2.5 NMAC, 9/30/08]

19.6.2.6 OBJECTIVE: The objective of Part 2 of 19.6 NMAC is to establish regulations to implement the requirements for emergency notification plans, mine accident emergency operations center and accident notifications as directed in NMSA Chapter 69, Article 5.
[N, 08/31/06; 19.6.2.6 NMAC - Rn, 11.8.2.6 NMAC, 9/30/08]

19.6.2.7 DEFINITIONS:

- A.** "Accident" means accident as defined in Title 30 CFR 50.2(h).
 - B.** "Board" means the state mining safety board.
 - C.** "CFR" means Code of Federal Regulations.
 - D.** "Days" means calendar days.
 - E.** "Hours worked" means hours reported to MSHA on the 7000-2 form or for an OSHA regulated site on the OSHA form 300-A, for the previous calendar year.
 - F.** "Inspector" means the state mine inspector.
 - G.** "Mine" means mine as defined in Title 30 CFR 50.2(a).
 - H.** "Operator" means operator as defined in Title 30 CFR 50.2(c).
 - I.** "Service" means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.
- [N, 08/31/06; 19.6.2.7 NMAC - Rn, 11.8.2.7 NMAC & A, 9/30/08; A, 1/01/10; A, 10/01/10]

19.6.2.8 REQUIREMENT TO FILE EMERGENCY NOTIFICATION PLAN:

- A.** All operators of existing mines must prepare an emergency notification plan and submit the plan to the state mine inspector for approval by April 10, 2006. All operators of new or reopened mines shall submit an emergency notification plan to the state mine inspector prior to opening or reopening the mine.
 - B.** Each emergency notification plan must contain procedures for notifying the state mine inspector within thirty minutes of an accident.
 - C.** Any changes made by a mine operator to an approved emergency notification plan shall be submitted by the operator, within no less than seven working days from date of the change, to the state mine inspector for review and approval. The inspector shall no less than annually, from the date of approval of an operator's emergency notification plan, notify the operator to insure that the plan on file with the state mine inspector is current.
 - D.** The inspector shall retain a copy of each mine operator's approved emergency notification plan at the mine accident emergency operations center.
- [N, 08/31/06; 19.6.2.8 NMAC - Rn, 11.8.2.8 NMAC & A, 9/30/08]

19.6.2.9 ESTABLISHMENT OF MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. The state mine inspector shall establish and maintain the mine accident emergency operations center as the primary state government communications for dealing with mine accidents that:

(1) provides emergency assistance requested by the mine operator or the mine safety and health administration for mine accidents or emergencies; and

(2) is accessible twenty-four hours a day, seven days a week, at a statewide telephone number established and designated by the inspector.

B. Upon receipt of an emergency call regarding an accident, the mine accident emergency operations center shall immediately notify the state mine inspector or his/her designee, who will ensure that the emergency notification plan for the appropriate mine is complied with.

C. In the event of an accident or recovery operation in or about a mine, the state mine inspector may, upon request of the mine operator or the mine safety and health administration, coordinate the assignment of mine rescue teams to assist with needed rescues.

[N, 08/31/06; 19.6.2.9 NMAC - Rn, 11.8.2.9 NMAC, 9/30/08]

19.6.2.10 REQUIREMENTS TO NOTIFY THE MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice within thirty minutes of ascertaining the occurrence of the accident to the mine accident emergency operations center at the statewide telephone number established by the state mine inspector stating the facts and circumstances of the accident and providing the names and telephone numbers of at least two persons located at the site of the accident who are knowledgeable in emergency operations.

B. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law. Notification of any other federal, state or local agency does not relieve the operator of its obligation to provide notification under Subsection A of 19.6.2.10 NMAC.

[N, 08/31/06; 19.6.2.10 NMAC - Rn, 11.8.2.10 NMAC, 9/30/08]

19.6.2.11 FAILURE TO PROVIDE TIMELY NOTICE:

A. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of a mine if it is determined that the operator failed to give immediate notice as required in 19.6.2.10 NMAC. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

B. In determining the amount of the penalty, the inspector shall consider all relevant factors including whether notice was provided at all to the inspector or, if notice was provided, the lateness of such notice and the seriousness of the accident. The inspector shall utilize the penalty structure approved by the mining safety board.

(1) Penalty points for coal mining operators based on coal production.

Annual tonnage of coal mine failing to provide timely notice	Penalty points
0 to 15,000	0
Over 15,000 to 30,000	1
Over 30,000 to 50,000	2
Over 50,000 to 100,000	3
Over 100,000 to 200,000	4
Over 200,000 to 300,000	5
Over 300,000 to 500,000	6
Over 500,000 to 800,000	7
Over 800,000 to 1.1 million	8
Over 1.1 million to 2 million	9
Over 2 million	10

(2) Penalty points for coal mining operators based on the coal production in New Mexico of the controlling entity.

Annual coal tonnage produced in New Mexico of controlling entity	Penalty points
0 to 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2

Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

- (3) Penalty points for metal/non-metal operators based on hours worked.

Annual hours worked at a M/NM mine failing to provide timely notice	Penalty points
0 to 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

- (4) Penalty points for metal/non-metal operators based on annual hours worked in New Mexico by controlling entity of a M/NM mine.

Annual hours worked in New Mexico by controlling entity of a M/NM mine	Penalty points
0 to 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

- (5) Penalty points based on operator negligence.

Negligence		
Categories	Penalty points	
	Persons endangered	No endangerment
Low negligence - The operator failed to report the accident within the required 30 minutes but did report within 1 hour.	10	5
Moderate negligence - The operator failed to report the accident for more than 1 hour and less than 4 hours.	15	7
High negligence - The operator failed to report the accident for more 4 hours and less than 12 hours.	20	10
Reckless disregard - The operator failed to report the accident for greater than 12 hours, or the operator was previously fined for failure to report an accident within one year of the occurrence.	25	12

- (6) Points based on type of accident.

Type of accident (as prescribed in 30CFR, Part 50.2 h(1) - (12) <i>There could be more than one category where the penalty points are accrued i.e., a fire at a mine that burns for more than 30 minutes and results in a fatality, would equal 40 penalty points.</i>	Penalty points	
	Persons endangered	No endangerment
Fatality	25	N/A
An injury at a mine that has a reasonable potential to cause death	20	N/A

An entrapment of an individual for more than 30 minutes	10	5
An unplanned inundation of a mine by a liquid or gas	10	5
An unplanned ignition or explosion of gas or dust	15	5
An unplanned mine fire not extinguished within 30 minutes of discovery	15	7
An unplanned ignition or explosion of blasting agent or explosive	20	10
An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage	10	N/A
A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour	15	N/A
An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank	10	N/A
Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes	10	5
An event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs	20	N/A

(7) Penalty amounts based on total points.

Penalty conversion table	
Penalty points	Penalty
0 to 15 points	\$5,000
16 to 25 points	\$10,000
26 to 35 points	\$20,000
36 to 45 points	\$50,000
46 to 55 points	\$65,000
56 to 65 points	\$85,000
66 to 70 points	\$95,000
71 or more points	\$100,000

C. If the state mine inspector determines that notice was not timely provided, the inspector shall within 90 days after notification of an accident or, if notice was not provided to the inspector, after ascertaining that an accident did occur at a mine, mail a notice of violation with a proposed penalty to the operator.

(1) The operator shall pay the penalty within 30 days after receipt of the notice.

(2) If the operator wishes to challenge the violation or request that the penalty be adjusted or waived, the operator must submit a written petition to the inspector within 20 days after receipt of the notice. Filing of a petition stays the requirement to pay the penalty. The operator may also submit written documentation in support of his petition and may request a meeting with the inspector to discuss the circumstances of the violation.

(3) Within 60 days after receipt of a petition, the inspector shall issue a final order upholding, amending or rescinding the notice of violation and penalty. The inspector may consider actions of the operator in response to the violation when considering amending the penalty. The inspector's final order shall include a statement that the operator may file an appeal of the final order with the board. Unless the inspector's final order is appealed to the board in accordance with Subsection E of this section, if the final order contains a penalty, the operator shall pay the penalty within 30 days after receipt of the final order.

D. In determining whether to adjust or waive imposition of the penalty, the inspector may consider factors such as, but not limited to:

(1) whether the mine was idled for any reason at the time of the accident;

(2) whether the mine operator encountered communications problems that made it impossible to provide timely notice;

(3) whether medical personnel determined that an injury was not considered life threatening immediately after an accident; if injury becomes life threatening, then notice requirements would be triggered when operator learns of a change in status from a medical authority;

(4) whether a fatality of mine personnel that occurs after an accident is associated with a specific accident;

(5) whether the need to provide emergency medical treatment or emergency rescue and recovery efforts reasonably precluded the mine operator from timely providing notice; and

(6) whether the penalty creates an undue financial hardship on the mine.

E. The operator may appeal the inspector's final order to the board pursuant to these rules.

(1) The operator shall file a written notice of appeal of the inspector's final order within twenty days after service of the final order. Unless a timely written appeal is made, the inspector's final order shall be final and not subject to judicial review. The filing of a timely notice of appeal shall stay enforcement of the inspector's final order until the board issues its written decision on the appeal.

(2) The operator shall file the written notice of appeal with the chair of the board or the chair's designee, and include the order number and the name of the operator.

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

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

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

(6) Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the inspector's final order, and stating the reasons for that action. This 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.

[N, 08/31/06; 19.6.2.11 NMAC - Rn, 11.8.2.11 NMAC & A, 9/30/08; A, 1/01/10; A, 10/01/10]

HISTORY OF 19.6.2 NMAC:

Pre-NMAC History: None

History of Repealed Material: [Reserved]

NMAC History:

11.8.2 NMAC, Emergency Notification (filed 7/18/2006) was renumbered and amended to 19.6.2 NMAC, Emergency Notification, effective 9/30/2008.

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 6 MINE SAFETY
PART 3 MINE SAFETY FOR UNDERGROUND WORKERS

19.6.3.1 ISSUING AGENCY: New Mexico State Mine Inspector.
[N, 12/31/06; 19.6.3.1 NMAC - Rn, 11.8.3.1 NMAC, 9/30/08]

19.6.3.2 SCOPE: All persons subject to NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq.
[N, 12/31/06; 19.6.3.2 NMAC - Rn, 11.8.3.2 NMAC, 9/30/08]

19.6.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq.
[N, 12/31/06; 19.6.3.3 NMAC - Rn, 11.8.3.3 NMAC, 9/30/08]

19.6.3.4 DURATION: Permanent.
[N, 12/31/06; 19.6.3.4 NMAC - Rn, 11.8.3.4 NMAC, 9/30/08]

19.6.3.5 EFFECTIVE DATE: December 31, 2006, unless a later date is cited at the end of a section.
[N, 12/31/06; 19.6.3.5 NMAC - Rn, 11.8.3.5 NMAC, 9/30/08]

19.6.3.6 OBJECTIVE: The objective of Part 3 of 19.6 NMAC is to establish general requirements for all underground mine workers.
[N, 12/31/06; 19.6.3.6 NMAC - Rn, 11.8.3.6 NMAC, 9/30/08]

19.6.3.7 DEFINITIONS: [Reserved]
[N, 12/31/06; 19.6.3.7 NMAC - Rn, 11.8.3.7 NMAC, 9/30/08]

19.6.3.8 REQUIREMENTS FOR UNDERGROUND MINE WORKERS:

A. No mine employee or other person shall remove, displace, damage, destroy, carry off or fail to use any safety device, safeguard notice or warning, provided for use in any mine employment or place of mine employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any mine employee, in such employment or place of employment, or fail or neglect to follow and obey safety orders promulgated by the mine operator or mine inspector, and to do every other thing reasonably necessary to protect the life, health, safety and welfare of employees, including himself. This being a state law, violation of this act constitutes a misdemeanor.

B. No miner or other person shall carry into a mine intoxicating liquors or alcoholic beverages or any controlled substances or enter the mine under the influence of intoxicating liquor or controlled substances. This being a state law, violation constitutes a crime punishable by fine or imprisonment, or both.
[N, 12/31/06; 19.6.3.8 NMAC - Rn, 11.8.3.8 NMAC, 9/30/08]

HISTORY of 19.6.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Commission of Public Records and Archives:

MI 69-0, Rules Pertaining to Mine Safety for Underground Workmen, filed 1/6/69.

History of Repealed Material: MI 69-0, Rules Pertaining to Mine Safety for Underground Workmen (filed 1/6/1969) repealed 12/31/2006.

Other History:

MI 69-0, Rules Pertaining to Mine Safety for Underground Workmen (filed 1/6/1969) was renumbered, reformatted, and replaced by 11.8.3 NMAC Mine Safety for Underground Workers, effective 12/31/2006.

11.8.3 NMAC, Mine Safety for Underground Workers (filed 12/12/2006) was renumbered to 19.6.3 NMAC, Mine Safety for Underground Workers, effective 9/30/2008.

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 appellee.

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]

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 6 MINE SAFETY
PART 5 NEW MEXICO MINE SAFETY CODE FOR ALL MINES INCLUDING OPEN-CUT AND OPEN-PIT

19.6.5.1 ISSUING AGENCY: Mining Safety Board.
[06/01/08; 19.6.5.1 NMAC - Rn, 19.7.20.1 NMAC, 9/30/08]

19.6.5.2 SCOPE: All owners, employees and visitors of mining operations in New Mexico, utilizing hoist to access underground mining operations.
[06/01/08; 19.6.5.2 NMAC - Rn, 19.7.20.2 NMAC, 9/30/08]

19.6.5.3 STATUTORY AUTHORITY: Section 69-8-4 NMSA 1978.
[06/01/08; 19.6.5.3 NMAC - Rn, 19.7.20.3 NMAC, 9/30/08]

19.6.5.4 DURATION: Permanent.
[06/01/08; 19.6.5.4 NMAC - Rn, 19.7.20.4 NMAC, 9/30/08]

19.6.5.5 EFFECTIVE DATE: 06/01/08, unless a later date is cited at the end of a section.
[06/01/08; 19.6.5.5 NMAC - Rn, 19.7.20.5 NMAC, 9/30/08]

19.6.5.6 OBJECTIVE: Maintain a system of uniform hoist signals for all underground mines.
[06/01/08; 19.6.5.6 NMAC - Rn, 19.7.20.6 NMAC, 9/30/08]

19.6.5.7 DEFINITIONS: [RESERVED]

19.6.5.8 SIGNALS FOR ALL MINES. The following signal code shall be used in all mines:
A. 1 bell, stop immediately if in motion; 1-2-1 bells, hoist muck; 2-1-2 bells, release cage, skip or bucket; 2 bells, lower; 3-1 bells, hoist persons; 3-2 bells, lower persons, if bells rung slowly move slowly; 7 bells, danger signal, followed by station signal calls cage to that station. This signal takes precedence over all other except an accepted blasted signal.
B. Additional mine specific signals may be used if approved by the state mine inspector.
C. Automated hoists shall be exempt from compliance with the bell signal requirements.
[06/01/08; 19.6.5.8 NMAC - Rn, 19.7.20.8 NMAC, 9/30/08]

HISTORY OF 19.6.5 NMAC:

Pre-NMAC History:

Rule MI 81-1, New Mexico Mine Safety Code for All Mines Including Open-cut and Open-pit, filed 5/11/1981.

History of Repealed Material:

Rule MI 81-1, New Mexico Mine Safety Code for All Mines Including Open-cut and Open-pit (filed 5/11/1981) repealed 06/01/08.

Other History:

Rule MI 81-1, New Mexico Mine Safety Code for All Mines Including Open-cut and Open-pit (filed 5/11/1981) was replaced by 19.7.20 NMAC, New Mexico Mine Safety Code for All Mines Including Open-cut and Open-pit, effective 06/01/08.

19.7.20 NMAC, New Mexico Mine Safety Code for all Mines Including Open-Cut and Open-Pit (filed 4/8/2008) was renumbered to 19.6.5 NMAC, New Mexico Mine Safety Code for all Mines Including Open-Cut and Open-Pit, effective 9/30/2008.