

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-201. Coal Exploration: Requirements for Exploration Approval.

R645-201-100. Responsibilities for Coal Exploration Plan Review.

110. Coal exploration plan review on lands which are not subject to 43 CFR Parts 3480 -3487 will be the responsibility of the Division.

120. On lands where the requirements of 43 CFR 3480-3487 apply, the review of coal exploration plans will be guided by the direction provided in these parts of the 43 CFR.

130. The Division will coordinate as appropriate its activities in reviewing coal exploration projects with other agencies with the objective of reducing duplication of agency and operator effort and at the same time, maximizing the effect of its protection of the state from the environmental effects of coal exploration activities.

R645-201-200. Notices of Intention to Conduct Minor Coal Exploration.

210. Notices of Intention to Conduct Minor Coal Exploration when 250 tons or less of coal will be removed will require Division review prior to conducting exploration except where exploration is planned to be conducted on lands designated unsuitable for surface coal mining operations under R645-103; exploration on these lands designated as unsuitable will be subject to the requirements of R645-201-300.

220. Notices of Intention to Conduct Minor Coal Exploration will include:

221. The name, address and telephone number of the applicant seeking to explore;

222. The name, address and telephone number of the applicant's representative who will be present at, and responsible for conducting the exploration operations;

223. A narrative and map describing the exploration area and indicating where exploration will occur;

224. A statement of the period of intended exploration; and

225. A description of the method of exploration to be used, the amount of coal to be removed and the practices that will be followed to protect the area from adverse impacts of the exploration activities and to reclaim the area in accordance with the applicable requirements of R645-202.

R645-201-300. Major Coal Exploration Permits.

310. Any person who intends to conduct coal exploration in which more than 250 tons of coal will be removed in the area to be explored or which will take place on lands designated as

unsuitable for coal mining and reclamation operations under R645-103, will, prior to conducting the exploration, submit an application for a Major Coal Exploration Permit and obtain written approval from the Division.

320. Contents of Major Coal Exploration Permit Applications. Each application for a Major Coal Exploration Permit approval will contain, at a minimum, the following information:

321. The name, address, and telephone number of the applicant;

322. The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration; and

323. An exploration and reclamation operations plan, including:

323.100. A narrative description of the proposed exploration area, cross-referenced to the map required under R645-201-325, including information on surface topography; geology, 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.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; known archeological resources located within the proposed exploration area; and other information which the Division may require regarding known or unknown historic or archeological resources;

323.200. 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;

323.300. An estimated timetable for conducting and completing each phase of the exploration and reclamation;

323.400. A description of the measures to be used to comply with the applicable requirements of R645-202;

323.500. The estimated amount of coal to be removed and a description of the methods to be used to determine the amount removed; and

323.600. A statement of why more than 250 tons of coal are necessary for exploration.

324. The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored;

325. 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 will specifically show existing underground openings, 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; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

326. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation; and

327. A detailed estimate of the cost of reclamation for the proposed exploration, with supporting calculations for the estimate. Estimates should be based on rates given in acceptable "cost, performance and escalation index" handbooks. The exploration reclamation estimate should include appropriate calculations and costs for:

- 327.100. Demolition;
- 327.200. Structural removal;
- 327.300. Backfilling and/or regrading;
- 327.400. Recontouring;
- 327.500. Seedbed preparation;
- 327.600. Seeding;
- 327.700. Mulching and/or fertilizing;
- 327.800. Contingency factor; and
- 327.900. Escalation factor.

328. For any lands listed in R645-103-224, 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 coal mining and reclamation operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of R645-103-224, 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 R645-103-224.

330. Public Notice and Comment for an application for a Major Coal Exploration Permit.

331. Completeness Determination. Within 30 days of receipt of an application, excluding applicant response time, the Division will determine whether an application is administratively complete. The division will notify the applicant, in writing, upon determining the application to be administratively complete.

332. Public notice of the application will be provided as follows:

332.100. The applicant will publish once a week for four consecutive weeks, subsequent to the Division's completeness determination, a public notice of the filing of an administratively complete application with the Division in a newspaper of general circulation in the county of the proposed exploration area; and

332.200. The public notice will state the name and business address of the person seeking approval, the date of filing of the application, the Division address where written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

333. Public Comment. Any person with an interest which is or may be adversely affected will have the right to file written comments with the Division on the application within 30 days after the last date of publication.

340. Approval or Disapproval of an Application for a Major Coal Exploration Permit.

341. The Division will act upon an administratively complete application for a Major Coal Exploration Permit and any written comments within 60 days, weather permitting. The approval of a Major Coal Exploration Permit may be based only on a complete and accurate application.

342. The Division will approve a complete and accurate application for a Major Coal Exploration Permit filed in accordance with R645-201-300 if it finds, in writing, that the exploration and reclamation described in the application will:

342.100. Be conducted in accordance with R645-201-300, R645-202, and any other applicable provisions of the State Program;

342.200. Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species;

342.300. Not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, (16 U.S.C. Sec. 470 et seq.), unless the proposed exploration has been approved by both the Division and the agency with jurisdiction over the resources to be affected;

342.400. Terms of approval issued by the Division will contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the Act, R645-201-300, R645-202, and any other applicable provisions of the

State Program; and

342.500. With respect to exploration activities on any lands protected under R645-103-224, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for coal mining and reclamation operations. Before making this finding, the Division must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of R645-103-224, 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 R645-103-224, to comment on whether the finding is appropriate.

350. Notice and Hearing on an Application for a Major Coal Exploration Permit.

351. The Division will notify the applicant and the appropriate local government officials, and other commenters, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant will include a statement of the reason, for disapproval. The Division will provide public notice of approval or disapproval of each application, by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

352. Any person with interests which are or may be adversely affected by a decision of the Division pursuant to R645-201-351, will have the opportunity for administrative and judicial review as are set forth in R645-300-200.

R645-201-400. Requirements for Commercial Sale.

Any person who extracts coal for commercial sale or commercial use during any coal exploration will obtain a coal mining and reclamation operations permit for those operations from the Division under R645-300 through R645-303 unless that coal extraction is exempted by R645-100-400.

410. With the prior written approval of the Division, no permit to conduct coal mining and reclamation operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. An application will be filed with the Division to obtain this written approval.

420. The application referred to under R645-201-410 is required to demonstrate that the coal testing is needed for the development of the coal mining and reclamation operation which will be the subject of a permit application to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal.

430. The application to mine coal for testing purposes will contain:

431. The name of the testing firm and the locations at which the coal will be tested.

432. If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

432.100. The specific reason for the test, including why the coal may differ from the intended user's other coal supplies so as to require testing;

432.200. The amount of coal necessary for the test(s) and why a smaller amount will not suffice; and

432.300. A description of the specific tests that will be conducted.

433. Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

434. An explanation as to why other means of exploration, such as core drilling are not adequate to determine the quality of the coal and/or the feasibility of developing a coal mining and reclamation operation.

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