

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8      COAL MINING**  
**PART 6         GENERAL REQUIREMENTS FOR COAL EXPLORATION**

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

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

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

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

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

**19.8.6.6        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.  
[19.8.6.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.6.8 - 19.8.6.599 [RESERVED]**  
[19.8.6.8 - 19.8.6.599 - N, 9-29-2000]

**19.8.6.600      GENERAL REQUIREMENTS:** Any person who intends to conduct coal exploration activities outside a permit area on lands designated as unsuitable for surface mining under all of 19.8.2, 19.8.3 and 19.8.4 NMAC shall submit an application and shall obtain written approval from the director. Any person who receives approval from the director for such activities shall comply with 19.8.19 NMAC.  
[11-29-97; 19.8.6.600 NMAC - Rn, 19 NMAC 8.2.6.600, 9-29-2000]

**19.8.6.601      GENERAL REQUIREMENTS: EXPLORATION OF LESS THAN 250 TONS:**

**A.** Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed in the area to be explored shall, prior to conducting the exploration, file with the director a written notice of intention to explore.

**B.** The notice shall include:

- (1) the name, address, and telephone number of the person seeking to explore;
- (2) the name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;
- (3) a precise description and map at a scale of 1:24,000 or larger, of the exploration area;
- (4) a statement of the period of intended exploration;
- (5) a narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities.
- (6) a description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities; and

(7) if the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation.

C. Any person who conducts coal exploration activities pursuant to this section which substantially disturbs the natural land surface shall comply with 19.8.19 NMAC.

D. The director shall, except as otherwise provided in 19.8.6.606 NMAC, place such notices on public file and make them available for public inspection and copying.

E. If the director does not act adversely on the notice of intent within 30 days the applicant may proceed with exploration.

F. A bond sufficient to assure that completion of reclamation of the area disturbed by the exploration activity may be required by the director in an amount determined pursuant to 19.8.14.1404 NMAC.

[11-29-97; 19.8.6.601 NMAC - Rn, 19 NMAC 8.2.6.601, 9-29-2000; A, 12-31-2007]

**19.8.6.602 GENERAL REQUIREMENTS: EXPLORATION OF MORE THAN 250 TONS:** Any person who intends to conduct coal exploration in which more than 250 tons of coal are removed in the area to be explored, shall, prior to conducting the exploration, obtain the written approval of the director, accordance with the following:

A. Contents of application for approval. Each application for approval shall contain, at a minimum, the following information:

(1) the name, address, and telephone number of the applicant;

(2) the name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(3) an exploration and reclamation operations plan, including:

(a) a narrative description of the proposed exploration area, cross-referenced to the map required under Paragraph (5) of Subsection A of 19.8.6.602 NMAC, including surface topography, geological, surface water, and other physical features, vegetative cover, the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et. seq.), and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978, the Habitat Protection Act, Sections 17-6-1 et seq. NMSA 1978, and the laws relating to the protection of native New Mexico plants including Section 76-8-1 through 76-8-4 NMSA 1978; districts, sites, buildings, structures or objects listed or eligible for listing on the national register of historic places; and known archeological resources located within the proposed exploration area;

(b) a narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

(c) an estimated timetable for conducting and completing each phase of the exploration and reclamation;

(d) the estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(e) a description of the measures to be used to comply with the applicable requirements of 19.8.19 NMAC.

(4) the name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(5) a map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation; the map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; documented historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978, the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978, and the laws relating to the protection of native New Mexico plants including Sections 76-8-1 through 76-8-4 NMSA 1978; and

(6) a bond sufficient to assure that completion of reclamation of the area disturbed by the exploration activity may be required by the director; such bond, if required by the director, shall be in a form approved by the director and shall not be subject to the requirements of 19.8.14 NMAC;

(7) a statement of why extraction of more than 250 tons of coal is necessary for exploration;

- (8) such other information as the director deems necessary to take action under 19.8.6.603 NMAC;
- (9) for any lands listed in 19.8.2.201 NMAC, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations; the application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC.

**B.** Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) within such time as the director may designate, public notice of the filing of the application with the director shall be published in a newspaper of general circulation in the county of the proposed exploration area;

(2) the public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the director at which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration;

(3) any person with an interest which is or may be adversely affected shall have the right to file written comments within the time limits prescribed in the notice.

[11-29-97; 19.8.6.602 NMAC - Rn, 19 NMAC 8.2.6.602, 9-29-2000; A, 01-15-2002]

**19.8.6.603 APPLICATIONS: APPROVAL OR DISAPPROVAL OF EXPLORATION OF MORE THAN 250 TONS:**

**A.** The director shall act upon a completed application for approval within 45 days.

**B.** The director shall approve a complete application filed in accordance with this part, if he finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) will be conducted in accordance with the act, 19.8.19 NMAC and these rules and regulations;

(2) will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978 and the laws relating to the protection of New Mexico native plants including Sections 76-8-1 through 76-8-4 NMSA 1978 or result in the destruction of adverse modification of critical habitat of those species and will also comply with the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978;

(3) will not adversely affect any districts, sites, buildings, structures, or objects listed on the national register of historic places unless the proposed exploration has been approved by both the director and the agency with jurisdiction over such matters;

(4) with respect to exploration activities on any lands protected under 19.8.2.201 NMAC, will minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations; before making this finding, the director must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC, to comment on whether the finding is appropriate.

**C.** Terms of approval. Each approval issued by the director shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the act, 19.8.19 NMAC and 19.8.1 through 19.8.35 NMAC.

**D.** The granting of written approval to conduct exploration shall in no way be construed to ensure the issuance of a permit to conduct surface coal mining and reclamation operations under 19.8.5 NMAC.

[11-29-97; 19.8.6.603 NMAC - Rn, 19 NMAC 8.2.6.603, 9-29-2000; A, 1-15-2001; A, 12-31-2007]

**19.8.6.604 APPLICATION: NOTICE AND HEARING FOR EXPLORATION OF MORE THAN 250 TONS:**

**A.** The director shall notify the applicant and the appropriate local government officials, in writing, of his decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The director shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the county of the proposed operation.

**B.** Any person with interests which are or may be adversely affected by decision of the director pursuant to Subsection A of 19.8.6.604 NMAC above, shall have the opportunity for administrative and judicial review as are set forth in 19.8.12 NMAC.

[11-29-97; 19.8.6.604 NMAC - Rn, 19 NMAC 8.2.6.604, 9-29-2000]

**19.8.6.605 COAL EXPLORATION COMPLIANCE DUTIES:**

**A.** All coal exploration and reclamation which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of the act, 19.8.6 and 19.8.19 NMAC and all appropriate provisions of 19.8 NMAC, and any conditions on approval for exploration and reclamation imposed by the director.

**B.** Any person who conducts any coal exploration in violation of Section 69-25A-16 NMSA 1978 of the act, the provisions of 19.8.6 and 19.8.19 NMAC and any other parts of 19.8 NMAC shall be subject to the provisions of Section 69-25A-22 NMSA 1978 of the act, 19.8.29, 19.8.30 and 19.8.31 NMAC, and the applicable inspection and enforcement provisions of 19.8 NMAC.

[11-29-97; 19.8.6.605 NMAC - Rn, 19 NMAC 8.2.6.605, 9-29-2000]

**19.8.6.606 PUBLIC AVAILABILITY OF INFORMATION:**

**A.** Except as provided in Subsection B of 19.8.6.606 NMAC, all information submitted to the director under this part shall be made available for public inspection and copying at the director's office.

**B.** Confidential information.

(1) The director shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the director determines that the information is confidential.

(2) The director shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available until after notice and opportunity to be heard is afford both persons seeking and opposing disclosure of the information.

[11-29-97; 19.8.6.606 NMAC - Rn, 19 NMAC 8.2.6.606, 9-29-2000; A, 12-31-2007]

**HISTORY OF 19.8.6 NMAC:**

**Pre-NMAC History:**

The material in Part 6 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 Surfacing 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 and reformatted CSMC Rule 80-1 to 19 NMAC 8.2 filed 11-13-97. Renumbered 19 NMAC 8.2

Subpart 6 General Requirements for Coal Exploration, filed 11-13-97, to 19.8.6 NMAC General Requirements for Coal Exploration, effective 9-29-2000.