

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8    COAL MINING**  
**PART 2        AREAS DESIGNATED BY ACTS OF CONGRESS**

**19.8.2.1        ISSUING AGENCY:** New Mexico Coal Surface Mining Commission.  
[19.8.2.1 NMAC - N, 9-29-2000]

**19.8.2.2        SCOPE:** All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).  
[19.8.2.2 NMAC - N, 9-29-2000]

**19.8.2.3        STATUTORY AUTHORITY:** NMSA 1978, Sections 69-25A-1 et. seq. (1979.)  
[19.8.2.3 NMAC - N, 9-29-2000]

**19.8.2.4        DURATION:** Permanent.  
[19.8.2.4 NMAC - N, 9-29-2000]

**19.8.2.5        EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[19.8.2.5 NMAC - N, 9-29-2000]

**19.8.2.6        OBJECTIVE:** The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.  
[19.8.2.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**19.8.2.7        DEFINITIONS: [RESERVED]**  
[19.8.2.7 NMAC - N, 9-29-2000]  
[Definitions for this part can be found in 19.8.1.7 NMAC.]

**19.8.2.8 - 19.8.2.199 [RESERVED]**  
[19.8.2.8 - 19.8.2.199 NMAC - N, 9-29-2000]

**19.8.2.200      LANDS UNSUITABLE:** The director shall determine whether:  
**A.**        an application for a permit must be denied, limited or conditioned, because surface coal mining operations on those lands are prohibited or limited by Section 69-25A-26 NMSA 1978 of the act, and 19.8.2 NMAC;  
**B.**        an applicant for a permit covering such lands either had any valid existing rights on August 3, 1977, or was conducting a surface coal mining operation on those lands on August 3, 1977.  
[11-29-97; 19.8.2.200 NMAC - Rn 19 NMAC 8.2.2.200, 9-29-2000]

**19.8.2.201      AREAS WHERE MINING IS PROHIBITED OR LIMITED:** Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

- A.**        on any lands which will adversely affect any publicly owned park or any places included on the national register of historic places, unless approved jointly by the director, and the federal, state or local agency with jurisdiction over the park or places;
- B.**        within 100 feet measured horizontally of the outside right-of-way line of any public road except:
  - (1)        where mine access roads or haulage roads join such right-of-way line; or
  - (2)        where the director allows the public road to be relocated or the area affected to be within 100 feet of such road, after:
    - (a)        public notice and opportunity for a public hearing in accordance with Subsection D of 19.8.2.202 NMAC; and
    - (b)        making a written finding that the interests of the affected public and landowners will be protected;

**C.** within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet, or unless an access or haul road connects with an existing public road on the side of the public road opposite the dwelling;

**D.** within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

**E.** within 100 feet measured horizontally of a cemetery; this prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations;

**F.** on any lands within the boundaries of:

(1) the national park system;

(2) the national wildlife refuge system,

(3) the national system of trails, the national wilderness preservation system;

(4) the wild and scenic rivers system, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act 16 U.S.C. 1276(a) or study rivers or study river corridors as established in any guidelines pursuant to that act, and national recreation areas designated by act of congress;

(5) federal lands within a national forest; this prohibition does not apply if the secretary of interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations; and:

(a) any surface operations and impacts will be incident to an underground coal mine; or

(b) with respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the secretary of agriculture has determined that surface mining is in compliance with the act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq. [11-29-97; 19.8.2.201 NMAC - Rn 19 NMAC 8.2.2.201, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

#### **19.8.2.202 PROCEDURES:**

**A.** Upon receipt of a complete application for a surface coal mining and reclamation operations permit, the director shall review the application to determine whether surface coal mining operations are limited or prohibited under 19.8.2.201 NMAC on the lands which would be disturbed by the proposed operation.

**B.** The director must reject any portion of the application that would locate surface coal mining operations on land protected under 19.8.2.201 NMAC unless:

(1) the site qualifies for the exception for existing operations under 19.8.2.203 NMAC;

(2) a person has valid existing rights for the land, as determined under 19.8.35 NMAC;

(3) the applicant obtains a waiver or exception from the prohibitions of 19.8.2.201 NMAC in accordance with Subsections D, E and G of 19.8.2.202 NMAC.

**C.** If the director is unable to determine whether the proposed operation is located within the boundaries of any of the lands listed in Subsection F of 19.8.2.201 NMAC or closer than the limits provided in Subsections D and E of 19.8.2.201 NMAC, the director shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The national park service or the U.S. fish and wildlife service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The director, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within 30-day period or within the extended period granted, the director may make the necessary determination based on the information he has available.

**D.** Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate or close any public road, the director shall:

(1) require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing;

(3) hold a public hearing in the locality of the proposed mining operations where any member of the public may participate for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

**E.** Where the proposed surface coal mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right.

(1) A new waiver is not required if an effective waiver from the owner of the occupied building exists at the time of the application.

(2) A valid waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to New Mexico law or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

**F.** Review by other agencies.

(1) Where the proposed surface coal mining operations may adversely affect any public park or any places included on the national register of historic places, the director shall transmit to the federal, state or local agencies with jurisdiction over a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

(a) a request for that agency's approval or disapproval of the operations, including a copy of applicable parts of the permit application;

(b) a notice to the appropriate agency that it must respond within 30 days from receipt of the request, with a notice that another 30 days is available upon request;

(c) the notice will also state that failure to interpose an objection within the time specified under Subparagraph (b) of Paragraph (1) of Subsection F of 19.8.2.202 NMAC will constitute approval of the proposed operation.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(3) Paragraphs (1) and (2) of Subsection F of 19.8.2.202 NMAC do not apply to:

(a) lands for which a person has valid existing rights, as determined under 19.8.35 NMAC;

(b) lands within the scope of the exception for existing operations in 19.8.2.203 NMAC.

**G.** When a new surface coal mining operation or boundary revision for an existing surface coal mining operation is proposed that will include federal lands within a national forest, the director may not issue the permit or approve the boundary revision before the secretary of the interior makes a finding based on information submitted pursuant to 30 CFR Part 761.13.

**H.** If the director determines that the proposed surface coal mining operation is not prohibited under Section 69-25A-26 NMSA 1978 of the act, and this part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 19.8.3 and 19.8.4 NMAC.

[11-29-97; 19.8.2.202 NMAC - Rn 19 NMAC 8.2.2.202, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

**19.8.2.203 EXCEPTION FOR EXISTING OPERATIONS:** The prohibitions and limitations of 19.8.2.201 NMAC do not apply to:

**A.** surface coal mining operations for which a valid permit, issued by the director under 19.8 NMAC Parts 1-35, exists when the land comes under the protection of 19.8.2.201 NMAC; this exception applies only to lands within the permit area as it exists when the land comes under the protection of 19.8.2.201 NMAC;

**B.** with respect to operations existing prior to August 3, 1977, lands upon which validly authorized surface coal mining operations existed when the land comes under the protection of 1978 NMSA 69-25A et seq. and 19.8.2.201 NMAC.

[19.8.2.203 NMAC - N, 1-15-2002]

#### **HISTORY OF 19.8.2 NMAC:**

##### **Pre-NMAC History:**

The material in Part 2 was derived from that previously filed with the State Records Center and Archives under: SB 73-1 Regulations of the State of New Mexico Coal Surfacing Commission, filed 1-10-73 and its amendment filed 8-4-76

SB 78-1 (Rule 78-1) Regulations of the State of New Mexico Coal Surfacing Commission, filed 8-31-78

SB 79-1 (Rule 79-1) New Mexico Coal Surfacemining Regulations, filed 7-11-79

CSMC Rule 80-1 (Rule 80-1) Surface Coal Mining Regulations, filed 9-24-80; and all amendments to CSMC Rule 80-1, filed 7-29-82, 11-10-83, 3-5-84, 7-19-84, filed 8-6-84, 8-23-84, 3-28-89, 6-15-90, 9-18-90, 2-15-91, 5-8-91, 8-26-91, 10-4-91, 7-28-92, 1-25-93, 11-1-94, 3-10-95, 4-12-95, 12-21-95.

**Other History:**

Renumbered and reformatted CSMC Rule 80-1, Surface Coal Mining Regulations, filed 9-24-80 to 19 NMAC 8.2, Coal Surface Mining, filed 11-13-97.

Renumbered 19 NMAC 8.2 Subpart 2 Areas Designated by Acts of Congress, filed 11-13-97, to 19.8.5 NMAC Areas Designated by Acts of Congress, effective 9-29-2000.