

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 10    NON-COAL MINING**  
**PART 9         PUBLIC PARTICIPATION**

**19.10.9.1        ISSUING AGENCY:** New Mexico Mining Commission.  
[19.10.9.1 NMAC - N, 05-15-2001]

**19.10.9.2        SCOPE:** All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.  
[19.10.9.2 NMAC - N, 05-15-2001]

**19.10.9.3        STATUTORY AUTHORITY:** NMSA 1978, Section 69-36-1 et. seq.  
[19.10.9.3 NMAC - N, 05-15-2001]

**19.10.9.4        DURATION:** Permanent.  
[19.10.9.4 NMAC - N, 05-15-2001]

**19.10.9.5        EFFECTIVE DATE:** February 15, 1996, unless a later date is cited at the end of a section.  
**A.**        All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.  
**B.**        The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.  
[19.10.9.5 NMAC - N, 05-15-2001]

**19.10.9.6        OBJECTIVE:** The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.  
[19.10.9.6 NMAC - N, 05-15-2001]

**19.10.9.7        DEFINITIONS: [RESERVED]**  
[19.10.9.7 NMAC - N, 05-15-2001]  
[Definitions for this part can be found in 19.10.1.7 NMAC.]

**19.10.9.8 - 19.10.9.900 [RESERVED]**  
[19.10.9.8 - 19.10.9.900 NMAC - N, 05-15-2001]

**19.10.9.901        APPLICABILITY:**  
**A.**        No action on any of the following applications will be taken by the Director until the applicant has complied with the requirements of notice and opportunity for public hearing contained in this Part:  
    (1)    application for the issuance, renewal or revision of a mining or exploration permit, except that minimal impact operations need not comply with public notice requirements contained in this Part;  
    (2)    application for standby status; and  
    (3)    application for a variance.  
**B.**        The Director may hold one hearing on more than one application by a permittee for the same mining operation.  
**C.**        Public notice and opportunity for a hearing for applications for the release of financial assurance and for any inspection prior to such release are provided for in 19.10.12 NMAC.  
**D.**        19.10.9 NMAC does not apply to applications related to minimal impact operations.  
[7-12-94, 2-15-96; 19.10.9.901 NMAC - Rn, 19 NMAC 10.2.9.901, 05-15-2001]

**19.10.9.902        CONTENTS OF NOTICE:** The notice shall contain, at a minimum, the following information:  
**A.**        the name and address of the applicant;  
**B.**        a description of the location and boundaries of the proposed permit area;  
**C.**        the purpose of the application and a general description of the mining operation;

**D.** the Director's name and address to whom written comments may be submitted and where a copy of the application is available for public inspection; and

**E.** the procedure and deadline for requesting a hearing.  
[7-12-94, 2-15-96; 19.10.9.902 NMAC - Rn, 19 NMAC 10.2.9.902, 05-15-2001]

**19.10.9.903 PUBLICATION REQUIREMENTS:** The applicant shall provide the Director at the time of filing the application with the Director proof that notice of the application has been:

**A.** provided by certified mail to the owners of record, as shown by the most recent property tax schedule, of all properties within 1/2 mile of the property on which the mining, exploration or reclamation operation is located or is proposed to be located on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

**B.** provided by certified mail to all municipalities and counties and tribal organizations within a 10 mile radius of the property on which the mining, exploration or reclamation operation is or is proposed to be located on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

**C.** published once in a newspaper of general circulation in each county in which the property on which the mining, exploration or reclamation operation is or is proposed to be located; provided that this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice, and shall be printed in both English and Spanish;

**D.** posted in at least four publicly accessible and conspicuous places on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC, including the entrance to the new or existing mining operation or exploration operation if that entrance is publicly accessible and conspicuous;

**E.** mailed to the mineral lessor, if any, on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

**F.** mailed to all persons who have made a written request to the Director for notice of this application on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

**G.** mailed by certified mail to all persons on a list maintained by the Director of individuals and organizations who have requested notice of applications under this Act; and

**H.** mailed to the Environment Department, the State Engineer, the Department of Game and Fish, the Forestry Division and the State Historic Preservation Division.

**I.** When the application is determined to be administratively complete by the Director, the applicant shall provide to the Director timely proof that notice of that determination has been provided by first class mail to everyone who has indicated to the applicant in writing that they desire information regarding the application and to a list maintained by the Director of individuals and organizations who have requested notice of applications under this Act.

[7-12-94, 2-15-96, 7-31-97; 19.10.9.903 NMAC - Rn, 19 NMAC 10.2.9.903, 05-15-2001]

**19.10.9.904 OPPORTUNITY FOR PUBLIC HEARING:**

**A.** Any interested person may request that the Director conduct a public hearing on the application. Such request must be made within 30 days of the date of the newspaper publication of the notice of application unless the Director determines a longer period in which to make the request is appropriate and such period is specified in the published notice. If a hearing is timely requested, the Director shall set a hearing unless the request is clearly frivolous. The Director may hold a public hearing absent any request.

**B.** The date, time and location of the public hearing shall be advertised by the Director in a newspaper of general circulation in the locality of the operation. The advertisement shall also identify the applicant, the operation, the purpose of the hearing, and how to contact the Division for additional information. All persons who have submitted written requests in advance to receive notices of hearing to the Director or who have provided comments on the application to the Director shall be mailed notice at least 30 days prior to the hearing.

**C.** The nearest community to the mining or exploration operation with adequate and accessible public facilities will be the site for any public hearing.

**D.** All interested persons may submit written comments regarding the application to the Director. Written comments must be received by the Director prior to the close of the hearing record following any public hearing that is held. If no public hearing is held, written comments will be considered only if they are received by the Director within 60 days after the newspaper publication of the notice of the application or within 60 days after the person filing the comment received notice of the application, whichever is later.

**E.** An additional opportunity for a public hearing may be provided if the applicant makes substantial changes in the proposed action, if there are significant new circumstances or information bearing on the proposed action or if the applicant proposes to substantially increase the scale or substantially change the nature of the proposed action and there is public interest and a request for a public hearing.  
[7-12-94, 2-15-96, 7-31-97; 19.10.9.904 NMAC - Rn, 19 NMAC 10.2.9.904, 05-15-2001]

**19.10.9.905 HEARING PROCEDURES:**

**A.** The Director may act as the hearing officer or appoint a hearing officer to conduct the hearing. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in hearings including, but not limited to:

- (1) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
- (2) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process; and
- (3) preparing and filing a report of the hearing and if requested by the Director, making recommendations for action.

**B.** The rules of civil procedure and the rules of evidence do not apply to hearings under this Part.

**C.** Any interested person may testify at the hearing. A person who wants to present testimony should indicate this desire on the sign-in sheet before the hearing begins. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his direct testimony. Any person attending the hearing is entitled to conduct such cross-examination as may be required for full disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

**D.** All testimony will be taken under oath or affirmation.

**E.** Any interested person may submit a written statement containing data, views or arguments to the hearing officer for inclusion in the record. The hearing officer may set a deadline for such submittal at the conclusion of the hearing.

**F.** Any person offering exhibits at the hearing shall mark the exhibits identifying the person offering it and the date of the hearing.

[7-12-94, 2-15-96; 19.10.9.905 NMAC - Rn, 19 NMAC 10.2.9.905, 05-15-2001]

**19.10.9.906 HEARING RECORD:**

**A.** The Division will make a verbatim record, by audio tape or stenography, of each public hearing.

**B.** Any person may obtain a copy of the verbatim record of the hearing. It shall be obtained directly from the court reporter, or if no reporter was employed, the Director will provide a copy of the audio tape. The person requesting the copy shall pay the court reporter or Director for the cost of the transcript or the audio tape copy, respectively.

**C.** The administrative record includes all documents related to the application and received by the Director prior to the beginning, during or after the conclusion of the hearing, including, but not limited to:

- (1) the application that is the subject of the hearing;
- (2) correspondence related to the application;
- (3) the notice of hearing;
- (4) affidavits of publication of the notice;
- (5) written statements submitted to the Director including post-hearing submissions, if allowed;
- (6) the verbatim record of the hearing;
- (7) the hearing officer's report, if any;
- (8) the Director's decision and the reasons therefor; and
- (9) any other material used by the Director in reaching the decision.

[7-12-94, 2-15-96; 19.10.9.906 NMAC - Rn, 19 NMAC 10.2.9.906, 05-15-2001]

**19.10.9.907 COMMISSION REVIEW: [RESERVED]**

[7-12-94, 2-15-96; R 6-30-99; 19.10.9.907 NMAC - Rn, 19 NMAC 10.2.9.907, 05-15-2001]

[Material previously under this Section was repealed effective 6-30-99]

**History of 19.10.9 NMAC:**

**Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

Rule 9, Public Participation, filed 07-12-94.

**History of Repealed Material: [Reserved]**

**Other History:**

Rule 9, Public Participation, filed 07-12-94, renumbered and reformatted as Subpart 9 of 19 NMAC 10.2, New Mexico Mining Act Implementation, filed 01-31-96.

19 NMAC 10.2, Subpart 9, Public Participation, filed 01-31-96 was renumbered and reformatted to 19.10.9 NMAC, effective 05-15-2001.