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State of Utah

DEPARTMENT OF NATURAL RESOURCES

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Division of Oil, Gas and Mining

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January 19, 2010

TO: Board of Oil, Gas & Mining

THROUGH: John R. Baza, Director

FROM: Steve Schneider, Administrative Services & Policy Coordinator

SUBJECT: Status on Informal Rulemaking for Valid Existing Rights in Coal Program

This memorandum is written to update the Board on the status of the informal rulemaking process on the subject of valid existing rights ("VER") in the Coal Program. Draft rules are now ready for further review by the Informal Rules Review Group as part of the informal process.

In review, OSM published the final rule on December 17, 1999 in the Federal Register, consisting of 73 pages. Because these rules were challenged in Federal court, OSM informed Utah and other states to defer state rulemaking. OSM's letter dated February 1, 2008 informed the Division that the U.S. Court of Appeals upheld the federal VER rules and the Division provided a reply letter on March 31, 2008 with a timetable for state rulemaking. The Division briefed the Board on September 28, 2008 and commenced the informal rulemaking process.

OSM concurred on December 14, 2009 with the attached VER rules drafted by the Division. Each proposed state rule change is cross-referenced to the counterpart federal regulation. The Utah Mining Association was provided the draft on December 16, 2009 for review. The Division is ready for distribution of the draft VER rules to the Informal Rules Review Group on January 28, 2010, assuming no objection from the Board. The Division would provide comments back to the Board on March 24, 2010.

Assuming the remainder of the rulemaking process proceeds smoothly, the formal rulemaking process would commence with a petition to the Board in April, an initial board hearing would occur in May, a public comment hearing in June, and approval of the rule change in July 2010.

I will be available to answer questions at the Board briefing on January 27, 2010 or I can be reached at 801-538-5328.

Attachment

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UTAH DNR OIL, GAS & MINING

Utah Division of Oil, Gas & Mining
Coal Program: Valid Existing Rights
Rulemaking Process: Informal
Dec.14, 2009 Rules Draft

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-100-200. Definitions.

As used in the R645 Rules, the following terms have the specified meanings:

...

"Upland Areas" means, with respect to ALLUVIAL VALLEY FLOORS, those geomorphic features located outside the floodplain and terrace complex such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows, or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid Existing Rights" means [~~(a) for haul roads" (i) a recorded right of way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977, or (ii) any other road in existence as of August 3, 1977; (b) a person possesses valid existing rights if the person proposing to conduct coal mining and reclamation operations can demonstrate that property rights to the coal had been acquired prior to August 3, 1977 and that the coal is both needed for, and immediately adjacent to, an ongoing coal mining and reclamation operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the coal mining and reclamation operation as a whole economically viable; (c) where an area comes under the protection of 40-10-24 of the Act after August 3, 1977, valid existing rights will be found if on the date the protection comes into existence, a validly authorized coal mining and reclamation operation exists on that area; and (d) interpretation of the terms of the document relied upon to establish the rights to which the standard of portions (a) and (c) of this definition applies will be based either upon applicable Utah statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable Utah law exists, upon the usage and custom at the time and place it came into existence.~~] a set of circumstances under which a person may, subject to regulatory authority approval, conduct coal mining and reclamation operations on lands where Subsection 40-10-24(4) of the Act and R645-103-224 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of R645-103-224 and Subsection 40-10-24(4) of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Federal Act and the State Program.

Comment [S1]: Entire VER definition replaced to match federal in 30 CFR761.5.

(a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of coal mining and reclamation operations intended. This right must exist at the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Applicable Utah statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable Utah law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(i) Good faith/all permits standard. All permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. At a minimum, an application must have been submitted for any permit required under R645-201, R645-301 or R645-302; or

(ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a coal mining and reclamation operation for which all permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act when the Division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Division may consider factors such as:
(A) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act depends upon use of that land for coal mining and reclamation operations;
(B) The extent to which plans used to obtain financing for the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;
(C) The extent to which investments in the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;
(D) Whether the land lies within the area identified on the life-of-mine map submitted under R645-301-521.141 before the land came under the protection of R645-103-224.

(c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by R645-103-224 or Subsection 40-10-24(4) of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of coal mining and reclamation operations:
(i) The road existed when the land upon which it is located came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and the person has a legal right to use the road for coal mining and reclamation operations;
(ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for coal mining and reclamation operations;
(iii) A valid permit for use or construction of a road in that location for coal mining and reclamation operations existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act; or
(iv) Valid existing rights exist under paragraphs (a) and (b) of this definition.

"Valley Fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation, Failure, or Refusal" means for the purposes of R645-402, (1) A violation of a condition of a permit issued under the State Program, or (2) A failure or refusal to comply with any order issued under UCA 40-10-22, or any order incorporated in a final decision issued under UCA 40-10-20(2) or R645-104-500.

"Water Supply", "State-appropriated Water", and "State-appropriated Water Supply" are all synonymous terms and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code.

"Violation Notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

"Willfully" means for the purposes of R645-402, that an individual acted (1) either intentionally, voluntarily, or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

"Willful Violation" means an act or omission which violates the State Program or any permit condition, committed by a person who intends the result which actually occurs.

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-103. Areas Unsuitable for Coal Mining and Reclamation Operations.
R645-103-200. Areas Designated by Act of Congress.

210. Scope. The rules in R645-103-200 establish the procedures to be used by the Division to determine whether a proposed coal mining and reclamation operation can be authorized in light of the mandatory prohibitions set forth in the Act and Federal Act.

220. Federal Lands. The authority to make determinations of unsuitability on federal lands is reserved to the Secretary pursuant to Section 523(a) of the Federal Act.

221. Valid [~~and~~] Existing Rights (VER). VER determinations on federal lands will be performed in a manner consistent with the terms of a cooperative agreement between the Secretary and Utah pursuant to section 523(c) of the Federal Act.

Comment [S2]: Basis is 761.5.

222. VER determinations on nonfederal lands which affect adjacent federal lands will be performed in a manner consistent with the terms of the cooperative agreement referenced in R645-103-221.

223. On federal lands within the boundaries of a national forest the Division will be responsible for coordination with the Secretaries of Interior and Agriculture, as appropriate, to ensure that mining is permissible under 30 CFR 761.11(b) and Section 522(e)(2) of the Federal Act.

Comment [S3]: Section of SMCRA recommended by OSM to clarify.

224. Coal mining and reclamation operations may not be conducted on the following lands unless there are VER, as determined under R645-103-231.100, or qualify for the exception for existing operations under R645-103-225:

Comment [S4]: Basis is 761.11 for areas where prohibited or limited.

224.100. Any lands within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; 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 established in any guidelines issued under that Act; or National Recreation Areas designated by Act of Congress;

224.200. Any Federal lands within a national forest. This prohibition does not apply if the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and:

224.210. Any surface operations and impacts will be incident to an underground coal mine; or

224.220. 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 Federal 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;

224.300. Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in R645-103-236, the Division and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation;

224.400. Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply:

224.410. Where a mine access or haul road joins a public road, or

224.420. When, as provided in R645-103-234, the Division (or the appropriate public road authority designated by the Division) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the coal mining and reclamation operation, after:

224.421. Providing public notice and opportunity for a public hearing; and

224.422. Finding in writing that the interests of the affected public and landowners will be protected;

224.500 Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:

224.510. The owner of the dwelling has provided a written waiver consenting to coal mining and reclamation operations within the protected zone, as provided in R645-103-235; or

224.520. The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling;

224.600. Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park; or

224.700. 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.

225. VER determinations for land are not required where an existing operation meets the requirements of 30 CFR 761.12.

Comment [S5]: Basis is 761.12 for existing operations exception.

230. Procedures.

231. Upon receipt of an administratively complete application for a permit to conduct coal mining and reclamation operations, or an administratively complete application for a revision of the boundaries of a permit to conduct coal mining and reclamation operations, the Division will review the application to determine whether the proposed coal mining and reclamation [~~operations are limited or prohibited under 40-10-24(4) of the Act or 30 CFR 761.11(a) and (b) on the lands which would be disturbed by the proposed operations~~] operation would be located on any lands protected under R645-103-224.

Comment [S6]: Basis is 761.17(a) on regulatory authority obligations.

231.100. The Division will follow 30 CFR 761.16 for determining state/federal responsibility for determinations, establishing application requirements, evaluation procedures and decision-making criteria for VER determinations, providing for public participation and notification of affected parties, and establishing requirements for the availability of records.

Comment [S7]: Basis is 761.16 for submission and processing of VER.

232. [~~Where the proposed operations would be located on any lands listed in Section 40-10-24(4)(a) and (d) or 30 CFR 761.11, the~~] The Division will reject [~~the application if the applicant has no valid existing rights for the area, or if the activity did not exist on August 3, 1977.~~] any portion of the application that would locate coal mining and reclamation operations on land protected under R645-103-224 unless:

232.100. The site qualifies for the exception for existing operations under R645-103-225;

232.200. A person has VER for the land, as determined under R645-103-231-100;

232.300. The applicant obtains a waiver or exception from the prohibitions of R645-103-224 in accordance with R645-103-237, R645-103-234, and R645-103-235; or

232.400. For lands protected by R645-103-224.300, both the Division and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with R645-103-236.

233. If the Division is unable to determine whether the proposed activities are located within the boundaries of any of the lands listed in [~~40-10-24(4)(a) or 30 CFR 761.11(a) and (b)~~] R645-103-224.100 or [~~closer than the limits provided in 40-10-24(4)(d) of the Act, the~~] within the specified distance from a structure or feature listed in R645-103-224.600 or R645-103-224.700, the Division must request that the federal, Utah, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location. The Division will transmit a copy of the relevant portions of the permit application to the appropriate federal, Utah, 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 will be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and will have 30 days from receipt of the notification in which to respond.~~] The Division, upon request by the appropriate agency, will grant an extension to the 30-day period of an additional 30 days. However, the Division's request for location verification must specify that the Division will not necessarily consider a response received after the 30-day period or the extended period granted. If no response is received within the 30-day period, or within the extended period granted, the Division may make the necessary determination based on the information it has available.

234. [~~Where the coal mining and reclamation operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in 40-10-24(4)(c), or where the applicant proposes to relocate or close any public road, the Division or public road authority designated by the Division will:~~

~~234.100. Require the applicant to obtain necessary approvals from the authority with the jurisdiction over the public road;~~

~~234.200. Provide an opportunity for a public hearing in the locality of the proposed coal mining and reclamation operation for the purpose of determining whether the interests of the public and affected landowners will be protected;~~

~~234.300. If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two weeks prior to the hearing; and~~

~~234.400. Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed coal mining and reclamation operation. No mining will be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the Division or public road authority determines that the interests of the public and affected landowners will be protected.~~]

Comment [S8]: Basis is 761.17(b) on regulatory authority obligations.

Comment [S9]: Amended in 761.17(c) on location verification.

Comment [S10]: Not included in 761.17(c) on location verification. Was in 761.12(b)(2) in prior reg's.

Comment [S11]: Basis is 761.17(c)(1)(iii) where OSM added clarifying reg.

Comment [S12]: 761.12(d) was modified and placed into new 761.14. Due to the numerous changes, the comparable state rule is deleted and new wording to be as effective as 761.14 is inserted. Pertains to public road procedures.

Procedures for relocating or closing a public road or waiving the prohibition on coal mining and reclamation operations within the buffer zone of a public road.

234.100. This section does not apply to:

234.110. Lands for which a person has VER, as determined under R645-103-231.100;

234.120. Lands within the scope of the exception for existing operations in R645-103-225; or

234.130 Access or haul roads that join a public road, as described in R645-103-224.410.

234.200 The applicant must obtain any necessary approvals from the authority with jurisdiction over the road if the applicant proposes to:

234.210. Relocate a public road;

234.220. Close a public road; or

234.230. Conduct coal mining and reclamation operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

234.300. Before approving an action proposed under R645-103-234.200, the Division, or a public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the Division must:

234.310. Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;

234.320. If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and

234.330. Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the Division must make this finding within 30 days after the hearing. If no hearing was held, the Division must make this finding within 30 days after the end of the public comment period.

235. Procedures for waiving the prohibition on coal mining and reclamation operations within the buffer zone of an occupied dwelling.

Comment [S13]: Basis is 761.15(a) on buffer zone for dwelling.

235.100. This section does not apply to:

235.110. Lands for which a person has VER, as determined under R645-103-231.100;

235.120. Lands within the scope of the exception for existing operations in R645-103-225; or

235.130. Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in R645-103-224.520.

235.200. Where the proposed coal mining and reclamation operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant will submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to [~~such activities~~] coal mining and reclamation operations within a closer distance of the dwelling as specified.

Comment [S14]: Basis is 761.15(b)

235.100. Where the applicant for a permit has obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to [~~mine~~] conduct operations within 300 feet of such dwelling, a new waiver will not be required.

Comment [S15]: Basis is 761.15(c)

235.200. Where the applicant for a permit had obtained a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

235.300. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to Utah laws, or if [~~the~~] coal mining and reclamation operations [~~has proceeded to within~~] have entered the 300-foot [~~limit prior to~~] zone before the date of purchase.

Comment [S16]: Basis is 761.15(d)

236. Where the Division determines that the proposed coal mining and reclamation operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Division will transmit to the federal, Utah, or local agency with jurisdiction over the publicly owned park or National Register place, a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the activity, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Division, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days, or the extended period granted, will constitute an approval of the proposed permit. A permit for the coal mining and reclamation operation will not be issued unless jointly approved by all agencies. The procedures for joint approval will not apply to lands for which a person has VER as determined under R645-103-231.100 and lands within the scope of the exception for existing operations in R645-103-225.

Comment [S17]: Basis is 761.17(d)(3) on public parks.

237. If the applicant intends to rely upon the exception provided in R645-103-224.200 to conduct coal mining and reclamation operations on federal lands within a national forest, the applicant must request that the Division obtain the Secretarial findings required by R645-103-224.200. The applicant may submit a request to the Division before preparing and submitting an application for a permit or boundary revision on Federal lands in national forests. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining and reclamation operations" in 30 CFR 761.5. The applicant must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. The Division may request that the permit applicant provide additional information that the Division determines is necessary in order to make the required findings. When a proposed coal mining and reclamation operation or proposed boundary revision for an existing coal mining and reclamation operation includes federal lands within a national forest, the Division may not issue the permit or approve the boundary revision before the Secretary makes the findings required by R645-103-224.200.

Comment [S18]: Basis is new 761.13 which revised and replaced former 761.12(c) on federal lands in nation forest matters. R645-103-223 could be removed but it is general and currently retained.

[~~237~~]238. If the Division determines that the proposed coal mining and reclamation operation is not prohibited under Section 40-10-24 of the Act and R645-103-200, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400.

Comment [S19]: Renumbered due to the insert of new 237.

[~~238~~]239. A determination by the Division that a person holds or does not hold valid existing rights [~~or that coal mining and reclamation operations did or did not exist on the date of enactment~~] will be subject to administrative and judicial review under R645-300-200.

Comment [S20]: Renumbered due to the insert of new 237. Text edited due to 761.16(f).

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-201. Coal Exploration: Requirements for Exploration Approval.
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

Comment [S21]: Basis is new 772.12(b)(14) for Exploration.

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[~~, or eligible for listing on,~~] the National Register of Historic Places, pursuant to the National Historic Preservation Act, [~~as amended~~] (16 U.S.C. Sec. 470 et seq.[~~, 1976 Supp. V~~]), unless the proposed exploration has been approved by both the Division and the agency with jurisdiction over [~~such matters~~] the resources to be affected; [~~and~~]

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.

Comment [S22]: OSM originally identified a change needed here, but same as 772.12(d)(2)(ii) so no change.

Comment [S23]: Basis is minor amending of 772.12(d)(2)(iii).

Comment [S24]: Basis is new 772.12(d)(2)(iv) for exploration.

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. Natural Resources; Oil, Gas and Mining; Coal.
R645-300. Coal Mine Permitting: Administrative Procedures.
R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R645-300-100 present the procedures to carry out the entitled activities.

110. Introduction.

111. Objectives. The objectives of R645-300-100 are to:

111.100. Provide for broad and effective public participation in the review of applications and the issuance or denial of permits;

111.200. Ensure prompt and effective review of each permit application by the Division; and

111.300. Provide the requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

112. Responsibilities.

112.100. The Division has the responsibility to approve or disapprove permits under the approved State Program.

112.200. The Division and persons applying for permits under the State Program will involve the public throughout the permit process of the State Program.

112.300. The Division will assure implementation of the requirements of R645-300 under the State Program.

112.400. All persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. The applicant will provide all information in an administratively complete application for review by the Division in accordance with R645-300 and the State Program.

112.500. Any permittee seeking to renew a permit for coal mining and reclamation operations solely for the purpose of reclamation and not for the further extraction, processing, or handling of the coal resource will follow the procedures set forth in R645-303-232.500.

113. Coordination with requirements under other laws. The Division will provide for the coordination of review and issuance of permits for coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended 16 U.S.C. 668a); and where federal and Indian lands covered by that Act are involved, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

120. Public Participation in Permit Processing.

121. Filing and Public Notice.

121.100. Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under R645-303-220 or renewal of a permit under R645-303-230 will place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper will be submitted to the Division. The advertisement will contain, at a minimum, the following:

121.110. The name and business address of the applicant;

121.120. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it will indicate the north direction;

121.130. The location where a copy of the application is available for public inspection;

121.140. The name and address of the Division, where written comments, objections, or requests for informal conferences on the application may be submitted under R645-300-122 and R645-300-123;

121.150. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with R645-103-234; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; and

121.160. If the application includes a request for an experimental practice under R645-302-210, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

121.200. The applicant will make an application for a permit, significant revision under R645-303-220, or renewal of a permit under R645-303-230 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the coal mining and reclamation operation is proposed to occur, or an accessible public office approved by the Division. This copy of the application need not include confidential information exempt from disclosure under R645-300-124. The application required by R645-300-121 will be filed by the first date of newspaper advertisement of the application. The applicant will file any changes to the application with the public office at the same time the change is submitted to the Division.

121.300. Upon receipt of an administratively complete application for a permit, a significant revision to a permit under R645-303-220, or a renewal of a permit under R645-303-230, the Division will issue written notification indicating the applicant's intention to conduct coal mining and reclamation operations within the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification will be sent to:

121.310. Local governmental agencies with jurisdiction over or an interest in the area of the proposed coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

121.320. All federal or state governmental agencies with authority to issue permits and licenses applicable to the proposed coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with the State Program, Section 503(a)(6) or Section 504(h) of P.L. 95-87, or 30 CFR 733.12; or those agencies with an interest in the proposed coal mining and reclamation operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, state and federal fish and wildlife agencies, and Utah State Historic Preservation Officer.

122. Comments and Objections on Permit Application.

122.100. Within 30 days of the last newspaper publication, written comments or objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit

under R645-303-230 may be submitted to the Division by public entities notified under R645-300-121.300 with respect to the effects of the proposed coal mining and reclamation operation on the environment within their areas of responsibility.

122.200. Written objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to the Division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by R645-300-121.

122.300. The Division will upon receipt of such written comments or objections:

122.310. Transmit a copy of the comments or objections to the applicants; and

122.320. File a copy for public inspection at the Division.

123. Informal Conferences.

123.100. Any person having an interest which is or may be adversely affected by the decision on the application, or an office or a head of a federal, state, or local government agency, may request in writing that the Division hold an informal conference on the application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230. The request will:

123.110. Briefly summarize the issues to be raised by the requestor at the conference;

123.120. State whether the requestor desires to have the conference conducted in the locality of the proposed coal mining and reclamation operation; and

123.130. Be filed with the Division no later than 30 days after the last publication of the newspaper advertisement required under R645-300-121.

123.200. Except as provided in R645-300-123.300, if an informal conference is requested in accordance with R645-300-123.100, the Division will hold an informal conference within 30 days following the receipt of the request. The informal conference will be conducted as follows:

123.210. If requested under R645-300-123.120, it will be held in the locality of the proposed coal mining and reclamation operation.

123.220. The date, time, and location of the informal conference will be sent to the applicant and other parties to the conference and advertised by the Division in a newspaper of general circulation in the locality of the proposed coal mining and reclamation operation at least two weeks before the scheduled conference.

123.230. If requested in writing by a conference requestor at a reasonable time before the conference, the Division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

123.240. The requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) will apply to the conduct of the informal conference. The conference will be conducted by a representative of the Division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record will be made of the conference, unless waived by all the parties. The record will be maintained and will be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to R645-301-800.

123.300. If all parties requesting the informal conference withdrew their request before the conference is held, the informal conference may be canceled.

123.400. An informal conference held in accordance with R645-300-123 may be used by the Division as the public hearing required under R645-103-234 on proposed relocation or closing of public roads.

124. Public Availability of Permit Applications.

124.100. General Availability. Except as provided in R645-300-124.200 and R645-300-124.300, all applications for permits; permit changes; permit renewals; and transfers, assignments or

sales of permit rights on file with the Division will be made available, at reasonable times, for public inspection and copying.

124.200. Limited Availability. Except as provided in R645-300-124.310, information pertaining to coal seams, test borings, core samplings, or soil samples in an application will be made available to any person with an interest which is or may be adversely affected. Information subject to R645-300-124 will be made available to the public when such information is required to be on public file pursuant to Utah law.

124.300. Confidentiality. The Division will provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which will be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to:

124.310. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment.

124.320. Information required under section 40-10-10 of the Act that is authorized by that section to be held confidential and is not on public file pursuant to Utah law and that the applicant has requested in writing to be held confidential; and

124.330. Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (P. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

130. Review of Permit Application.

131. General.

131.100. The Division will review the application for a permit, permit change, or permit renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Division, either granting, requiring modification of, or denying the application. If an informal conference is held under R645-300-123 the decision will be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under R645-300-210.

131.110. Application review will not exceed the following time periods:

131.111. Permit change applications.

131.111.1. Significant revision - 120 days.

131.111.2. Amendments - 60 days.

131.112. Permit renewal - 120 days.

131.113. New underground mine applications - One year.

131.114. New surface mine applications - One year.

131.120. Time will be counted as cumulative days of Division review and will not include operator response time or time delays attributed to informal or formal conferences or Board hearings.

131.200. The applicant for a permit or permit change will have the burden of establishing that their application is in compliance with all the requirements of the State Program.

131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

132. Review of Compliance.

132.100. The Division will review available information on state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under section 518 of the federal Act, SMCRA-derived laws of other states, and section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states and federal air and water protection laws, rules and regulations incurred at any coal mining

and reclamation operations connected with the applicant. The Division will then make a finding that neither the applicant, nor any person who owns or controls the applicant, nor any person owned or controlled by the applicant is currently in violation of any law, rule, or regulation referred to in R645-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:

132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

132.120. Establish for the Division that the applicant or any person owned or controlled by the applicant or any person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under R645-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R645-300-132.110.

132.200. Any permit that is issued on the basis of proof submitted under R645-300-132.110 or pending the outcome of an appeal described in R645-300-132.120 will be issued conditionally.

132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R645-300-210.

133. Written Findings for Permit Application Approval. No permit application or application for a [~~permit change~~] significant revision of a permit will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

Comment [S25]: Basis is first sentence of 773.15 on review of permit applications. Corrects wording to CFR.

133.100. The application is complete and accurate and the applicant has complied with all the requirements of the Federal Act and the State Program;

Comment [S26]: Recommended by OSM and basis is 773.15(a).

133.200. The proposed permit area is:

133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R645-103-400 or 30 CFR 769, to have an area designated as unsuitable for coal mining and reclamation operations, unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments were made in relation to the operation covered by the permit application; or

133.220. Not within an area designated as unsuitable for [~~mining~~] coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400 or 30 CFR 769 or within an area subject to the prohibitions [~~or limitations~~] of R645-103-[~~230~~]224;

Comment [S27]: Basis for changes to 133.220 is 773.15(c)(2). Dec 1999 FR cites as 773.15(c)(3)(ii) but CFR later shows as 773.15(c)(2).

133.300. For coal mining and reclamation operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under R645-301-114.200;

133.400. The Division has made an assessment of the probable cumulative impacts of all anticipated coal mining and reclamation operations on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

133.500. The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et.seq.);

133.600. The Division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan

protecting historic resources, or a documented decision that the Division has determined that no additional protection measures are necessary; and

133.700. The applicant has:

133.710. Demonstrated that reclamation as required by the Federal Act and the State Program can be accomplished [~~according to information given~~] under the reclamation plan contained in the permit application.

Comment [S28]: Basis is 773.15(b) minor amends.

133.720. Demonstrated that any existing structure will comply with the applicable performance standards of R645-301 and R645-302.

133.730. Paid all reclamation fees from previous and existing coal mining and reclamation operations as required by 30 CFR Part 870.

133.740. Satisfied the applicable requirements of R645-302.

133.750. If applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of R645-301-353.400.

133.800. For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of R645-301-553.500, the site of the operation is a previously mined area as defined in R645-100-200.

133.900. For permits to be issued for proposed remining operations as defined in R645-100-200 and reclaimed in accordance with R645-301-553, the permit application must contain the following information:

Comment [S29]: Basis is 773.15(m) on permit applications for remining.

133.910. Lands eligible for remining;

133.920. An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

133.930. Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the State Program can be accomplished.

133.1000. The applicant is eligible to receive a permit, based on the reviews under R645-300-100 through R645-300-132.300.

Comment [S30]: Basis is 773.15(n) on permit applications.

134. Performance Bond Submittal. If the Division decides to approve the application, it will require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of R645-301-800.

140. Permit Conditions. Each permit issued by the Division will be subject to the following conditions:

141. The permittee will conduct coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to R645-301-800.

142. The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

143. The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

144. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee will allow the authorized representatives of the Division to:

144.100. Have the right of entry provided for in R645-400-110 and R645-400-220.

144.200. Be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.

145. The permittee will take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

145.100. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

145.200. Immediate implementation of measures necessary to comply; and

145.300. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

146. As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

147. The operator will pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

148. Within 30 days after a cessation order is issued under R645-400-310, except where a stay of the cessation order is granted and remains in effect, the permittee will either submit the following information current to when the order was issued or inform the Division in writing that there has been no change since the immediately preceding submittal of such information:

148.100. Any new information needed to correct or update the information previously submitted to the Division by the permittee under R645-301-112.300.

148.200. If not previously submitted, the information required from a permit applicant by R645-301-112.300.

150. Permit Issuance and Right of Renewal.

151. Decision. If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R645-301-800. If the application is disapproved, specific reasons therefore will be set forth in the notification required by R645-300-152.

152. Notification. The Division will issue written notification of the decision to the following persons and entities:

152.100. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference;

152.200. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land; and

152.300. The Office.

153. Permit Term. Each permit will be issued for a fixed term of five years or less, unless the requirements of R645-301-116 are met.

154. Right of Renewal. Permit application approval will apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with R645-300-151 will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with R645-303-230.

155. Initiation of Operations.

155.100. A permit will terminate if the permittee has not begun the coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.

155.200. The Division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:

155.210. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

155.220. There are conditions beyond the control and without the fault or negligence of the permittee.

155.300. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee will be deemed to have commenced coal mining and

reclamation operations at the time that the construction of the synthetic fuel or generating facility is initiated.

155.400. Extensions of time granted by the Division under R645-300-155 will be specifically set forth in the permit, and notice of the extension will be made public by the Division.

160. Improvidently Issued Permits: Review Procedures.

161. Permit review. When the Division has reason to believe that it improvidently issued a coal mining and reclamation permit it will review the circumstances under which the permit was issued, using the criteria in R645-300-162. Where the Division finds that the permit was improvidently issued, it shall comply with R645-300-163.

162. Review criteria. The Division will find that a coal mining and reclamation permit was improvidently issued if:

162.100. Under the violations review criteria of the regulatory program at the time the permit was issued;

162.110. The Division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

162.120. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

162.200. The violation, penalty or fee;

162.210. Remains unabated or delinquent; and

162.220. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

162.300. Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

163. Remedial Measures.

When the Division, under R645-300-162 finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued it will use one or more of the following remedial measures:

163.100. Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

163.200. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

163.300. Suspend the permit until the violation is abated or the penalty or fee is paid; or

163.400. Rescind the permit under R645-300-164.

164. Improvidently Issued Permits: Rescission procedures. When the Division under R645-300-163 elects to rescind an improvidently issued permit it will serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under R645-300-162 and states that:

164.100. Automatic suspension and rescissions. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, that;

164.110. The finding of the Division under R645-300-162 was erroneous;

164.120. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

164.130. The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

164.140. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

164.200. Cessation of operations. After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Division; and

164.300. Right to appeal. The permittee may file an appeal for administrative review of the notice under R645-300-200.

170. Final Compliance Review

After an application is approved, but before the permit is issued, the Division will reconsider its decision to approve the application based on the compliance review required by rule R645-300-132.100 and in light of any new information submitted under R645-301-112.900 and R645-301-113.400.

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-301. Coal Mine Permitting: Permit Application Requirements.
R645-301-100. General Contents.

The rules in R645-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to the Division all of the information required by R645-301-100.

111.300. Applicability. The requirements of R645-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R645-301-112 and R645-301-113 in a format prescribed by OSM rules governing the Applicant Violator System information needs.

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number and, as applicable, social security number and employer identification number of the:

112.210. Applicant;

112.220. Applicant's resident agent; and

112.230. Person who will pay the abandoned mine land reclamation fee.

112.300. For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 of this chapter, as applicable:

112.310. The person's name, address, social security number and employer identification number;

112.320. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. The title of the person's position, date position was assumed, and when submitted under R645-300-147, date of departure from the position;

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the person in any State in the United States.

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 the operation's:

112.410. Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

112.420. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.800. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R645-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R645-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. Forfeited a performance bond or similar security deposited in lieu of bond;

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R645-301-113.110 and R645-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal

law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

113.310. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

113.320. A brief description of the violation alleged in the notice;

113.330. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in R645-301-113.300 to obtain administrative or judicial review of the violation;

113.340. The current status of the proceedings and of the violation notice; and

113.350. The actions, if any, taken by any person identified in R645-301-113.300 to abate the violation.

113.400. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.

114. Right-of-Entry Information.

114.100. An application will contain a description of the documents upon which the applicant bases their legal right to enter and begin coal mining and reclamation operations in the permit area and will state whether that right is the subject of pending litigation. The description will identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

114.200. Where the private mineral estate to be mined has been severed from the private surface estate, an applicant will also submit:

114.210. A copy of the written consent of the surface owner for the extraction of coal by certain coal mining and reclamation operations;

114.220. A copy of the conveyance that expressly grants or reserves the right to extract coal by certain coal mining and reclamation operations; or

114.230. If the conveyance does not expressly grant the right to extract the coal by certain coal mining and reclamation operations, documentation that under applicable Utah law, the applicant has the legal authority to extract the coal by those operations.

114.300. Nothing given under R645-301-114.100 through R645-301-114.200 will be construed to provide the Division with the authority to adjudicate property rights disputes.

115. Status of Unsuitability Claims.

115.100. An application will contain available information as to whether the proposed permit area is within an area designated as unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under R645-103-300, R645-103-400, or 30 CFR Part 769.

115.200. An application in which the applicant claims the exemption described in R645-103-333 will contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed coal mining and reclamation operations.

115.300. An application [~~in which the applicant~~] that proposes to conduct coal mining and reclamation operations within 300 feet of an occupied dwelling or within 100 feet of a public road [~~will contain the necessary information and~~] must meet the requirements of [~~R645-103-230 through R645-103-238~~] R645-103-234 or R645-103-235, respectively.

Comment [S31]: Basis for 115.300 change is 778.16(c) on public road or dwelling.

116. Permit Term.

116.100. Each permit application will state the anticipated or actual starting and termination date of each phase of the coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

116.200. If the applicant requires an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation, the application will:

116.210. Be complete and accurate covering the specified longer term; and

116.220. Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

117. Insurance, Proof of Publication and Facilities or Structures Used in Common.

117.100. A permit application will contain either a certificate of liability insurance or evidence of self-insurance in compliance with R645-301-800.

117.200. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Division will be filed with the Division and will be made a part of the application not later than 4 weeks after the last date of publication as required by R645-300-121.100.

117.300. The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R645 Rules for the facility or structure will be met.

118. Filing Fee. Each permit application to conduct coal mining and reclamation operations pursuant to the State Program will be accompanied by a fee of $5.00.

120. Permit Application Format and Contents.

121. The permit application will:

121.100. Contain current information, as required by R645-200, R645-300, R645-301 and R645-302.

121.200. Be clear and concise; and

121.300. Be filed in the format required by the Division.

122. If used in the permit application, referenced materials will either be provided to the Division by the applicant or be readily available to the Division. If provided, relevant portions of referenced published materials will be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

123. Applications for permits; permit changes; permit renewals; or transfers, sales or assignments of permit rights will contain the notarized signature of a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

130. Reporting of Technical Data.

131. All technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

132. Technical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.

140. Maps and Plans.

141. Maps submitted with permit applications will be presented in a consolidated format, to the extent possible, and will include all the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area will be at a scale of 1:6,000 or larger.

Maps of the adjacent area will clearly show the lands and waters within those areas and be at a scale determined by the Division, but in no event smaller than 1:24,000.

142. All maps and plans submitted with the permit application will distinguish among each of the phases during which coal mining and reclamation operations were or will be conducted at any place within the life of operations. At a minimum, distinctions will be clearly shown among those portions of the life of operations in which coal mining and reclamation operations occurred:

142.100 Prior to August 3, 1977;

142.200 After August 3, 1977, and prior to either:

142.210. May 3, 1978; or

142.220 In the case of an applicant or operator which obtained a small operator's exemption in accordance with the Interim Program rules (MC Rules), January 1, 1979;

142.300 After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the State Program; and

142.400 After the estimated date of issuance of a permit by the Division under the State Program.

150. Completeness. An application for a permit to conduct coal mining and reclamation operations will be complete and will include at a minimum information required under R645-301 and, if applicable, R645-302.

160. Permit change, renewal, transfer, sale and assignment.

Procedures to change, renew, transfer, assign, or sell existing coal mining and reclamation permit rights are presented at R645-303.

R645-301-400. Land Use and Air Quality.

The rules in R645-301-400 present the requirements for information related to Land Use and Air Quality which are to be included in each permit application.

410. Land Use. Each permit application will include a descriptions of the premining and proposed postmining land use(s).

411. Environmental Description.

411.100. Premining Land-Use Information. The application will contain a statement of the condition and capability of the land which will be affected by coal mining and reclamation operations within the proposed permit area, including:

411.110. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land will also be described;

411.120 A narrative of land capability which analyzes the land-use description in conjunction with other environmental resources information required under R645-301-411.100, and R645-301 and R645-302. The narrative will provide analyses of the capability of the land before any coal mining and reclamation operations to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by coal mining and reclamation operations; and

411.130. A description of the existing land uses and land-use classifications under local law, if any, of the proposed permit and adjacent areas.

411.140. Cultural and Historic Resources Information. The application will contain maps as described under R645-301-411.141 and a supporting narrative which describe the nature of cultural and historic resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas. The description will be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historic, and cultural preservation agencies.

411.141. Cultural and Historic Resources Maps. These maps will clearly show:

411.141.1. The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas;

411.141.2. Each cemetery that is located in or within 100 feet of the proposed permit area; and

411.141.3. Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

411.142. Coordination with the State Historic Preservation Officer (SHPO). The narrative presented under R645-301-411.140 will also describe coordination efforts with and present evidence of clearances by the SHPO. For any publicly owned parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed coal mining and reclamation operations, each plan will describe the measures to be used:

411.142.1. To prevent adverse impacts; or

411.142.2. If valid existing rights exist, as determined under R645-103-231, or joint agency approval is to be obtained under R645-103-236, to minimize adverse impacts.

Comment [S32]: Basis is clarifying amendment to 780.31(a)(2) and 784.17(a)(2).

411.143. The Division may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the national Register of Historic Places through:

411.143.1. Collection of additional information;

411.143.2. Conducting field investigations; or

411.143.3. Other appropriate analyses.

411.144. The Division may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

411.200. Previous Mining Activity. The application will state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

411.210. The type of mining method used;

411.220. The coal seams or other mineral strata mined;

411.230. The extent of coal or other minerals removed;

411.240. The approximate dates of past mining; and

411.250. The uses of the land preceding mining.

412. Reclamation Plan.

412.100. Postmining Land-Use Plan. Each application will contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. The plan will explain:

412.110. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

412.120. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

412.130. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900; and

412.140. The consideration which has been given to making all of the proposed coal mining and reclamation operations consistent with surface owner plans and applicable Utah and local land-use plans and programs.

412.200. Land Owner or Surface Manager Comments. The description will be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and Utah and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

412.300. Suitability and Compatibility. Assure that final fills containing excess spoil are suitable for reclamation and revegetation and are compatible with the natural surroundings and the approved postmining land use.

413. Performance Standards.

413.100. Postmining Land Use. All disturbed areas will be restored in a timely manner to conditions that are capable of supporting:

413.110. The uses they were capable of supporting before any mining; or

413.120. Higher or better uses.

413.200. Determining Premining Uses of Land.

413.210. The premining uses of land to which the postmining land use is compared will be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

413.220. The postmining land use for land that has been previously mined and not reclaimed will be judged on the basis of the land use that existed prior to any mining: provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use will be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

413.300. Criteria for Alternative Postmining Land Uses. Higher or better uses may be approved by the Division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

413.310. There is a reasonable likelihood for achievement of the use;

413.320. The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

413.330. The use will not:

413.331. Be impractical or unreasonable;

413.332. Be inconsistent with applicable land-use policies or plans;

413.333. Involve unreasonable delay in implementation; or

413.334. Cause or contribute to violation of federal, Utah, or local law.

414. Interpretation of R645-301-412 and R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, Reclamation Plan: Postmining Land Use. The requirements of R645-301-412-130, for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of R645-303-220 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land-use capability as required by R645-301-413.100. An application for a permit revision of this type:

414.100. Must be submitted in accordance with the filing deadlines of R645-303-220;

414.200. Will constitute a significant alteration from the mining operations contemplated by the original permit; and

414.300. Will be subject to the requirements of R645-300-120 through R645-300-155 and R645-300-200.

420. Air Quality.

421. Coal mining and reclamation operations will be conducted in compliance with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and any other applicable Utah or federal statutes and regulations containing air quality standards.

422. The application will contain a description of coordination and compliance efforts which have been undertaken by the applicant with the Utah Bureau of Air Quality.

423. For all SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates exceeding 1,000,000 tons of coal per year, the application will contain an air pollution control plan which includes the following:

423.100 An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under R645-301-423.200 to comply with federal and Utah air quality standards; and

423.200 A plan for fugitive dust control practices as required under R645-301-244.100 and R645-301-244.300.

424. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons of coal per year or less, will include a plan for fugitive dust control practices as required under R645-301-244 and R645-301-244.300.

425. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons or less will include an air quality monitoring program, if required by the division, to provide sufficient data to judge the effectiveness of the fugitive dust control plan required under R645-301-424.