

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 - Rp, 5/3/2022]

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 - Rp, 5/3/2022]

19.6.4.3 STATUTORY AUTHORITY: Section 69-5-1 *et seq.*, Section 69-8-1 *et seq.*, and Section 69-14-1 *et seq.*, NMSA 1978.
[19.6.4.3 NMAC - Rp, 5/3/2022]

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

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

19.6.4.6 OBJECTIVE: The objective of 19.6.4 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 Section 69-14-1 NMSA 1978. 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 - Rp, 5/3/2022]

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. “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.
 - F. “Extended absence”** means the state mine inspector cannot perform their duties due to illness, medical condition, is on family medical leave (FMLA) or other circumstances for a period of 30 days or longer.
 - G. “Inspector”** means the state mine inspector.
 - H. “Mining engineering graduate”** means a person having a B.S. degree in mining or mineral engineering from an accredited college or university.
 - I. “Official”** means coal mine official, including underground coal mine foreman, underground coal mine examiner, general underground coal mine foreman, or surface coal mine foreman Table in Subsection G of 19.6.4.9 NMAC.
 - J. “Revoke”** means to permanently invalidate a certification.
 - K. “Service”** means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.
 - L. “Suspend”** means to invalidate a certification for a specified period of time.
 - 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.
- [19.6.4.7 NMAC - Rp, 5/3/2022]

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 - Rp, 5/3/2022]

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. Alternatively, at the discretion of the state mine inspector, such examinations may be administered by appointment.

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 30 days prior to the examination date and shall meet the experience requirements of this section as summarized in Table in Subsection G of 19.6.4.9 NMAC. The state mine inspector may require documentation from an applicant supporting their qualification and competency. Every person desiring to secure an underground coal mine foreman's certificate and not already in such position or not holding such certificate from another state shall first have regularly performed the duties of an underground coal mine examiner for six months and shall have at least four years of underground coal mine experience to participate in the underground coal mine foreman's examination. Every person desiring to secure a surface coal 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 coal mine foreman’s examination. A person who holds a certificate for surface coal mine foreman who wishes to take the underground coal mine foreman test must have a minimum of four years of experience in underground coal mine workings. A person who holds an underground coal mine foreman certificate and who wishes to participate in the surface coal mine foreman examination must have at least two years of surface coal mine experience. A person who holds an underground coal mine foreman certificate and who wishes to participate in the general underground coal mine foreman examination must have at least two years of surface mine experience or two years of surface experience at an underground mine. Every person desiring to secure an underground coal 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 underground coal mine experience to participate in the underground coal mine examiner's examination.

E. The state mine inspector may allow a mining engineering graduate or a person with other credentials that attest to advanced competency including applicable experience at non-coal mines to participate in the foreman’s or examiner’s examination if the candidate meets at least one-half of the experience requirements and all other prerequisites listed in Subsections B and D of this section prior to taking the examination.

F. All candidates for certification or recertification must achieve a cumulative score of eighty percent or higher on the corresponding written exam.

G. Table in Subsection G of 19.6.4.9 NMAC is incorporated into this section as a guide to the prerequisites and areas of responsibility for coal mine officials.

Certification Title	Qualification	Authorization
Underground Coal Mine Examiner	Two-years underground mining experience, or One-year underground mining experience and advanced competency, or Equivalent experience and certification form another state	Underground areas at underground coal mines.
Underground Coal Mine Foreman	Four-years underground mining experience with six months examiner experience, or	Underground areas at underground coal mines.

	Two-years underground mining experience with six months examiner experience and advanced competency, or Equivalent experience and certification from another state.	
General Underground Coal Mine Foreman	Current NM certification as underground coal mine foreman and two-years of experience at surface areas of underground coal mines.	Underground areas at underground coal mines. Surface areas at underground coal mines.
Surface Coal Mine Foreman	Four-years surface mining experience, or Two-years surface mining experience and advanced competency, or Equivalent experience and certification from another state, or Current NM certification as underground coal mine foreman and two-years of experience at surface coal mines or surface areas of underground coal mines	Surface coal mines Surface areas at underground coal mines

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

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 - Rp, 5/3/2022]

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. Should a certified official fail to meet the annual training requirement for any reason; or should a certified official be absent from mine employment in New Mexico for a period of one year or more and upon resumption of mine employment in New Mexico; the certified official may appeal to the state mine inspector for reinstatement of active certification. The state mine inspector may require testing, remedial training, interviews, evidence of applicable training, or other criteria to assure competency before re-activating said certification.

B. Each official has the responsibility to notify the state mine inspector of any change in address or change in mine employment within 30 days of such change. Failure to provide current contact information may result in suspension of certification.

C. Certified persons may apply for recertification within 12 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. The state mine inspector may extend the certification period for an official for no more than six months to facilitate the recertification process. 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. Underground coalmine examiners may fulfill the recertification by successfully completing the examination for underground coal mine foreman certification or recertification.
[19.6.4.11 NMAC - Rp, 5/3/2022]

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 by a state mine regulatory authority 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 20 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 NMAC, 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 - Rp, 5/3/2022]

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 - Rp, 5/3/2022]

19.6.4.14 CERTIFICATION OF COAL MINE OFFICIALS IN THE EVENT THE POSITION OF STATE MINE INSPECTOR IS VACANT: 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 timely certification and prevent a lapse between recertification of coal mine officials, the certification and recertification, or refusal to certify or recertify and suspension or revocation of certification, as required in 19.6.4.9 NMAC and 19.6.4.12 NMAC shall be completed by a deputy state mine inspector.

[19.6.4.14 NMAC - N, 5/3/2022]

HISTORY OF 19.6.4 NMAC: 19.6.4 NMAC - Certification Of Coal Mine Officials filed 8/29/2008, Repealed effective 5/3/2022.

Other History: 19.6.4 NMAC - Certification Of Coal Mine Officials filed 8/29/2008, was Replaced by 19.6.4 NMAC - Certification Of Coal Mine Officials effective 5/3/2022.