

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8      COAL MINING**  
**PART 24        SPECIAL PERFORMANCE STANDARDS - OPERATIONS ON PRIME FARMLAND**

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

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

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

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

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

**19.8.24.6        OBJECTIVE:** The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.  
[19.8.24.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.24.8 - 19.8.24.2399 [RESERVED]**  
[19.8.24.8 - 19.8.24.2399 NMAC - N, 9-29-2000]

**19.8.24.2400     PRIME FARMLAND: SPECIAL REQUIREMENTS:** Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:

- A.** a permit shall be obtained for those operations under 19.8.10.1004 NMAC;
- B.** soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting or mining, in accordance with 19.8.24.2401 NMAC and in a manner that prevents mixing or contaminating these materials with undesirable material; where removal of soil materials results in erosion that may cause air and water pollution, the director shall specify methods to control erosion of exposed overburden;
- C.** the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining; water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area; the creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

[11-29-97; 19.8.24.2400 NMAC- Rn, 19 NMAC 8.2.24.2400, 9-29-2000; A, 1-15-2002]

**19.8.24.2401     PRIME FARMLAND: SOIL REMOVAL:**

- A.** Surface coal mining and reclamation operations on prime farmland shall be conducted to:
  - (1) separately remove the entire A horizon or other suitable soil material which will create a final soil having a greater productive capacity than that which existed prior to mining;
  - (2) separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining;

(3) separately remove the underlying C horizons, other strata, or a combination of horizons or other strata to be used instead of the B horizon; when replaced, these combinations shall be equal to, or more favorable for plant growth than the B horizon.

**B.** The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Subsection A of 19.8.24.2403 NMAC.

[11-29-97; 19.8.24.2401 NMAC- Rn, 19 NMAC 8.2.24.2401, 9-29-2000]

**19.8.24.2402 PRIME FARMLAND: SOIL STOCKPILING:** If not utilized immediately the A horizon or other suitable soil materials specified in Paragraph (1) of Subsection A of 19.8.24.2401 NMAC and the B horizon or other suitable soil materials specified in Paragraphs (2) and (3) of Subsection A of 19.8.24.2401 NMAC shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than 30 days shall meet the requirements of 19.8.20.2006 NMAC.

[11-29-97; 19.8.24.2402 NMAC- Rn, 19 NMAC 8.2.24.2402, 9-29-2000]

**19.8.24.2403 PRIME FARMLAND: SOIL REPLACEMENT:** Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

**A.** the minimum depth of soil and soil material to be reconstructed for prime farmland shall be 48 inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower; the director shall specify a depth greater than 48 inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths; soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity;

**B.** replace soil material only on land which has been first returned to final grade and scarified according to 19.8.20.2054 through 2058 NMAC, unless site-specific evidence is provided and approved by the director showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield;

**C.** replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction;

**D.** replace the B horizon or other suitable material specified in Paragraphs (2) and (3) of Subsection A of 19.8.24.2401 NMAC to the thickness needed to meet the requirements of Subsection A of 19.8.24.2401 NMAC;

**E.** replace the A horizon or other suitable soil materials specified in Paragraph (1) of Subsection A of 19.8.24.2401 NMAC as the final surface soil layer; this surface soil layer shall equal or exceed the thickness of the original soil, as determined in 19.8.10.1004 NMAC, and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted;

**F.** apply nutrients and soil amendments as needed to quickly establish vegetative growth.

[11-29-97; 19.8.24.2403 NMAC- Rn, 19 NMAC 8.2.24.2403, 9-29-2000]

**19.8.24.2404 PRIME FARMLAND: REVEGETATION:** Each person who conducts surface coal mining and reclamation operations on prime farmland shall meet the following revegetation requirements during reclamation:

**A.** following soil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion; all vegetation shall be in compliance with the plan approved by the director under 19.8.10.1004 NMAC and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity; the timing and mulching provisions of 19.8.20.2062 and 2063 NMAC shall be met;

**B.** within a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading, any portion of the permit area which is prime farmland must be used for crops commonly grown, such as corn, alfalfa, permanent pasture grain, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland; the crops may be grown in rotation with any or pasture crops as defined for cropland; the director may approve a crop use of perennial plants for hay, where this is a common long-term use of prime farmland soils in the surrounding area; the level of management shall be equivalent to that on which the target yields are based;

C. measurement of success in prime farmland revegetation will be determined based upon the techniques approved in the permit by the director under 19.8.10.1004 NMAC; as a minimum, the following standards shall be met:

(1) average annual crop production shall be determined based upon a minimum of 3 years data; crop production shall be measured for the three years immediately prior to release of bond according to 19.8.14 NMAC;

(2) revegetation on prime farmland shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for non-mined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices;

(3) the reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland; where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops;

(4) reference crop yields for a given crop season are to be determined from:

(a) the current yield records of representative local farms in the surrounding area, with concurrence by the U.S. natural resources conservation service; or

(b) the average county yields recognized by the U.S. department of agriculture, which have been adjusted by the U.S. natural resources conservation service for local yield variation within the county that is associated with differences between non-mined prime farmland soil and all other soils that produce the reference crop.

(5) under either procedure in Paragraph (4) of Subsection C of 19.8.24.2404 NMAC, the average reference crop yield may be adjusted, with the concurrence of the U.S. natural resources conservation service for:

(a) disease, pest, and weather-induced seasonal variations; or

(b) differences in specific management practices where the overall management practices of the crops being compared are equivalent;

(6) a statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the director in consultation with U.S. natural resources conservation service.

[11-29-97; 19.8.24.2404 NMAC- Rn, 19 NMAC 8.2.24.2404, 9-29-2000; A, 12-31-2007]

#### **HISTORY OF 19.8.24 NMAC:**

##### **Pre-NMAC History:**

The material in Part 24 was derived from that previously filed with the State Records Center and Archives under: SB 73-1 Regulations of the State of New Mexico Coal Surfacing Commission, filed 1-10-73 and its amendment filed 8-4-76

SB 78-1 (Rule 78-1) Regulations of the State of New Mexico Coal Surfacing Commission, filed 8-31-78

SB 79-1 (Rule 79-1) New Mexico Coal Surfacing Regulations, filed 7-11-79

CSMC Rule 80-1 (Rule 80-1) Surface Coal Mining Regulations, filed 9-24-80; and all amendments to CSMC Rule 80-1, filed 7-29-82, 11-10-83, 3-5-84, 7-19-84, filed 8-6-84, 8-23-84, 3-28-89, 6-15-90, 9-18-90, 2-15-91, 5-8-91, 8-26-91, 10-4-91, 7-28-92, 1-25-93, 11-1-94, 3-10-95, 4-12-95, 12-21-95.

##### **Other History:**

Renumbered and reformatted CSMC Rule 80-1, Surface Coal Mining Regulations, filed 9-24-80 to 19 NMAC 8.2, Coal Surface Mining, filed 11-13-97.

Renumbered 19 NMAC 8.2 Subpart 24 Special Performance Standards - Operations on Prime Farmland, filed 11-13-97, to 19.8.24 NMAC Special Performance Standards - Operations on Prime Farmland, effective 09-29-2000.