



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Natural Resources, Division of Mineral Resources Management

Rule Contact Name and Contact Information:

Brian Becker, Deputy Legal Counsel, 614-265-6861.

Regulation/Package Title (a general description of the rules' substantive content):

2020 Coal Rules

Rule Number(s): 1501:13-1-09, 1501:13-1-11, 1501:13-1-14, 1501:13-3-05, 1501:13-3-06, 1501:13-3-08, 1501:13-4-03, 1591:13-4-07, 1501:13-5-01, 1501:13-7-08, 1501:13-9-05, 1501:13-9-14, 1501:13-9-18, 1501:13-11-01, 1501:13-12-04, 1501:13-13-02, 1501:13-13-04, 1501:13-13-05, 1501:13-13-06, 1501:13-13-07, 1501:13-14-03, and 1501:13-14-04.

Date of Submission for CSI Review: July 14, 2020

Public Comment Period End Date: August 4, 2020

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 17 rules (FYR? 17)

Amended/ 5 rules (FYR? 5)

Rescinded/ 0 rules (FYR? 0)

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The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The Division of Mineral Resources Management (DMRM) is submitting 22 rules that regulate coal mining and reclamation to the Common Sense Initiative pursuant to Ohio Revised Code (ORC) section 107.52. DMRM proposes to: amend three rules: amend two other rules only to revise the rule detail that references the statutes that implement or amplify the rule; and file another seventeen rules as No-Change rules. All 22 rules have been reviewed by DMRM pursuant to section 106.03; thus, the JCARR filing will indicate that they have undergone their five-year-review.

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The following is a list of the rules, their key provisions, and their proposed amendments. (Note: The attachment contains a copy of each rule; those with proposed changes are accompanied by an explanation of the changes.)

Ohio Administrative Code (OAC) Chapter 1501:13-1. This chapter contains a variety of rules regarding the implementation of the coal mining regulatory program; they form the underpinning for the regulatory program.

Two rules from this chapter are No Change rules and one is proposed for revision:

- **1501:13-1-09 Notice of citizen suits.** This rule contains the requirements for initiating a citizen suit under division (B) of section 1513.15 of the Revised Code. No changes are proposed.
- **1501:13-1-11 Computation of time.** This rule explains how time is computed for the rules regulating Ohio's coal mining and reclamation program. No changes are proposed.
- **1501:13-1-14 Incorporation by reference.** This rule contains the dates of publication of the Code of Federal Regulations and the United States Code for those federal regulations and federal laws that are incorporated by reference in the Coal rules, and tells the public where these regulations and laws can be found. The proposed amendments update the references to the editions of the Code of Federal Regulations and the United States Code and the website address.

OAC Chapter 1501:13-3. This chapter includes the rules related to areas where mining is prohibited or limited and to the demonstration of valid existing rights (VER). Under federal and state law, there are certain areas where mining may not be conducted after August 3, 1977, (the implementation date of the federal Surface Mining Control and Reclamation Act, commonly known as SMCRA) unless an operator can demonstrate the existence of VER.

Three rules from this chapter will be continued with no changes:

- **1501:13-3-05 Criteria for designating areas unsuitable for coal mining operations.** This rule contains the criteria that the Chief must consider when determining whether an area is to be designated as unsuitable for coal mining operations.
- **1501:13-3-06 Exploration on land designated as unsuitable for coal mining operations.** This rule contains the requirements for exploration on an area designated as unsuitable for coal mining.
- **1501:13-3-08 Lateral support.** This rule provides protection for land or water adjacent to a coal mining operation by limiting the distance of any part of a pit to adjacent land or water unless the permittee owns the surface or mineral rights of the adjoining land or water, or has consent of the landowner.

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OAC Chapter 1501:13-4. This chapter contains permitting rules. ORC section 1513.07 requires a permit to mine coal in Ohio.

Two rules from this Chapter are proposed for revision:

- **1501:13-4-03 Permit applications; requirements for legal, financial, compliance and related information.** This rule contains the legal, financial, compliance and related information that is required to be submitted in a coal mining permit application. The proposed amendment would remove the requirement that a resident agent's tax ID number or SSN be provided in a coal mining application.

- **1501:13-4-07 Annual reports and maps.** This rule contains the requirements for annual reports and maps for Ohio's coal mining and reclamation operations. Amendment proposed to the rule's history trail only: one section of law would be added to the list of statutes that the rule amplifies.

OAC Chapter 1501:13-5. This chapter deals with the processing of permit applications, including allowing for public participation in the review of an application.

One rule from this Chapter is proposed for amendment:

- **1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.** This rule contains the requirements for the review of, public participation in, and approval or disapproval of Ohio's coal mining and reclamation permit applications, as well as terms and conditions for such permits. The proposed amendment would correct a reference to another administrative code provision.

OAC Chapter 1501:13-7. This chapter contains rules related to performance security and liability insurance. ORC section 1513.08 requires the applicant for a permit to conduct coal mining and reclamation operations to file performance security and section 1513.07(B)(1)(q) requires the applicant to obtain liability insurance.

One rule from this Chapter will be continued with no changes:

- **1501:13-7-08 Reclamation phase approval conference and performance security release conference.** This rule contains the requirements for reclamation phase approval conferences and performance security release conferences.

OAC Chapter 1501:13-9. This chapter contains general performance standards for coal mining.

Three rules from this Chapter will be continued with no changes:

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- **1501:13-9-05 Coal recovery.** This rule requires that coal mining operations be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity.
- **1501:13-9-14 Backfilling and grading.** This rule contains the requirements for backfilling and grading areas affected by coal mining.
- **1501:13-9-18 Extension of time for limestone, clay and shale removal.** This rule contains the requirements that a coal mining permittee must meet when requesting a time extension for reclamation for the purpose of removing limestone, clay, or shale.

OAC Chapter 1501:13-11. This chapter contains rules regarding coal mining-related transportation facilities (other than roads), support facilities, and utility installations.

One rule from this Chapter will be continued with no changes:

- **1501:13-11-01 Other transportation facilities.** This rule contains the requirements for transportation facilities used in coal mining and reclamation.

OAC Chapter 1501:13-12. This chapter contains performance standards specific to underground coal mining operations.

One rule from this Chapter will be continued with no changes:

- **1501:13-12-04 Underground mine entry and access discharges.** This rule contains the requirements for the location, design, construction, and utilization of surface entries and access to underground workings.

OAC Chapter 1501:13-13. This chapter contains performance standards for special categories of mining.

One rule from this Chapter is proposed for revision and four are No Change rules:

- **1501:13-13-02 Auger mining additional performance standards.** This rule contains additional performance standards for auger mining. Amendment proposed to the rule's history trail only: one section of law would be added to the list of statutes that the rule amplifies.
- **1501:13-13-04 Mountaintop removal mining.** This rule provides an exemption for mountaintop removal mining from the general requirement to restore mined areas to their approximate original contour, and sets out performance standards for mountain top removal mining and reclamation operations. No changes are proposed.

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- **1501:13-13-05 Steep slope mining.** This rule contains additional performance standards for mining and reclamation operations conducted on steep slope areas. No changes are proposed.

- **1501:13-13-06 Coal preparation plants and support facilities not located at or near the mine site or not within the permit area for a mine.** This rule contains additional performance standards for coal preparation plants and support facilities not located at or near a mine site or not within the permit area of a mine. No changes are proposed.

- **1501:13-13-07 In situ processing.** This rule contains performance standards and monitoring requirements for in situ processing of coal at coal mining operations. No changes are proposed.

OAC Chapter 1501:13-14. This chapter contains the rules related to enforcement of the requirements of ORC Chapter 1513. and OAC Division 1501:13.

Two rules from this Chapter will be continued with no changes:

- **1501:13-14-03 Civil penalties.** This rule contains the procedures for assessing a civil penalty under Ohio's coal mining and reclamation program.

- **1501:13-14-04 Petition for fees.** This rule contains the procedures for petitioning for the award of costs and expenses, including attorneys' fees, under Ohio's coal mining and reclamation program.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Ohio Revised Code section 1513.02 is the general statute authorizing the Division of Mineral Resources Management to adopt rules regulating coal mining. Additional statutory authority for adopting the rules:

- For rule 1501:13-1-14: ORC section 1513.072.
- For rules 1501:13-4-03 and 1501:13-5-01: ORC section 1513.07.

Statutes that these rules amplify:

- For rule 1501:13-1-09: ORC section 1513.15.
- For rule 1501:13-1-11: ORC section 1513.02
- For rule 1501:13-1-14: ORC sections 121.71 to 121.76, 1513.02, 1513.07, 1513.072, 1513.073, and 1513.16.
- For rules 1501:13-3-05 and 1501:13-3-06: ORC section 1513.073.
- For rule 1501:13-3-08: ORC sections 1513.02 and 1513.073.

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- For rule 1501:13-4-03: ORC section 1513.07.
- For rule 1501:13-4-07: ORC sections 1513.07, 1513.08, and 1513.09.
- For rule 1501:13-5-01: ORC sections 1513.07, 1513.071, and 1513.08.
- For rules 1501:13-7-08, 1501:13-9-05, 1501:13-9-14, 1501:13-9-18, 1501:13-11-01, 1501:13-13-04, 1501:13-13-05, 1501:13-13-06, and 1501:13-13-07: ORC section 1513.16.
- For rule 1501:13-12-04: ORC section 1513.35.
- For rule 1501:13-13-02: ORC sections 1513.02 and 1513.16.
- For rule 1501:13-14-03: ORC sections 1513.02, 1513.13, 1513.14, and 1513.15.
- For rule 1501:13-14-04: ORC sections 1513.02, 1513.13, and 1513.131.

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
*If yes, please briefly explain the source and substance of the federal requirement.***

Yes, these regulations implement federal requirements and enable Ohio to maintain primacy for coal mining and reclamation.

The Surface Mining Control and Reclamation Act (SMCRA) of 1977 established stringent national standards for coal mining and reclamation. SMCRA created the federal Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSM). Because of the diverse mining conditions in the United States, Congress intended that the states become the primary regulators. Each state proposes its own laws and regulations for the mining industry. These laws and regulations must meet or exceed federal standards and are subject to approval by the Secretary of the Interior. This procedure allows individual states to gain primacy control over the regulation of surface mining. The Secretary of the Interior approved Ohio's regulatory and AML program in 1982.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

ORC Chapter 1513. and OAC Division 1501:13 protect Ohio's land and water resources and the public from the potential negative impacts of coal mining. The coal regulatory program oversees active mining operations and the reclamation of the land by mining companies after extraction of coal. DMRM has the unique and challenging responsibility of regulating the mining industry in a way which strikes a balance between protection of public health and safety and the environment

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from the adverse effects of mining operations and providing for the nation's need for coal as an essential source of energy.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

DMRM will measure the success of these rules by ensuring that coal mining continues in Ohio in an environmentally protective manner and that all mined lands are reclaimed and restored to a productive post mining land use.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

In early January 2020, DMRM Rules Coordinator Ann Laubach e-mailed an advance copy of this rule package to Mike Cope, President of the Ohio Coal Association (OCA), requesting the OCA's preliminary review of these rules. In early February, Ann Laubach e-mailed Mike Cope an additional rule for the 2020 Coal rules package, for a total of 22 rules.

On February 27, Ann Laubach e-mailed this rule package and a letter of the same date from DMRM Chief Dave Crow to OCA President Mike Cope, Trent A. Dougherty, General Counsel of the Ohio Environmental Council, and Steve Maxwell of the Pittsburgh Field Division of OSM. Chief Crow requested comments on the rules by March 26, 2020.

By e-mail on February 29, 2020, the OCA responded with comments. (Please see the answer to Question 10 for further information.)

DMRM received no comments on the rules from the OEC or OSM.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

OCA's comments and DMRM's response were the following:

- Two comments on the rules for which DMRM is proposing to amend only the rule detail (known as the "history trail") that references the statutes that implement or amplify the rules. The OCA asked that these references be revised to point to the specific paragraphs in each section of law rather than to the whole Revised Code section. In response, DMRM revised the rule detail that references the statutes that implement or amplify the rule to provide more specificity.
- A more general comment on DMRM's permitting process: that some Division permitting and engineering staff have requested "revisions that are not relevant to the issue-at-hand and at other times are creating 'rules' based upon extraneous guidelines that are not supported by laws or rules." In response, the Division has implemented a policy of having the permitting manager and the coal regulatory manager review every revision letter before it is sent. Also, reviewers will contact companies to review the comments before finalizing the revision letters.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rules were developed to implement ORC Chapter 1513. and to maintain a state regulatory program that is as effective as the federal program.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Not applicable. Ohio's coal mining and reclamation regulatory program must meet or exceed the federal requirements under SMCRA and 30 C.F.R. Chapter VII. For this reason, the program does not have the flexibility to consider alternatives outside of the limitations of SMCRA.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No, because ORC Chapter 1513. dictates the parameters of the regulations. Moreover, the provisions of ORC Chapter 1513. and OAC 1501:13 must meet or exceed the federal standards of the Surface Mining Control and Reclamation Act and the regulations implementing SMCRA in 30 C.F.R., Chapter VII.

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14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The ODNR Division of Mineral Resources Management has authority under ORC Chapter 1513. to regulate coal mining and reclamation in Ohio. DMRM's statutes and rules were reviewed to ensure the rules were not duplicative or in conflict with other Ohio regulations.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The changes proposed in this coal rule package will not change the way that coal mining is regulated. The change proposed to rule 1501:13-4-03 -- to remove the requirement that a resident agent's tax ID number or the last four digits of his/her social security number be provided in a coal mining application -- will be implemented consistently throughout Ohio through interactions between the Division's permitting staff and the regulated industry. The Ohio Coal Association will be advised of this change so they can update their members.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community; and**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

Answer to question a: The affected business community is all of Ohio's coal mining operators.

Answer to questions b and c: These regulations do not impose an adverse impact on Ohio's coal mining operators beyond the impact already imposed by ORC Chapter 1513. as well as the requirements of 30 CFR Parts 700, 800 and 900. In order for Ohio to maintain primacy for the coal mining and reclamation regulatory program, Ohio's laws and rules must meet or exceed the federal laws and rules.

Chapter 1501:13-1. These rules generally don't have a direct impact on the business community.

Chapter 1501:13-3. These rules affect the business community because they restrict the areas where coal mining operations can be conducted or require the operator to submit detailed information to DMRM to demonstrate Valid Existing Rights.

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Chapter 1501:13-4. These rules require the operator to submit a great deal of detailed information regarding the proposed exploration or mining operation. Applying for a coal mining permit requires the operator to commit a significant amount of staff time and financial resources. Once a permit is issued, annual reports and maps showing the progression of mining and reclamation are required, including information on the number of acres affected, the amount of coal produced, and maps showing the location of mining and reclamation areas.

Chapter 1501:13-5. These rules deal with the processing of permit applications, including allowing for public participation in the review of an application. For each permit application, significant revision to a permit, or permit renewal, the applicant (i.e., the coal operator) is required to place an advertisement of the proposed coal mining operations in a local newspaper once a week for four weeks.

Chapter 1501:13-7. Performance security is a significant financial commitment for the coal permittee. The purpose of posting performance security is to ensure that the state will have sufficient funds available to complete reclamation if the permittee does not fulfill its statutory obligation. Performance security is released incrementally as reclamation of mined areas proceeds: generally, 50% is released for an area when backfilling, grading and drainage controls are completed; 35% is released when topsoil and subsoil are replaced and the area is revegetated; and the final 15% is released when the required maintenance period has passed (5 years, or 2 years for a remining area) and revegetation has proved successful. A person with a valid legal interest which may be adversely affect by approval of a reclamation phase or by release of performance security, or certain government officials, may request a conference to present objections to a proposed reclamation phase approval or performance security release.

Chapters 1501:13-9 through 1501:13-13. The performance standards in these rules include many detailed requirements that coal mine operators must follow to implement the approved mining and reclamation plans.

Chapter 1501:13-14. Rules related to enforcement. One of the two rules from this Chapter included in this BIA – Civil penalties -- can have a negative impact on business. ORC section 1513.02(E) requires the assessment of a civil penalty if a violation leads to the issuance of a cessation order or if an operator fails to correct a violation for which a notice of violation or order has been issued within the period permitted for its correction. The same law also gives the Chief of DMRM the discretion to assess a civil penalty in other instances. The rule provides details on how civil penalties are assessed on coal mining operations.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

ORC Chapter 1513. and the federal regulations of 30 CFR Parts 700, 800, and 900 establish the parameters for these rules. These laws and regulations provide many safeguards to protect public health and safety and the environment from the potential adverse effects of coal mining.

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Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

ORC Chapter 1513. does not contain any small business exemptions but does provide one alternative means of compliance for small operators. The Small Operator Assistance Program, pursuant to ORC section 1513.07(B)(3) and OAC rule 1501:13-6-03, provides assistance to small coal operators in completing some of the requirements of the coal permit application. To qualify for assistance, the operator's total annual coal production must not exceed 300,000 tons. However, the Office of Surface Mining has not made funds available for this program for approximately ten years.

Ohio law (section 1513.01(H)(1)) excludes some coal extraction from the definition of coal mining:

- The extraction of coal incidental to the extraction of other minerals, provided coal is less than one-sixth of the total weight of all the minerals removed.
- The extraction of coal as an incidental part of government-financed construction, when approved by the Chief of DMRM.
- Coal exploration subject to ORC section 1513.072.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

DMRM does not normally assess penalties for paperwork violations unless a pattern of violations develops, the issue goes into non-compliance, or an operator knowingly or willingly fails to submit required reports.

Further, section 119.14 is not applicable to the regulation of coal mining because a violation of ORC Chapter 1513 or OAC Division 1501:13:

- Has the potential to cause serious harm to the public interest that DMRM is charged to protect.
- Presents a direct danger to the public health or safety, or the risk of severe environmental harm.
- Is a failure to comply with a federal requirement for a program that has been delegated from the federal government to a regulatory authority where the federal requirement includes a requirement to impose a fine.

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20. What resources are available to assist small businesses with compliance of the regulation?

DMRM's Coal Regulatory staff is available to help anyone who needs guidance or assistance in complying with these rules.

DMRM recognizes that operators must commit significant resources to satisfy the statutory requirements pursuant to ORC Chapter 1513. DMRM is always looking for ways to reduce the burden on operators within the limitations of the law. The change proposed to rule 1501:13-4-03 will reduce the information required to be provided in a permit application.

Coal rules 2020

22 coal rules total:

- 17 No Change
- 3 with proposed amendments
- 2 proposed to amend only the rules' history trails

1501:13-1-09 Notice of citizen suits. No Change.

1501:13-1-11 Computation of time. No Change.

1501:13-1-14 Incorporation by reference. Proposed updates.

1501:13-3-05 Criteria for designating areas unsuitable for coal mining operations. No Change.

1501:13-3-06 Exploration on land designated as unsuitable for coal mining operations. No Change.

1501:13-3-08 Lateral support. No Change.

1501:13-4-03 Permit applications; requirements for legal, financial, compliance and related information. Amendment proposed to remove a requirement.

1501:13-4-07 Annual reports and maps. Amendment proposed only to the rule's history trail.

1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions. Amendment proposed to correct a paragraph reference.

1501:13-7-08 Reclamation phase approval conference and performance security release conference. No Change.

1501:13-9-05 Coal recovery. No Change.

1501:13-9-14 Backfilling and grading. No Change.

1501:13-9-18 Extension of time for limestone, clay and shale removal. No Change.

1501:13-11-01 Other transportation facilities. No Change.

1501:13-12-04 Underground mine entry and access discharges. No Change.

1501:13-13-02 Auger mining additional performance standards. Amendment proposed only to the rule's history trail.

1501:13-13-04 Mountaintop removal mining. No Change.

1501:13-13-05 Steep slope mining. No Change.

1501:13-13-06 Coal preparation plants and support facilities not located at or near the mine site or not within the permit area for a mine. No Change.

1501:13-13-07 In situ processing. No Change.

1501:13-14-03 Civil penalties. No Change.

1501:13-14-04 Petition for fees. No Change.

*****DRAFT - NOT FOR FILING*****

1501:13-1-09 Notice of citizen suits. No Change Rule.

- (A) A person who intends to initiate a civil action on his or her own behalf under division (B) of section 1513.15 of the Revised Code shall give written notice of intent to do so in accordance with this rule.
- (B) Notice shall be given by certified mail to the chief and the alleged violator if the complaint alleges a violation of Chapter 1513. of the Revised Code or any rule, order, or permit issued under Chapter 1513. of the Revised Code.
- (C) Service of notice under this rule is complete upon mailing to the last known address of the person being notified.
- (D) A person giving notice regarding an alleged violation shall state, to the extent known:
 - (1) Sufficient information to identify the provision of Chapter 1513. of the Revised Code, rule, order, or permit allegedly violated;
 - (2) The act or omission alleged to constitute a violation;
 - (3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;
 - (4) The date, time, and location of the alleged violation;
 - (5) The name, address, and telephone number of the person giving notice; and
 - (6) The name, address, and telephone number of legal counsel, if any, of the person giving notice.
- (E) A person giving notice of an alleged failure by the chief to perform a mandatory act or duty under Chapter 1513. of the Revised Code shall state, to the extent known:
 - (1) The provision of Chapter 1513. of the Revised Code containing the mandatory act or duty allegedly not performed;
 - (2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under Chapter 1513. of the Revised Code;
 - (3) The name, address, and telephone number of the person giving notice; and
 - (4) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

*****DRAFT - NOT FOR FILING*****

1501:13-1-11 Computation of time. No Change Rule.

- (A) Except as otherwise provided, computation of time under these rules is based on calendar days.
- (B) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- (C) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is seven days or less.

Draft Rule 1501:13-1-14, dated 2/5/2020.

This is a summary of the changes made to this rule.

(A). Updates of the edition of the Code of Federal Regulations that is incorporated by reference and the Federal government website.

Just before this rule is filed with JCARR, it will be updated with the most recent dates for the Code of Federal Regulations and the U. S. Code.

*****DRAFT - NOT FOR FILING*****

Dated 2/5/2020

1501:13-1-14 Incorporation by reference.

(A) The federal regulation references included in these rules can generally be found in public libraries or electronically at the website www.gpo.gov/fdsys/govinfo.gov/. The publishing dates for the various parts of the Code of Federal Regulations (C.F.R.) are: Title 7, January 1, ~~2018~~[2019](#); Title 30 and Title 40, July 1, ~~2018~~[2019](#); Title 43, October 1, ~~2017~~[2019](#).

- (1) 7 C.F.R. Part 657;
- (2) 30 C.F.R. 77.214, 77.215, 77.216, 77.216(a), 77.216-2(a), and 77.216-3;
- (3) 30 C.F.R. 710.12;
- (4) 30 C.F.R. Part 761;
- (5) 30 C.F.R. 843.11;
- (6) 30 C.F.R. Chapter VII, Subchapters D, F, and R;
- (7) 40 C.F.R. Parts 122, 123, 136, 260 to 270 and 434;
- (8) 43 C.F.R. Parts 3480 to 3487.

(B) The federal law references included in these rules are based on the ~~2012~~[2018](#) edition of the United States Code (U.S.C.), dated January ~~15~~[14](#), ~~2013~~[2019](#), ~~as supplemented in 2017, effective January 12, 2018~~. These federal laws can generally be found in public libraries or electronically at the website www.gpo.gov/fdsys/govinfo.gov/.

- (1) The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., as amended;
- (2) The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa et seq.;
- (3) The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq., as amended;
- (4) The Bald and Golden Eagle Protection Act, 16 U.S.C. 668 et seq., as amended;
- (5) The Migratory Bird Treaty Act of 1918, 16 U.S.C. 703 et seq., as amended;
- (6) Section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq.;
- (7) The Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., as amended;
- (8) The Occupational Safety and Health Act, 29 U.S.C. 651 et seq., as amended;
- (9) The Mine Safety and Health Act, 30 U.S.C. 801 et seq., as amended;
- (10) Section 518 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1268;
- (11) The Clean Water Act, 33 U.S.C. 1251 et seq.;
- (12) Water pollution prevention and control effluent limitations, 33 U.S.C. 1311(p);

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- (13) Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C., Chapter 82, Subchapter III, Section 6921 et seq., as amended;
- (14) Section 3001 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C., Chapter 82, Subchapter III, Section 6921 et seq., as amended;
- (15) The Clean Air Act, 42 U.S.C. 7401 et seq.

Just before this rule is filed with JCARR, it will be updated with the most recent dates for the Code of Federal Regulations and the U. S. Code.

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1501:13-3-05. Criteria for designating areas unsuitable for coal mining operations. No Change Rule.

(A) Criteria for designating lands as unsuitable.

- (1) Upon petition, an area shall be designated as unsuitable for all or certain types of coal mining operations, if the chief determines that reclamation is not technologically and economically feasible.
- (2) Upon petition, an area may be designated as unsuitable for certain types of coal mining operations, if the operations will:
 - (a) Be incompatible with existing state or local land use plans or programs;
 - (b) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
 - (c) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products or of aquifers and aquifer recharge areas;
 - (d) Affect natural hazard lands in which the operations could substantially endanger life and property. Such lands include areas subject to frequent flooding and areas of unstable geology; or
 - (e) Conflict with or otherwise violate additional criteria the chief may adopt.

(B) Land exempt from designation as unsuitable for coal mining operations. The requirements of this rule do not apply to:

- (1) Lands on which coal mining operations were being conducted on August 3, 1977;
- (2) Lands covered by a permit issued under Chapter 1513. of the Revised Code; or
- (3) Lands where substantial legal and financial commitments in coal mining operations were in existence prior to January 4, 1977.

(C) A determination by the chief that a person holds or does not hold a valid existing right or that coal mining operations did or did not exist as of August 3, 1977 may be appealed pursuant to the procedures set forth in section 1513.13 of the Revised Code.

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1501:13-3-06. Exploration on land designated as unsuitable for coal mining operations. No Change Rule.

Designation of any area as unsuitable for all or certain types of coal mining operations does not prohibit coal exploration operations in the area, provided that exploration is conducted in accordance with the requirements of Chapter 1513. of the Revised Code and rules 1501:13-4-02 and 1501:13-8-01 of the Administrative Code, and that the exploration does not interfere with any value for which the area has been designated unsuitable for coal mining.

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1501:13-3-08 Lateral support. No Change Rule.

To provide for lateral support, no permit application shall be approved to extend any part of a pit within fifty feet of horizontal distance to an adjacent land or water unless the permittee owns either the surface or the mineral rights in and under the adjoining land or water, or the permittee has written consent from the adjoining surface and mineral owners which consent shall be filed with the permit application.

Draft Rule 1501:13-4-03, dated 1/9/2020.

This is a summary of the changes made to this rule.

(B)(1) and (B)(4). Amendments to remove the requirement that a resident agent's tax ID number or the last four digits of a resident agent's SSN be provided in a coal mining application because this information is not necessary for Department purposes. Note that these amendments are removing an existing requirement; they are not creating new requirements.

- Resident agent would be removed from the list of persons who must provide this information in (B)(1).
- However, (B)(1) also includes requirements on the submission of names, addresses and telephone numbers, and this information will still be required for the applicant's resident agent. Therefore, (B)(4) is amended to require that each application other than a single proprietorship contain the name, address, and telephone numbers of the resident agent of the applicant who will accept service of process.

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1/9/2020 Proposed rule amendment to remove the requirement that a resident agent's tax ID number or SSN must be provided in a coal mining application. See paragraphs (B)(1) and (B)(4), page 2.

1501:13-4-03 Permit applications; requirements for legal, financial, compliance and related information.

(A) Definition.

- (1) For the purposes of this rule, a person "owned or controlled" or "owns or controls" a coal mining operation if, at any time:
 - (a) The person is the permittee of a coal mining operation;
 - (b) Based on instruments of legal or equitable ownership or voting securities, the person owns of record in excess of fifty per cent of an entity which conducts coal mining operations; or
 - (c) The person has any relationship which gives that person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts coal mining operations.
- (2) It will be presumed that a person "owns or controls" or "owned or controlled" a coal mining operation, unless it can be demonstrated that the person does not or did not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining operation is or was conducted if, at any time:
 - (a) The person is an officer or a director of an entity which conducts coal mining operations;
 - (b) The person is the operator of the coal mining operation;
 - (c) The person has the ability to commit the financial or real property assets or working resources of an entity which conducts coal mining operations;
 - (d) The person is a general partner in a partnership which conducts coal mining operations;
 - (e) Based on the instruments of legal or equitable ownership or the voting securities of a corporate entity which conducts coal mining operations, the person owns of record ten through fifty per cent of the entity; or
 - (f) The person owns or controls coal to be mined by another person under a lease, sublease or other contract; and
 - (i) Has the right to receive such coal after mining; or
 - (ii) Has the authority to determine the manner in which another person conducts that coal mining operation.

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(B) Identification of interests.

- (1) Each application shall contain the names, addresses, and telephone numbers, and either the employer identification numbers or the last four digits of the social security numbers of:
 - (a) The permit applicant;
 - (b) The operator, if the operator is a person different from the applicant; [and](#)
 - ~~(c) The resident agent of the applicant who will accept service of process; and~~
 - ~~(d)~~ [\(c\)](#) The person who will pay the abandoned mine land reclamation fee.
- (2) For a coal mining operation other than an underground mining operation, each application shall also contain the names and addresses of:
 - (a) Every legal or equitable owner of record of the property to be mined;
 - (b) The holders of record of any leasehold interest in the property to be mined; and
 - (c) Any purchaser of record under a real estate contract of the property to be mined.
- (3) For an underground mining operation each application shall also contain the names and addresses of:
 - (a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the property to be mined;
 - (b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and
 - (c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.
- (4) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. [Each application other than a single proprietorship shall contain the name, address and telephone numbers of the resident agent of the applicant who will accept service of process.](#)
- (5) For each person who owns or controls or owned or controlled the applicant according to paragraph (A) of this rule, the application shall contain the following information:
 - (a) The person's name and address, and either the last four digits of his or her social security number or his or her employer identification number;
 - (b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;
 - (c) The title of the person's position, the date that the position was assumed, and when this information is submitted under paragraph (I) of rule 1501:13-4-06 or paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code and the person is no longer employed in that position, the date of departure from the position;

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- (d) Each additional name and identifying number, including employer identification number or the last four digits of the social security number, and federal or state permit number and corresponding MSHA number, under which the person owns or controls, or previously owned or controlled, a coal mining and reclamation operation in the United States within the five-year period preceding the date of submission of the application; and
 - (e) The application number or other identifier of, and the regulatory authority for, any other pending coal mining operation permit application filed by the person in any state in the United States.
 - (6) If any owner, holder, purchaser, or operator identified under paragraphs (B)(1) to (B)(3) of this rule is a business entity other than a single proprietorship, the application shall contain the names and street addresses of their respective principals, officers, and resident agents.
 - (7) For any coal mining 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 paragraph (A) of this rule, the application shall include the operation's:
 - (a) Name, address, identifying numbers, including employer identification number, federal or state permit number and corresponding MSHA number, and the regulatory authority; and
 - (b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.
 - (8) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.
 - (9) Each application shall contain the name of the proposed mine and the MSHA identification numbers for all mine-associated structures that require MSHA approval.
 - (10) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit. If requested by the applicant, any information required by this paragraph which is not on public file pursuant to Ohio law shall be held in confidence by the chief as provided under rule 1501:13-1-10 of the Administrative Code.
 - (11) After the 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 paragraphs (B)(1), (B)(4), (B)(5), (B)(7), and (J) of this rule.
 - (12) The applicant shall submit the information required by paragraphs (B) and (C) of this rule on a form prescribed by the chief.
- (C) Violation information. Each application shall contain:
- (1) A statement of whether the applicant or operator, or any subsidiary, affiliate, or persons controlled by or under common control with the applicant or operator has:
 - (a) Had a federal or state coal mining permit suspended or revoked during the five-year period preceding the date of submission of the application; or

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- (b) Forfeited a mining bond, performance security, or similar security deposited in lieu of bond.
- (2) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including:
 - (a) Identification number of the permit;
 - (b) Date of suspension, revocation, or forfeiture, and, when applicable, the amount of bond, performance security, or similar security forfeited;
 - (c) Identification of the regulatory authority that suspended or revoked the permit or forfeited the bond, performance security, or similar security, and the stated reasons for that action;
 - (d) The current status of the permit, or of the bond, performance security, or similar security involved; and
 - (e) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture, and the current status of these proceedings.
- (3) The applicant shall submit a listing of:
 - (a) Each violation notice, as that term is defined in rule 1501:13-1-02 of the Administrative Code, received by the applicant or operator in connection with any coal mining and reclamation operation during the three-year period preceding the date of submission of the application for violations of Chapter 1513. of the Revised Code or these rules, or of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection; and
 - (b) All unabated violation notices received prior to the date of submission of the application incurred in connection with any coal mining and reclamation operation owned or controlled by either the applicant or the operator or by any person who owns or controls the applicant.
- (4) For each violation notice reported under paragraph (C)(3)(a) or (C)(3)(b) of this rule, the application shall also contain:
 - (a) Any identifying numbers for the operation, including the federal or state permit number and associated MSHA number, the date of issuance and identification number of the violation notice, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;
 - (b) A brief description of the violation alleged in the violation notice;
 - (c) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation notice, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;
 - (d) The current status of the proceedings and of the violation notice;

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(e) If the abatement period for a violation in a notice of violation issued under paragraph (B) of rule 1501:13-14-02 of the Administrative Code, or its equivalent for the federal or another state regulatory program, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation; and

(f) For all violations not covered under paragraph (C)(4)(e) of this rule, the actions taken to abate or correct the violation.

(5) After the 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 paragraph (C) of this rule.

(D) Right of entry and operation information.

(1) Each application shall contain a notarized statement describing the documents upon which the applicant bases his or her legal right to enter and begin coal mining in the permit area, for surface mining operations, or in the permit and shadow areas, for underground mining operations, and whether that right is the subject of pending litigation. The notarized statement shall identify those 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.

(2) Each application shall contain a notarized statement identifying the specific land for which the applicant is negotiating to acquire the legal right to enter and begin coal mining in the permit area, for surface mining operations, or in the permit and shadow areas, for underground mining operations, during the term of the permit and, when requested by the chief, signed statements from each landowner and mineral owner granting authorized representatives of the chief a right of entry to, upon, and through the areas of land upon which coal mining and reclamation operations are proposed.

(3) Where the private mineral estate to be mined has been severed from the private surface estate and surface disturbance will result from the applicant's proposed use of a surface mining method, the application shall also provide for lands within the permit area:

(a) A copy of the written consent of the surface owner to the surface disturbance that will result from the extraction of coal by the applicant's proposed surface mining method;

(b) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods that cause surface disturbance; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods that cause disturbance, documentation that under state law, the applicant has the legal authority to extract the coal by those methods.

(4) Nothing in this rule shall be construed to afford the chief the authority to adjudicate property rights disputes.

(E) Relationship to areas designated unsuitable for mining.

(1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for coal mining operations under rule 1501:13-3-07 of

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the Administrative Code or under study for designation in an administrative proceeding under such rule.

- (2) If an applicant claims the exemption provided in paragraph (B)(3) of rule 1501:13-3-05 of the Administrative Code, the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed coal mining operations.
- (3) If an applicant proposes to conduct coal mining operations within three hundred feet, measured horizontally, of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in paragraph (D) of rule 1501:13-3-04 of the Administrative Code.
- (4) If an applicant proposes to conduct coal mining operations within one hundred feet, measured horizontally, of a public road, the application shall contain the road permit as required under paragraph (C) of rule 1501:13-3-04 of the Administrative Code.

(F) Permit term information.

- (1) Each application shall state the anticipated or actual starting and termination date of each phase of the coal mining and the anticipated number of acres of land to be affected during the first year of mining and over the total life of the permit.
- (2) Each application to conduct an underground mining operation shall also state the horizontal extent of proposed underground mine workings over the total life of the permit.
- (3) If an applicant proposes a permit term in excess of five years, the application shall:
 - (a) Be complete and accurate covering the specified longer term; and
 - (b) 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.

(G) Identification of location of public office for filing of application. Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection as required by these rules.

(H) Newspaper advertisement and proof of publication. A copy of the newspaper advertisement of the application for a permit or renewal of a permit, or for revision of a permit if notice is required under paragraph (E) of rule 1501:13-4-06 of the Administrative Code, shall be filed with the chief and made a part of the complete application. A proof of publication shall be filed with the chief prior to approval of the permit application.

(I) Facilities or structures used in common.

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with Chapter 1501:13-7 of the Administrative Code, each permittee shall provide performance security for 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

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application shall include a copy of the agreement between or among the parties setting forth the respective performance security responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the chief that all responsibilities under this chapter for the facility or structure will be met.

(J) Central file for identity information.

- (1) The chief shall allow an applicant or permittee to meet the information submittal requirements of paragraph (B) of this rule, paragraph (I) of rule 1501:13-4-06, and paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code, by submitting the required information to the chief, on a form provided by the chief, with an indication that the information in the form applies to all permits held by the applicant or permittee. The applicant or permittee shall swear or affirm, under oath and in writing, that all information provided pursuant to paragraph (J) of this rule is accurate and complete.
- (2) The chief shall establish a central file to house the information submitted pursuant to paragraph (J) of this rule, rather than placing duplicate information in each application file for a permittee. The chief shall make the information in this central file available to the public upon request.
- (3) Permittees shall update information in this central file according to the following:
 - (a) If the information already submitted to the chief under paragraph (B) of this rule, paragraph (I) of rule 1501:13-4-06 and paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code is accurate and complete, the permittee shall certify to the chief, on a form provided by the chief, by swearing or affirming, under oath and in writing, that the information is accurate, complete, and up to date; or
 - (b) If part of the information already submitted to the chief under paragraph (B) of this rule, paragraph (I) of rule 1501:13-4-06 and paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code is missing or incorrect, the permittee shall submit to the chief, on a form provided by the chief, the necessary information or corrections and swear or affirm, under oath and in writing, that the information is accurate and complete.

Draft Rule 1501:13-4-07, dated 3/5/2020.

This is a summary of the changes made to this rule.

There are no changes proposed to the content of this rule. The proposed change is only to the "History Trail" of the rule, to add a section of statute to the list of laws that the rule amplifies:

History trail would be revised to add section 1513.09(B). (B) includes requirements related to record-keeping, monitoring, and reporting.

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Dated 3/5/2020. Proposed to change the “history trail” only, i.e., to add one section of statute to the list of laws which the rule amplifies. See end of rule.

1501:13-4-07 Annual reports and maps.

Within thirty days after each anniversary date of the issuance of a coal mining and reclamation permit, the permittee shall file the following with the chief:

- (A) An annual report that shall:
- (1) Be on a form prescribed and provided by the chief;
 - (2) Include the following estimates of acreages for the permit area and, as applicable, for the incremental area or for each incremental mining unit:
 - (a) The number of acres affected during the mining year for which the report is being filed;
 - (b) The number of acres to be reclaimed that were affected during the mining year for which the report is being filed;
 - (c) Cumulative total of acres affected during the permit period to include the acres affected during the mining year for which the report is being filed; and
 - (d) The number of acres to be affected during the next year of the mining operation;
 - (3) Provide the following location information for each of the acreage estimates required by paragraph (A)(2) of this rule:
 - (a) County;
 - (b) Township;
 - (c) Township - range designation; and
 - (d) Section number and/or lot number;
 - (4) Provide the following performance security information:
 - (a) The total amount of performance security on file for the permit;
 - (b) The number of acres reported as affected and the number of acres to be affected for which performance security has not been provided; and
 - (c) The incremental mining units reported as affected and the incremental mining units to be affected for which performance security has not been provided; and
 - (5) Include the number of tons of coal produced for the permit during the mining year for which the report is filed.
- (B) An annual map that shall be prepared by or under the direction of a qualified registered professional surveyor and shall, in addition to other applicable map requirements show:
- (1) The boundaries of each incremental mining unit affected during the permit year for which the annual

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report is filed;

- (2) The incremental area for the permit year for which the annual report is filed and for all preceding permit years;
 - (3) The perimeter of the area affected during the permit year that is to be reclaimed during the next permit year;
 - (4) The perimeter of the total area affected during the permit to include that area affected during the mining year for which the annual report is filed; and
 - (5) In table form, all of the acreages required by paragraphs (A)(2), (A)(4) and (B) of this rule, and if applicable the number of acres affected beyond the permit limits.
- (C) For coal mining operations that have not had any changes in the extent of their affected area, a letter to the chief certifying that the previously submitted information adequately reflects the current operations shall satisfy the reporting requirements of this rule. The letter must state that all areas already affected will be reclaimed or reaffected.
- (D) Within thirty days after the completion of mining operations on a permit, the permittee shall file with the chief a final report that includes the information required under paragraph (A) of this rule and a final map that includes the information required under paragraph (B) of this rule.

Five Year Review (FYR) Dates: 11/02/2015 and 11/02/2020

Promulgated Under: 119.03

Statutory Authority: 1513.02

Rule Amplifies: 1513.07, 1513.08, [1513.09\(B\)](#)

Prior Effective Dates: 8/16/82 (Emer.), 10/27/82, 4/30/09

Draft Rule 1501:13-5-01, dated 8/13/2019.

This is a summary of the changes made to this rule.

(E)(6). Paragraph reference corrected. In 2018, paragraph (D)(2) was added to Rule 1501:13-4-03, so the reference in rule 1501:13-5-01 needs to be revised to (D)(3).

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Dated 8-13-2019. See corrected reference in (E)(6), page 6.

1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

- (A) Public notices of filing of permit applications, applications for significant revisions to permits, and applications for permit renewal.
- (1) After the chief determines an application for a permit, for a significant revision to a permit, or for a permit renewal to be complete, the applicant shall place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operations at least once a week for four consecutive weeks. The advertisement shall contain, at a minimum, the following information:
- (a) The name and business address of the applicant;
 - (b) A description which shall:
 - (i) Clearly describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
 - (ii) Clearly describe the exact location and boundaries of the proposed permit area; and
 - (iii) State the name of the U.S. geological survey 7.5 minute quadrangle map(s) which contains the area described;
 - (c) The location where a copy of the application is available for public inspection under paragraph (A)(4) of this rule;
 - (d) The address of the "Division of Mineral Resources Management, 2045 Morse Road, Building H, Columbus, Ohio 43229" to which written comments, objections, or requests for informal conferences on the application may be submitted under paragraph (B) of this rule and rule 1501:13-14-05 of the Administrative Code;
 - (e) If the application includes a road permit, approved by the road authority, to conduct coal mining operations within one hundred feet of the outside right-of-way of a public road or to relocate or close a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the approximate timing and duration of the relocation or closing;
 - (f) If the application includes a request for an experimental practice under rule 1501:13-4-12 of the Administrative Code, a statement indicating that an experimental practice is requested and identifying the rule of the Administrative Code for which a variance is requested; and
 - (g) If the application includes a request for restoration off the permit area by means of mitigation pursuant to rule 1501:13-13-08 of the Administrative Code, a statement indicating that such restoration is requested.
- (2) Upon receipt of a complete application for a permit, for a significant revision to a permit or for a permit renewal, the chief shall issue written notification of:

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- (a) The applicant's intention to conduct coal mining and reclamation operations at a particularly described tract of land;
 - (b) The application or permit number;
 - (c) Where a copy of the application may be inspected; and
 - (d) Where comments on the application may be submitted under paragraph (B) of this rule.
- (3) The written notification described in paragraph (A)(2) of this rule shall be sent to:
- (a) Federal, state, and local government agencies with jurisdiction over or an interest in the area of the proposed operations;
 - (b) Government planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;
 - (c) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;
 - (d) The federal or state government agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application; and
 - (e) The board of county commissioners, the board of township trustees, the legislative authorities of municipal corporations, private water companies, regional councils of governments, and the boards of directors of conservancy districts in each county or part of a county in which the proposed operations are located.
- (4) Availability of permit applications, applications for significant revisions to permits, and applications for permit renewal.
- (a) The applicant shall make a full copy of the complete application for a permit, a significant permit revision, or a permit renewal available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the chief at the division of mineral resources management district office responsible for inspection of the proposed operation, or if no such office is maintained in the county where the mining is proposed to occur, the applicant shall file a copy of the application with the county recorder of that county or at the office of the natural resources conservation service of the United States department of agriculture located in the county where the mining is proposed to occur.
 - (b) The applicant shall file the copy of the complete application under paragraph (A)(4)(a) of this rule by the first date of newspaper advertisement of the application. The applicant shall file any subsequent changes to the application with the public office at the same time the change is submitted to the chief.
- (B) Comments and objections on permit applications, applications for significant revisions to permits and applications for permit renewal.
- (1) Within thirty days of notification by the chief, as provided under paragraph (A)(3) of this rule, written

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comments or objections on an application for a permit, significant revision to a permit, or permit renewal may be submitted to the chief by such public entities with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

- (2) Written comments regarding or objections to an application for a permit, significant revision to a permit, or permit renewal may be submitted to the chief 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 thirty days after the last publication of the newspaper notice required under paragraph (A) of this rule.
 - (3) The chief shall, upon receipt of such written comments or objections, transmit a copy of such written comments or objections to the applicant and file a copy for public inspection at the same public office where the application is filed.
- (C) Informal conferences. Any person having an interest which is or may be adversely affected by the issuance of or significant revision to a permit, or by the renewal of a permit, or the officer or head of any federal, state or local government agency or authority may, in writing, within thirty days after the last publication of the newspaper notice required under paragraph (A) of this rule, request that the chief hold an informal conference in accordance with rule 1501:13-14-05 of the Administrative Code.
- (D) Review of permit applications, applications for revisions to permits, and applications for permit renewals.
- (1) Preliminary review by the chief.
 - (a) The chief shall review the complete application and any written comments or written objections submitted, and records of any informal conference held under rule 1501:13-14-05 of the Administrative Code.
 - (b) The applicant for a permit, revision to a permit, or permit renewal shall have the burden of establishing that the application is in compliance with all of the requirements of Chapter 1513. of the Revised Code and these rules.
 - (2) Time frames for review.
 - (a) If there has been no informal conference held pursuant to section 1513.071 of the Revised Code, the chief shall submit to the applicant for a permit the written finding of the chief granting or denying the permit in whole or in part and stating the reasons therefor within the time frames established in paragraph (D)(2)(b) of this rule. If there has been an informal conference held pursuant to section 1513.071 of the Revised Code, the chief shall submit to the applicant for a permit the written finding of the chief granting or denying the permit in whole or in part and stating the reasons therefor within the time frames established in paragraph (B)(3) of rule 1501:13-14-05 of the Administrative Code and paragraph (D)(2)(b) of this rule.
 - (b) The chief shall grant or deny a permit not later than two hundred forty business days after the submission of a complete application for the permit. Any time during which the applicant is making revisions to the application or providing additional information requested by the chief regarding an application shall not be included in the two hundred forty business days. If the chief determines that a permit cannot be granted or denied within the two-hundred-forty-business-day time frame, the chief, not later than two hundred ten business days after the submission of a complete application

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for the permit, shall provide the applicant with written notice of the expected delay.

- (3) If the chief decides to approve the application, he or she shall require that the applicant file the performance security before the permit is issued, in accordance with the requirements of Chapter 1513. of the Revised Code and division 1501:13 of the Administrative Code.
- (4) The chief shall determine, based on the list of violation notices submitted as part of the application under paragraph (C)(3) of rule 1501:13-4-03 of the Administrative Code or on available information concerning federal or state failure-to-abate cessation orders, unabated federal or state imminent harm cessation orders, delinquent civil penalties issued pursuant to rule 1501:13-14-03 of the Administrative Code or section 518 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), delinquent abandoned mine reclamation fees, or forfeitures of a coal mining bond, performance security, or similar security deposited in lieu of a bond in this or any other state or with the United States where the violations upon which the forfeitures were based have not been corrected, that any coal mining operation owned or controlled by the applicant or by any person who owns or controls the applicant is not currently in violation of any law, rule, or regulation of the United States or any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection. If this determination cannot be made, the chief shall not issue the permit. The chief shall require the applicant, before the issuance of the permit, to either:
 - (a) Submit to the chief proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation, and submit to the chief proof that any civil penalties owed to the state for a violation not the subject of an appeal have been paid; or
 - (b) Establish for the chief that the applicant, or any person owned or controlled by either 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 that violation. If the administrative or judicial hearing authority affirms the violation, then any coal mining operations being conducted under a permit issued according to this paragraph shall be immediately terminated, unless and until the provisions of paragraph (D)(4)(a) of this rule are satisfied.
- (5) For the purposes of paragraph (D)(4) of this rule, the chief may presume that, in the absence of a failure-to-abate cessation order, a notice of violation issued pursuant to paragraph (B) of rule 1501:13-14-02 of the Administrative Code or under any equivalent state or federal law, rule or regulation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties.
- (6) No permit shall be issued to an applicant if a determination is made by the chief that the applicant, anyone who owns or controls the applicant, or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of Chapter 1513. of the Revised Code and these rules of a nature and duration to result in irreparable damage to the environment as to indicate an intent not to comply with or a disregard of Chapter 1513. of the Revised Code or division 1501:13 of the Administrative Code.
- (7) Any permit that is issued on the basis of proof submitted under paragraph (D)(4)(a) of this rule that a violation is in the process of being corrected, or pending the outcome of an appeal described in

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paragraph (D)(4)(b) of this rule, shall be conditionally issued.

- (8) Subsequent to the effective date of this rule, the prohibitions of paragraph (D)(4) of this rule regarding the issuance of a new permit, shall not apply to any violation that:
- (a) Occurs after that date;
 - (b) Is unabated; and
 - (c) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:
 - (i) Issued pursuant to paragraph (L) of rule 1501:13-4-12 of the Administrative Code; and
 - (ii) Held by the person making application for the new permit.
 - (d) For permits issued under paragraph (L) of rule 1501:13-4-12 of the Administrative Code, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:
 - (i) Arose after permit issuance;
 - (ii) Was related to prior mining; and
 - (iii) Was not identified in the permit.
- (E) Criteria for approval or denial of an application. No application for a permit, significant revision to a permit, or permit renewal shall be approved unless the application affirmatively demonstrates, and the chief finds, in writing, on the basis of information set forth in the application or from information otherwise available, that is documented in the approval and made available to the applicant, that:
- (1) The application is accurate and complete and that all requirements of Chapter 1513. of the Revised Code and all rules adopted thereunder have been complied with;
 - (2) The applicant has demonstrated that coal mining and reclamation operations, as required by Chapter 1513. of the Revised Code and all rules adopted thereunder, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;
 - (3) The assessment of the probable cumulative hydrologic impacts of all anticipated coal mining in the general area on the hydrologic balance, as described in divisions (B)(1)(k) and (E)(2)(c) of section 1513.07 of the Revised Code, has been made by the chief and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;
 - (4) The proposed permit area is:
 - (a) Not included within an area designated unsuitable for coal mining operations under rule 1501:13-3-07 of the Administrative Code;
 - (b) Not within an area under study for designation as unsuitable for coal mining operations in an administrative proceeding begun under rule 1501:13-3-07 of the Administrative Code, unless the applicant demonstrates that, before January 4, 1977, substantial legal and financial commitments

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were made in relation to the operation for which the applicant is applying for a permit;

- (c) Not on any lands subject to the prohibitions or limitations of paragraph (A)(1), (A)(2), (A)(6), (A)(7) or (A)(8) of rule 1501:13-3-03 of the Administrative Code;
- (d) Not within one hundred feet of the outside right-of-way line of any public road, except as provided for in paragraph (C) of rule 1501:13-3-04 of the Administrative Code; and
- (e) Not within three hundred feet from any occupied dwelling, except as provided for in paragraph (A)(5) of rule 1501:13-3-03 or paragraph (D) of rule 1501:13-3-04 of the Administrative Code;
- (5) The proposed operations will not adversely affect any publicly owned parks or places included in the "National Register of Historic Places," administered by the national parks service, U.S. department of the interior, except as provided for in paragraph (A)(3) of rule 1501:13-3-03 of the Administrative Code. The website for the "National Register of Historic Places" for Ohio sites is www.nationalregisterofhistoricplaces.com/oh/state.html;
- (6) For operations involving the mining of coal where the private mineral estate to be mined has been severed from the private surface estate and surface disturbance will result from the applicant's proposed use of a surface mining method, the applicant has submitted to the chief the documentation required under paragraph (D)~~(2)~~(3) of rule 1501:13-4-03 of the Administrative Code;
- (7) The applicant has either:
 - (a) Submitted the proof required by paragraph (D)(4)(a) of this rule; or
 - (b) Made the demonstration required by paragraph (D)(4)(b) of this rule;
- (8) The applicant has submitted proof, by affidavit and supporting documentation, that all reclamation fees from previous and existing operations as required by Subchapter R of Chapter VII of Title 30 of the Federal Code of Regulations have been paid;
- (9) The coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed during the same permit term in areas adjacent to the proposed permit area;
- (10) The applicant will submit the performance security required under Chapter 1513. of the Revised Code and these rules prior to the issuance of the permit;
- (11) The applicant has, with respect to prime farmland, obtained either a negative determination or satisfied the requirements of paragraph (F) of rule 1501:13-4-12 of the Administrative Code;
- (12) The proposed postmining land use of the permit area has been approved by the chief in accordance with the requirements of rule 1501:13-9-17 of the Administrative Code;
- (13) The chief has made all specific approvals required under division 1501:13 of the Administrative Code;
- (14) The operations are not likely to jeopardize the continued existence of endangered or threatened species or are not likely to result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.);

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- (15) The applicant has satisfied the applicable permit requirements for special categories of mining under requirements of rule 1501:13-4-12 of the Administrative Code;
- (16) The chief has taken into account the effect of the proposed permitting action on properties listed on or eligible for listing on the "National Register of Historic Places," as referenced in paragraph (E)(5) of this rule. Some of the ways in which the chief may take into account the effect of the proposed permitting action on such historic resources include, but are not limited to:
 - (a) Imposing permit conditions which protect the historic resource;
 - (b) Requiring revision of the proposed operation plan before application approval; and
 - (c) Concluding in a written finding that no protection measures are necessary;
- (17) The applicant has demonstrated that any existing structure will comply with the requirements of paragraph (C) of rule 1501:13-1-01 of the Administrative Code and the applicable performance standards of division 1501:13 of the Administrative Code;
- (18) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of paragraph (L)(3) of rule 1501:13-9-14 of the Administrative Code, the site of the operation is a previously mined area as defined in rule 1501:13-1-02 of the Administrative Code; and
- (19) For operations which will include remining areas under paragraph (L) of rule 1501:13-4-12 of the Administrative Code, the application includes:
 - (a) Lands eligible for remining;
 - (b) 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
 - (c) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of Chapter 1513. of the Revised Code can be accomplished.
- (F) Final compliance review. After an application is approved, but before the permit is issued, the chief shall reconsider his or her decision to approve the application, based on the compliance review required by paragraph (D)(4) of this rule in light of any new information submitted under paragraphs (B)(11) and (C)(5) of rule 1501:13-4-03 of the Administrative Code.
- (G) Conditions of permits: general and right of entry. Each permit issued by the chief shall ensure and contain specific conditions requiring that:
 - (1) Except to the extent that the chief otherwise directs in the permit that specific actions be taken, the permittee shall conduct all coal mining and reclamation operations as described in the complete application;
 - (2) The permittee shall allow the authorized representatives of the secretary of the department of the interior, including, but not limited to, inspectors and fee compliance officers, and the chief and his or her authorized representatives, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to:

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- (a) Have the rights of entry provided for in paragraph (B) of rule 1501:13-14-01 of the Administrative Code; and
 - (b) Be accompanied by private persons for the purpose of conducting an inspection in accordance with rule 1501:13-14-01 of the Administrative Code when the inspection is in response to an alleged violation reported to the chief by the private person;
- (3) The permittee shall conduct coal mining and reclamation operations only on those lands specifically designated on the maps submitted under rules 1501:13-4-04, 1501:13-4-05, 1501:13-4-07, 1501:13-4-08, 1501:13-4-08.1, 1501:13-4-13 and 1501:13-4-14 of the Administrative Code and approved for the term of the permit and which are subject to the performance security in effect pursuant to Chapter 1501:13-7 of the Administrative Code. The permit shall contain a specific condition to prohibit the commencement of coal mining operations on any land that is located within the permit area or the shadow area if the permittee has not provided to the chief documents that form the basis of the permittee's legal right to enter and conduct coal mining operations on that land;
- (4) The permittee shall not operate without adequate performance security coverage in effect at all times; and
- (5) Within thirty days after a cessation order is issued under rule 1501:13-14-02 of the Administrative Code or 30 C.F.R. 843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall submit to the chief the following information, current to the date the cessation order was issued, or notify the chief in writing that there has been no change since the immediately preceding submittal of such information:
- (a) Any new information needed to correct or update the information previously submitted to the chief by the permittee under paragraph (B)(5) of rule 1501:13-4-03 of the Administrative Code; or
 - (b) If not previously submitted, the information required from a permit applicant by paragraph (B)(5) of rule 1501:13-4-03 of the Administrative Code.
- (H) Conditions of permits: environment, public health and safety. Each permit issued by the chief shall ensure and contain specific conditions requiring that:
- (1) The permittee shall take all possible steps to minimize any adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
 - (a) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 - (b) Immediate implementation of measures necessary to comply; and
 - (c) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance;
 - (2) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Chapter 1513. of the Revised Code and all rules adopted thereunder and which prevents violation of any other applicable state or federal law;

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- (3) The permittee shall conduct his or her operations:
 - (a) In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health and safety of the public; and
 - (b) Utilizing any methods specified in the permit by the chief in approving alternative methods of compliance with the performance standards of Chapter 1513. of the Revised Code and all rules adopted thereunder;
- (4) As applicable, the permittee shall comply with paragraph (C) of rule 1501:13-1-01 of the Administrative Code and with the permanent or interim program requirements of division 1501:13 of the Administrative Code for compliance, modification, or abandonment of existing structures; and
- (5) The permittee shall pay all reclamation fees, as required by Subchapter R of Chapter VII of Title 30 of the Federal Code of Regulations for coal produced under the permit for sale, transfer or use.
- (I) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

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**1501:13-7-08. Reclamation phase approval conference and performance security release conference.
No Change Rule.**

- (A) Procedure for requesting a reclamation phase approval conference or a performance security release conference.
- (1) The following persons may request a reclamation phase approval conference or a performance security release conference:
 - (a) A person with a valid legal interest which may be adversely affected by approval of a reclamation phase or release of performance security, pursuant to rule 1501:13-7-05 or 1501:13-7-05.1 of the Administrative Code; or
 - (b) The responsible officer or head of any federal, state or local government agency that:
 - (i) Has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation; or
 - (ii) Is authorized to develop and enforce environmental standards with respect to the operation.
 - (2) Within thirty days after the last publication of the notice required by paragraph (A)(3) of rule 1501:13-7-05 or by paragraph (A)(3) of rule 1501:13-7-05.1 of the Administrative Code, a person listed in paragraph (A)(1) of this rule may file written objections to the proposed reclamation phase approval or the proposed performance security release and request a conference with the chief.
 - (3) If written objections are filed and a conference is requested, the chief shall inform all interested parties of the time and place of the conference and shall hold the conference within thirty days after receipt of the request for the conference.
 - (4) The date, time, and location of the conference shall be advertised by the chief in a newspaper of general circulation in the locality of the coal mining operation proposed for reclamation phase approval or performance security release at least once a week for two consecutive weeks.
 - (5) The conference shall be held in the locality of the coal mining operation proposed for reclamation phase approval or performance security release or in Franklin county at the option of the person requesting the conference.
 - (6) An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. Such record shall be maintained and shall be accessible to all parties until at least five years after expiration of the period during which the permit is covered by any portion of a reclamation performance security.
 - (7) In the event that all parties requesting the conference stipulate agreement prior to the requested conference and withdraw their request, the conference need not be held.
- (B) Procedure at reclamation phase approval conference or performance security release conference.
- (1) A party to a conference may appear in person, or be represented by his or her attorney or such other representative as is permitted to practice before the division, and may present his or her objections to the proposed reclamation phase approval or the proposed performance security release either orally or in writing.

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(2) The conference shall be conducted by the chief or a representative of the chief.

(C) Decision of the chief regarding reclamation phase approval or performance security release.

(1) The chief shall issue his or her decision to approve or disapprove a reclamation phase or a performance security release in accordance with paragraph (A)(7) of rule 1501:13-7-05 or paragraph (A)(7) of rule 1501:13-7-05.1 of the Administrative Code.

(2) Within thirty days after notification of the final decision of the chief regarding the reclamation phase approval or performance security release, the permittee or any person with an interest that is or may be adversely affected may appeal the decision to the reclamation commission pursuant to Chapter 1513. of the Revised Code.

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1501:13-9-05 **Coal recovery. No Change Rule.**

Coal mining operations shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in future coal mining operations is minimized.

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1501:13-9-14 Backfilling and grading. No Change Rule.

- (A) In order to achieve the approximate original contour, the operator shall, as provided by this rule, transport, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Where highwalls are reduced by blasting, all of the provisions of this rule will apply. Small depressions may be left if compatible with the future land use and comply with the requirements of this rule. Cut and fill terraces may be used only in those situations expressly identified in this rule. The postmining graded slopes must approximate the premining natural slopes in the area in accordance with paragraphs (B) and (C)(1) of this rule, except as provided under paragraph (L) of this rule.
- (B) Slope measurements.
- (1) To determine the natural slopes of the area before mining, representative slopes must be accurately measured and recorded.
 - (a) Each slope measurement shall be taken along the prevailing slope extending one hundred linear feet above and below or beyond the coal outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the chief.
 - (b) Where the area has been previously mined, the measurements shall be representative of the premining configuration of the land.
 - (c) Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed.
 - (2) After the disturbed area has been graded, the final graded slopes shall be measured, comparing the premining slope measurements as shown on the application map.
 - (3) Slope measurements shall be subject to a five-degree tolerance unless otherwise specified by the chief, provided that this tolerance does not conflict with the approved postmining land use.
- (C) Final graded slopes.
- (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (B) of this rule and approved by the chief or any lesser slope specified by the chief based on consideration of soil, climate, or other characteristics of the surrounding area. Proof of a minimum long-term static safety factor of 1.3 for the final slopes may be required by the chief. Final graded slopes shall not exceed the angle of repose or such lesser slope as is necessary to achieve this minimum long-term static safety factor and to prevent slides. Postmining final graded slopes need not be uniform.
 - (2) On approval by the chief and in order to conserve soil moisture, ensure stability, and control erosion on final grade slopes, cut and fill terraces may be allowed if the terraces are compatible with the postmining land use approved under rule 1501:13-9-17 of the Administrative Code, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:
 - (a) The design and construction is to be certified by an engineer;
 - (b) The slope of the terrace outslope shall not exceed fifty per cent; and

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(c) No highwalls may be left.

(3) All operations on natural slopes of more than twenty degrees or on such lesser slopes as the chief defines as a steep slope shall meet the provisions of rule 1501:13-13-05 of the Administrative Code.

(D) Spoil, except excess spoil disposed of in accordance with rule 1501:13-9-07 of the Administrative Code, shall be returned to the mined-out area or used in accordance with paragraph (E) of this rule for blending to restore approximate original contour.

(E) Blending of spoil. Spoil may be placed on the area outside the mined-out area in nonsteep slope areas within the limits of the approximate original contour by blending the spoil into the surrounding terrain provided all the following requirements are met:

(1) All vegetative and organic material shall be removed from the area;

(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with rule 1501:13-9-03 of the Administrative Code; and

(3) The spoil area shall be backfilled and graded on the area in accordance with the requirements of this rule.

(F) Mountaintop removal. The requirements of this paragraph and of rule 1501:13-13-04 of the Administrative Code shall apply to coal mining operations which remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden. Final graded top plateau slopes on the mined area shall be less than twenty per cent so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed fifty per cent or such lesser slopes as the chief shall prescribe. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraphs (G) and (H) of this rule shall be eliminated. All mountaintop removal operations shall, in addition, meet the provisions of rule 1501:13-13-04 of the Administrative Code.

(G) Small depressions. The requirement of this rule to achieve the approximate original contour does not prohibit construction of small depressions if they are approved by the chief to minimize erosion, conserve soil moisture, promote revegetation, or enhance fish and wildlife. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. The total surface area and the holding capacity of the depression shall be approved by the chief. Permanent impoundments shall be governed by paragraph (H) of this rule and by rule 1501:13-9-04 of the Administrative Code.

(H) Permanent impoundments. Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use pursuant to rule 1501:13-9-17 of the Administrative Code and protection of the hydrologic balance pursuant to rule 1501:13-9-04 of the Administrative Code are met. No impoundments shall be constructed on top of areas in which excess spoil is deposited pursuant to rule 1501:13-9-07 of the Administrative Code.

(I) Regrading or stabilizing rills and gullies. Rills and gullies which form in regraded, topsoiled areas shall be filled, regraded or otherwise stabilized and have the topsoil replaced and the areas reseeded or replanted, when the rills and gullies either:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover; or

(2) Cause or contribute to a violation of water quality standards.

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- (J) Covering or otherwise treating coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill.
- (1) Covering all exposed coal seams remaining after mining. Any acid-forming, toxic-forming or combustible materials, or any other waste materials exposed, used, or produced from a coal mining operation shall be:
- (a) Placed in such a manner so as to:
 - (i) Isolate said materials to minimize contact with water;
 - (ii) Prevent combustion; and
 - (iii) Prevent adverse effects on plant growth and land use;
 - (b) Placed in such a manner so as not to be in proximity to a drainage course; and
 - (c) Covered with four feet of nontoxic and noncombustible material or treated to a nontoxic and noncombustible state. The chief may allow less than four feet of cover material based on physical and chemical analyses which show the requirements of rule 1501:13-9-15 of the Administrative Code will be met.
- (2) Stabilization. Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of acid- or toxic-forming materials into surface or subsurface waters in accordance with rule 1501:13-9-04 of the Administrative Code and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the chief before the acid- or toxic-forming materials are covered.
- (3) Use of waste materials as fill. Coal mine wastes may be disposed of in the mined-out area only if disposed of in accordance with paragraphs (A) and (B) of rule 1501:13-9-09 of the Administrative Code, except that a long-term static safety factor of 1.3 shall be achieved.
- (K) Grading along the contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil in accordance with rule 1501:13-9-03 of the Administrative Code, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.
- (L) The postmining slope may vary from the approximate original contour when approval is obtained from the chief for:
- (1) Mountaintop removal operations in accordance with paragraph (C) of rule 1501:13-4-12 of the Administrative Code, provided the performance standards of paragraph (F) of this rule and of rule 1501:13-13-04 of the Administrative Code are met;
 - (2) A variance from approximate original contour requirements in accordance with paragraph (E) of rule 1501:13-4-12 of the Administrative Code, provided the performance standards of rule 1501:13-13-05 of the Administrative Code are met; or

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- (3) Incomplete elimination of highwalls in previously mined areas in accordance with paragraph (K) of rule 1501:13-4-12 of the Administrative Code, provided the following performance standards are met. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:
- (a) All spoil generated by the remaining operation and any other reasonably available spoil shall be used to backfill the highwall. The area of reasonably available spoil shall be included within the permit area;
 - (b) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;
 - (c) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the chief, that the highwall remnant is stable;
 - (d) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment; and
 - (e) For auger mining operations, the following additional requirements shall be met:
 - (i) The coal seam mined shall be covered with a minimum of four feet of nonacid-, nontoxic-forming material; and
 - (ii) The person who conducts the auger mining operation shall demonstrate to the chief that the backfill, designed by an engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3.

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1501:13-9-18 Extension of time for limestone, clay and shale removal. No Change Rule.

- (A) Request for extension of the time limits of paragraph (A)(3) of rule 1501:13-9-13 of the Administrative Code for the purpose of removing limestone, clay, or shale shall be submitted in writing to the chief of the division of mineral resources management not less than sixty days prior to the time the reclamation required by paragraph (A) of rule 1501:13-9-13 of the Administrative Code must otherwise commence.
- (B) Requests for extension of time filed pursuant to paragraph (A) of this rule shall be on a form prescribed by the chief and shall include the following information:
- (1) The name and address of the permittee or operator;
 - (2) The permit number of the area on which the extension of time is requested;
 - (3) The date the original permit was issued and the date mining began;
 - (4) The number of acres permitted;
 - (5) The number of acres with respect to which the extension of time to begin or complete reclamation is requested, and if such request for extension does not include the entire permitted area, a map prepared in accordance with these rules and showing the acreage of the request shall be filed;
 - (6) A time schedule for beginning and completion reclamation, which schedule shall include the dates backfilling will begin and be completed; the dates grading will begin and be completed; the dates resoiling will begin and be completed; and the date planting will begin and be completed;
 - (7) Identification of coal, limestone, clay, and shale seams to be mined, including:
 - (a) The name or identifying number of coal seam;
 - (b) The average thickness of the coal seam;
 - (c) The name or identifying number of the shale seam;
 - (d) The average thickness of the shale seam;
 - (e) The name or identifying number of the clay seam;
 - (f) The average thickness of the clay seam;
 - (g) The name or identifying number of the limestone seam; and
 - (h) The average thickness of the limestone seam;
 - (8) Production data or other information indicating that the permittee or operator requesting such extension is in a business which substantially utilizes the limestone, clay or shale, which data or other information shall cover the three preceding years, if available, and include the tonnage produced per month; the person to whom the limestone, clay or shale is sold or by whom it is otherwise utilized; and the number of years the permittee or operator has been engaged in limestone, clay or shale production;
 - (9) A statement by the permittee or operator explaining in detail the facts, circumstances, conditions and reasons why the permittee or operator would not be able to begin or complete reclamation as required by paragraph (A) of rule 1501:13-9-13 of the Administrative Code; and

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(10) The signature of the permittee or operator and the date of request.

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1501:13-11-01 Other transportation facilities. No Change Rule.

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, and maintained and the area restored to:

- (A) Prevent, to the extent possible using the best technology currently available:
 - (1) Damage to fish, wildlife, and related environmental values; and
 - (2) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.
- (B) Control and minimize diminution or degradation of water quality and quantity;
- (C) Control and minimize erosion and siltation; and
- (D) Prevent damage to public or private property.

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1501:13-12-04 Underground mine entry and access discharges. No Change Rule.

- (A) Surface entries and access to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.
- (B) Gravity discharge of water from an underground mine, other than a drift mine subject to paragraph (C) of this rule, may be allowed by the chief, if it is demonstrated that:
 - (1) The discharge:
 - (a) Without treatment, satisfies the water effluent limitations of all applicable state and federal water quality standards; and
 - (b) The discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or
 - (2) All of the following three requirements are met:
 - (a) The discharge is conveyed to a treatment facility in the permit area in accordance with rule 1501:13-9-04 of the Administrative Code;
 - (b) All water from the underground mine discharged from the treatment facility meets the effluent limitations of all applicable state and federal statutes and regulations; and
 - (c) Consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.
- (C) Notwithstanding anything to the contrary in paragraphs (A) and (B) of this rule, for a drift mine first used after August 16, 1982 and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

Draft Rule 1501:13-13-02, dated 3/5/2020.

This is a summary of the changes made to this rule.

There are no changes proposed to the content of this rule. The proposed change is only to the "History Trail" of the rule, to add a section of statute to the list of laws that the rule amplifies:

History trail would be revised to add section 1513.02(G). Section 1513.02(G) includes authority for the Chief regarding augering.

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Dated 3/5/2020 Proposed to change the “history trail” only, i.e., to add one section of statute to the list of laws which the rule amplifies. See end of rule.

1501:13-13-02 Auger mining additional performance standards.

(A) General.

- (1) Auger mining operations shall be conducted in accordance with the requirements of Chapters 1501:13-9 to 1501:13-11 of the Administrative Code, except as provided in this rule.
- (2) The chief may prohibit auger mining, if necessary, to:
 - (a) Maximize the utilization, recoverability, or conservation of the solid-fuel resource; or
 - (b) Protect against adverse water-quality impacts.

(B) Coal recovery.

- (1) Auger mining shall be conducted so as to maximize the utilization and conservation of the coal in accordance with rule 1501:13-9-05 of the Administrative Code.
- (2) Auger mining shall be planned and conducted to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete.
- (3) Each person who conducts auger mining operations shall leave areas of undisturbed coal, as approved by the chief, to provide access for future underground mining operations to coal reserves remaining after augering is complete, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination shall be made by the chief upon presentation of appropriate technical evidence by the operator.

(C) Hydrologic balance.

- (1) Auger mining shall be planned and conducted to minimize disturbances of the prevailing hydrologic balance in accordance with the requirements of rule 1501:13-9-04 of the Administrative Code.
- (2) All auger holes, except as provided in paragraph (C)(3) of this rule, shall be:
 - (a) Sealed within seventy-two hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material. If sealing is not possible within seventy-two hours, the discharge shall be treated commencing within seventy-two hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and
 - (b) Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the chief, if the holes are not discharging water containing acid- or toxic-forming material.
- (3) Auger holes need not be sealed with an impervious material so as to prevent drainage if the chief determines that:
 - (a) The resulting impoundment of water may create a hazard to the environment or public health or safety; and

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(b) The drainage from the auger holes will:

(i) Not pose a threat of pollution of surface water; and

(ii) Comply with the requirements of rule 1501:13-9-04 of the Administrative Code.

(D) Subsidence protection. Auger mining shall be conducted in accordance with the requirements of paragraphs (A) and (D) of rule 1501:13-12-03 of the Administrative Code.

(E) Backfilling and grading.

General. Auger mining shall be conducted in accordance with the backfilling and grading requirements of rule 1501:13-9-14 of the Administrative Code.

(F) Protection of underground mining. Auger holes shall not extend closer than five hundred feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with rule 1501:13-9-08 of the Administrative Code.

(G) Remining. Auger mining operations that affect previously mined areas containing a preexisting highwall shall comply with the requirements of rule 1501:13-9-14 of the Administrative Code except as provided in paragraph (K) of rule 1501:13-4-12 of the Administrative Code.

Five Year Review (FYR) Dates: 11/02/2015 and 11/02/2020

Promulgated Under: 119.03

Statutory Authority: 1513.02

Rule Amplifies: [1513.02\(G\)](#), 1513.16

Prior Effective Dates: 8/28/78, 8/16/82 (Emer.), 10/27/82, 10/1/88, 4/30/09

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1501:13-13-04 Mountaintop removal mining. No Change Rule.

- (A) Mountaintop removal mining operations shall be exempt from the requirements of rule 1501:13-9-14 of the Administrative Code for achieving approximate original contour, if the following requirements are met:
- (1) The chief grants a variance under paragraph (C) of rule 1501:13-4-12 of the Administrative Code;
 - (2) An industrial, commercial, agricultural, residential, or public facility (including recreation facilities) use is proposed for the affected land;
 - (3) The alternative land use criteria in rule 1501:13-9-17 of the Administrative Code are met and the proposal is approved by the chief; and
 - (4) All other applicable requirements of these rules and the requirements of division (B) of section 1513.16 of the Revised Code will be met.
- (B) Coal mining and reclamation operations conducted under this rule shall comply with the following standards:
- (1) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam and its associated overburden, shall be retained to prevent slides and erosion. The chief may permit an exemption to the requirement that the coal barrier be retained if the following conditions are satisfied:
 - (a) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or
 - (b) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;
 - (2) The final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the out slopes of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the chief finds that a minimum static safety factor of 1.5 will be attained;
 - (3) The resulting level or gently rolling contour shall be graded to drain inward from the out slope except at specific points where it drains over the out slope in protected stable channels. The chief may waive this requirement if environmental problems would be caused by such inward drainage;
 - (4) Natural watercourses below the area to be mined shall not be damaged;
 - (5) Spoil shall be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under rule 1501:13-9-17 of the Administrative Code. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of rule 1501:13-9-07 of the Administrative Code; and
 - (6) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, shall be covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use.
- (C) All permits giving approval for mountaintop removal mining shall be reviewed not more than three years from the date of issuance of the permit, unless the operator affirmatively demonstrates and the chief finds that all operations are proceeding in accordance with the terms of the permit and applicable requirements of

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Chapter 1513. of the Revised Code.

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1501:13-13-05 Steep slope mining. No Change Rule.

- (A) The operator conducting coal mining and reclamation operations on natural slopes that exceed twenty degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the chief after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall meet the performance standards of this rule. The standards of this rule do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or where the mining is governed by rule 1501:13-13-04 of the Administrative Code:
- (1) Spoil, waste materials or debris, including that from clearing and grubbing and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope;
 - (2) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of rule 1501:13-9-14 of the Administrative Code. Land above the highwall shall not be disturbed unless the chief finds that this disturbance will facilitate compliance with the environmental protection standards of these rules and the disturbance is limited to that necessary to facilitate compliance. The person who conducts the coal mining and reclamation operation must demonstrate to the chief, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3;
 - (3) Material in excess of that required to meet the provisions of rule 1501:13-9-14 of the Administrative Code shall be disposed of in accordance with the requirements of paragraph (B) of this rule;
 - (4) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill when approved by the chief; and
 - (5) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the chief as stable and not subject to erosion.
- (B) An operator conducting steep slope mining shall place all excess spoil material resulting from coal mining and reclamation operations in such a manner that it complies with rule 1501:13-9-07 of the Administrative Code.

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1501:13-13-06. Coal preparation plants and support facilities not located at or near the mine site or not within the permit area for a mine. No Change Rule.

- (A) Applicability. Each person who operates a coal preparation plant or support facility in connection with a coal mine but not located within the permit area for a specific mine shall obtain a permit in accordance with paragraph (I) of rule 1501:13-4-12 of the Administrative Code, obtain performance security in accordance with section 1513.08 of the Revised Code and these rules, and operate the plant or support facility in accordance with these rules.
- (B) Performance standards. Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this rule shall comply with the following:
- (1) Signs and markers for the coal preparation plant, coal mine waste disposal area, and water treatment facilities shall comply with rule 1501:13-9-01 of the Administrative Code;
 - (2) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with rules 1501:13-10-01, 1501:13-11-01 and 1501:13-11-02 of the Administrative Code;
 - (3) Any stream or channel diversion shall comply with paragraph (F) of rule 1501:13-9-04 of the Administrative Code;
 - (4) Any disturbed area related to the coal preparation plant or support facilities shall have sediment control structures, in compliance with paragraphs (D) and (G) of rule 1501:13-9-04 of the Administrative Code and all discharges from these areas shall meet the requirements of paragraphs (A) and (B) of rule 1501:13-9-04 of the Administrative Code and any other applicable state or federal law;
 - (5) Permanent impoundments associated with coal preparation plants shall meet the requirements of paragraphs (H) and (R) of rule 1501:13-9-04 of the Administrative Code. Dams constructed of or impounding coal mine waste shall comply with rule 1501:13-9-09 of the Administrative Code;
 - (6) Use of water wells shall comply with paragraph (O) of rule 1501:13-9-04 of the Administrative Code and water rights shall be protected in accordance with paragraph (P) of rule 1501:13-9-04 of the Administrative Code;
 - (7) Disposal of coal mine waste, solid waste, and any excavated materials shall comply with the requirements of rules 1501:13-9-09 and 1501:13-9-07 of the Administrative Code;
 - (8) Discharge structures for diversions and sediment control structures shall comply with paragraph (I) of rule 1501:13-9-04 of the Administrative Code;
 - (9) Fish, wildlife and related environmental values shall be protected in accordance with rule 1501:13-9-11 of the Administrative Code;
 - (10) Slide areas and other surface areas shall comply with rule 1501:13-9-12 of the Administrative Code;
 - (11) Adverse effects upon or resulting from nearby underground coal mining operations shall be minimized by appropriate measures including, but not limited to, compliance with paragraph (Q) of rule 1501:13-9-04 of the Administrative Code and rule 1501:13-9-08 of the Administrative Code;
 - (12) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal preparation plant shall comply with rules 1501:13-9-01 to

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1501:13-9-17, 1501:13-10-01, 1501:13-11-01 and 1501:13-11-02 of the Administrative Code;

- (13) Any coal preparation plant or support structures located on prime farmland shall meet the requirements of rule 1501:13-13-03 of the Administrative Code;
- (14) All exposed surface areas shall be protected and stabilized to control erosion and air pollution attendant to erosion effectively; and
- (15) Reclamation shall follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with these rules.

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1501:13-13-07 In situ processing. No Change Rule.

(A) Performance standards.

- (1) The person who conducts in situ processing activities shall comply with the provisions of this rule.
- (2) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:
 - (a) Avoiding discharge of fluids into holes or wells, other than as approved by the chief;
 - (b) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the chief;
 - (c) Avoiding annular injection between the wall of the drill hole and the casing; and
 - (d) Preventing discharge of process fluid into surface waters.
- (3) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.
- (4) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:
 - (a) Horizontally beyond the affected area identified in the permit; and
 - (b) Vertically into overlying or underlying aquifers.
- (5) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

(B) Monitoring.

- (1) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics in a manner approved by the chief to measure changes in the quantity and quality of water in surface and ground water systems in the permit and in adjacent areas.
- (2) Water quality monitoring shall be conducted in accordance with monitoring programs approved by the chief as necessary according to appropriate federal and state water quality standards.

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1501:13-14-03 Civil penalties. No Change Rule.

- (A) The chief shall review each notice of violation and cessation order in accordance with the assessment procedures described in this rule to determine whether a civil penalty shall be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.
- (B) The chief shall assess a penalty for each cessation order. In all other instances, the chief shall consider the factors listed in paragraph (C) of this rule in determining whether to assess a penalty.
- (C) In determining the amount of the penalty, the chief shall consider:
- (1) The permittee's history of previous violations at the particular coal mining operation;
 - (2) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
 - (3) Whether the permittee was negligent;
 - (a) "Negligence" means the failure of a permittee to prevent the occurrence of any violation of the conditions of the permit or Chapter 1513. of the Revised Code or rules adopted thereunder due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit or the law due to indifference, lack of diligence, or lack of reasonable care;
 - (b) A "greater degree of fault than negligence" means reckless, knowing, or intentional conduct; and
 - (4) The demonstrated good faith of the permittee to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation;
 - (a) "Rapid compliance" means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement;
 - (b) "Normal compliance" means the person to whom the notice or order was issued abated the violation within the time given for abatement;
 - (c) If consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.
- (D) Assessment of separate violations for each day.
- (1) The chief may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the chief shall consider the factors listed in paragraph (C) of this rule and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply.
 - (2) In addition to the civil penalty provided for in paragraph (D)(1) of this rule and pursuant to section 1513.02 of the Revised Code, whenever a violation contained in a notice of violation, cessation order or other order has not been abated within the abatement period in the order, a civil penalty of not less than seven hundred fifty dollars shall be assessed for each day during which such failure continues, provided

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that such penalty for the failure to abate a violation shall not be assessed for more than thirty days for each such violation. If the permittee has not abated the violation within the thirty-day period, the chief shall within the next thirty days take appropriate action pursuant to section 1513.17 or 1513.40 of the Revised Code, or division (D)(3) of section 1513.02 of the Revised Code, or division (A) of section 1513.15 of the Revised Code, to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate. If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

- (a) If the chairman of the reclamation commission determines, in a temporary relief proceeding held under section 1513.13 of the Revised Code, that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the chairman of the reclamation commission issues a final order with respect to the violation in question; and
- (b) If the person to whom the notice or order was issued initiates review proceedings under section 1513.14 of the Revised Code with respect to the violation in which the obligations to abate are stayed by the court, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

(E) Procedures for assessment of civil penalties.

- (1) The chief shall, within thirty days of the issuance of the notice or order, serve a copy of the proposed assessment, by certified mail, on the person to whom the notice of violation or order was issued at the address specified in the sign required under paragraph (B) of rule 1501:13-9-01 of the Administrative Code, or at any address at which the person is in fact located. Service shall be deemed complete when the certified mail service requirements of paragraph (D)(1)(b) of rule 1501:13-14-02 of the Administrative Code are met.
- (2) The recipient of the proposed assessment shall be advised of the right to an informal assessment conference under this rule.
- (3) Within fifteen days of service of a notice of violation or order, the person to whom it was issued may submit written information about the violation to the chief and to the inspector who issued the notice of violation or cessation order. The chief shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(F) Informal assessment conference.

- (1) Within fifteen days from the date upon which a proposed assessment is served, the person to whom the proposed assessment was issued may submit a written request to the chief for an informal assessment conference to contest the amount of the penalty. The informal assessment conference shall constitute the public hearing required by division (E)(2) of section 1513.02 of the Revised Code. A person who does not submit a timely request for an informal assessment conference shall be considered to have waived the opportunity for a conference. A timely request for an informal assessment conference under this rule shall toll the time permitted for appeal of the proposed assessment to the reclamation commission pursuant to section 1513.13 of the Revised Code.
- (2) The chief shall appoint a conference officer to conduct the informal assessment conference. The conference officer shall be a person other than the inspector who issued the notice of violation upon which the penalty is based.

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- (3) The assessment conference shall not be governed by Chapter 119. of the Revised Code regarding the requirements for formal adjudicatory hearings.
 - (4) The assessment conference shall be held within sixty days after receipt of the written request required by paragraph (F)(1) of this rule. A failure by the chief to hold the assessment conference within the prescribed time limit shall not be grounds for rescission or reduction of all or a part of the proposed assessment unless the person against whom the proposed penalty is assessed makes a timely written objection to the delay and proves to the chief that actual prejudice results from the delay.
 - (5) The chief shall post notice of the date, time and place of the conference at least five days prior to the conference at the district office of the division of mineral resources management from which the underlying notice of violation was issued. Any person may attend and participate in the conference.
 - (6) Within thirty days after the conference, the conference officer shall issue a written notice of his or her action as a result of the conference, which notice shall be served on the persons who participated in the conference by certified mail in accordance with paragraph (D)(1)(b) of rule 1501:13-14-02 of the Administrative Code. The notice shall contain the decision of the conference officer to affirm, raise, lower or vacate the proposed assessment.
 - (7) The conference officer shall consider such information as is relevant to the assessment. The conference officer shall either:
 - (a) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer, chief and by the person assessed; or
 - (b) Affirm, raise, lower or vacate the penalty.
 - (8) The person served with the proposed assessment shall bear the burden of proving at the conference the existence or non-existence of any or all of the factors subject to consideration by the conference officer.
 - (9) The written notice of the conference officer's decision shall be accompanied by the worksheet if the proposed assessment has been raised or lowered. The reasons for the conference officer's action on the proposed assessment shall be fully documented in the appropriate file.
 - (10) If the conference officer increases or decreases the proposed assessment by more than twenty-five per cent and five hundred dollars, the notice of decision required by paragraph (F)(6) of this rule shall not be final unless approved by the chief or his or her designee, evidenced by the appropriate signature thereon.
 - (11) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved, or that the person assessed is not diligently working toward a good faith resolution of the issues.
 - (12) If full payment of the amount specified in the settlement agreement is not received within thirty days after execution of the agreement, the chief may enforce the agreement or rescind it and proceed as if there had never been a settlement agreement.
- (G) Request for hearing. Any person having an interest that is or may be adversely affected by a notice of violation, order or decision of the chief or by any modification, vacation or termination of such a notice, order or decision, except a show cause order or an order which adopts a rule, may appeal by filing a notice of appeal with the reclamation commission pursuant to section 1513.13 of the Revised Code within thirty days from receipt of the proposed assessment.

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- (1) At the time this appeal is filed, the person shall forward the amount of the penalty to the secretary of the reclamation commission for placement in an escrow account. Failure to forward the money to the secretary of the reclamation commission within thirty days from receipt of the proposed assessment shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.
 - (2) The reclamation commission shall hold all funds submitted under paragraph (G)(1) of this rule in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in paragraph (I) of this rule.
- (H) If, upon appeal, the reclamation commission affirms or modifies the proposed amount of the penalty, the person so assessed shall have thirty days from service of the commission's written decision, unless otherwise provided by Chapter 1513. of the Revised Code, within which to pay such amount in full, or file an appeal with the court of appeals.
- (I) Final assessment and payment of penalty.
- (1) If the person to whom a notice of violation or cessation order is issued fails to request a review as provided in paragraph (G) of this rule, a proposed assessment shall become a final order of the chief and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.
 - (2) If any party requests judicial review of a final order of the reclamation commission, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (I)(3) of this rule, the escrowed funds shall be transferred to the chief in payment of the penalty, and the escrow shall end.
 - (3) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this rule, the reclamation commission shall, within thirty days of receipt of the order, refund to the person assessed all or part of the escrowed amount, with interest, from the date of payment into escrow to the date of the refund.

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1501:13-14-04 Petition for fees. No Change Rule.

(A) Award of costs and expenses.

- (1) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under Chapter 1513. of the Revised Code which results in a final order being issued by the chief.
- (2) The petition for an award of costs and expenses including attorneys' fees must be filed with the chief within forty-five days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.
- (3) Contents of petition.
 - (a) A petition filed under paragraph (A)(1) of this rule shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:
 - (i) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;
 - (ii) Receipts or other evidence of such costs and expenses; and
 - (iii) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.
- (4) Any person served with a copy of the petition shall have thirty days from service of the petition within which to file an answer to such petition.
- (5) Appropriate costs and expenses including attorneys' fees may be awarded:
 - (a) To any person from the permittee, if:
 - (i) The person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of Chapter 1513. of the Revised Code, Chapters 1501:13-1 to 1501:13-14 of the Administrative Code or the permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the chief determines that the person made a substantial contribution to the full and fair determination of the issues; or
 - (ii) The person initiates an application for review of alleged discriminatory acts, pursuant to section 1513.39 of the Revised Code, upon a finding of discriminatory discharge or other acts of discrimination;
 - (b) To any person other than a permittee or his or her representative from the state of Ohio, if the person initiates or participates in any proceeding under Chapter 1513. of the Revised Code upon a finding that the person made a substantial contribution to a full and fair determination of the issues;
 - (c) To a permittee from the state of Ohio when the permittee demonstrates that the chief or his or her authorized representative issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee;

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- (d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under Chapter 1513. of the Revised Code or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or
- (e) To the division of mineral resources management where it demonstrates that any person applied for review pursuant to Chapter 1513. of the Revised Code or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the division of mineral resources management.

(6) An award under this rule may include:

- (a) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under Chapter 1513. of the Revised Code; and
- (b) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award of costs.

(B) Appeal of decision. Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under Chapter 1513. of the Revised Code may appeal such award to the reclamation commission pursuant to section 1513.13 of the Revised Code.