

RECLAMATION OF PRIME FARMLAND AFTER SURFACE MINING FOR COAL AND FARMLAND PROTECTION POLICY ACT¹

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Abstract: Reclamation of prime farmland (RPF) after surface mining for coal and farmland protection policy act (FPPA) have a similar function, but the approach to achieve the same purpose is different. The similarity of RPF and FPPA is to reduce the loss of prime farmland and other important farmlands. The reclamation of prime farmland after surface mining for coal allows the disturbance of prime farmland, which is only one of the four categories of important farmland. After disturbance, prime farmland is reclaimed to its original productivity. FPPA's purpose is to limit the acreage of prime farmland as well as unique farmland, and farmland of statewide and local importance from being converted from agricultural uses to non-agricultural uses. FPPA uses easements, mitigation, and federal programs to maintain the farmland base. The soil properties of important farmlands are similar for RPF and FPPA. This paper discusses the soil and programmatic relationship of RPF and FPPA.

Additional Key Words: farmland, grandfathering, historically, easement, mitigation.

¹ Paper was presented at the 2005 National Meeting of the American Society of Mining and Reclamation, Breckenridge CO, June, 19-23 2005. Published by ASMR, 3134 Montavesta Rd., Lexington, KY 40502.

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Proceedings America Society of Mining and Reclamation, 2005 pp 1082-1086

DOI: 10.21000/JASMR05011082

<https://doi.org/10.21000/JASMR05011082>

Introduction

USDA is responsible for all phases of agriculture on rural lands that are important for producing food and fiber for the nation. Public Law 95-87 (P.L. 95-87) and Public Law 97-98 (P.L. 97-98) are two of the many different tools that provide guidance in caring out this USDA responsibility. This paper briefly describes P.L. 95-87 and P.L. 97-98.

P.L. 95-87, Program-Surface Mining Control and Reclamation Act of 1977, became law on August 3, 1977. It pertains to reclamation of prime farmland after surface mining for coal. P.L. 97-98, Farmland Protection Policy Act (FPPA), became law on December 22, 1981. It relates to changing agricultural lands to non-agricultural uses.

P.L. 95-87, Title V, addresses land areas that have not been mined. It outlines the steps in the reconstruction of a soil similar to that which existed before surface mining for coal, or at least from the standpoint of the reconstructed soil's productivity. It explains USDA-Natural Resources Conservation Service (NRCS) activities with prime farmland historically used as cropland (P.L. 95-87 and 30 CFR, 2002b). After disturbance, P.L. 95-87 specifies that prime farmland will be reclaimed to its original productivity.

The purpose of P.L. 97-98 is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to non-agricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with state, unit of local government, and private programs and policies to farmland.

Discussion of the laws

P.L. 95-87, Surface Mining and Reclamation Act

The Secretary of Agriculture was assigned a number of responsibilities in P.L. 95-87. These included the regulatory and reclamation programs to reduce the adverse effects on coal mining on prime farmland. The Secretary of Agriculture delegated to the NRCS Chief all functions and responsibilities assigned to USDA by P.L. 95-87, except those that related to the National Forest Service System Lands and the ARS (USDA-SCS, 1983a).

The NRCS assisted state regulatory agencies (SRA) and mine operators to identify, remove, and restore, after mining, prime farmland "historically" used as cropland (USDA-SCS, 1983b, USDA-NRCS, 1999, and USDA-SCS, 1984). The definition of "historically" is important to know since it allows some prime farmlands to be reclaimed differently than other prime farmlands.

"Historically used for cropland are those lands that have been used for cropland for any 5 years or more out of the 10 years immediately proceeding the acquisition, including purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations ... productivity of the land" (30 CFR, 2002a)."

Prime farmland as defined in P.L. 95-87 is soils that are “Historically” used for cropland and that have the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. The items for determining prime farmland are: 1) available soil water capacity, 2) suitable soil temperature for crops commonly grown in an area, 3) suitable soil pH for crops commonly grown in an area, 4) water table depth, 5) electrical conductivity, 6) exchangeable sodium, 7) flooding frequency, 8) water and wind erosion, 9) soil permeability, and 10) rock fragments in the soil surface layer. If the proposed surface mining project is determined not to qualify as “historically” used for cropland, then the reclaimed soil is reclaimed using rules and regulations that results many times with a reclaimed soil being less productive than the premined soil.

NRCS assists the SRA and mine operators identify prime farmland and restore its productivity after mining (30 CFR, 2002b). These responsibilities are done in cooperation with SRA and with the assistance of other USDA agencies.

P.L. 97-98, Farmland Protection Policy Act

Congress enacted FPPA as a subtitle of the 1981 Farm Bill. The purpose of the law is to “minimize the extent to which Federal programs contribute to the unnecessary conversion of farmland to nonagricultural uses” (P.L. 97-98, Sec. 1539-1549; 7 U.S.C.4201, et seq.). FPPA addresses four categories of important farmland (hereafter referred to as farmland). Farmland consists of prime farmland, unique farmland, farmland of statewide importance, and farmland of local importance. Determining farmland based on soil properties and other soil features and locally selected factors allow for a quantifiable, scientific, and defensible system. The FPPA also stipulates that federal programs be compatible with state, local and private efforts to protect farmland (7 CFR, 2004). The U.S. Department of Agriculture’s Natural Resources Conservation Service (NRCS) is charged with oversight of the FPPA. The presence of farmland in a proposed project applying for federal funds or technical assistance from federal agencies requires a determination on what the impact will be on converting agricultural land classified a farmland to other uses. The FPPA methodology provides local decision-makers in a jurisdiction with the basic building blocks for an evaluation system that systematically ranks different soils based on selected soils information.

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. The items for determining prime farmland are: 1) available soil water capacity, 2) suitable soil temperature for crops commonly grown in an area, 3) suitable soil pH for crops commonly grown in an area, 4) water table depth, 5) electrical conductivity, 6) exchangeable sodium, 7) flooding frequency, 8) water and wind erosion, 9) soil permeability, and 10) rock fragments in the soil surface layer. Criteria for unique farmlands and farmlands of statewide and local importance are identified by state and/or local agencies working in conjunction with NRCS. Unique farmland is farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields.

Table 1 shows how selected elements in P.L. 95-87 and P.L. 97-98 are addressed during implementation. Both laws speak to maintaining a farmland base. P.L. 95-87 disturbs the soil (typically its removal) before mining the coal and reconstructs the original soil materials after

mining (Sinclair, 2004). Whereas, P.L. 97-98's procedure limits the acreage of farmland being converted from agricultural uses to non-agricultural uses.

Table 1. Characteristics of P.L. 95-87 and P.L. 97-98.

| <u>Elements</u> | <u>Addresses the Element</u> | |
|--|---------------------------------------|-------------------|
| | <u>P.L. 95-87</u> | <u>P.L. 97-98</u> |
| Prime Farmland | yes, if not grandfathered | yes |
| Unique Farmland | no, not to original crop productivity | yes |
| Statewide Important Farmland | no, not to original crop productivity | yes |
| Locally Important Farmland | no, not to original crop productivity | yes |
| Agricultural Infrastructure | N/A ^{1/} | no |
| Urban-Build Up Area | N/A | no |
| No Federal Financial Assistance | N/A | no |
| LESA Score of Less than 160 points ^{2/} | N/A | no |
| Reclaimed to Original Crop Productivity if prime farmland | yes | N/A |
| Easement | no | yes |
| Mitigation | no | yes |

^{1/} N/A – not applicable.

^{2/} Land Evaluation and Site Assessment (LESA) maximum points are of 260. The land evaluation (LE) part LESA is scored 0 to 100 points. The site assessment (SA) part LESA is scored 0 to 160 points.

Summary and Conclusions

P.L. 95-87 and P.L. 97-98 have the same function, but the approach to achieve the same purpose is different. Both are intended to reduce the loss of prime farmland and other important farmlands. The reclamation of p

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