

405 KAR 20:040. Prime farmland.

RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465, 30 C.F.R. Parts 715, 823

STATUTORY AUTHORITY: KRS 350.020, 350.028(1), (5), 350.100, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.020, 350.028(1), (5), and 350.450 require the Energy and Environment Cabinet to promulgate environmental protection performance standards specifically including special requirements for the protection of prime farmland. This administrative regulation establishes special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

Section 1. Scope and Purpose. This administrative regulation establishes special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Section 2. Responsibilities.

(1) 30 C.F.R. Part 823 requires the U.S. Soil Conservation Service (SCS) within each state to establish specifications for prime farmland soil removal, storage, replacement, and reconstruction. The Kentucky specifications are established in "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland."

(2) 30 C.F.R. Part 823 requires the cabinet to use the soil-reconstruction specifications established by the SCS, as referenced in subsection (1) of this section, to carry out its responsibilities.

Section 3. Applicability. The requirements of this administrative regulation, including the SCS prime farmland specifications of Section 2 of this administrative regulation, shall apply to prime farmland affected by surface coal mining and reclamation operations except that which has been excluded in accordance with 405 KAR 8:050, Section 3(1).

Section 4. Soil Removal and Stockpiling.

(1) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(2) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of Section 5(1) of this administrative regulation.

(3) Soil removal and stockpiling operations on prime farmland shall be conducted to:

(a) Separately remove the topsoil, or remove other suitable soil materials where the other soil materials will create a final soil having a greater productive capacity than that which exists prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(b)

1. Except as provided by subparagraph 2 of this paragraph, separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by Section 5(1) of this administrative regulation. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials.

2. If combinations of the soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling shall not be required.

(4) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall meet the requirements of 405 KAR 16:050 or 18:050.

Section 5. Soil Replacement.

(1) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. The determination of whether a horizon inhibits or prevents root penetration shall be in accordance with the SCS specifications under Section 2 of this administrative regulation.

(2) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(3) The operator shall replace the B horizon, C horizon, or other suitable material specified in Section 4(3)(b) of this administrative regulation to the thickness needed to meet the requirements of subsection (1) of this section.

(4) The operator shall replace the topsoil or other suitable soil materials specified in Section 4(3)(a) of this administrative regulation as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

Section 6. Revegetation and Restoration of Soil Productivity.

(1) Revegetation and demonstration of successful restoration of soil productivity shall comply with the requirements established in "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining," Kentucky Department for Natural Resources in consultation with the U.S. Soil Conservation Service.

(2) Data on crop yields from restored prime farmland soils shall be verified by the cabinet. The permittee shall notify the appropriate regional office of the department of harvest dates in order to provide the opportunity for cabinet personnel to monitor yield measurements. This notification shall be in writing at least thirty (30) days prior to anticipated harvest dates and shall be followed up by telephone prior to actual harvest dates.

(3) This section shall also apply to prime farmland mined under the interim regulatory program under 30 C.F.R. Part 715.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland", January 1986;

(b) "Kentucky Prime Farmland Revegetation and Crop Production Restoration after Mining", June 1985.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Mine Permits, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(8 Ky.R. 1590; eff. 1-6-1983; 12 Ky.R. 955; 1336; eff. 2-4-1986; TAm eff. 8-9-2007; Crt eff. 7-3-2018; 46 Ky.R.1358; 2277; eff. 5-5-2020.)