

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 7 MINING - GENERAL PROVISIONS
PART 2 NEW MEXICO MINE SAFEGUARDING

19.7.2.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[10-14-95; 19.7.2.1 NMAC - Rn, 19 NMAC 7.2.1, 5/30/2003]

19.7.2.2 SCOPE: These rules and regulations shall apply to all mining operations with surface mine openings including shafts, adits, highwalls and auger boreholes where operations are suspended permanently (abandoned), or for a temporary period of time when an office with a responsible person is not maintained at the site, exclusive of coal mining operations regulated under Section 69-25A-1 to Section 69-25A-35 NMSA 1978 and all mines subject to the New Mexico Mining Act, Section 69-36-1 to Section 69-36-20 NMSA 1978 (1993 Repl. Pamp.).
[8-21-89, 10-14-95; 19.7.2.2 NMAC - Rn, 19 NMAC 7.2.2, 5/30/2003]

19.7.2.3 STATUTORY AUTHORITY: The secretary of the department is generally authorized to make and adopt rules and regulations necessary to carry out the duties of the department at Section 9-1-5E NMSA 1978. The general duties and purposes of the mining and minerals division are set out at Section 9-5A-4D NMSA 1978 as amended 1987. The secretary is specially authorized to promulgate and enforce rules and regulations concerning the safeguarding of abandoned mines, Sections 69-12-4 and 69-27-3 NMSA 1978.
[8-21-89; 19.7.2.3 NMAC - Rn, 19 NMAC 7.2.3, 5/30/2003]

19.7.2.4 DURATION: Permanent.
[10-14-95; 19.7.2.4 NMAC - Rn, 19 NMAC 7.2.4, 5/30/2003]

19.7.2.5 EFFECTIVE DATE: October 14, 1995 [unless a later date is cited at the end of a section]
[8-21-89, 10-14-95; 19.7.2.5 NMAC - Rn, 19 NMAC 7.2.5, 5/30/2003]

19.7.2.6 OBJECTIVE: The following rules and regulations have been adopted by the secretary of the New Mexico energy, minerals and natural resources department to provide for the protection of public health and safety through the effective safeguarding of mine surface openings when mining operations have been suspended permanently, or have been suspended for a temporary period of time and an office with a responsible person is not maintained at the site.
[8-21-89; 19.7.2.6 NMAC - Rn, 19 NMAC 7.2.6, 5/30/2003]

19.7.2.7 DEFINITIONS:

- A. "Abandoned" means the permanent cessation of mining operations or the temporary cessation when no office with a responsible person is maintained at the site at all times and access to the mine is controlled.
- B. "Director" means the director of the mining and minerals division.
- C. "Division" means the mining and minerals division of the New Mexico energy, minerals and natural resources department.
- D. "Effectively close or fence off" means to prevent entrance or access to any mine surface openings associated with any permanently suspended mining operation or any mine surface openings associated with any temporarily suspended mining operations when an office with a responsible person is not maintained at the site to all unauthorized persons, by sealing such opening with earthen or other suitable materials in a manner approved by the director, or by the construction of a fence around such openings of materials and in a manner approved by the director, and includes the monitoring and maintenance of such closures or fences as necessary to ensure that entrance and access is prevented.
- E. "Immediate danger" means a condition that could reasonably be expected to have a high probability of resulting in physical harm to public health and safety.
- F. "Mine" means and includes all surface and underground operations to win coal, metals and other mineral substances from their deposits (exclusive of natural gas or petroleum), all tunnel operations, all caisson operations, all mills, ore houses and treatment plants, all quarries, pits, open cut workings, strippings, placer mines, sand, gravel and similar banks.

G. "Mineral" means coal, metallic or non-metallic ores or any naturally occurring rock substances that are mined or recovered on or under the surface of the earth.

H. "Operations" means any construction or excavation activities for the purpose of winning minerals from their deposits or any activities undertaken in the proper safeguarding of mine surface openings.

I. "Operator" means and includes owner, operator, lessee, manager, superintendent or agent, receiver or trustee and political subdivisions and instrumentalities of the state of New Mexico operating any mine.

J. "Permanent suspension" means the cessation for an indefinite period of mining operations which are not expected to resume at a future time. Mines where suspension is permanent are considered abandoned mines for purposes of safeguarding.

K. "Secretary" means the secretary of the energy, minerals and natural resources department.

L. "Suspension" means the cessation of mine operations and may be either permanent or temporary in nature.

M. "Temporary suspension" means the cessation for a limited time of mining operations which are expected to resume at a future time. Mines under temporary suspension which have no office with a responsible person at the site at all times and where access to the mine is not controlled are considered abandoned for purposes of safeguarding.

N. "Unauthorized persons" means anyone other than the mine owner or operator, the state mine inspector or the director and their agents or any other state or federal regulatory agency authorized to inspect the mine site.

[8-21-89, 10-14-95; 19.7.2.7 NMAC - Rn, 19 NMAC 7.2.7, 5/30/2003]

19.7.2.8 SAFEGUARDING OF MINE OPENINGS:

A. Prior to either the permanent suspension of mining operations or the temporary suspension of mining operations when an office with a responsible person present at all times is not maintained at the site, on which are located mine surface openings including shafts, adits, highwalls or auger boreholes, the operator shall notify the division on a notice of intention to suspend operations form (form 12). The operator shall include on the form a plan to effectively close or fence off all surface mine openings on the property. The plan shall include a description of the materials and procedures which are proposed to be used, and the construction and location of trespass warnings and appropriate danger notices. The plan shall include a timetable for completion of the proposed safeguarding procedures. Commencing of safeguarding operations shall take place immediately when the operator suspends mining operations. If the safeguarding plan is not approved by the director, the operator will receive notice of disapproval and may resubmit an amended plan for approval.

B. Acceptable methods to effectively close or fence off surface mining openings include the sealing of such openings with earthen materials, concrete, masonry or other materials approved by the director. Fences must be constructed of durable materials and in a manner approved by the director and must be reasonably capable of preventing entrance or access to the mine surface openings by unauthorized persons. Closures and fences shall be monitored and maintained throughout the period of permanent (abandonment) or temporary suspension. Trespass warnings and danger notices must be constructed of durable materials and be visible by persons who may approach the safeguarded openings. Notices and warning shall be printed in both the English and Spanish languages and be legible from a distance of fifty feet. Signs shall contain the mine name, name of operator and the assigned U.S. mine safety and health administration (MSHA) registration number in addition to the trespass warning and danger notice. [8-21-89, 10-14-95; 19.7.2.8 NMAC - Rn, 19 NMAC 7.2.8, 5/30/2003]

19.7.2.9 DECISION OF DIRECTOR: If the director disapproved the proposed plan because it does not effectively safeguard surface mine openings, the director shall indicate in writing the reason therefor. The operator shall then submit an amended safeguarding plan.

[8-21-89, 10-14-95; 19.7.2.9 NMAC - Rn, 19 NMAC 7.2.9, 5/30/2003]

19.7.2.10 RIGHT OF ENTRY: The director and his agents shall have right of entry to mines for the purpose of determining compliance with the rules and regulations for the effective safeguarding of surface mine openings.

[8-21-89; 19.7.2.10 NMAC - Rn, 19 NMAC 7.2.10, 5/30/2003]

19.7.2.11 INSPECTION AND ENFORCEMENT: If upon inspection or the investigation of a complaint by any affected party the director determines that there is a violation of statutes, rules and regulations applicable to

safeguarding mine surface openings and a party responsible for such safeguarding can be identified, the director shall issue a written notice of non-compliance by certified mail to the responsible party. The responsible party shall submit a written response to the director within ten days of certified mail receipt of the notice of non-compliance. Failure to respond in writing to the director within the ten day limit shall be deemed a failure to properly safeguard and may result in referral by the director to the appropriate district attorney for prosecution. Each individual failure to comply with a statute, rule or regulation, or failure to respond to a written notice will constitute a separate and unlawful act that may be prosecuted. Each unlawful act is subject to a fine of not more than two hundred dollars (\$200) or by imprisonment for three months in the county jail or by such fine and imprisonment. Additionally, the director may bring a direct action in district court seeking to compel compliance with the statute requiring safeguarding of mine surface openings.

[8-21-89; 19.7.2.11 NMAC - Rn, 19 NMAC 7.2.11, 5/30/2003]

19.7.2.12 EMERGENCY ACTION: If the director determines that an immediate danger to public health and safety exists due to the lack of or ineffective safeguarding of mine surface openings, the director may take appropriate actions necessary to effectively safeguard the mine and recover reasonable costs for such work from the owner of the mine through negotiation or, if necessary, by the filing of a civil suit in district court in the county where the emergency action occurred. The director's actions are discretionary and are subject to financial limitations.

[8-21-89; 19.7.2.12 NMAC - Rn, 19 NMAC 7.2.12, 5/30/2003]

19.7.2.13 INTERPRETATIVE MEMORANDA: The director from time to time may issue interpretative memoranda which discuss the type of safeguarding techniques that may be used. Varying types of mine openings, the likelihood of reopening the mine, the proximity to populated areas and other relevant factors will be considered. These memoranda are intended to be guidelines and are not to be considered applicable to any specific mine closure.

[8-21-89; 19.7.2.13 NMAC - Rn, 19 NMAC 7.2.13, 5/30/2003]

HISTORY OF 19.7.2 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives under:

EMNRD MMD 89-1, Mine Registration, Reporting and Safeguarding, filed 8/21/89.

History of Repealed Material: [RESERVED]

Other History:

That portion of EMNRD MMD 89-1, Mine Registration, Reporting and Safeguarding, filed 8-21-89 was **renumbered, reformatted, amended and replaced** into first version of the New Mexico Administrative Code as 19 NMAC 7.2, New Mexico Mine Safeguarding, filed 09/28/95.

NMAC 7.2, New Mexico Mine Safeguarding, filed 09/28/95, was **renumbered, reformatted and replaced** by 19.7.2 NMAC, New Mexico Mine Safeguarding, effective 05/30/2003.