

NOTICE OF RULEMAKING

Public Notice: The New Mexico Mining Safety Board will conduct a public hearing in Albuquerque at the Workers' Compensation Building, 2410 Center Ave., Albuquerque, New Mexico, 87106, on May 8, 2018 from 1:00 p.m. to 3:00 p.m. (MDT). The purpose of the hearing is to receive public comment on proposed amendments to 19.6.4 NMAC - Certification of Coal Mine Officials ("Part 4").

Purpose: The State Mine Inspector (SMI) has proposed amending the current rules concerning the certification and recertification of coal mine officials. The purpose of the proposed action is to clarify several procedural requirements, incorporate more consistent terminology, and to codify certain procedures used by the SMI in the course of certifying and recertifying coal mine officials. As part of this process, the SMI solicited input from the coal mining community. The response was positive toward the proposed changes in 19.6.4 NMAC with one additional recommendation that would resolve an issue concerning certification of coal mine foremen working on surface areas of underground mines. An additional proposal was drafted to address that issue. The proposed rule clarifies certification and recertification issues, codifies practices adopted by the SMI for administration of the rule, provides for consistent use of terminology, and provides for an agreeable solution to certification of surface foremen at underground coal mines.

Summary of full text: Throughout Part 4, the use of foreman and examiner was used liberally without direct context to coal mine foreman or coal mine examiner. Although the title of Part 4 directs application to coal mines, the proposed amendment would prevent confusion by consistently using these terms throughout the part. This move also made clear that prerequisite experience for testing would be based on coal mine experience and not non-coal mining experience.

Subsection C of 19.6.4.9 NMAC was amended to codify the SMI practice of providing for coal mine official examinations on an appointment basis. Subsection D of the same subpart codifies the SMI practice of requiring certain identification and qualifications of prospective coal mine officials via the application process and clarifies the coal mine examiner experience expectations for underground mine foremen by replacing the phrase "serve as" with "regularly performed the duties of". Finally, the proposed Subsection D outlines requirements for an underground coal mine foreman who may be required to perform foreman duties at surface areas of underground mines. A new classification "general underground coal mine foreman" is incorporated in the proposed rule.

Subsection E of 19.6.4.9 NMAC expanded the SMI's authority to permit a modified experience requirement for persons with "credentials that attest to advanced competency". Otherwise, such accommodation is limited to mining engineering graduates (and by definition, mineral engineering graduates). A table was created that identifies the qualifications and authorizations associated with each classification of coal mine official in a simple format.

In Subsection A of 19.6.4.11 NMAC, a process was outlined for the SMI to use in recertification of coal mine officials who for a variety of reasons may not have maintained annual training requirements on the 5-year certification. Subsection E codifies language that allows the SMI to recertify all coal mine officials whose certification expires during that year to recertify on a single date. This practice has been in place and has proven advantageous to the SMI, operators, and individual coal mine officials. Paragraph 5 of Subsection A was modified to make it clear that discipline for a non-mining issue in another state (such as a speeding ticket) does not disqualify a candidate for certification, recertification, or permit action by the SMI to suspend or revoke certification on such basis.

Authority: Section 69-8-4, NMSA 1978, provides that the Mining Safety Board "shall, after public hearing, adopt rules for the protection of the life and safety of employees and to carry out the intent of the Mining Safety Act." Section 69-14-3, NMSA 1978 authorizes the Mining Safety Board to "enact requirements, including requirements for applications, examinations and qualifications, for certification of any mine personnel required to be qualified by state or federal law." Finally, Section 69-14-4, NMSA 1978 provides that, "The mining safety board shall adopt rules for requirements for recertification."

Access to the Proposed Rulemaking: A complete copy of the proposed rule changes with line-out of extracted text and underlined inserted text may be read or downloaded from the Bureau of Mine Safety (BMS) website at bmi.state.nm.us. A copy may be obtained by contacting Debora McVey at the Bureau of Mine Safety at 575-835-5460 or Debora.mcvey@nmt.edu.

Public Comment: Interested parties may comment on the proposed rulemaking at a public hearing to be held at the regular mining safety board meeting beginning at 1:00 p.m. on May 8, 2018 at the NM Workers' Compensation building, 2410 Center Ave., Albuquerque, New Mexico. Written comments will also be received by the Bureau of Mine Safety until Monday, May 7, 2018 by U.S. Mail or email.

MSB Rulemaking Comments
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Accommodations: Individuals with disabilities who require the above information in an alternative format or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debora McVey or Randy Logsdon at 575-835-5460 as soon as possible before the public hearing. The Bureau of Mine Safety will make a reasonable effort to provide necessary accommodations.

Technical Information: These proposed amendments did not require technical information.