

BEFORE THE MINING SAFETY BOARD
FOR THE STATE OF NEW MEXICO

IN RE:

RULEMAKING PROCEEDING FOR THE
AMENDMENT OF 19.6.4 NMAC (Certification of
Coal Mine Officials).

CONCISE EXPLANATORY STATEMENT

The New Mexico Mining Safety Board (the “Board”) hereby adopts rules that amend the Board’s administrative code, including Part 4 (Certification of Coal Mine Officials. The published rule is codified in 19.6.4 NMAC.

(1) Statutory Authority for Rule Promulgation:

NMSA 1978, Section 69-8-4, 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 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 provides that, “The mining safety board shall adopt rules for requirements for recertification.”

(2) Effective Date of Rule:

Date of publication in the New Mexico Register

(3) Date of Adoption of Rule:

9/25/2018

(4) Date of Meeting Approving Rule:

June 21, 2018

(5) Reasons for Adopting Rule:

Prior to this amendment, throughout Part 4 the terms “foreman” and “examiner” were used liberally without the direct context of coal mine foreman or coal mine examiner. Although the title of Part 4 directs application to coal mines, the amendment was intended to 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 codified the SMI practice of requiring certain identification and qualifications of prospective coal mine officials via the application process and clarified the coal mine examiner experience expectations for underground mine foremen by replacing the phrase “serve as” with “regularly performed the duties of.” Finally, the amended Subsection D now 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 final, amended 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 codified language that allowed 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.

(6) Reasons for Changes from Published Rule:

No changes were made from the published rule.

(7) Reasons for Not Accepting Substantive Arguments from Public Comment:

The Board received no public comments in connection with this rulemaking proceeding.

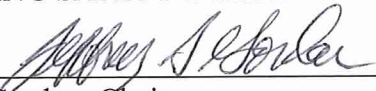
The proposed rule, as authorized by the Board during its regular meeting held June 21, 2018, is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

ON BEHALF OF THE NEW MEXICO
MINING SAFETY BOARD

9-25-2018

DATE


Jeff Gordon, Chair

*Executed electronic signature via-email
authorization dated XX/XX/XXXX*