

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 10    NON-COAL MINING**  
**PART 10        VARIANCES**

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

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

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

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

**19.10.10.5       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.  
[19.10.10.5 NMAC - N, 05-15-2001]

**19.10.10.6       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.  
[19.10.10.6 NMAC - N, 05-15-2001]

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

**19.10.10.8 - 19.10.10.1000 [RESERVED]**  
[19.10.10.8 - 19.10.10.1000 NMAC - N, 05-15-2001]

**19.10.10.1001    GENERAL:** An applicant or a permittee may apply to the Director for a variance from the provisions of 19.10 NMAC.  
[7-12-94, 2-15-96; 19.10.10.1001 NMAC – Rn, 19 NMAC 10.2.10.1001, 05-15-2001]

**19.10.10.1002    APPLICATION:**  
**A.**        Each application for a variance must:  
    **(1)**    state the applicant's name and address;  
    **(2)**    state the date of the application;  
    **(3)**    identify the mining operation for which the variance is sought;  
    **(4)**    provide the location of the property on which the mining operation is located;  
    **(5)**    identify the section of 19.10 NMAC from which the variance is sought;  
    **(6)**    state in detail the extent to which the applicant wants to vary from 19.10 NMAC;  
    **(7)**    present sufficient evidence to prove that failure to grant a variance will impose an undue economic burden on the applicant;  
    **(8)**    present sufficient evidence to prove that granting a variance will not result in a significant threat to human health, safety or the environment; and  
    **(9)**    include the fee for a variance application pursuant to 19.10.2 NMAC.  
**B.**        The Director may require the applicant to furnish additional information.

[7-12-94, 2-15-96; 19.10.10.1002 NMAC - Rn, 19 NMAC 10.2.10.1002, 05-15-2001]

**19.10.10.1003 NOTICE REQUIREMENTS:**

**A.** Applications for a variance are subject to the public notice and opportunity for public hearing requirements of 19.10.9 NMAC.

**B.** Notice also shall be provided by the Director to the Environment Department, the Office of the State Engineer, the Game and Fish Department, the State Historic Preservation Office, the Forestry Division, other agencies he deems appropriate, and, if the operation is on state or federal land, to the appropriate state or federal land management agency.

[7-12-94, 2-15-96; 19.10.10.1003 NMAC – Rn, 19 NMAC 10.2.10.1003, 05-15-2001]

**19.10.10.1004 VARIANCE APPROVALS:**

**A.** In granting the variance, the Director may impose conditions on the applicant to assure that the variance will not result in a significant threat to human health, safety or the environment.

**B.** An order of the Director granting a variance shall:

- (1) state the applicant's name and address;
- (2) state the date the order is made;
- (3) identify the mining operation for which the variance is sought;
- (4) state the address or location of the property upon which the mining operation is located;
- (5) identify the section of 19.10 NMAC from which the variance is sought;
- (6) find that the variance will not result in a significant threat to human health, safety or environment;

and

- (7) find that failure to grant the variance will impose an undue economic burden on the applicant.

[7-12-94, 2-15-96; 19.10.10.1004 NMAC – Rn, 19 NMAC 10.2.10.1004, 05-15-2001]

**19.10.10.1005 LIMITATIONS:** The Director shall not grant a variance which results in a violation of any state or federal law or regulation.

[7-12-94, 2-15-96; 19.10.10.1005 NMAC – Rn, 19 NMAC 10.2.10.1005, 05-15-2001]

**History of 19.10.10 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 10, Variances, filed 07-12-94.

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

**Other History:**

Rule 10, Variances, filed 07-12-94, renumbered and reformatted as Subpart 10 of 19 NMAC 10.2, New Mexico Mining Act Implementation, filed 01-31-96.

19 NMAC 10.2, Subpart 10 Variances, filed 01-31-96 was renumbered and reformatted to 19.10.10 NMAC, effective 05-15-2001.