

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8    COAL MINING**  
**PART 32      SMALL OPERATOR ASSISTANCE PROGRAM**

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

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

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

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

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

**19.8.32.6      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.  
[19.8.32.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.32.8 - 19.8.32.3199 [RESERVED]**  
[19.8.32.8 - 19.8.32.3199 NMAC N, 9-29-2000]

**19.8.32.3200    ELIGIBILITY FOR ASSISTANCE:** An applicant is eligible for assistance if he:

- A.**    intends to apply for a permit pursuant to the act;
- B.**    establishes that his probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his permit or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:
  - (1)    the pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;
  - (2)    the pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;
  - (3)    all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;
  - (4)    all coal produced by operations owned by members of the applicant's family and the applicants' relatives, unless it is established that there is no direct or indirect business relationship between or among them.
- C.**    is not restricted in any manner from receiving a permit under the permanent regulatory program;

and

- D.**    does not organize or reorganize his company solely for the purpose of obtaining assistance under the SOAP.

[11-29-97; 19.8.32.3200 NMAC - Rn, 19 NMAC 8.2.32.3200, 9-29-2000; A, 1-15-2002]

**19.8.32.3201    FILING FOR ASSISTANCE:** Each application for assistance shall include the following information:

- A.**    a statement of the operator's intent to file a permit application;

- B.** the names and addresses of:
    - (1) the permit applicant; and
    - (2) the operator if different from the applicant;
  - C.** a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under 19.8.32.3200 NMAC; the schedule shall include for each location:
    - (1) the operator or company names under which coal is or will be mined;
    - (2) the permit number and mine safety and health administration (MSHA) number;
    - (3) the registration number issued by the state mine inspector;
    - (4) the actual coal production during the year preceding the year for which the applicant under 19.8.32.3200 NMAC, and
    - (5) the estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit;
  - D.** a description of:
    - (1) the proposed method of coal mining;
    - (2) the anticipated starting and termination dates of mining operations;
    - (3) the number of acres of land to be affected by the proposed mining operation; and
    - (4) a general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated;
  - E.** a U.S. geological survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:
    - (1) the area of land to be affected;
    - (2) the location of any existing or proposed test borings; and
    - (3) the location and extent of known workings of any underground mines.
  - F.** copies of documents which show that:
    - (1) the applicant has a legal right to enter and commence mining within the permit area; and
    - (2) a legal right of entry has been obtained for the director and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.
- [11-29-97; 19.8.32.3201 NMAC - Rn, 19 NMAC 8.2.32.3201, 9-29-2000]

**19.8.32.3202 APPLICATION APPROVAL AND NOTICE:**

- A.** If the director finds the applicant eligible, he shall inform the applicant in writing that the application is approved.
  - B.** If the director finds the applicant ineligible, he shall inform the applicant in writing that the application is denied and shall state the reasons for denial.
- [11-29-97; 19.8.32.3202 NMAC - Rn, 19 NMAC 8.2.32.3202, 9-29-2000]

**19.8.32.3203 PROGRAM SERVICES AND DATA REQUIREMENTS:**

- A.** To the extent possible with available funds, the director shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in Subsection B of 19.8.32.3203 NMAC for eligible operators who request assistance.
- B.** The director shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the director shall be sufficient to satisfy the requirements for:
  - (1) the determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with Subsection C of 19.8.9.907 NMAC and any other applicable provisions of 19.8 NMAC;
  - (2) the drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with 19.8.8.803 NMAC and any other applicable provisions of 19.8.1 through 19.8.35 NMAC;
  - (3) the development of cross-section maps and plans required by 19.8.8.813 NMAC;
  - (4) the collection of archaeological and historic information and related plans required by 19.8.8.801 NMAC and 19.8.9.912 NMAC and any other archaeological and historic information required by the regulatory authority;
  - (5) pre-blast surveys required by Subsection E of 19.8.9.902 NMAC; and
  - (6) the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 19.8.8.809 NMAC and 19.8.9.905 NMAC, and

information and plans for any other environmental values required by the regulatory authority under SMCRA and the act.

**C.** Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

**D.** Data collected under this program shall be made publicly available in accordance with the New Mexico Public Record Act. The director shall develop procedures for interstate coordination and exchange of data. [11-29-97; 19.8.32.3203 NMAC - Rn, 19 NMAC 8.2.32.3203, 9-29-2000; A, 1-15-2002]

**19.8.32.3204 QUALIFIED LABORATORIES:**

**A.** Basic qualifications. To be designated a qualified laboratory, a firm shall demonstrate that it:

(1) is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

(2) has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

(3) meets applicable federal or state safety and health requirements;

(4) has analytical, monitoring and measuring equipment capable of meeting applicable standards; and

(5) has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable requirements of 19.8.8.802 NMAC, 19.8.8.804 NMAC and Subsection C of 19.8.9.907 NMAC and any other applicable provisions of this part; other appropriate methods or guidelines for data acquisition may be approved by the director;

(6) has the capability of performing services for either the determination or statement referenced in Subsection B of 19.8.32.3204 NMAC.

**B.** Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the director.

**C.** Disqualification. The director shall disqualify a designated laboratory if that laboratory is interested, directly or indirectly in an applicant for small operator assistance.

[11-29-97; 19.8.32.3204 NMAC - Rn, 19 NMAC 8.2.32.3204, 9-29-2000]

**19.8.32.3205 ALLOCATION OF FUNDS:** The director shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide services pursuant to this part.

[11-29-97; 19.8.32.3205 NMAC - Rn, 19 NMAC 8.2.32.3205, 9-29-2000]

**19.8.32.3206 APPLICANT LIABILITY:**

**A.** The applicant shall reimburse the director for the cost of the services rendered pursuant to this part if:

(1) the applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) the director finds that the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter, or

(3) the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 tons annual production limit during any consecutive 12-month period of the remaining term of the permit. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the director.

**B.** The director may waive the reimbursement obligation if he finds that the applicant at all times acted in good faith.

[11-29-97; 19.8.32.3206 NMAC - Rn, 19 NMAC 8.2.32.3206, 9-29-2000; A, 1-15-2002]

**HISTORY OF 19.8.32 NMAC:**

**Pre-NMAC History:**

The material in Part 32 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 32 Small Operator Assistance Program, filed 11-13-97, to 19.8.32 NMAC Small Operator Assistance Program, effective 9-29-2000.