

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.
[19.6.2.1 NMAC - Rp, 5/3/2022]

19.6.2.2 SCOPE: All persons subject to Section 69-5-1 et seq and Sections 69-8-1 et seq. NMSA 1978 and all mines as defined in Subsection D of 69-8-2 NMSA 1978.
[19.6.2.2 NMAC - Rp, 5/3/2022]

19.6.2.3 STATUTORY AUTHORITY: Section 69-5-1 et seq and Sections 69-8-1 et seq., NMSA 1978.
[19.6.2.3 NMAC - Rp, 5/3/2022]

19.6.2.4 DURATION: Permanent.
[19.6.2.4 NMAC - Rp, 5/3/2022]

19.6.2.5 EFFECTIVE DATE: May 3 2022, unless a later date is cited at the end of a section.
[19.6.2.5 NMAC - Rp, 5/3/2022]

19.6.2.6 OBJECTIVE: The objective of 19.6.2 NMAC is to establish regulations to implement the requirements for emergency notification plans, mine accident emergency operations center and accident notifications as directed in Chapter 69, Article 5 NMSA 1978.
[19.6.2.6 NMAC - Rp, 5/3/2022]

19.6.2.7 DEFINITIONS:

- A.** “**Accident**” means accident as defined in Subsection A of 69-8-2 NMSA 1978.
- B.** “**Annual tonnage of coal**” means the clean coal tons reported on the form 7000-2 for the previous calendar year.
- C.** “**Board**” means the state mining safety board.
- D.** “**CFR**” means Code of Federal Regulations.
- E.** “**Days**” means calendar days.
- F.** “**Deputy state mine inspector**” means a senior employee of the New Mexico bureau of mine safety who has knowledge and understanding of the 19.6 NMAC mine safety rules.
- G.** “**Extended absence**” means the state mine inspector cannot perform his/her duties due to illness, medical condition, is on family medical leave (FMLA) or other circumstances for a period of 30 days or longer.
- H.** “**Hours worked**” means hours reported to mine safety and health administration (MSHA) on the 7000-2 form or for an occupational safety and health administration (OSHA) regulated site on the OSHA form 300-A, for the previous calendar year.
- I.** “**Inspector**” means the state mine inspector
- J.** “**Mine**” means the mine as defined in Subsection E of 69-8-2 NMSA 1978.
- K.** “**Operator**” means operator as defined in Subsection G of 69-8-2 MMSA 1978.
- L.** “**Service**” means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.
- M.** “**Vacant**” means there is not a state mine inspector because the incumbent state mine inspector has resigned, retired, been terminated or is deceased and a new state mine inspector has not been appointed or assumed the office.

[19.6.2.7 NMAC - Rp, 5/3/2022]

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. 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 30 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 ensure 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.

[19.6.2.8 NMAC - Rp, 5/3/2022]

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 24 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 their 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.

[19.6.2.9 NMAC - Rp, 5/3/2022]

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 30 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 the operator designates who are knowledgeable about the accident or about the emergency operations at the mine.

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.

[19.6.2.10 NMAC - Rp, 5/3/2022]

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 tonnage of coal 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 one hour.	10	5
Moderate negligence - The operator failed to report the accident for more than one hour and less than four hours.	15	7
High negligence - The operator failed to report the accident for more four 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 Subsection A of 69-8-2 NMSA 1978. <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 that has a reasonable potential to cause death	10	N/A
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 10 minutes of discovery in an underground mine or 30 minutes at a surface facility of an underground mine	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.	10	N/A
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 19.6.2 NMAC, 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 (20) 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 30 days and no more than 90 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.

[19.6.2.11 NMAC - Rp, 5/3/2022]

19.6.2.12 INVESTIGATION TO PROVIDE TIMELY NOTICE OF AN ACCIDENT:

A. The state mine inspector shall lead the investigation if a timely notice of an accident was or was not provided and determine if a civil penalty should be imposed as required in 19.6.2.11 NMAC,

B. In the event the position of the state mine inspector is vacant, or during an extended absence of the state mine inspector, in order to provide a timely determination of compliance of emergency notification, a deputy state mine inspector shall lead the investigation and determine if a civil penalty should be imposed as outlined in [19.6.2.12 NMAC - Rp, 5/3/2022]

HISTORY OF 19.6.2 NMAC:

Pre-NMAC History: None

History of Repealed Material: 19.6.2 NMAC - Emergency Notification filed 8/29/2008, Repealed effective 5/3/2022.

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.

19.6.2 NMAC - Emergency Notification filed 8/29/2008, was Replaced by 19.6.2 NMAC - Emergency Notification effective 5/3/2022.