CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: **Ohio Department of Natural Resources, Division of Mineral Resources Management**

Regulation/Package Title: **DMRM 2015-2016 Coal Rules**

Rule Number(s): **This a Business Impact Analysis of 35 rules:**

16 No Change rules; 18 rules proposed for amendment; 1 proposed new rule. Please see the answer to Question 1 for complete list of rules.

Date: **11/14/2017**

Rule Type:

X New **X 5-Year Review**

X Amended **_ Rescinded**

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. 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 35 rules for review to the Common Sense Initiative pursuant to ORC section 107.52; DMRM proposes to amend some of these rules, create one new rule, and some continue with no changes. Several of these rules are proposed for amendment due to recent changes in state law:

- HB 64 of the 131st General Assembly, effective 9/29/2015.
- SB 293 of the 131st General Assembly, effective 9/14/2016.

Eighteen are proposed for amendment:

1501:13-1-02 Definitions.
1501:13-1-04 Exemption for coal extraction incidental to government financed highway or other construction.
1501:13-1-08 Petitions to initiate rule making.
1501:13-1-12 Notice of public hearing to adopt, amend, or rescind rules.
1501:13-1-14 Incorporation by reference.
1501:13-3-03 Areas where mining is prohibited or limited.
1501:13-4-02 Requirements of coal exploration.
1501:13-4-03 Permit applications; requirements for legal, financial, compliance and related information.
1501:13-4-06 Permit applications, revisions, and renewals, and transfers, assignments, and sales of permit rights.
1501:13-4-14 Underground mining permit application requirements for reclamation and operations plans.
1501:13-4-15 Authorization to conduct coal mining on pollution abatement areas.
1501:13-4-16 Requirements for exemption for coal extraction incidental to the extraction of other minerals.
1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.
1501:13-9-04 Protection of the hydrologic system.
1501:13-9-06 Use of explosives.
1501:13-9-10 Training, examination, and certification of blasters.
1501:13-12-03 Subsidence control.
1501:13-14-02 Enforcement.

One rule is proposed as a new rule:

1501:13-13-08 Restoration off the permit area by means of mitigation. To implement provisions of ORC section 1513.16(A)(25) enacted by HB 64.

Sixteen are proposed to remain in effect with no changes ("No Change rules"):

1501:13-1-03 Restrictions on financial interest of employees
1501:13-1-05 Successor division
1501:13-1-06 Severability
1501:13-3-02 Submission and processing of requests for valid existing rights determinations
1501:13-3-04 Procedures for identifying areas where mining is prohibited or limited
1501:13-3-07 Procedures for designating areas unsuitable for coal mining operations
1501:13-4-01 General contents requirements for permit applications
1501:13-5-02 Improvidently issued permits.
1501:13-5-03 Revocation of exemption for coal extraction incidental to the extraction of other minerals
1501:13-7-02 Amount and duration of performance security
1501:13-7-06.1 Tax credit for reclamation outside an applicant's permit area
1501:13-9-03 Topsoil handling
1501:13-9-09 Disposal of coal mine wastes and noncoal mine wastes
1501:13-9-13 Contemporaneous reclamation
1501:13-14-05 Informal conferences
1501:13-14-06 Individual civil penalties.

All of these rules have undergone review pursuant to ORC section 106.03; thus, the JCARR filing will indicate that they have undergone their five-year-review.

The following is an explanation of the key provisions of these rules and the significant changes proposed for them. (Note: Attachments 1 and 2 contain all the rules as they will be submitted to JCARR. In Attachment 1, the rules proposed for amendment and the proposed new rule are each accompanied by a summary listing all the changes proposed for the rule. The No Change rules are included in Attachment 2.)

More information regarding the impact of the regulations on regulated businesses is contained in the answer to Question 14.

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

Five rules from this chapter are proposed for revision; only rule 1501:13-1-02 has significant changes.

- 1501:13-1-02 Definitions. Contains the definitions that are used in Chapters 1501:13-1 to 1501:13-14 of the Administrative Code. The definitions that are proposed for amendment relate to:
    - Program Amendment 82 (an amendment to Ohio's coal mining and reclamation program required by the federal Office of Surface Mining):
        - New definition, "Alternative financial security," to define a term that was added to Ohio's coal mining program in 2007 by HB 443. Alternative financial security is required to cover long-term water treatment or a long-term alternative water supply under section 1513.16(F)(8).
        - Revise definition of collateral bond in order to establish a trust fund agreement as another means for supporting a collateral bond.
        - Remove "a trust fund" from the definition of performance security because it will be covered under the inclusion of "collateral bond" in the performance security definition once "trust fund" is added as a type of collateral bond.
    - Subsidence: new definitions for "Non-commercial building" and "Occupied residential dwelling and structures related thereto" that mirror the definitions from the federal regulations, 30 C.F.R. 701.5.
    - A finding from the 2012 OSM oversight study. A new definition of "Replacement of water supply" that mirrors the federal regulations, 30 C.F.R. 701.5, will address OSM's finding that Ohio's program is less stringent than the Federal program in that Ohio does not provide replacement of equivalent water delivery systems and the additional cost for operation and maintenance (O&M) for replacement water supplies.

- 1501:13-1-04 Exemption for coal extraction incidental to government financed highway or other construction. Deals with the exemption for coal extraction incidental to government-financed highway or other construction as provided under ORC 1513.01. Also includes provisions for the limited extraction of coal during Abandoned Mine Lands (AML) projects. Paragraph reference corrected.

- 1501:13-1-08 Petitions to initiate rule making. Establishes provisions that allow any person to petition the Chief of the Division to initiate rule making and that require the Chief to review and issue a written decision on the petition within ninety days. Small change to correct DMRM's address.

- 1501:13-1-12 Notice of public hearing to adopt, amend, or rescind rules. Contains the requirements for public notices of hearings to adopt, amend or rescind coal mining and reclamation rules. Small changes made to agree with ORC 119.03.

- 1501:13-1-14 Incorporation by reference. 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. Changes to update the editions of the Code of Federal Regulations and the US Code.

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

- 1501:13-1-03 Restrictions on financial interest of employees. Establishes the background information that must be provided by all employees in DMRM's coal mining and reclamation program, as well as members of the Reclamation Commission and the Reclamation Forfeiture Fund Advisory Board, to assure compliance with section 1513.04 of the Revised Code and with 30 CFR Part 705.

- 1501:13-1-05 Successor division. Provides for the continued administration and enforcement of Chapter 1513. of the Revised Code and Chapters 1501:13-1 to 1501:13-14 of the Administrative Code if there is a reorganization or a consolidation of the divisions of the Ohio Department of Natural Resources.

- 1501:13-1-06 Severability. Establishes the severability of the rules in Chapters 1501:13-1 to 1501:13-14 of the Administrative Code, so that the invalidity of one rule or part of a rule does not affect the validity of the other rules.

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.

One rule from this chapter is proposed for revision. The revision is not significant.

- 1501:13-3-03 Areas where mining is prohibited or limited. Contains the list of areas where coal mining is prohibited or limited, subject to VER and qualification for the exception for existing operations under paragraph (B) of the rule. Referenced section of law updated per SB 293.

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

- 1501:13-3-02 Submission and processing of requests for valid existing rights determinations. Contains the requirements for submitting a request for a VER determination and the requirements for initial review, public notice and comment, determination by the chief, administrative and judicial review, and availability of records of a request for a VER determination.

- 1501:13-3-04 Procedures for identifying areas where mining is prohibited or limited. Contains requirements that the Chief must follow in reviewing a coal mining permit application or revision to determine if any lands would be disturbed where mining is prohibited or limited. Contains requirements for an applicant who proposes to mine: on national forest land; on or within 100 feet of a road; or within 300 feet of an occupied dwelling.

- 1501:13-3-07 Procedures for designating areas unsuitable for coal mining operations. Contains the requirements for designating areas unsuitable for coal mining, including petitions, notification, hearings, inventory and public information, and decisions.

OAC Chapter 1501:13-4. This chapter contains permitting rules. ORC section 1513.07 requires a permit to mine coal in Ohio. ORC section 1513.072 requires that coal exploration be carried out under a notice of intent to explore or, if the exploration activity will substantially disturb the land, an exploration permit.

Six rules from this chapter are proposed for amendment; there are significant changes in rules 1501:13-4-03, 1501:13-4-14, and 1501:13-4-15.

- 1501:13-4-02 Requirements of coal exploration. Contains the requirements for coal exploration, including: notice of intent to explore or exploration permit; public availability of exploration information; sale or commercial use of coal extracted during exploration. Several changes to clarify requirements and make a correction.

- 1501:13-4-03 Permit applications; requirements for legal, financial, compliance and related information. Contains the legal, financial, compliance and related information that is required to be submitted in a coal mining permit application. The provisions proposed for amendment relate to:
    - Program Amendment 83: In a Federal Register notice, the OSM directed Ohio to amend this rule to require that all unabated violation notices be listed in the application, not only unabated cessation orders and uncorrected air and water quality violation notices.
    - HB 64 right of entry provisions: a new paragraph is proposed to require that the application include 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. If requested by the Chief, the application must also include 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.

- 1501:13-4-06 Permit applications, revisions, and renewals, and transfers, assignments, and sales of permit rights. Contains requirements for permit applications, permit revisions and renewals, and the transfer, assignment, and sale of permit rights. Two small clarifications added.

- 1501:13-4-14 Underground mining permit application requirements for reclamation and operations plans. Requirements include: Protection of hydrologic balance; ground and surface water monitoring; postmining land uses; protection of parks and historic places; subsidence control plan; disposal of excess spoil; air pollution plan; and fish and wildlife plan. Small but significant revisions related to subsidence: changes to clarify requirements and to use wording consistent with the changes proposed for rule 1501:13-12-03 Subsidence Control.

- 1501:13-4-15 Authorization to conduct coal mining on pollution abatement areas. Contains the requirements for coal mining on previously mined areas (often called "remining") that have continuing water pollution problems. Several clarifications added, the most significant regarding testing:
    - Paragraph (C)(5)(b) revised to change the requirements for testing overburden and spoil on pollution abatement areas so that they are the same as the requirements for the rest of the permit area. This change will eliminate the potential that twice the number of test holes might be required on remining pollution abatement areas, thereby eliminating a disincentive to remining operations.

- 1501:13-4-16 Requirements for exemption for coal extraction incidental to the extraction of other minerals. Requirements include: contents of a request for exemption; conditions of exemption; stockpiling of materials; public availability of information; and reporting. Small change to correct DMRM's address.

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

- 1501:13-4-01 General contents requirements for permit applications. Contains the general requirements for format and content of permit applications.

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; the revisions are significant.

- 1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions. Contents of rule include: public notice of filing; comments and objections on applications; informal conferences; review, approval or denial of applications; and conditions placed on permits. Significant changes related to:
    - HB 64 restoration off the permit area: New provision that states that if the application for a coal mining permit, permit renewal, or permit revision includes a request for restoration off the permit area by means of mitigation, this must be specified in the public notice.

    - HB 64 right of entry provisions: New provision from ORC section 1513.07(I)(4) enacted by HB 64: 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.

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

- 1501:13-5-02 Improvidently issued permits. Contains the provisions for handling a coal mining and reclamation permit that the Chief has reason to believe was improvidently issued.

- 1501:13-5-03 Revocation of exemption for coal extraction incidental to the extraction of other minerals. Establishes a procedure that the Division of Mineral Resources Management must follow for reviewing compliance with exemptions for coal extraction incidental to the extraction of other minerals, and for revoking such exemptions if necessary.

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.

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

- 1501:13-7-02 Amount and duration of performance security. Contains the requirements regarding the amount and duration of performance security provided under Ohio's coal mining and reclamation regulatory program.

- 1501:13-7-06.1 Tax credit for reclamation outside an applicant's permit area. Sets forth the terms and conditions under which the Chief of DMRM may approve an application to perform reclamation outside a permit area for a tax credit pursuant to section 1513.171 of the Ohio Revised Code. The rule applies to those permittees that provide performance security together with reliance on the Reclamation Forfeiture Fund.

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

Three rules from this chapter are proposed for amendment. All contain significant changes.

- 1501:13-9-04 Protection of the hydrologic system. Contents of rule include: water quality standards and effluent limitations; sediment control measures; stream buffer zones; diversions, siltation structures, and impoundments; monitoring; and water rights and replacement. Significant changes are:
    - Clarification regarding how to measure the distance from a stream: "measured horizontally."
    - HB 64 restoration off the permit area by means of mitigation: Provision added that the Chief may approve a variance from the buffer zone requirements for restoration off the permit area approved under rule 1501:13-13-08.
    - New provision to mirror requirement of federal regulations, 30 CFR 816.43(b)(4).
- 1501:13-9-06 Use of explosives. Contains the requirements for the use of explosives (blasting) at Ohio's coal mining operations. Numerous changes and clarifications proposed for this rule. The proposed revisions do not reduce the blasting protections that the rule provides to people or property near coal mines. The most significant proposed changes are to paragraphs (F)(8) and (F)(9):
    - (F)(8). Language revised to make the frequency-dependent limits the only measurement-based compliance method allowed. DMRM has required this compliance method in industrial minerals mines (quarries) since 2003, and for many years the DMRM has required its application to older houses with plaster-on-lath walls in many coal blast plans. Pennsylvania has required this compliance method for ALL blasting for many years. For all those reasons, the Ohio mining and blasting industry is already familiar with the frequency-dependent limits and has extensive practice with achieving compliance. The three-tiered, distance-dependent method, which would no longer be allowed under this proposed rule, was created by federal Office of Surface Mining over 30 years ago when there was much more limited knowledge of how distance and other factors affect ground vibration frequencies. Decades later, seismographic data from tens of thousands of blasts have shown that the lower frequencies most conducive to damage to residential structures can occur at any distance, making the distance-dependent method archaic. By contrast, the frequency-dependent method

simultaneously accounts for the natural frequencies of residential structures, the potential effect of soils, geological structures and distance on ground vibration frequencies, and the modern option of using programmable electronic (digital) detonators and signature-hole analysis to promote the generation of higher frequencies that are less conducive to damage.

  - (F)(9). The three-tiered, distance-dependent scaled distance (SD) factors are proposed to be replaced by a single SD factor of 90. This more-conservative SD factor will match what is already in rule 1501:14-3-04, Use of Explosives for Industrial Minerals Mines, and will promote seismographic monitoring of more blasts. In the absence of seismographic monitoring, an SD factor of 90 will likely ensure that the particle velocities at the nearest dwelling do not exceed 0.50 inch per second and fall under the frequency-dependent limits of (F)(8). Also in (F)(9), the option to apply for and use a modified (less conservative) scaled distance factor is proposed to be removed. This method was used only once by a permittee in the last 30 years, and has the potential effect of reducing the amount of blasts that must be monitored at a dwelling for compliance, while increasing the explosive charge-weights per delay. For liability reasons and better proof of compliance, seismographic monitoring of blasts should be encouraged, not discouraged.

- 1501:13-9-10 Training, examination, and certification of blasters. This rule applies to blasters of both coal and industrial minerals mines. Contains detailed requirements for becoming and remaining a certified blaster including provisions on recertification, suspension, and revocation. Numerous changes and clarifications proposed for this rule. The proposed revisions do not reduce the blasting protections that the rule provides to people or property near coal or industrial minerals mines. The most significant proposed change affects paragraphs (A)(4), (C)(1) and (5)(a) and (b), and (D)(2)(b):
  - Revision to and addition of several paragraphs to formalize an existing process for issuing a highly limited type of certification, available to blasters who conduct small-scale blasting on industrial minerals mining permits.

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

- 1501:13-9-03 Topsoil handling. Requires topsoil to be removed prior to mining and segregated, stockpiled, and protected from erosion and contaminants, and then replaced after mining.

- 1501:13-9-09 Disposal of coal mine wastes and noncoal mine wastes. Contains detailed requirements for coal mine waste and noncoal mine waste disposal areas.

- 1501:13-9-13 Contemporaneous reclamation. Contains requirements regarding the timing of reclamation; generally, reclamation of an area is to begin immediately after extraction of minerals is completed.

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

One rule from this chapter is proposed for amendment; the revisions are significant.

- 1501:13-12-03 Subsidence control. Contains requirements regarding material damage to structures or surface land due to subsidence. Numerous changes and clarifications proposed for this rule. The most significant proposed changes are:
    - Changes to (F) and (H) to mirror 30 CFR 817.121(c)(2): Provisions revised to clarify and meet the requirements of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1309a (a)(1) and 30 C.F.R. 817.121(c)(2), consistent with the Ohio General Assembly's directive in Ohio Revised Code 1513.02 (A)(1)(c) to implement standards "to meet the requirements of [SMCRA]." Consistent with federal law, the term "structures or facilities" is proposed to be replaced with "non-commercial building or occupied residential dwelling and structures related thereto that existed at the time of mining." More closely mirroring federal law on this point will provide greater clarity and certainty to the regulated community, consistent with the Governor's Common Sense Initiative, and those affected by damage from subsidence.

    - Addition of sub-paragraph (O)(4): sets out in rule an existing requirement regarding the pre-subsidence survey. Permittees conduct pre-subsidence surveys for structures that are to be undermined, and permittees must notify surface owners about the pre-subsidence survey.

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

One rule is proposed to be created in this chapter; its provisions are significant.

- 1501:13-13-08 Restoration off the permit area by means of mitigation. New rule to implement provisions of Ohio Revised Code section 1513.16(A)(25) enacted by HB 64. Proposed provisions include hydrologic and engineering assessment, proposed mitigation plan, landowner notification, review by the Chief, and release of performance bond:
    - (A) and sub-paragraphs (A)(1) to (3). Clarifies that a request for restoration off the permit area by means of mitigation is part of an application for a permit or a revision to a permit and that areas to be restored off the permit area must be in compliance with the hydrologic protection provisions of rule 1501:13-9-04.

    - (B) and sub-paragraphs. Establishes detailed requirements for the hydrologic and engineering assessment required under 1513.16(A)(25)(a).

- (C). Provides details about the proposed mitigation plan and mitigation activities pursuant to 1513.16(A)(25)(b).

- (D). Requires that the surface owner of record be notified that restoration off the permit area by means of mitigation will be requested.

- (E)(1). Provides details about the Chief's written determinations regarding the proposed restoration off the permit area by means of mitigation as required under 1513.16(A)(25)(a) to (d).

- (E)(2). Requires the Chief to review any comments and any other relevant information received about the proposed restoration off the permit area.

- (E)(3). Clarifies that review and approval of a request for restoration off the permit area is subject to the requirements for permit applications and permit revisions.

- (F). Provides details about how restoration off the permit area by means of mitigation will be performed and how performance security will be released for permits with approved restoration off the permit area.

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.

One rule from this chapter is proposed for amendment; its changes are not significant.

- 1501:13-14-02 Enforcement. Provisions include cessation orders, notices of violation, show cause orders, and injunctive relief. One small typo corrected; one small clarification added.

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

- 1501:13-14-05 Informal conferences. Contains the procedures for requesting and holding an informal conference on a permit application, permit renewal, significant revision to a permit, or a performance security adjustment.

- 1501:13-14-06 Individual civil penalties. Defines the terms and establishes criteria and procedures for the assessment of individual civil penalties.

1., supplemental question: for rules concerning liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

Does the draft rule package require insurance and/or surety products as a condition of compliance? If yes, what measure did the agency take to determine if the financial responsibility instrument is readily available in the amounts required?

This question applies to two of the rules in this BIA. ORC section 1513.08 requires coal mining operations to obtain and maintain performance security.

- 1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions. One of the reviews required by this rule before a permit is issued and one of the conditions placed on a permit under this rule is that performance security will be filed and maintained pursuant to Ohio Revised Code Chapter 1513.
- 1501:13-7-02 Amount and duration of performance security.

Surety bonds may be written by companies licensed/authorized to transact fidelity and surety business in the state of Ohio. The Ohio Department of Insurance (ODI) is responsible for licensing surety companies and insurance agents in Ohio and the authorized company/agent is available on ODI's website. There are currently 20 licensed surety companies that commonly provide surety bonds through various licensed insurance agents to the mining industry in Ohio. The surety company must also be listed on the U.S. Department of Treasury Circular 570. Verification of surety companies meeting these requirements is completed prior to accepting each surety bond in Ohio. Sureties evaluate available mining reserves and the duration of the obligation as well as market availability and the balance sheet of the mining company.

In addition, ODNR Chief Legal Counsel Brock Miskimen and Deputy Legal Counsel Ashley Montgomery-Hively consulted with the Ohio Insurance Institute to verify that the required financial products are readily available in Ohio in the amounts required.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

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 rules 1501:13-1-02 and 1501:13-1-14: ORC section 1513.072(A).
- For rules 1501:13-1-02 and 1501:13-14-14: ORC section 1513.35.
- For rules 1501:13-4-03, 1501:13-4-06, and 1501:13-5-01: ORC section 1513.07.
- For rules 1501:13-4-14, 1501:13-9-06, and 1501:13-9-10: ORC section 1513.161.
- For rule 1501:13-9-10: ORC section 1514.12.

3. 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 regulator. 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.

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

Rule 1501:13-3-03(A)(5) contains a provision that exceeds the federal requirement. The rationale for this provision is stated below:

The Division has determined that one provision of rule 1501:13-3-03 which is more stringent than the federal rule should continue as it is currently effective in order to protect public health and safety. The Division is choosing not to adopt a federal exception to paragraph (A)(5) of this rule because its adoption could jeopardize the health and safety of the occupants of a dwelling.

The federal regulations, under 30 CFR 761.11(e)(2), allow an unusual exception to the normal prohibition that protects occupied dwellings: a coal mining access or haul road is allowed to come within 300 feet of an occupied dwelling if that dwelling is on the opposite side of an existing public road and the access or haul road is connecting to the public road. If the Division were to adopt this federal exception, it would relegate this occupied dwelling to a lower standard of protection simply because of the existence of a public road, even though the public road of and by itself does not provide any extra protection to this dwelling.

Under section 1513.02(A)(1)(b) of the Revised Code, the Chief is required to adopt rules "to ensure full compliance with all requirements...relating to reclamation, and the attainment of those objectives in the interest of the public health, safety, and welfare..." The proximity of an occupied dwelling to the trucks and other heavy equipment of a coal mining haul road certainly falls within the sphere of the Chief's interest in protecting public health, safety, and welfare.

5. 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 difficult responsibility of regulating the mining industry in a way which strikes a balance between protection of society and the environment from the adverse effects of mining operations and providing for the nation's need for coal as an essential source of energy.

6. 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 seeing that coal mining continues to be carried out in Ohio in an environmentally protective manner and that all mined lands are reclaimed and restored to a productive post mining land use.

Development of the Regulation

7. 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.

By letter dated January 4, 2017, DMRM Chief Lanny Erdos provided an advance copy of these rules and their proposed changes, by e-mail, to Christian Palich of the Ohio Coal Association (OCA), requesting review and comment. Several members of the OCA provided written comments on the rules, and on February 14, 2017, DMRM Chief Erdos and several DMRM staff met with OCA members to discuss these comments. As a result of this meeting and follow-up e-mail and phone discussions, several of the proposed changes were revised. (See the answer to Question 8, below, for more information.)

By letter dated May 2, 2017, DMRM Chief Erdos provided these rules with their proposed changes, by e-mail, to Mike Carey of OCA, Stephan Maxwell of OSM, and Trent A. Dougherty of the Ohio Environmental Council. In addition, several other OCA and OSM representatives were sent copies of the rules for comment. Chief Erdos requested comments on the rules by June 2, 2017.

On June 1, by e-mail, David Hamilton of OSM sent comments on the proposed rules. The coal blasting rules were further revised as a result of these comments. (See the answer to Question 8, below, for more information.)

On July 17, 2017, DMRM e-mailed the blasting rule changes to three OCA members, Mark Stemm, Mike McKown, and Paul Leist, and asked that they respond with any comments on these changes by July 31.

DMRM received no further requests to revise the rules.

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

The OCA made comments regarding right of entry, remining, off-site restoration, blasting, stream buffer zones and impoundments. DMRM revised six rules as a result of discussion with OCA representatives and revised five other rules to simplify website addresses. DMRM also provided extensive explanations to the OCA regarding the proposed changes, particularly related to the remining and blasting rules, and to the wording of the new Off-site Restoration rule.

OSM made comments regarding blasting and off-site restoration. After follow-up discussions between OSM's and DMRM's blasting specialists, DMRM removed three proposed changes from the blasting rules and revised one proposed change.

OSM initially expressed concern regarding the proposed new rule, Restoration off the permit area by means of mitigation. However, on August 14, 2017, a representative of OSM's Pittsburgh Field Division e-mailed the Chief:

> Upon further review, we have determined that permitting to mine through and restore perennial and intermittent streams, with proper 404 permits, would not be inconsistent with SMCRA and the regulations.

9. 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 Chapter 1513. and to maintain a state regulatory program that is as effective as the federal program.

10. 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 remain as effective as 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.

11. 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.

12. 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. The Ohio EPA and the US Army Corps of Engineers have some permitting authority over streams and wetlands disturbed by mining and DMRM cooperates with these agencies pursuant to ORC sections 1513.02(J) and 1513.076. In addition, Ohio law and rules require that the Division notify and work with other State and Federal agencies when reviewing applications and implementing various provisions of the law and rules.

The Division also reviews the other laws and rules under its authority, i.e., abandoned mined lands, industrial minerals mining, and mine safety, to avoid conflict.

13. 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.

Most of the changes proposed in this coal rule package are corrections and clarifications that will not change the way that coal mining is regulated. In two cases -- the test hole requirement in the remining rule, 1501:13-4-15(C)(5)(b), and the small-scale IM blasting certification of 1501:13-9-10(A)(4), (C)(1) and (5)(a) and (b), and (D)(2)(b) -- the provisions are already being implemented informally and are being added to the rules for consistency. In two other cases -- the right of entry language of 1501:13-4-03(D)(1) and (2) and 1501:13-5-01(G)(3) -- the provisions have taken effect due to a state law change (and are therefore already being implemented) and are being added to the rules for consistency.

DMRM's permitting and regulatory processes ensure that any new requirements are applied consistently across Ohio. Implementation occurs through updates given by DMRM staff to the regulated industry during the permitting and revision process as well as through the regulatory inspection process. The Ohio Coal Association is advised of the implementation so they can update their members. Furthermore, changes to rules 1501:13-9-06 (use of explosives in coal mines) and 1501:13-9-10 (training, examination and certification of blasters) will be conveyed via regular mail or email to all DMRM-certified blasters, and to all major contractors that provide blasting services at Ohio mines.

For implementation of new rule 1501:13-13-08, DMRM will coordinate with its partner agencies, the Ohio EPA and the US Army Corps of Engineers, on how best to process requests for restoration off the permit area by means of mitigation.

Adverse Impact to Business

14. 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;

b. Identify the nature of the adverse impact (e.g., license 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 as well as certified blasters for coal and industrial minerals mines.

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 be as effective as 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 VER.

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. Every permit has four major components:

- Legal, Financial, Compliance, and Related Information (OAC 1501:13-4-03)
- Environmental Resources Information (OAC 1501:13-4-04 or 1501:13-4-13)
- Operations and Reclamation Plan (OAC 1501:13-4-05 or 1501:13-4-14)
- Special Categories of Mining (OAC 1501:13-4-12)

Detailed operations and reclamation plans include information on topsoil storage and replacement, protection of ground and surface water, blasting, handling of overburden and coal waste, contemporaneous reclamation, and many other issues.

Chapter 1501:13-5. These rules deal with the processing of permit applications, including allowing for public participation in the review of an application. These rules primarily require action on the part of DMRM, rather than the industry.

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 his or her 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.

An operator who forfeits performance security is banned, by law, from obtaining another permit to mine coal anywhere in the country.

Chapters 1501:13-9 through 1501:13-13. The performance standards in these rules include many detailed requirements that coal mine operators and certified blasters must follow to implement the approved mining plan to minimize disturbance and prevent material damage and reclaim the mined land to a condition capable of supporting the pre-mining land use or to higher or better uses.

Chapter 1501:13-14. Rules related to enforcement. The three rules from this Chapter included in these rule packages -- Enforcement, Informal conferences, and Individual civil penalties -- can have a negative impact on business. The rules provide details on how enforcement actions are processed and reviewed.

15. 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.

Regulatory Flexibility

16. 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, no funding has been available for this program from the Office of Surface Mining for about 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

As noted under Question 1, rule 1501:13-9-10 is proposed to be amended to formalize an existing process for issuing a highly limited type of certification, available to blasters who conduct small-scale blasting on industrial minerals mining permits. By reducing the requirements for obtaining and maintaining this limited type of blaster certification, the economic burden on small-scale dimension stone quarries is reduced, which helps them remain competitive with producers of manufactured (artificial) stone products.

17. 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, for example, a pattern of violations develops, or 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

18. 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.

Assistance to all coal operators:

DMRM recognizes that operators must commit significant resources to meet the many statutory obligations of ORC Chapter 1513. DMRM is always looking for ways to reduce the burden on operators within the limitations of the law. For example, as noted under Question 1, the proposed revision to rule 1501:13-4-15(C)(5)(b) will eliminate a disincentive to remining operations by changing the requirements for testing overburden and spoil on pollution abatement areas so that they are the same as the requirements for the rest of the permit area. The proposed new rule 1501:13-13-08, Restoration off the permit area by means of mitigation, will change the way a stream or wetland is restored in cases when restoration on the permit is not possible. This should result in fewer resources being spent in an attempt to restore a stream or wetland where there is no water -- resources that can instead be used for approved mitigation activities.

2015-16 Coal Rules

Rules with amendments:

1501:13-1-02 Definitions. Changes related to: Program Amendment 82; subsidence; and a finding from an OSM oversight study.
1501:13-1-04 Exemption for coal extraction incidental to government financed highway or other construction. Paragraph reference corrected.
1501:13-1-08 Petitions to initiate rule making. Small change to correct DMRM's address.
1501:13-1-12 Notice of public hearing to adopt, amend, or rescind rules. Small changes made to agree with ORC 119.03.
1501:13-1-14 Incorporation by reference. Annual update needed.
1501:13-3-03 Areas where mining is prohibited or limited. Small update due to SB 293.
1501:13-4-02 Requirements of coal exploration. Several changes to clarify requirements and make a correction.
1501:13-4-03 Permit applications; requirements for legal, financial, compliance and related information. Changes related to: Program Amendment 83; and HB 64 right of entry provisions.
1501:13-4-06 Permit applications, revisions, and renewals, and transfers, assignments, and sales of permit rights. Two small clarifications added.
1501:13-4-14 Underground mining permit application requirements for reclamation and operations plans. Changes related to subsidence.
1501:13-4-15 Authorization to conduct coal mining on pollution abatement areas. Several clarifications added.
1501:13-4-16 Requirements for exemption for coal extraction incidental to the extraction of other minerals. Small change to correct DMRM's address.
1501:13-5-01 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions. Changes related to: HB 64 restoration off the permit area; and HB 64 right of entry provisions.
1501:13-9-04 Protection of the hydrologic system. Changes related to: HB 64 restoration off the permit area; addition to mirror federal regulations; and other clarifications and corrections.
1501:13-9-06 Use of explosives. Numerous changes.
1501:13-9-10 Training, examination, and certification of blasters. Numerous changes.
1501:13-12-03 Subsidence control. Changes to (F) and (H) to mirror 30 CFR 817.121(c)(2); changes to (O) to correct and clarify.
1501:13-14-02 Enforcement. One small typo corrected; one small clarification added.
18 rules total

Proposed new rule:

1501:13-13-08 Restoration off the permit area. To implement provisions of Ohio Revised Code section 1513.16(A)(25) enacted by HB 64.

Draft Rule 1501:13-1-02, dated 2/24/2017.

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

Changes related to Program Amendment 82:

- (G). New definition, “Alternative financial security,” added to define a term that was added to Ohio’s coal mining program in 2007 by HB 443. Alternative financial security is required to cover long-term water treatment or a long-term alternative water supply under section 1513.16(F)(8).

- (DD). New subparagraph (5) added to the definition of collateral bond in order to establish a trust fund agreement as another means for supporting a collateral bond.

- (LLLL). Removed “a trust fund” from the definition of performance security because it will be covered under the inclusion of “collateral bond” in the performance security definition once “trust fund” is added to (DD)(5) as a type of collateral bond.

Two new definitions related to subsidence that mirror the definitions from the federal regulations, 30 C.F.R. 701.5:

- (CCCC). New definition, “Non-commercial building.”

- (GGGG). New definition, “Occupied residential dwelling and structures related thereto.”

New definition, Replacement of water supply, that mirrors the definition from the federal regulations, 30 C.F.R. 701.5:

- (SSSSS). New definition, “Replacement of water supply,” added to maintain a State program that is as effective as the Federal program. As part of the annual 2012 OSM oversight study, OSM found that Ohio’s program was less stringent than the Federal program in that Ohio does not provide replacement of equivalent water delivery systems and the additional cost for operation and maintenance (O&M) for replacement water supplies. OSM recommended that Ohio make program adjustments in a timely manner to address these deficiencies.

Website address simplified in (NNNNN).

DRAFT - NOT FOR FILING

Dated 2/24/2017 One new definition and two amended definitions per PA 82 – (G), (DD)(5), and (LLLL). Two new subsidence-related definitions – (CCCC) and (GGGG). New definition, Replacement of water supply – (SSSSS). Website address simplified - (NNNNN).

1501:13-1-02 Definitions.

As used in Chapters 1501:13-1 to 1501:13-14 of the Administrative Code:

(A) "Abatement plan" means any individual technique or combination of techniques, the implementation of which may result in reduction of the base line pollution load. Abatement techniques may include but are not limited to best management practices such as: addition of alkaline material, daylighting old underground mines, special plans for managing toxic- and acid-forming material, regrading, and revegetation.

(B) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned coal mine and reclamation operation or from an area affected by coal mining and reclamation operations.

(C) "Acid-forming materials" means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will form acids that may create acid drainage.

(D) "Acid water" means any waters, the pH of which, as determined by standard methods, is less than 6.0.

(E) "Adjacent area" means the area outside the affected area or permit area where air, surface or ground water, fish, wildlife, vegetation or other resources protected by Chapter 1513. of the Revised Code, determined according to the context in which "adjacent area" is used, are or reasonably could be expected to be adversely affected by proposed coal mining and reclamation operations including probable impacts from underground workings. With respect to underground mining operations, "adjacent area" shall include, at a minimum, the surface areas above full coal recovery areas.

(F) "Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations.

(1) The affected area includes:

(a) The disturbed area;

(b) Any area upon which coal mining and reclamation operations are conducted;

(c) Any adjacent lands the use of which is incidental to coal mining and reclamation operations;

(d) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations, but may not include public roadways, provided that:

(i) The public roadway was in existence prior to the application for the permit;

(ii) The effect on the public roadway from mining use will be minor; and

(iii) The public roadway is incidentally, rather than directly, part of the mining operation;

(e) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings,

holes or depressions, repair areas, storage areas, shipping areas; and

(f) Any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations.

(2) The affected area does not include surface disturbance attributable solely to underground mine subsidence, provided that this exception shall not be construed as a limitation on the authority of the chief or his or her authorized representative to require submission of information about, or take enforcement or other actions in regard to, subsidence disturbances and conditions existing in areas overlying underground workings before, during, and after mining, which areas are not within the permit or affected area.

(G) "Alternative financial security" means a trust fund, a standby trust fund, or other similar agreement or mechanism for the benefit of the state, enforceable under law and approved by the chief, that assures sufficient funds are available and devoted solely to the purpose of providing and maintaining long-term water treatment or a long-term alternative water supply, as applicable, for permits the chief determines require alternative financial security under division (F)(8) of section 1513.16 of the Revised Code.

~~(G)~~ (H) "Angle of draw" means the angle with the vertical, made by a straight line extending away from the edge of the mined-out area to the ground surface, spanning the horizontal distance in which subsidence may occur.

~~(H)~~ (I) "Applicant" means any person seeking a permit, permit renewal or revision to a permit, or a transfer, assignment or sale of permit rights from the chief to conduct coal mining and reclamation operations.

~~(I)~~ (J) "Application" means the documents and other information filed with the chief under Chapter 1513. of the Revised Code, and rules adopted thereunder, for the issuance of a permit, permit renewal or revision to a permit, or for a transfer, assignment or sale of permit rights for coal mining and reclamation operations.

~~(J)~~ (K) "Approximate original contour" means that surface configuration achieved by backfilling and grading of a mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may remain where the chief determines that they are in compliance with division (A)(8) of section 1513.16 of the Revised Code.

~~(K)~~ (L) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

~~(L)~~ (M) "Area mining" means a method of surface coal mining that involves making a series of parallel mining cuts against the highwall created from the initial mining cut. Spoil from each subsequent cut is placed in the preceding cut where coal has been removed and, as a result, area mining forms a series of parallel spoil ridges. Area mining along the contour differs from contour mining in that at least three successive parallel cuts are made from the initial cut.

~~(M)~~ (N) "Auger mining" means a method of mining coal at a highwall by drilling holes or cutting into an exposed coal seam from the highwall and transporting the coal along an auger bit or by conveyors or other means to the surface.

~~(N)~~ (O) "Backfill" or "backfilling" means to fill an excavation or pit with material to a predetermined configuration by reducing the peaks, valleys, and outslopes of the spoil, and filling the cut.

~~(O)~~ (P) "Base line pollution load" means the characterization of the material being discharged from or on the pollution abatement area, described in terms of mass loading for net acidity, total iron, total manganese, and total suspended solids, including seasonal variations and variations in response to precipitation events.

~~(P)~~ (Q) "Best available technology economically achievable" means measures and practices which will abate or ameliorate to the maximum extent possible pollution discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

~~(Q)~~ (R) "Best management practice" means a practice implemented during the mining and reclamation of remining sites that is designed to reduce, if not completely eliminate, the pre-existing water pollution problems. Best management practices are tailored to specific mining operations based largely on pre-existing site conditions, hydrology, and geology. Best management practices are designed to function in a physical and/or geochemical manner to reduce pollution loadings. These best management practices may include engineering, geochemical materials handling, daylighting, regrading, revegetation, diversion ditches or other applicable practices.

~~(R)~~ (S) "Best technology currently available" means equipment, devices, systems, methods, or techniques which:

(1) Will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws;

(2) Will minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable; and

(3) Are currently available anywhere as determined by the chief. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds.

~~(S)~~ (T) "Cemetery" means any area of land where human bodies are interred.

~~(T)~~ (U) "Chief" means chief of the division of mineral resources management.

~~(U)~~ (V) "Coal exploration" means the field gathering of environmental data and surface or subsurface geologic, physical, or chemical data by trenching, drilling or other techniques that disturb the natural land surface and that are necessary to determine the quality and quantity of overburden and coal of an area.

~~(V)~~ (W) "Coal exploration permit" means a permit to conduct coal exploration operations that substantially disturb the natural land surface, issued by the chief pursuant to section 1513.072 of the Revised Code.

~~(W)~~ (X) "Coal mine waste" means coal processing waste and underground development waste.

~~(X)~~ (Y) "Coal mining and reclamation operations" means coal mining operations and all activities necessary and incidental to the reclamation of such operations.

~~(Y)~~ (Z) "Coal mining operation" means:

(1) Activities conducted on the surface of lands in connection with a coal mine, the removal of coal from coal refuse piles, and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal at or near the mine site. Such activities do not include the following:

(a) The extraction of coal incidental to the extraction of other minerals if the weight of coal extracted is less than one-sixth the total weight of minerals removed, including coal;

(b) The extraction of coal as an incidental part of federal, state, or local highway or other government-financed construction when approved by the chief; or

(c) Coal exploration subject to section 1513.072 of the Revised Code; and

(2) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or improvement or use of existing roads to gain access to the site of such activities, and for hauling, excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. Separation by a stream, roadway, or utility easement does not preclude two or more contiguous tracts of land from being considered contiguous.

~~(Z)~~ (AA) "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

~~(AA)~~ (BB) "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with the coal preparation plant, including, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

~~(BB)~~ (CC) "Coal processing waste" means earth materials which are wasted or otherwise separated from the product coal after physical or chemical processing, cleaning, or concentrating of coal.

~~(CC)~~ (DD) "Collateral bond" means an indemnity agreement in a sum certain payable only to the state and executed by the permittee or applicant as principal which is supported by one or more of the following:

(1) The deposit of cash in one or more federally insured accounts, payable only to the state upon demand;

(2) Negotiable bonds of the United States or the state of Ohio endorsed to the order of, and placed in the possession of, the state;

(3) Negotiable certificates of deposit, payable to, and in possession of, the state; ~~or~~

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the state of

Ohio, payable only to the state upon presentation by the chief~~.~~; or

(5) A trust fund naming the state as primary beneficiary in an amount sufficient to complete the reclamation plan for any and all areas that may be in default at any time and devoted solely to the purpose of providing performance security in accordance with these rules.

~~(DD)~~ (EE) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

~~(EE)~~ (FF) "Community or institutional building" means any building other than a public building or an occupied dwelling, which:

(1) Is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups;

(2) Functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or

(3) Is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

~~(FF)~~ (GG) "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

~~(GG)~~ (HH) "Complete application" means an application for the issuance of a permit, permit renewal or revision to a permit, or for a transfer, assignment or sale of permit rights for coal mining and reclamation operations which contains all the information required under Chapter 1513. of the Revised Code and these rules and necessary to initiate processing and public review.

~~(HH)~~ (II) "Contour mining" means a method of surface coal mining that involves making an initial mining cut along the contour of a hillside to the maximum highwall height and then making subsequent cuts along the same contour, placing spoil in the preceding cut where the coal has been removed.

~~(II)~~ (JJ) "Cropland" means land used for the production of cultivated crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land will not be considered as having been used for the production of cultivated crops on the basis of use as woodland or rangeland, or where the only cultivation has been disking to establish or help maintain grass used as a forage, or where the only cultivation has been disking to plant small grain for a quick cover to be used as forage and not as a grain crop.

~~(JJ)~~ (KK) "Cumulative hydrologic impact assessment" means the assessment of the probable cumulative impact of all anticipated mining in the general and adjacent area upon the hydrologic balance of the area and particularly upon water availability.

~~(KK)~~ (LL) "D permit" means a permit issued pursuant to an application filed with the division of mineral resources management pursuant to section 1513.07 of the Revised Code, effective September 1, 1981.

~~(LL)~~ (MM) "Developed spring" means a spring regularly being used for domestic or agricultural purposes.

~~(MM)~~ (NN) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance security or other assurance of performance required by section 1513.08 of the Revised Code is released.

~~(NN)~~ (OO) "Diversion" means a channel, embankment, or other man-made structure constructed for the purpose of diverting water from one area to another.

~~(OO)~~ (PP) "Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

~~(PP)~~ (QQ) "Drainage plan" means a description or illustration of the method of collection, treatment, and discharge of all or any of the waters within, flowing onto, or being discharged from the permit area.

~~(QQ)~~ (RR) "Effluent limitations" means a specific, numeric, measurable set of limits on the amount of various pollutants that are placed on point source discharges through the national pollutant discharge elimination system (NPDES). For a remining NPDES permit that uses non-numeric limitations, "effluent limitations" means the best management practice as required under that NPDES permit.

~~(RR)~~ (SS) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

~~(SS)~~ (TT) "Engineer" means a professional engineer registered in accordance with the requirements of Chapter 4733. of the Revised Code.

~~(TT)~~ (UU) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

~~(UU)~~ (VV) "Excess spoil" means spoil material disposed of in a location other than the mined-out area, except that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in non-steep slope areas shall not be considered excess spoil, provided that the blending will be done in accordance with paragraph (E) of rule 1501:13-9-14 of the Administrative Code.

~~(VV)~~ (WW) "Existing structure" means a structure or facility used in connection with or to facilitate coal mining and reclamation operations for which construction began prior to August 16, 1982.

~~(WW)~~ (XX) "Forfeiture of performance security" means that the chief shall proceed against the permittee in the manner set forth in rule 1501:13-7-06 of the Administrative Code.

~~(XX)~~ (YY) "Fragile lands" means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, national natural landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

~~(YY)~~ (ZZ) "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or coal mining and reclamation operations or both. During coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage

piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

~~(ZZ)~~ (AAA) "Full coal recovery" means recovery of a high percentage of the in-place coal reserve by pillar removal, longwall mining, or other underground mining method in which support is removed from the roof of the mine under a large enough area that a full or partial collapse or subsidence of the mine roof is planned as part of the method of mining.

~~(AAA)~~ (BBB) "General area" means, with respect to hydrology, the topographic and ground-water basin in and surrounding a permit area which is of sufficient size to include the area to be affected by all anticipated mining activities, including one or more watersheds containing perennial streams and ground-water zones, and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground-water systems in the basins. Anticipated mining shall include, at a minimum, the entire projected lives, through performance security releases, of:

(1) The proposed operation;

(2) All existing operations; and

(3) Any operation for which a permit application has been submitted to the chief.

~~(BBB)~~ (CCC) "Grading" means the shaping of material to conform to the approved mining and reclamation plan.

~~(CCC)~~ (DDD) "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

~~(DDD)~~ (EEE) "Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than twenty degrees or the average slope of the profile of the existing hollow from the toe of the fill to the top of the fill is greater than ten degrees. In head-of-hollow fills the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

~~(EEE)~~ (FFF) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

~~(FFF)~~ (GGG) "Highwall" means the face of exposed overburden and coal in an open cut of a coal mining operation or for entry to underground mining operations.

~~(GGG)~~ (HHH) "Highwall remnant" means that portion of a highwall that remains after backfilling and grading of a remining permit area.

~~(HHH)~~ (III) "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a state or national register of historic places, national historic landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

~~(III)~~ (JJJ) "Historically used for cropland" means:

(1) Lands that have been used for cropland for any five years or more out of the ten years immediately

preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of coal mining and reclamation operations;

(2) Lands that the chief determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(3) Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

~~(JJJ)~~ (KKK) "Hydrologic balance" means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

~~(KKK)~~ (LLL) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves then along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

~~(LLL)~~ (MMM) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of Chapter 1513. of the Revised Code or these rules in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

~~(MMM)~~ (NNN) "Impounding structure" means a dam, embankment or other structure used to impound sediment, water, slurry, or other liquid or semi-liquid material.

~~(NNN)~~ (OOO) "Impoundments" means all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

~~(OOO)~~ (PPP) "Incremental area" for a particular permit year applies only to permits for which the applicant or permittee provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code and means:

(1) That area within the permit area which the permittee affects by coal mining and reclamation operations in the particular permit year and which the permittee does not intend to affect in the coming permit year; and

(2) In the permit year in which mining operations are completed on the permit area, all of the affected area not already designated as an incremental area under paragraph (A)(6)(a) of rule 1501:13-7-01 of the Administrative Code.

~~(PPP)~~ (QQQ) "Incremental mining unit" applies only to permits for which the applicant or permittee provides

performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of rule 1501:13-7-01 of the Administrative Code. Incremental mining unit means an area within a permit of sufficient size and configuration to provide for efficient mining and reclamation operations, subject to approval by the chief, where mining and reclamation activities are authorized by the chief and a specific amount of performance security has been determined by the chief pursuant to paragraph (B) of rule 1501:13-7-01 of the Administrative Code.

~~(QQQ)~~ (RRR) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

~~(RRR)~~ (SSS) "Intermittent stream" means a stream that is below the local water table and flows for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

~~(SSS)~~ (TTT) "Knowing" or "knowingly" means, except where the context indicates otherwise, that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

~~(TTT)~~ (UUU) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under section 1513.37 of the Revised Code.

~~(UUU)~~ (VVV) "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

~~(VVV)~~ (WWW) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

~~(WWW)~~ (XXX) "Mountaintop removal mining" means coal mining operations in which the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill except as otherwise provided for in paragraph (B)(1) of rule 1501:13-13-04 of the Administrative Code, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of paragraph (C) of rule 1501:13-4-12 of the Administrative Code.

~~(XXX)~~ (YYY) "MSHA" means the mine safety and health administration.

~~(YYY)~~ (ZZZ) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing conditions suitable for germination and growth.

~~(ZZZ)~~ (AAAA) "National pollutant discharge elimination system" and "NPDES" means the national permit program authorized under the Clean Water Act, 33 U.S.C. 1251 et seq., that controls water pollution by regulating point sources that discharge pollutants into waters of the United States.

~~(AAAA)~~ (BBBB) "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

(CCCC) "Non-commercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in this rule. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

~~(BBBB)~~ (DDDD) "Notice of intention to explore" means the documents and other information filed with the chief for coal exploration, pursuant to section 1513.072 of the Revised Code and rule 1501:13-4-02 of the Administrative Code.

~~(CCCC)~~ (EEEE) "Noxious plants" means species that have been included on the official list of noxious plants for the state of Ohio.

~~(DDDD)~~ (FFFF) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(GGGG) "Occupied residential dwelling and structures related thereto" means, for purposes of rule 1501:13-12-03 of the Administrative Code, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

~~(EEEE)~~ (HHHH) "Operation" means coal mining operation.

~~(FFFF)~~ (IIII) "Operator" means any person conducting a coal mining operation and includes the permittee if the permittee is conducting the mining operation or a contract operator if a person under contract with the permittee is conducting the mining operation.

~~(GGGG)~~ (JJJJ) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

~~(HHHH)~~ (KKKK) "Perennial stream" means a stream or a part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

~~(III)~~ (LLLL) "Performance security" means a form of financial assurance, including a surety bond; a collateral bond; ~~a trust fund;~~ or a combination thereof, by which a permittee assures faithful performance of all the requirements of Chapter 1513. of the Revised Code, division 1501:13 of the Administrative Code, and the requirements of the permit and reclamation plan.

~~(JJJJ)~~ (MMMM) "Permanent diversion" means a diversion remaining after coal mining and reclamation operations are completed which has been approved for retention by the chief.

~~(KKKK)~~ (NNNN) "Permanent impoundment" means an impoundment which is approved by the chief and, if required, by other state and federal agencies for retention as part of the postmining land use.

~~(LLLL)~~ (OOOO) "Permit" means a permit to conduct coal mining and reclamation operations issued by the chief pursuant to section 1513.07 or 1513.074 of the Revised Code.

~~(MMMM)~~ (PPPP) "Permit area" means the area of land to be affected indicated on the approved map submitted by the applicant or operator with the application required by section 1513.07 or 1513.074 of the Revised Code. This area shall include, at a minimum, all areas which are or will be affected by the coal mining and reclamation operations during the term of the permit. With respect to underground mining operations, "permit area" shall not include those surface areas overlying underground workings and not included within the affected area.

~~(NNNN)~~ (QQQQ) "Permit year" means the year beginning on the date on which the permit was issued or the year beginning on any yearly anniversary of the permit issuance. Permit years are identified by sequence. For example, the permit year beginning on the date the permit was issued is the "first permit year," the permit year beginning on the first yearly anniversary of the permit is the "second permit year," and so on.

~~(OOOO)~~ (RRRR) "Permittee" means a person holding or required by Chapter 1513. of the Revised Code to hold a permit.

~~(PPPP)~~ (SSSS) "Person" means an individual, partnership, corporation, business trust, estate, trust, association or other legal entity, or any political subdivision, instrumentality or agency of the state or the United States.

~~(QQQQ)~~ (TTTT) "Person having an interest which is or may be adversely affected or person with a valid legal interest" means any person:

(1) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the chief; or

(2) Whose property is or may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the chief.

~~(RRRR)~~ (UUUU) "Pit" or "strip mine pit" means that part of the operation prior to backfilling from which coal is being or has been removed from its natural state.

~~(SSSS)~~ (VVVV) "Point source discharge" means any discernible, confined or discrete conveyance from which a pollutant is, or may be, discharged to the waters of the state.

~~(TTTT)~~ (WWWW) "Pollution abatement area" means that part or parts of the permit area which are causing or contributing to the base line pollution load, and which must be affected to bring about potential improvement of the base line pollution load, and which may include the immediate location of the discharge(s). The pollution abatement area shall include, to the extent practicable, areas within the permit area which are adjacent to and nearby the remining operation and which also must be affected to reduce the pollution load of the pre-existing discharges, and may include the immediate location of the pre-existing discharges.

~~(UUUU)~~ (XXXX) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, hail, or that quantity of water emanating from snow cover as snowmelt in a limited period of time.

~~(VVVV)~~ (YYYY) "Pre-existing discharge" means a discharge from surface or subsurface waters which is located on previously mined area as defined in this rule. This term shall include a pre-existing discharge that is

relocated as a result of the implementation of best management practices in the permit.

~~(WWWW)~~ (ZZZZ) "Previously mined area" means land affected by coal mining operations prior to August 3, 1977 that has not been reclaimed to the standards of Chapter 1513. of the Revised Code, as effective September 1, 1981 and thereafter.

~~(XXXX)~~ (AAAAA) "Prime farmland" means those lands that both:

(1) Are defined by the secretary of agriculture in 7 C.F.R. 657; and

(2) Have been historically used for cropland.

~~(YYYY)~~ (BBBBB) "Principal shareholder" means any person who is the record or beneficial owner of ten per cent or more of any class of voting stock.

~~(ZZZZ)~~ (CCCCC) "Probable hydrologic consequences" means the projected result of proposed coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water, the flow, timing, or pattern of the surface and ground water, and the stream channel conditions on the permit area and adjacent area.

~~(AAAAA)~~ (DDDDD) "Productivity" means the vegetative yield produced by a unit area for a unit of time.

~~(BBBBB)~~ (EEEEE) "Property to be mined" means the surface estates and mineral estates within the permit area. For those areas covered by underground workings, "property to be mined" means the mineral estates to be mined and the surface estates.

~~(CCCCC)~~ (FFFFF) "Public building" means any building that is owned by a public agency or used primarily for public business or meetings.

~~(DDDDD)~~ (GGGGG) "Public park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

~~(EEEEE)~~ (HHHHH) "Public roadway" means a road which is:

(1) Designated as a public road in the jurisdiction within which it is located;

(2) Constructed in a manner consistent with other public roads within the jurisdiction within which it is located;

(3) Regularly maintained with public funds; and

(4) Subject to, and available for, substantial use by the public.

~~(FFFFF)~~ (IIIII) "Publicly owned park" means a public park that is owned by a federal, state or local governmental entity.

~~(GGGGG)~~ (JJJJJ) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area and in the immediate vicinity of the permit area that is accessible and available for use and that, when rehandled, will not cause a hazard to public safety or significant damage to the environment.

~~(HHHHH)~~ (KKKKK) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

~~(IIII)~~ (LLLLL) "Receiving water" means the specific water body of the waters of the state into which point and non-point sources flow.

~~(JJJJJ)~~ (MMMMM) "Reclamation" means those actions taken to restore mined land as required by Chapter 1513. of the Revised Code to a postmining land use approved by the chief.

~~(KKKKK)~~ (NNNNN) "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. Magnitude of such events are as defined by the "National Weather Service Technical Paper No. 40, Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom. This technical report is available from NOAA's national weather service website ~~http://www.nws.noaa.gov/ohd/hdsc/currentpf.htm~~www.nws.noaa.gov/ohd/hdsc/currentpf.htm.

~~(LLLLL)~~ (OOOOO) "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

~~(MMMMM)~~ (PPPPP) "Remining" means conducting coal mining and reclamation operations which affect previously mined areas.

~~(NNNNN)~~ (QQQQQ) "Remining NPDES permit" means a national pollutant discharge elimination system permit issued by the Ohio environmental protection agency for a discharge which is in compliance with the permit requirements of 33 U. S.C. section 1311(p).

~~(OOOOO)~~ (RRRRR) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(SSSSS) "Replacement of water supply" means, with respect to a protected water supply contaminated, diminished, or interrupted by a surface or underground coal mining operation, provision of a water supply on both a temporary and permanent basis equivalent to premining quality and quantity. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply.

(1) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(2) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

~~(PPPPP)~~ (TTTTT) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the

right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes any access or haul road constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area of coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include ramps and routes of travel within the mining area or within spoil or coal mine waste disposal areas. The term may not include public roadways outside the permitted area, provided that the public roadway was in existence prior to the application for the permit, the effect on the public roadway from mining use will be minor, and the public roadway is incidentally, rather than directly, part of the mining operation.

~~(QQQQQ)~~ (UUUUU) "Rules promulgated thereunder," "rules adopted thereunder," or "these rules" means all rules contained in Chapters 1501:13-1 to 1501:13-14 of the Administrative Code.

~~(RRRRR)~~ (VVVVV) "Runoff" means the overland flow caused by excess rainfall.

~~(SSSSS)~~ (WWWWW) "Safety factor" means the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

~~(TTTTT)~~ (XXXXX) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

~~(UUUUU)~~ (YYYYY) "Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

~~(VVVVV)~~ (ZZZZZ) "Shadow area" means the surface areas above the underground workings and surface areas that are within the angle of draw of such workings.

~~(WWWWW)~~ (AAAAAA) "Significant, imminent environmental harm to land, air or water resources" means:

(1) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(2) An environmental harm is imminent, if a condition, practice, or violation exists which:

(a) Is causing such harm; or

(b) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 1513.02 of the Revised Code.

(3) An environmental harm is significant if that harm is appreciable and not immediately reparable.

~~(XXXXX)~~ (BBBBBB) "Slope" means average inclination of a surface, measured from the horizontal.

~~(YYYYY)~~ (CCCCCC) "Soil horizons" means contrasting layers of soils parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(1) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(2) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has

measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(3) "B horizon." The layer that typically is immediately beneath the E horizon. This middle layer commonly contains more clay, iron, or aluminum than the A, E or C horizon; and

(4) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

~~(ZZZZZ)~~ (DDDDDD) "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey.

~~(AAAAAA)~~ (EEEEEE) "Spoil" means overburden that has been removed during coal mining operations, including underground development materials, but does not include topsoil.

~~(BBBBBB)~~ (FFFFFF) "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes, but is not limited to, increasing bearing capacity, increasing shear strength, draining, compacting or revegetating.

~~(CCCCCC)~~ (GGGGGG) "Subirrigation" means the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

~~(DDDDDD)~~ (HHHHHH) "Subsoil" means the B and C horizons or, in instances where the area has been disturbed by agricultural practices, that soil below the soil ordinarily moved in the tillage or its equivalent in uncultivated soil.

~~(EEEEEE)~~ (IIIIII) "Substantial legal and financial commitments in a coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

~~(FFFFFF)~~ (JJJJJJ) "Substantially disturb" means, for purposes of coal exploration, to affect significantly land or water resources by blasting, by removal of vegetation, topsoil, or overburden, by construction of roads or other access routes, by placement of excavated earth or waste material on the natural land surface, or by other such activities.

~~(GGGGGG)~~ (KKKKKK) "Support facilities" means those facilities resulting from or incident to coal mining and reclamation operations and the areas upon which such facilities are located. Support facilities may consist of, but are not limited to, the following facilities: mine buildings; bathhouses; coal loading facilities, coal crushing facilities; coal sizing facilities; coal storage facilities, equipment and storage facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; facilities used to treat and store water for mine consumption; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including public roads. "Resulting from or incident to" an activity connotes an element of proximity to that activity.

~~(HHHHHHH)~~ (LLLLLL) "Surety bond" means an indemnity agreement in a sum certain payable only to the state, executed by the permittee or applicant as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in this state.

~~(IIIII)~~ (MMMMMM) "Surface mining operations" means those coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

~~(JJJJJ)~~ (NNNNNN) "Surface water" means water, either flowing or standing on the surface of the earth.

~~(KKKKKK)~~ (OOOOOO) "Surveyor" means a professional surveyor registered in accordance with the requirements of Chapter 4733. of the Revised Code.

~~(LLLLLL)~~ (PPPPPP) "Suspended solids" or "nonfilterable residue," expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the environmental protection agency's regulations for wastewater and analyses (40 C.F.R. part 136).

~~(MMMMMM)~~ (QQQQQQ) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or coal mining and reclamation operations and not approved by the chief to remain after reclamation as part of the approved postmining land use.

~~(NNNNNN)~~ (RRRRRR) "Temporary impoundment" means an impoundment used during coal mining and reclamation operations, but not approved by the chief to remain as part of the approved postmining land use.

~~(OOOOOO)~~ (SSSSSS) "Topsoil" means the A and E horizon layers, or in instances in which the area has been disturbed by agricultural practices, the soil ordinarily moved in tillage, or its equivalent in uncultivated soil.

~~(PPPPPP)~~ (TTTTTT) "Toxic forming materials" means earth materials or wastes having a pH of less than 4.0 or a calcium carbonate deficiency of five tons or more per one thousand tons of material. By order of the chief, such other earth materials or wastes shall be designated toxic which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

~~(QQQQQQ)~~ (UUUUUU) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which, through chemical action or physical effects, is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

~~(RRRRRR)~~ (VVVVVV) "Transfer, assignment, or sale of permit rights" means a change of a permittee, including, but not limited to, any fundamental legal change in the structure or nature of a permittee or a name change.

~~(SSSSSS)~~ (WWWWWW) "Trust fund" means money, securities or other property held by a trustee for the benefit of the state that is devoted to the purpose of providing assurance that funds will be available when needed to comply with Chapter 1513. of the Revised Code and rules adopted thereunder and that irrevocably establishes the state as the primary beneficiary.

~~(TTTTTT)~~ (XXXXXX) "Unanticipated event or conditions" as used in rule 1501:13-5-01 of the Administrative Code, means an event or condition related to prior mining activity which arises from a surface coal mining

and reclamation operation on lands eligible for remining and was not contemplated in the applicable permit.

~~(UUUUUU)~~ (YYYYYY) "Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining operations.

~~(VVVVVV)~~ (ZZZZZZ) "Underground mining operations" means underground mining surface operations and underground workings.

~~(WWWWWW)~~ (AAAAAAA) "Underground mining surface operations" means the surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoists and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed.

~~(XXXXXX)~~ (BBBBBBB) "Underground workings" means underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage and blasting.

~~(YYYYYY)~~ (CCCCCCC) "Unwarranted failure to comply" means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of Chapter 1513. of the Revised Code or these rules, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or Chapter 1513. of the Revised Code or these rules due to indifference, lack of diligence, or lack of reasonable care.

~~(ZZZZZZ)~~ (DDDDDDD) "Valid existing rights" means a set of circumstances under which a person demonstrates compliance with the standards under paragraph (A) or (B) of rule 1501:13-3-01 of the Administrative Code and may, subject to the chief's approval, conduct coal mining operations on lands where division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code would otherwise prohibit such operations.

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

~~(BBBBBBB)~~ (FFFFFFF) "Violation," for the purposes of rule 1501:13-4-03, paragraph (D) of rule 1501:13-5-01, and rule 1501:13-5-02 of the Administrative Code, means:

(1) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which the chief has provided one or more of the following types of notice, or the office of surface mining of the U.S. department of the interior or another state regulatory authority has provided equivalent notice under corresponding provisions of the federal regulatory program or a state regulatory program:

(a) A notice of violation;

(b) A cessation order;

(c) A final order, bill, or demand letter pertaining to a delinquent civil penalty;

(d) A bill or demand letter pertaining to delinquent reclamation fees owed to the office of surface mining of the U.S. department of the interior under 30 C.F.R. Part 870; or

(e) A performance security or bond forfeiture order.

~~(CCCCCCC)~~ (GGGGGGG) "Violation notice," for the purposes of rule 1501:13-4-03, paragraph (D) of rule 1501:13-5-01, and rule 1501:13-5-02 of the Administrative Code, means any written notification from a regulatory authority or other governmental entity of a violation, as specified in the definition of "violation" in this rule.

~~(DDDDDDD)~~ (HHHHHHH) "Water table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

~~(EEEEEEE)~~ (IIIIIII) "Water quality standards" means the rules set forth in Chapter 3745-1 of the Administrative Code establishing stream use designations and water quality criteria protective of such uses for the surface waters of the state.

~~(FFFFFFF)~~ (JJJJJJJ) "Willful violation" means an act or omission which violates a provision of Chapter 1513. of the Revised Code or these rules, other applicable state or federal laws, or a condition of a permit, committed by a person who intends the result which actually occurs.

~~(GGGGGGG)~~ (KKKKKKK) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-1-04, dated 5/4/2015.

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

(D)(2). Paragraph reference corrected.

DRAFT - NOT FOR FILING

Dated 5/4/2015

1501:13-1-04 Exemption for coal extraction incidental to government financed highway or other construction.

(A) Definitions. As used in this rule:

(1) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this rule, only that coal extracted from within the right-of-way and borrow areas, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of Chapter 1513. of the Revised Code.

(2) "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

(3) "Government-financed construction" means construction funded fifty per cent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent or in-kind payments. Funding at less than fifty per cent may qualify if the project is eligible under section 1513.37 of the Revised Code and the construction is undertaken as an approved reclamation project under section 1513.30 or 1513.37 of the Revised Code.

(B) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the construction operation, the documentation required by paragraphs (E) to (E)(4) of this rule.

(C) Requirements for approved reclamation projects under sections 1513.30 and 1513.37 of the Revised Code with less than fifty per cent government financing.

(1) Determinations. The division of mineral resources management shall determine:

(a) The likelihood of the coal being mined under a permit issued under section 1513.07 of the Revised Code considering the coal reserves from existing mine maps or other sources, the existing environmental conditions, all prior mining activity on or adjacent to the site, current and historic coal production in the area, and any known or anticipated interest in mining the site;

(b) The likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site; and

(c) The likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(2) Concurrence. The regulatory program coordinator and the abandoned mine lands program coordinator must concur on determinations of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under this exemption and in the delineation of the boundaries of the AML project.

(3) Documentation. The AML case file must include the determinations made under paragraphs (C)(1) and

(C)(2) of this rule, the information taken into account in making these determinations, and the names of the parties making the determinations.

(4) Special requirements. For each exempt project the division must:

(a) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(b) Ensure that the reclamation project is conducted in accordance with the provisions of the AML program and procedures as approved by the U.S. secretary of interior under 30 C.F.R. Chapter VII, Subchapter R;

(c) Develop site-specific reclamation requirements, including a contract performance bond, when appropriate, in accordance with approved AML procedures; and

(d) Require the contractor conducting the reclamation to provide, prior to the time reclamation begins, applicable documents that clearly authorize the extraction of coal and payment of royalties.

(5) Limitations. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (C)(2) of this rule, the contractor must obtain a permit under section 1513.07 of the Revised Code for such coal.

(D) Applicability.

(1) Coal extraction which is an incidental part of government-financed construction is exempt from Chapter 1513. of the Revised Code.

(2) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph ~~(C)~~(D)(1) of this rule shall not proceed until a permit has been obtained from the chief of the division of mineral resources management.

(E) Any person extracting coal incident to government-financed highway or other construction shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(1) A description of the construction project;

(2) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction;

(3) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing; and

(4) Acres from which coal will be removed.

(F) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-1-08, dated 3/4/2016.

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

(A). Address corrected.

DRAFT - NOT FOR FILING

Dated 3/4/2016

1501:13-1-08 Petitions to initiate rule making.

(A) Any person may petition the chief to initiate a proceeding for the issuance, amendment, or repeal of any rule under Chapter 1513. of the Revised Code. The petition shall be submitted to the chief at the address of "Division of Mineral Resources Management, Ohio Department of Natural Resources, 2045 Morse Road, Building H-~~3~~, Columbus, Ohio 43229."

(B) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a rule under Chapter 1513. of the Revised Code and shall indicate whether the petitioner desires a public hearing.

(C) Upon receipt of the petition, the chief shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a rule. Facts, technical justification, or law previously considered in a petition or rule making on the same issue shall not provide a reasonable basis. If the chief determines that the petition has a reasonable basis, a notice shall be published one time in three newspapers published in different counties and of general circulation in the state seeking comments from the public on the proposed change. The chief may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(D) Within ninety days from receipt of the petition, the chief shall issue a written decision either granting or denying the petition.

(1) If the petition is granted, the chief shall initiate a rule making proceeding under Chapter 119. of the Revised Code.

(2) If the petition is denied, the chief shall notify the petitioner in writing, setting forth the reasons for denial.

Draft Rule 1501:13-1-12, dated 2/2/2015.

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

Website address simplified.

The requirement that the notice be filed “not more than sixty days” prior to the hearing is proposed to be removed because this is no longer required by section 119.03 (A) of the Revised Code.

The provision that the “full text” may be used in the hearing notice is proposed to be removed because this provision is no longer included in section 119.03 (A)(2).

DRAFT - NOT FOR FILING

Dated 2/2/2015

1501:13-1-12 Public notice of hearing to adopt, amend, or rescind rules.

Public notice of a hearing on the adoption, amendment, or rescission of a rule, to be conducted by the division of mineral resources management, department of natural resources, state of Ohio, shall be given in the register of Ohio as required by Chapter 119. of the Revised Code. The website for the register of Ohio is ~~http://www.registerofohio.state.oh.us/~~www.registerofohio.state.oh.us. Said notice shall be given at least thirty days~~, but not more than sixty days,~~ prior to the hearing. The notice shall: state the division's intention to consider adopting, amending, or rescinding a rule; include a synopsis ~~or full text~~ of the proposed rule, amendment, or rule to be rescinded or a general statement of the subject matter to which such proposed rule, amendment or rescission relates; state the reason or purpose for adopting, amending, or rescinding the rule; and enumerate the date, time and place of the hearing on the proposed action which shall not be earlier than the thirty-first nor later than the fortieth day after the proposed rule, amendment, or rescission is filed. The notice shall also state the place from which a copy of the proposed rule, amendment, or rule to be rescinded may be obtained. The chief shall provide a copy of the public notice to anyone who requests it and pays a reasonable fee, not to exceed the cost of copying and mailing.

Draft Rule 1501:13-1-14, dated 9/21/2016.

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

(A) and (B). Annual updates of the editions of the Code of Federal Regulations and the United States Code that are incorporated by reference.

Note: just prior to filing this rule with JCARR, it will be updated with the most recent publication dates of the Code of Federal Regulations and the U.S. Code.

DRAFT - NOT FOR FILING

Dated 9/21/2016 *Note: just prior to filing this rule with JCARR, it will be updated with the most recent publication dates of the Code of Federal Regulations and the U.S. Code.*

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/. The publishing dates for the various parts of the Code of Federal Regulations (C.F.R.) are: Title 7, January 1, ~~2015~~2016; Title 30, Part 77, July 1, ~~2014~~2015; Title 30, Chapter VII, and Title 40, July 1, 2015; Title 43, October 1, ~~2014~~2015.

(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 edition of the United States Code (U.S.C.), dated January 15, 2013, as supplemented in ~~2013~~2015, effective January ~~16~~3, ~~2014~~2016. These federal laws can generally be found in public libraries or electronically at the website www.gpo.gov/fdsys/.

(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);

(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.

Draft Rule 1501:13-3-03, dated 2/24/2017.

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

(A)(3). Website address simplified.

(A)(8). SB 293 of the 131st General Assembly, effective 9/14/2016, repealed Ohio Revised Code section 1547.87, so the rule is revised to refer instead to sections 1547.81 to 1547.86.

DRAFT - NOT FOR FILING

Dated 2/24/2017

1501:13-3-03 Areas where mining is prohibited or limited.

(A) Subject to valid existing rights and qualification for the exception for existing operations under paragraph (B) of this rule, no coal mining operations shall be conducted:

(1) On any lands within the boundaries of the national park system, the national wildlife refuge system, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276 (a)) or study rivers or study river corridors as established in any guidelines pursuant to that act, national recreation areas designated by act of congress, or any nature preserve dedicated pursuant to Chapter 1517. of the Revised Code;

(2) On any federal lands within the boundaries of any national forest unless approval is granted by the United States secretary of interior;

(3) On any lands on which mining will adversely affect any publicly owned park or any places included on the "National Register of Historic Places," unless approved jointly by the chief and the federal, state, or local agency with jurisdiction over the park or places. The "National Register of Historic Places" is administered by the national parks service, U.S. department of the interior; its website for Ohio sites is ~~http://www.nationalregisterofhistoricplaces.com/oh/state.html~~www.nationalregisterofhistoricplaces.com/oh/state.html;

(4) Within one hundred feet measured horizontally of the outside right-of-way line of any public road, except:

(a) Where mine access roads or haulage roads join such right-of-way line; or

(b) Where a permit has been issued by the director of transportation, or the board of county commissioners, or the board of township trustees, or such other public authority that is charged by law with the maintenance of the public road subject to the requirements of paragraph (C) of rule 1501:13-3-04 of the Administrative Code and the approval of the chief;

(5) Within three hundred feet measured horizontally of any occupied dwelling unless the owner of the dwelling has provided a written waiver consenting to coal mining operations closer than three hundred feet as provided in paragraph (D) of rule 1501:13-3-04 of the Administrative Code;

(6) Within three hundred feet measured horizontally of any public building, school, church, community or institutional building or public park;

(7) Within one hundred feet measured horizontally of a cemetery. Cemeteries may be relocated if authorized by applicable state law or regulations; or

(8) Within one thousand feet of the normal waterlines of any river dedicated as a component of the scenic rivers program pursuant to sections 1547.81 to ~~1547.87~~1547.86 of the Revised Code.

(B) Exception for existing operations. The prohibitions and limitations of paragraph (A) of this rule do not apply to coal mining operations for which a valid permit, issued under Chapter 1513. of the Revised Code and these rules, exists when the land comes under the protection of division (D) of section 1513.073 of the Revised Code or this rule. This exception applies only to lands within the permit area as it exists when the

land comes under the protection of division (D) of section 1513.073 of the Revised Code or this rule.

(C) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-4-02, dated 2/24/2017.

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

(A). The first sentence of this paragraph proposed to be removed because it is not wholly accurate; it is specific to exploration operations that do not substantially disturb the natural land surfaces, but paragraph (A) includes other exploration operations as well.

(B). Heading added: “Notice of intention to explore.”

(C) and (C)(1). Revised to add “an authorized” representative of the Chief and to require, in the first sentence of (C)(1), that the Chief provide written notice.

(D)(8)(a). Website address simplified.

(E)(1). Address corrected.

DRAFT - NOT FOR FILING

Dated 2/24/2017

1501:13-4-02 Requirements of coal exploration.

(A) ~~Coal exploration under a notice of intent for exploration operations that do not substantially disturb the natural land surface.~~ Any person who intends to conduct coal exploration operations outside a permit area shall, prior to conducting the exploration, file with the chief a written notice of intention to explore.

(1) Except for exploration of lands designated in accordance with Chapter 1501:13-3 of the Administrative Code as unsuitable for coal mining operations, if a person demonstrates and the chief finds there will be no substantial disturbance of the natural land surface as "substantially disturb" is defined in rule 1501:13-1-02 of the Administrative Code, the person may conduct coal exploration operations under a notice of intention to explore, provided that person complies with the applicable requirements of this rule.

(2) A person intending to conduct coal exploration operations that substantially disturb the natural land surface, including all exploration of lands designated in accordance with Chapter 1501:13-3 of the Administrative Code as unsuitable for coal mining operations, shall, in addition to filing a written notice of intention to explore, be issued an exploration permit prior to conducting the exploration.

(B) Notice of intention to explore. The written notice required for coal exploration operations under paragraph (A) of this rule shall include:

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) A description to reasonably identify the exploration area, including a map of a scale of no greater than one inch equals one thousand feet, which shall be attached to the notice of intention showing the location of the exploration area as well as access to the proposed area;

(4) A statement of the period of intended exploration;

(5) A description of the methods and equipment to be used to conduct the exploration operation;

(6) If the surface is owned by a person other than the person seeking to explore, a description of the basis upon which the person seeking to explore claims the right to enter that land for the purpose of conducting exploration and reclamation;

(7) A description of the practices that will be followed to reclaim the area and to protect the environment from the adverse impacts of the exploration operations; and

(8) A statement that the person seeking to explore believes that the exploration operations will not substantially disturb the natural land surface.

(C) The chief, or ~~a~~an authorized representative of the chief, shall promptly review notices of intention to explore.

For exploration operations which the person seeking to explore believes will not substantially disturb the natural land surface, the person shall give reasonable notice to the division of mineral resources management district office having jurisdiction over the exploration area of the approximate date that the exploration will begin and shall give telephone notice on the date of commencement of any exploration activities.

(1) If the chief or ~~a~~an authorized representative of the chief finds ~~that~~ the exploration operations will not substantially disturb the natural land surface, he or she shall ~~notify~~provide written notice to the person seeking to explore that the notice of intention has been reviewed and the person may begin exploration. Based on determination by the chief, exploration operations that involve only drilling activities may not be considered substantial disturbance of the natural land surface. Drilling activities that will affect lands designated in accordance with Chapter 1501:13-3 of the Administrative Code as unsuitable for coal mining operations will be considered substantial disturbance.

(2) If the chief or a representative of the chief finds that the exploration operations will substantially disturb the natural land surface, he or she shall notify the person seeking to explore that the notice of intention has been reviewed and the person must submit an application for and be issued an exploration permit before beginning exploration. The chief shall, by order, issue or deny the exploration permit within a reasonable period of time.

(D) Coal exploration under an exploration permit. Any person who intends to conduct coal exploration operations outside a permit area during which more than two hundred fifty tons of coal will be removed or which will substantially disturb the natural land surface, including exploration on lands designated as unsuitable for coal mining operations, shall, prior to conducting the exploration, submit an application and obtain written approval from the chief for an exploration permit. Such exploration shall be subject to the requirements of paragraphs (E) to (L) of this rule. Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant;

(2) The name, address and telephone number of the applicant's representative who will be present at and responsible for conducting the exploration activities;

(3) A narrative describing the proposed exploration area;

(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation;

(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation;

(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount;

(7) If applicable, a statement of why extraction of more than two hundred fifty tons of coal is necessary for exploration;

(8) A description of:

(a) Cultural or historical resources listed on the "National Register of Historic Places," administered by the national parks service, U.S. department of the interior. The website for the "National Register of Historic Places" for Ohio sites is ~~http://www.nationalregisterofhistoricplaces.com/oh/state.html~~www.nationalregisterofhistoricplaces.com/oh/state.html;

(b) Cultural or historical resources known to be eligible for listing on the "National Register of Historic Places," as referenced in paragraph (D)(8)(a) of this rule;

(c) Known archeological resources located within the proposed exploration area; and

(d) Any other information which the chief may require regarding known or unknown historic or archeological resources;

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area;

(10) A description of the measures to be used to comply with rule 1501:13-8-01 of the Administrative Code;

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation; and

(14) For any lands listed in rule 1501:13-3-03 of the Administrative Code, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of section 1513.073 of the Revised Code and rules adopted thereunder, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of section 1513.073 of the Revised Code and rules adopted thereunder.

(E) Public notice and opportunity to comment. Upon submittal to the chief of an administratively complete application for an exploration permit, the applicant shall place an advertisement providing public notice of the filing of the application in a newspaper of general circulation in the county of the proposed exploration area.

(1) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the "Division of Mineral Resources Management, 2045 Morse Road, Building H-~~3~~, Columbus, Ohio 43229" where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(2) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within ten days after the date the notice was published.

(3) A copy of the newspaper advertisement of the application shall be filed with the chief and made part of the complete application. A proof of publication shall be filed with the chief prior to approval of the application.

(F) Decisions on applications for exploration.

(1) The chief, or a representative of the chief, shall promptly review and within a reasonable period of time act upon an administratively complete application for a coal exploration permit and any written comments.

(2) The chief shall approve an application for a coal exploration permit filed in accordance with this rule provided that the application is complete and accurate and the chief finds in writing that the applicant has demonstrated that the exploration and reclamation described in the application will:

(a) Be conducted in accordance with this rule, rule 1501:13-8-01 of the Administrative Code, and the applicable provisions of Chapter 1513. of the Revised Code and these rules;

(b) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species;

(c) Not adversely affect any cultural or historical resources listed on the "National Register of Historic Places" as referenced in paragraph (D)(8)(a) of this rule, pursuant to the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.), unless the proposed exploration has been approved by both the chief and the agency with jurisdiction over such matters; and

(d) With respect to exploration activities on any lands protected under section 1513.073 of the Revised Code and rules adopted thereunder, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for coal mining operations. Before making this finding, the chief shall provide reasonable opportunity to the owner of the feature causing the land to come under the protection of section 1513.073 of the Revised Code and rules adopted thereunder, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of section 1513.073 of the Revised Code and rules adopted thereunder, to comment on whether the finding is appropriate.

(3) Terms of approval issued by the chief shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this rule, rule 1501:13-8-01 of the Administrative Code, Chapter 1513. of the Revised Code, and these rules.

(G) Notice of chief's decision. The chief shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of his or her decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the chief at the division of mineral resources management district office responsible for inspection of the proposed exploration operations.

(H) Coal exploration compliance duties.

(1) Any person who conducts coal exploration operations pursuant to this rule that substantially disturb the natural land surface shall comply with this rule, rule 1501:13-8-01 of the Administrative Code, Chapter 1513. of the Revised Code and these rules, and any exploration permit term or condition imposed by the chief.

(2) Any person who conducts coal exploration operations pursuant to this rule that do not substantially disturb the natural land surface shall comply with the methods and practices described in the notice of intention filed pursuant to paragraph (B) of this rule and the requirements of rule 1501:13-9-02 of the Administrative Code. In addition, this person shall notify the division of mineral resources management district office having jurisdiction over the exploration area of the date of completion of the exploration and reclamation. The notice of intent shall expire on the first anniversary of the date of its issuance, unless a request for renewal is filed with the chief at least sixty days before the expiration date.

(3) Any person who conducts any coal exploration in violation of this rule, rule 1501:13-8-01 of the Administrative Code, Chapter 1513. of the Revised Code and these rules, or any exploration permit term or condition imposed by the chief shall be subject to the provisions of section 1513.99 of the Revised Code, and rules 1501:13-14-01 to 1501:13-14-06 of the Administrative Code.

(I) Public availability of information.

(1) Except as provided in paragraph (I)(2) of this rule, all information submitted to the chief under this rule shall be made available for public inspection and copying at the local offices of the chief closest to the exploration area.

(2) Information not to be available to the public.

(a) The chief shall not make information available for public inspection if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the chief determines that the information is confidential.

(b) The chief shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information that relates to the competitive rights of the person intending to conduct coal exploration.

(c) Information requested to be held as confidential shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

(J) Availability of exploration permit. Each person conducting a coal exploration operation for which the required exploration permit has been issued shall, while in the exploration area, make the exploration permit available for on-site review by the authorized representative of the chief.

(K) Commercial use or sale.

(1) Except as provided under paragraph (K)(2) of this rule or parts 3480 to 3487 of Title 43 of the Code of Federal Regulations, any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit shall first obtain a permit to conduct surface coal mining operations for those operations from the chief under Chapter 1501:13-4 of the Administrative Code.

(2) With the prior written approval of the chief, no permit to conduct coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the chief. The application shall demonstrate that the coal testing is necessary for the development of a coal mining and reclamation operation for which a coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(a) The name of the testing firm and the locations at which the coal will be tested;

(b) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(iii) A description of the specific tests that will be conducted;

(c) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve; and

(d) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

(L) A person adversely affected by a decision of the chief to approve or deny an exploration permit may file an appeal pursuant to section 1513.13 of the Revised Code.

(M) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-4-03, dated 4/4/2017.
Program Amendment 83 changes are in (C)(3) and (4). HB 64 (Right of Entry) changes are in (D)(1) and (2).

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

(B)(7) and (J)(2). Punctuation and typo corrected.

(C)(2)(e) and (f). The requirements of (f) are moved up to (e) because only (e) refers to administrative or judicial proceedings.

(C)(3) and (C)(4). Revised to make the rule as effective as the federal regulations of 30 CFR 778.14(c). In a Federal Register notice of 10/19/2015, 80 FR 63120, the Office of Surface Mining Reclamation and Enforcement (OSMRE) approved a package of amended coal rules with the exception of 1501:13-4-03(C)(3). The Federal Register notice directed Ohio to amend this rule to require that all unabated violation notices be listed in the application, not only unabated cessation orders and uncorrected air and water quality violation notices. The following are the specific changes that are proposed to address OSMRE's concerns:

(C)(3)(a). A reference is added to the definition of "violation notice," which, in conjunction with the definition of "violation," is quite broad:

1501:13-1-02
(BBBBBBB) "Violation," for the purposes of rule 1501:13-4-03, paragraph (D) of rule 1501:13-5-01, and rule 1501:13-5-02 of the Administrative Code, means:

(1) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which the chief has provided one or more of the following types of notice, or the office of surface mining of the U.S. department of the interior or another state regulatory authority has provided equivalent notice under corresponding provisions of the federal regulatory program or a state regulatory program:

(a) A notice of violation;
(b) A cessation order;
(c) A final order, bill, or demand letter pertaining to a delinquent civil penalty;
(d) A bill or demand letter pertaining to delinquent reclamation fees owed to the office of surface mining of the U.S. department of the interior under 30 C.F.R. Part 870; or
(e) A performance security or bond forfeiture order.

(CCCCCCC) "Violation notice," for the purposes of rule 1501:13-4-03, paragraph (D) of rule 1501:13-5-01, and rule 1501:13-5-02 of the Administrative Code, means any written notification from a regulatory authority or other governmental entity of a violation, as specified in the definition of "violation" in this rule.

(C)(3)(b), (C)(4), and (C)(4)(a) to (f). Revised so the term "violation notice" is used throughout these paragraphs so that all the actions included in the definition of violation are included in these provisions. Although the term "cessation order" is proposed to be removed from the paragraphs, cessation orders fall under the definition of "violation" and will therefore still be covered under these paragraphs.

Note that the proposed changes in (C)(3) and (C)(4) would not make Ohio's requirements more lenient; they would instead broaden the application of the provisions. For example, while the current rule requires the applicant to list only "unabated federal or state cessation orders and unabated or uncorrected air and water quality violation notices," the proposed amended rule would require the listing of all unabated violation notices.

(D)(1) and (2). Revised due to the changes to ORC 1513.07(B)(1)(i) made by HB 64 of the 131st General Assembly, effective 9/29/2015.

- In (D)(1), the word "description" changed to "notarized statement."
- New paragraph (D)(2) proposed to require that the application include 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. If requested by the Chief, the application must also include 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.

DRAFT - NOT FOR FILING

Dated 4/4/2017 Program Amendment 83 changes are in (C)(3) and (4). HB 64 (Right of Entry) changes are in (D)(1) and (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.

(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;

(c) The resident agent of the applicant who will accept service of process; and

(d) 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.

(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;

(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

(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.

~~(f) 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 ~~federal or state cessation orders and unabated or uncorrected air and water quality~~ 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 ~~or cessation order~~ reported under paragraph (C)(3)(a) or (C)(3)(b) of this rule, the application shall also contain~~, when applicable~~:

(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 ~~or cessation order~~, the name of the person to whom the violation notice ~~or cessation order~~ 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 ~~or cessation order~~;

(c) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation ~~or cessation order~~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 ~~or cessation order~~;

(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 for a cessation order issued under paragraph (A) 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 ~~or cessation order~~ is being abated

or corrected to the satisfaction of the agency with jurisdiction over the violation; and

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

(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 ~~description of~~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 ~~description~~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.

~~(2)~~ (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.

~~(3)~~ (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 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 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 ~~then~~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 1501:13-4-06, dated 3/2/2016.

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

(B)(2)(g) and (J). Added references to the specific paragraphs of rule 1501:13-4-03 [(H) and (B)(1)(a), respectively] for clarification.

DRAFT - NOT FOR FILING

Dated 3/2/2016

1501:13-4-06 Permit applications, revisions, and renewals, and transfers, assignments, and sales of permit rights.

(A) Applications for permits and permit renewals shall:

(1) Be submitted on forms provided by the chief;

(2) Be filed with the proper number of copies and at places designated by the chief;

(3) Be deemed to be complete as submitted to the chief unless the chief, within fourteen business days of the submission, identifies deficiencies in the application in writing and sends a written list of the deficiencies to the applicant. When the application is complete, the chief shall begin processing the application and notify the applicant of the application number assigned by the chief, so that this number may appear in the public notice required by division (A) of section 1513.071 of the Revised Code. An application for an area adjacent to a permit issued pursuant to section 1513.07 of the Revised Code and these rules may reference information previously submitted as part of the application for that permit if the information is applicable;

(4) Show the name, address, and telephone number of the person who prepared the application if that person is someone other than an employee of the applicant;

(5) Include the name and address of the newspaper in which the applicant is to publish the notice required by division (B)(1)(f) of section 1513.07 of the Revised Code;

(6) Include the telephone number of the applicant, of the operator if the applicant is not the operator, and of the applicant's statutory agent; and

(7) Include the employer identification number of the applicant, or the last four digits of the social security number of the applicant if the applicant is a sole proprietorship or partnership.

(B) Additional requirements for permit renewals.

(1) Any permit issued shall have the right of successive renewal upon expiration, provided the renewal complies with the requirements of paragraphs (A) and (B) of this rule.

(2) In addition to the requirements of paragraph (A) of this rule, an application for renewal shall:

(a) Be filed with the chief at least one hundred twenty days before the expiration of the permit involved; and

(i) Be submitted on an application form for a new permit if the renewal application includes land area that was not in the valid existing permit; or

(ii) Be submitted on a permit renewal application form if the renewal application includes only land area that was in the valid existing permit; and

(b) Include the name and address of the permittee, the term of the renewal requested, and the permit number;

(c) Include evidence that a liability insurance policy or adequate self-insurance under rule 1501:13-7-07

of the Administrative Code will be provided by the applicant for the proposed period of renewal;

(d) Include evidence that the performance security in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional performance security required by the chief pursuant to Chapter 1501:13-7 of the Administrative Code;

(e) Include additional revised or updated information required by the chief;

(f) Be subject to the requirement of division (A)(4) of section 1513.07 of the Revised Code;

(g) Include a copy of the newspaper notice and proof of publication as required by paragraph (H) of rule 1501:13-4-03 of the Administrative Code; and

(h) Be subject to the public notification, public participation, and hearing provisions in sections 1513.07 and 1513.071 of the Revised Code.

(3) Applications for renewal that include proposed revisions to the permit.

(a) If an application for renewal that includes proposed revisions to the permit is submitted on an application form for a new permit pursuant to paragraph (B)(2)(a)(i) of this rule, then the requirements for a permit revision under paragraph (E) of this rule shall not apply.

(b) If an application for renewal that includes any proposed revisions to the permit is submitted on a permit renewal form pursuant to paragraph (B)(2)(a)(ii) of this rule, then the revisions shall be identified and subject to the requirements of paragraph (E) of this rule.

(4) In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(C) Any revisions to an application shall:

(1) Be initialed and dated by the person making revisions. The name of the person shall be provided in the application in the space provided; and

(2) Be acknowledged in writing by the signature of the applicant in the application in the space provided. Such acknowledgement shall be dated by the applicant.

(D) For an application for which the applicant requests the chief to prepare the determinations of the probable hydrologic consequences as provided for by division (A)(4) of section 1513.02 of the Revised Code:

(1) The applicant shall submit:

(a) A request in writing to the chief at least sixty days prior to the time that the applicant intends to submit the application for a permit;

(b) On forms provided by the chief, the following information:

(i) The name of the watershed and location of the stream which will receive drainage discharged from the mining operation (the location of the stream may appear on the hydrologic map);

(ii) A statement of the quality and locations of subsurface water as required by division (B)(1)(n)(ii) of section 1513.07 of the Revised Code;

(iii) A description of the measures to be taken during mining and reclamation to assure protection of the quality and quantity of surface and ground water systems both on and off-site from the adverse effects of the mining and reclamation operations as required by division (C)(13) of section 1513.07 of the Revised Code; and

(iv) A description of the steps to be taken to comply with applicable water quality laws and regulations;

(c) A map prepared in accordance with division (B)(1)(m) of section 1513.07 of the Revised Code and Chapter 1501:13-4 of the Administrative Code showing the information required by division (B)(1)(m) of section 1513.07 of the Revised Code and Chapter 1501:13-4 of the Administrative Code;

(d) Cross-section maps or plans as related to hydrologic studies prepared in accordance with division (B)(1)(n)(i) of section 1513.07 of the Revised Code and Chapter 1501:13-4 of the Administrative Code, showing the information required by division (B)(1)(n)(i) of section 1513.07 of the Revised Code and Chapter 1501:13-4 of the Administrative Code; and

(e) The results of test borings as required by division (C)(12) of section 1513.07 of the Revised Code, submitted on a form provided by the chief;

(2) If the items required by paragraph (D)(1) of this rule are not complete or need revision, the chief shall not be required to prepare the determination of the probable hydrologic consequences. The chief shall notify the requestor by certified mail of those items that are incomplete or need revision. The sixty-day time period for preparation by the chief shall stop on the date the requestor receives the certified mail or reasonably should have received the certified mail, whichever is earlier. The sixty-day period shall resume upon receipt by the division of mineral resources management of the items that need to be completed or revised;

(3) The chief shall prepare the determination of the probable hydrologic consequences within sixty days of receipt of the items required by paragraph (D) of this rule. Those days during which the requestor is revising or making the request complete shall not be included in the sixty days allowed the chief;

(4) The chief shall submit the prepared determination of the probable hydrologic consequences to the requestor and at the same time return the items that were required to be submitted by the requestor by paragraph (D) of this rule; and

(5) The person requesting the preparation of the determination of the probable hydrologic consequences shall include the chief's determination as part of a complete application for a permit.

(E) Revisions to permits shall:

(1) Be obtained when:

(a) There are changes from the mining or reclamation operations as described in the approved plans for the original permit;

(b) Required by an order issued pursuant to paragraph (G) of this rule;

(c) As otherwise required by Chapter 1513. of the Revised Code or these rules;

(2) Be subject to the notice and hearing requirements when the changes in the mining and reclamation plan constitute a significant alteration from mining and reclamation operations contemplated in the original permit. Changes which constitute a significant alteration are those which:

(a) Revise the plan to include the dumping of hazardous chemical wastes and solid wastes;

(b) Revise the plan to include the permanent relocation of a perennial stream;

(c) Revise the plan to include the use of explosives;

(d) Revise the plan to include the construction of an excess spoil disposal fill;

(e) Revise the plan to include the construction of a coal processing waste bank;

(f) Revise the plan to include the use of waste material as fill;

(g) Revise the plan to change the postmining land use pursuant to rule 1501:13-9-17 of the Administrative Code;

(h) Revise the plan to change the subsidence control plan;

(i) Revise the plan to change to a concurrent surface and underground mining operation;

(j) Revise the plan to include the construction of either a permanent or temporary impoundment that has an embankment more than twenty feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway or has a storage volume of twenty-acre feet or more;

(k) Revise the plan to include a variance from approximate original contour; or

(l) Any other revision which the chief, by order, determines to be significant;

(3) Be filed with the chief:

(a) Prior to making changes in the mining and reclamation operations;

(b) If the change is required by paragraph (G) of this rule, within the time period specified in the order;

(4) Be approved or disapproved by the chief within ninety days of receipt of a complete revision request, provided that failure to disapprove shall not be deemed approval and that significant revisions in the reclamation plan shall be subject to notice and hearing requirements in accordance with paragraph (E)(2) of this rule;

(5) Be reviewed by the chief to determine whether a new or updated probable hydrologic consequences determination shall be required pursuant to either paragraph (E)(2) of rule 1501:13-4-05 or paragraph (E)(2) of rule 1501:13-4-14 of the Administrative Code;

(6) Be reviewed by the chief to determine whether a new or updated cumulative hydrologic impact assessment shall be required pursuant to divisions (B)(1)(k) and (E)(2)(c) of section 1513.07 of the Revised Code; and

(7) Be reviewed by the chief to determine if an adjustment of the estimated cost of reclamation shall be required pursuant to paragraph (E) of rule 1501:13-7-02 of the Administrative Code.

(F) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit.

(G) The chief shall review each permit.

(1) Review by the chief shall occur not later than the middle of the permit term or every five years whichever is more frequent. After this review, the chief may require, by order to the permittee, reasonable revision or modification of the permit provision to ensure compliance with Chapter 1513. of the Revised Code and these rules.

(2) Permits that include provisions for mountaintop removal operations, experimental practices, variances from approximate original contour, or variances for delay in contemporaneous reclamation for combined strip and underground mining operations shall be reviewed by the chief as required by rule 1501:13-4-12 of the Administrative Code. Upon completion of the review, the chief may order revisions or modifications of the mining and reclamation plan to ensure compliance with Chapter 1513. of the Revised Code and Chapter 1501:13-9 of the Administrative Code. The order shall be in writing and shall set forth the findings that require the revisions or modifications.

(H) Transfer, assignment, or sale of permit rights.

(1) Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit shall, prior to the date of such transfer, assignment or sale:

(a) Obtain appropriate performance security coverage for the permitted operation by:

(i) Obtaining transfer of the original performance security coverage of the original permittee, provided that the successor meets the eligibility requirements of paragraph (C)(2)(a) of rule 1501:13-7-01 of the Administrative Code where performance security is to be provided together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of that rule; or

(ii) Providing sufficient performance security in accordance with Chapter 1501:13-7 of the Administrative Code.

(b) Obtain insurance coverage in accordance with rule 1501:13-7-07 of the Administrative Code;

(c) Provide the chief with an application for approval of such proposed transfer, assignment, or sale including:

(i) The name and address of the existing permittee and permit number;

(ii) A brief description of the proposed action requiring approval;

(iii) The name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent; and

(iv) The same information as is required by rules 1501:13-4-03 and 1501:13-7-07 of the Administrative Code for applications for new permits for those activities; and

(d) Obtain the written approval of the chief for transfer, assignment, or sale of rights, according to paragraph (H)(4) of this rule.

(2) Prior to the approval of the transfer, assignment or sale, the chief may require that any civil penalties assessed on the permit be paid. No transfer, assignment or sale will be approved if the person succeeding to the permit owes civil penalties to the state.

(3) Advertisement and comment.

(a) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the permit number and particular geographic location of the permit, and the address to which written comments may be sent under this paragraph.

(b) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state or federal government agency may submit written comments on the application for approval to the chief within ten days after the advertisement of the application is published.

(4) The chief may, upon the basis of the applicant's compliance with the requirements of paragraphs (H)(1) to (H)(3) of this rule, grant written approval for the transfer, sale, or assignment of rights under a permit, if he or she first finds, in writing, that:

(a) The person seeking approval will conduct the operations covered by the permit in accordance with the requirements of Chapter 1513. of the Revised Code and these rules;

(b) The applicant is eligible to receive a permit in accordance with paragraphs (E) and (F) of rule 1501:13-5-01 of the Administrative Code;

(c) The applicant has, in accordance with paragraph (H)(1)(a) of this rule, submitted performance security as required by Chapter 1501:13-7 of the Administrative Code in an amount at least equivalent to the performance security of the original permittee; and

(d) The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until the applicant has obtained a new permit.

(5) Notification.

(a) The chief shall notify the permittee, the successor, commenters, and the office of surface mining of his or her findings.

(b) The successor shall immediately provide written notice to the chief of the consummation of the transfer, assignment, or sale of permit rights.

(I) The permittee shall notify the chief within a reasonable amount of time not later than thirty days after any addition, departure, or change in the persons required to be shown in the permit application, pursuant to division (B)(1)(d) of section 1513.07 of the Revised Code, by submitting, in writing, the following information:

(1) The person's name, address, and telephone number;

(2) The person's position title and relationship to the applicant, including percentage of ownership and location in the organizational structure;

(3) The date the person began functioning in the position; and

(4) The date of any departure.

(J) The permittee shall notify the chief in writing of any change in the address of the principal place of business required in the permit application, pursuant to paragraph (B)(1)(a) of rule 1501:13-4-03 of the Administrative Code.

(K) For those applicants who qualify for the small operator assistance program (S.O.A.P.), the applicant shall initiate action for the assistance sufficiently in advance to allow the division time to prepare the information required by paragraph (A) of rule 1501:13-6-03 of the Administrative Code. The applicant shall submit the information required under paragraph (D) of rule 1501:13-6-03 of the Administrative Code at the time of filing a complete permit application.

(L) Subsequent to any amendment of Chapter 1513. of the Revised Code or adoption of new or amended rules, the applicant shall revise those applications on file with the chief to comply with the permit requirements of the amended chapter or new or amended rules. This paragraph does not apply to those applications for which a permit has been issued except as provided under paragraph (G) of this rule.

(M) Determinations of the chief under this rule may be appealed to the reclamation commission pursuant to section 1513.13 of the Revised Code.

Draft Rule 1501:13-4-14, dated 2/24/2017.

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

(J)(1)(b). Website address simplified.

(M)(2). Revised for two reasons:

- To change “survey” to “inventory” to distinguish between this requirement and the “pre-subsidence survey” language proposed to be added to under rule 1501:13-12-03(O). The requirement in this rule is to basically make a list of the structures and renewable resource lands that exist which could be damaged or diminished by subsidence.
- To add “such structures or renewable resources lands” and “material.” These phrases, used earlier in (M)(2), are proposed to be repeated in the last sentence of the paragraph as a clarification.

(M)(2)(g)(ii). Revised for two reasons:

- “buildings” and “features” are added to be consistent with the wording of rule 1501:13-12-03.
- “This rule” changed to “rule 1501:13-12-03 of the Administrative Code” for clarification. While rule 1501:13-12-03 is referenced in (M)(2)(g) of this rule and (ii) is a sub-paragraph of (g), there is still the potential that the term “this rule” could be misinterpreted to mean rule 1501:13-4-14. For example, the Rule Drafting Manual of the Legislative Service Commission states that one should use “this rule” when referring to the rule itself. Re-stating “rule 1501:13-12-03” in sub-paragraph (ii) makes it clear which rule is referenced.

DRAFT - NOT FOR FILING

Dated 2/24/2017 Subsidence-related changes in (M)(2) & (M)(2)(g)(ii); website simplified in (J)(1)(b).

1501:13-4-14 Underground mining permit application requirements for reclamation and operations plans.

(A) Operation plan: general requirements.

(1) This rule shall apply only to underground mining operations.

(2) Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine including:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in rule 1501:13-9-17 of the Administrative Code and is approved by the chief):

(i) Dams, embankments, and other impoundments;

(ii) Overburden and topsoil handling and storage areas and structures;

(iii) Coal removal, handling, storage, cleaning, and transportation areas and structures;

(iv) Spoil, coal processing, waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

(v) Mine facilities; and

(vi) Water and air pollution control facilities.

(3) Each application shall contain the information required under Chapter 1501:13-4 of the Administrative Code for the proposed permit area in the detail necessary for the chief to determine the estimated cost of reclamation, pursuant to paragraph (B) of rule 1501:13-7-01 of the Administrative Code, if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the permittee. This estimate shall include:

(a) Operational detail sufficient to determine the greatest potential reclamation cost liability to the state; and

(b) Any other operational detail required by the chief that may affect the cost of reclamation by the division of mineral resources management in the event of forfeiture of the performance security by the permittee.

(B) Operation plan: existing structures.

(1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, of whether the structure meets the performance standards of rules 1501:13-8-01 to 1501:13-13-07 of the Administrative Code.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of rules 1501:13-8-01 to 1501:13-13-07 of the Administrative Code;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of rules 1501:13-8-01 to 1501:13-13-07 of the Administrative Code are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

(C) Operation plan: blasting. If surface blasting incident to the underground mine operation is to be conducted, the application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the blasting requirements of rule 1501:13-9-06 of the Administrative Code and including the following:

(1) Information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations;

(2) Description of any system to be used to monitor compliance with the airblast and ground vibration limits established under paragraph (C)(1) of this rule, including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring; and

(3) For blasting operations within five hundred feet of active underground mines, copies of the approvals given by the state and federal authorities concerned with the health and safety of underground miners.

(D) Reclamation plan: general requirements.

(1) Each application shall contain a plan for describing reclamation of the lands within the proposed permit area, showing how the applicant will comply with the requirements of Chapter 1513. of the Revised Code and rules adopted thereunder. The plan shall include, at a minimum, all information required under paragraphs (D) to (R) of this rule.

(2) Each plan shall contain, where appropriate, the following information for the proposed permit area:

(a) A detailed timetable for the completion of each major step in the reclamation plan;

(b) A plan for the backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with rule 1501:13-9-14 of the Administrative Code;

(c) A description of the removal, storage, and redistribution of the topsoil, subsoil, and other material to meet the requirements of rule 1501:13-9-03 of the Administrative Code. A demonstration of the suitability of topsoil substitutes or supplements under rule 1501:13-9-03 of the Administrative Code shall be based upon analysis of the thickness of soil horizons, total depth, texture, per cent coarse fragments, pH, and areal extent of the different kinds of soils. The chief may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements;

(d) A description of the revegetation as required in rule 1501:13-9-15 of the Administrative Code, including, but not limited to, descriptions of the:

(i) Schedule of revegetation;

(ii) Species and amounts per acre of seeds and seedlings to be used;

(iii) Methods to be used in planting and seeding;

(iv) Mulching techniques;

(v) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(vi) Irrigation, if appropriate, and disease, pest and vermin control, if any; and

(vii) The measures proposed to be used to determine the success of revegetation as required under rule 1501:13-9-15 of the Administrative Code;

(e) A description of the measures to be used to maximize the use and conservation of the coal resources as required by rule 1501:13-9-05 of the Administrative Code;

(f) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials and materials constituting a fire hazard are disposed of in accordance with paragraph (E) of rule 1501:13-9-09 and paragraph (J) of rule 1501:13-9-14 of the Administrative Code and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(g) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings and to plug, case or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with rule 1501:13-9-02 of the Administrative Code; and

(h) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.) and other applicable air and water quality laws and regulations and health and safety standards.

(E) Reclamation plan: protection of hydrologic balance.

(1) Each application shall contain a plan for the protection of the hydrologic balance. The plan shall be specific to the local hydrologic conditions and shall describe the measures to be taken during and after the proposed underground mining operations in accordance with rule 1501:13-9-04 of the Administrative Code to:

(a) Minimize disturbance to the hydrologic balance within the permit and adjacent areas and to prevent material damage outside the permit area;

(b) Protect the rights of present users of surface and ground waters within the permit area and adjacent areas;

(c) Avoid acid or toxic drainage;

(d) Control surface-water drainage into, through, and out of the proposed permit area, pursuant to rule 1501:13-9-04 of the Administrative Code;

(e) Treat, when required under these rules, surface- and ground-water drainage from the area to be disturbed by the proposed underground mining surface operations, so as not to exceed quantitative limits on pollutants in discharges under paragraph (B) of rule 1501:13-9-04 of the Administrative Code;

(f) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area. Vegetation may be determined by the chief to be the best technology currently available upon a demonstration by the permittee that the requirements of paragraphs (B)(1) to (B)(1)(b) of rule 1501:13-9-04 of the Administrative Code have been met. If the applicant proposes to make such a demonstration after vegetation is established and remove siltation structures sooner than two years after the last augmented seeding of a drainage area, the applicant shall state such intentions in the timetable and plans for removal of sediment control structures required by paragraph (H)(1)(b)(iv) or (H)(1)(c)(iv) of this rule;

(g) Address any potential adverse hydrologic consequences identified in the determination of probable hydrologic consequences under paragraph (E)(2) of this rule and include preventative and remedial measures; and

(h) Meet applicable federal and state water quality laws and regulations.

(2) Determination of probable hydrologic consequences (PHC).

(a) The plan shall include a determination of the probable hydrologic consequences of the proposed underground mining operations on the proposed permit area and adjacent areas. This determination shall be based on baseline hydrologic, geologic and other information collected for the permit application with respect to the hydrologic regime, providing information on the quantity and quality of water in surface- and ground-water systems under seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, and total manganese.

(b) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

(iii) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; and

(iv) What impact the proposed operation will have on:

(a) Sediment yield from the disturbed area;

(b) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(c) Flooding or streamflow alteration;

(d) Ground-water and surface-water availability; and

(e) Other characteristics as required by the chief.

(c) An application for a permit revision shall be reviewed by the chief to determine whether a new or updated PHC determination shall be required.

(3) Each plan shall contain a detailed description, with appropriate drawings, of permanent entry seals and downslope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.

(F) Ground-water and surface-water monitoring plans.

(1) Ground-water monitoring plan.

(a) The application shall include a ground-water monitoring plan based upon the PHC determination required under paragraph (E)(2) of this rule and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in paragraph (E)(1) of this rule. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, specific conductance corrected to twenty-five degrees centigrade, pH, total iron, total manganese, and water levels shall be monitored. Data resulting from monitoring shall be submitted to the chief pursuant to paragraph (N) of rule 1501:13-9-04 of the Administrative Code.

(b) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the general area, then monitoring of that stratum may be waived by the chief.

(2) Surface-water monitoring plan.

(a) The application shall include a surface-water monitoring plan based upon the PHC determination required under paragraph (E)(2) of this rule and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (E)(1) of this rule as well as the effluent limitations set forth in 40 C.F.R. part 434.

(b) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in the permit and adjacent areas, surface-water bodies such as streams, lakes and impoundments, that are potentially affected or into which water will be discharged, and at upstream monitoring locations, the specific conductance corrected to twenty-five degrees centigrade, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 C.F.R. parts 122, 123 and 434 and as required by the national pollutant discharge elimination system permitting authority.

(iii) Data resulting from this monitoring shall be submitted to the chief pursuant to paragraph (N) of rule 1501:13-9-04 of the Administrative Code.

(G) Reclamation plan: postmining land uses.

(1) Each application shall contain a plan for the postmining land use. The plan shall describe the proposed use following reclamation of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use polices and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use; and

(b) When a land use different from the premining land use is proposed, all materials needed for approval of the alternatives used under these rules.

(2) The plan shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) The plan shall describe the consideration which has been given to making all of the proposed coal mining operations consistent with surface owner plans and applicable state and local land use plans and programs.

(H) Reclamation plan: ponds, impoundments, banks, dams, and embankments.

(1) General requirements.

(a) Each application shall include a detailed design plan for each proposed siltation structure, water

impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(i) Be prepared by, or under the direction of, and certified by an engineer;

(ii) Contain a description, map, and cross section of the structure and its location;

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure; and

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(b) Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, 30 C.F.R. 77.216(a), or meets the class B or C criteria for dams in the U.S department of agriculture, soil conservation service technical release no. 60, "Earth Dams and Reservoirs," 1985, shall:

(i) Be prepared by, or under the direction of, and certified by an engineer;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate. If the applicant proposes to demonstrate that vegetation is the best technology currently available and remove siltation structures sooner than two years after the last augmented seeding of the drainage area, include a statement of such intentions.

(c) Each detailed design plan for a structure that does not meet the size or other criteria of paragraph (H)(1)(b) of this rule, shall:

(i) Be prepared by, or under the direction of, and certified by an engineer;

(ii) Include any design and construction requirements for the structure including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate. If the applicant proposes to demonstrate that vegetation is the best technology currently available and remove siltation structures sooner than two years after the last augmented seeding of the drainage area, include a statement of such intentions.

(2) Impoundments.

(a) Permanent and temporary impoundments shall be designed in compliance with the requirements of paragraph (H) of rule 1501:13-9-04 of the Administrative Code. The design of any impoundment shall be certified by an engineer experienced in impoundment design and construction. The certification statement shall state that the structure is designed to meet the requirements of paragraph (H) of rule 1501:13-9-04 of the Administrative Code.

(b) Each design plan for an impoundment that meets or exceeds the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall contain the information required under 30 C.F.R. 77.216-2(a). The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall also be submitted to the chief as part of the permit application.

(c) Impoundments not meeting the size or other criteria of paragraph (H)(1)(b) of this rule may be designed in compliance with the following design standards, in lieu of performance of engineering tests to demonstrate compliance with the 1.3 minimum static safety factor required in paragraph (H)(1)(c)(ii) of rule 1501:13-9-04 of the Administrative Code:

(i) The embankment foundation area shall be cleared of all organic matter and the entire foundation surface shall be scarified;

(ii) If the natural slope of the foundation as measured at right angles to the embankment center line is steeper than 10h:1v (ten per cent), the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts;

(iii) The embankment fill material shall be free of sod, large roots, other large vegetative matter, and coal processing waste;

(iv) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards;

(v) The moisture content of the fill material shall be sufficient to secure proper compaction. (An indication of sufficient moisture content is that when kneaded by hand the soil should just form a ball which does not readily separate. The engineer may specify other methods of testing moisture content if appropriate). When it is necessary to use materials of varying texture and gradation, the more impervious material shall be placed in the upstream and center portions of the embankment and the more pervious material shall be placed in the downstream portion of the fill;

(vi) The embankment's combined upstream and downstream side slopes shall be no steeper than the sum of 5h:1v, with neither slope steeper than 2h:1v. (Example: if downstream slope is 3h:1v, then upstream slope can be no steeper than 2h:1v. The minimum combined slope requirement of 5h:1v refers to the 3h and 2h added together.); and

(vii) The minimum top width of the embankment shall be (h + 35)/5, where "h" is the embankment height as measured from natural ground at the upstream toe to the top of the embankment.

(3) Siltation structures.

(a) Permanent and temporary siltation structures shall be designed in compliance with the requirements of paragraphs (G) and (H) of rule 1501:13-9-04 of the Administrative Code. The design of any siltation structure shall be certified by an engineer experienced in impoundment design and construction. The certification shall state that the structure is designed to meet the requirements of paragraphs (G) and (H) of rule 1501:13-9-04 of the Administrative Code.

(b) In addition to the requirements of paragraph (H)(1) of this rule, the plan shall include a determination of:

(i) The required sediment storage volume; and

(ii) The detention time provided by the pond.

(c) Each design plan for a siltation structure that meets or exceeds the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall contain the information required under 30 C.F.R. 77.216-2(a).

(4) Coal mine waste dams and embankments.

(a) Coal mine waste dams and embankments shall be designed to comply with the requirements of paragraphs (A) to (C) of rule 1501:13-9-09 and paragraph (H) of rule 1501:13-9-04 of the Administrative Code. The design of any coal mine waste dam or embankment shall be certified by an engineer experienced in design of similar earth and waste structures. The certification statement shall state that the structure is designed to meet the requirements of paragraphs (A) to (C) of rule 1501:13-9-09 and paragraph (H) of rule 1501:13-9-04 of the Administrative Code.

(b) Each plan shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer, according to the following:

(i) The number, location, and depth of borings and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

(ii) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered;

(iii) All springs, seepage, and ground-water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and

(iv) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(c) Each design plan for a coal mine waste dam or embankment that meets or exceeds the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall contain the information required under 30 C.F.R. 77.216-2(a).

(5) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of paragraphs (A) to (C) of rule 1501:13-9-09 of the Administrative Code, and with the provisions regarding impoundments under paragraph (H) of rule 1501:13-9-04 of the Administrative Code. The design of any coal mine waste bank shall be certified by an engineer experienced in design of similar earth and waste structures. The certification shall state that the structure is designed to meet the requirements of paragraphs (A) to (C) of rule 1501:13-9-09 and paragraph (H) of rule 1501:13-9-04 of the Administrative Code using current, prudent engineering practices.

(6) If the structure meets or exceeds the size or other criteria of MSHA, 30 C.F.R. 77.216 (a), or meets the Class B or C criteria for dams in the U.S department of agriculture, soil conservation service technical release no. 60, "Earth Dams and Reservoirs," 1985, each plan under paragraphs (H)(2), (H)(3), and

(H)(4) of this rule shall include a stability analysis of each structure. The stability analysis shall include, but not limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(7) For further information about soil conservation service technical release no. 60, which is incorporated by reference in paragraph (H) of this rule, see paragraph (H)(1)(a) of rule 1501:13-9-04 of the Administrative Code.

(I) Diversions. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with paragraphs (D) and (F) of rule 1501:13-9-04 of the Administrative Code.

(J) Protection of public parks and historic places.

(1) For any publicly owned parks or any places listed on the "National Register of Historic Places," administered by the national parks service, U.S. department of the interior, that may be adversely affected by the proposed operation, each application shall describe the measures to be used:

(a) To prevent adverse impacts; or

(b) If valid existing rights exist or joint agency approval is to be obtained under paragraph (E) of rule 1501:13-3-04 of the Administrative Code to minimize adverse impacts. The website for the "National Register of Historic Places" for Ohio sites is ~~http://www.nationalregisterofhistoricplaces.com/oh/state.html~~www.nationalregisterofhistoricplaces.com/oh/state.html.

(2) The chief may require the applicant to protect historic or archeological properties listed on or eligible for listing on the "National Register of Historic Places," as referenced in paragraph (J)(1) of this rule, through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

(K) Relocation or use of public roads. Each application shall describe the measures to be used to ensure that the interests of the public and landowners affected are protected if, under paragraph (C) of rule 1501:13-3-04 of the Administrative Code, the applicant seeks to have the chief approve:

(1) Conducting the proposed coal mining operation within one hundred feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

(L) Transportation facilities.

(1) Each application shall contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert,

bridge, drainage ditch, and drainage structure;

(b) A description of measures to be taken to obtain approval of the chief for alteration or relocation of a natural drainageway under rule 1501:13-10-01 of the Administrative Code;

(c) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the chief under rule 1501:13-10-01 of the Administrative Code;

(d) Drawings and specifications for each proposed ford of perennial or intermittent streams outside the mined-out area that is used as a temporary route, as necessary for approval of the ford by the chief in accordance with paragraph (D)(1) of rule 1501:13-10-01 of the Administrative Code; and

(e) A description of plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(2) Primary road embankments may be designed in compliance with the following design standards, in lieu of performance of engineering tests to demonstrate compliance with the 1.3 minimum static safety factor required in paragraph (G)(3) of rule 1501:13-10-01 of the Administrative Code:

(a) The embankment foundation area shall be cleared of all organic matter and the entire foundation surface shall be scarified;

(b) If the natural slope of the foundation as measured at right angles to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts;

(c) The embankment fill material shall be free of sod, large roots, other large vegetative matter, and coal processing waste;

(d) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards;

(e) The moisture content of the fill material shall be sufficient to secure proper compaction;

(f) The side slopes of the embankment shall be no steeper than 2h:1v;

(g) Embankments with upstream and downstream slopes shall have a minimum top width of (h + 35)/5, where "h" is the embankment height as measured from natural ground at the upstream toe to the top of the embankment;

(h) Hillside embankments shall have a minimum top width adequate for the intended use; and

(i) Culverts shall be placed such that the embankment, as defined in rule 1501:13-1-02 of the Administrative Code, will not impound water for an extended period of time.

(M) Subsidence control plan.

(1) The application shall include, for the shadow area, the most recent available U.S. geologic survey 7.5-minute topographic map showing:

(a) The extent of underground workings proposed for the term of the permit, including existing works that will continue to be used under the permit, all shown on a year-by-year basis;

(b) Those parts of the proposed underground workings from which there will be full coal recovery;

(c) The angle of draw for the workings described in paragraphs (M)(1)(a) and (M)(1)(b) of this rule; and

(d) Those areas in which measures will be taken to prevent or minimize subsidence and subsidence-related damage.

(2) The application shall include ~~a survey~~an inventory which shall show whether structures or renewable resource lands exist within the proposed permit and adjacent areas and whether subsidence, if it occurred, could cause material damage or diminution of the reasonably foreseeable use of such structures or renewable resource lands. If the ~~survey~~inventory shows that no such structures or renewable resource lands exists or no such material damage or diminution could be caused in the event of mine subsidence, and if the chief agrees with such conclusion, no further information need be provided in the application under paragraphs (M)(2)(a) to (M)(2)(e) of this rule. In the event the ~~survey~~inventory shows that such structures or renewable resource lands exist, and that subsidence could cause material damage or diminution of value or foreseeable use of ~~the land~~such structures or renewable resource lands, or if the chief determines that such material damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A description of the method of coal removal, such as longwall, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings;

(b) A map of the shadow area which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in paragraphs (M)(2)(d) and (M)(2)(e) of this rule will be taken to prevent or minimize subsidence and subsidence-related damage; and, where appropriate, to correct subsidence-related material damage;

(c) A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage;

(d) A description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with rule 1501:13-12-03 of the Administrative Code;

(e) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including such measures as:

(i) Backstowing or backfilling voids;

(ii) Leaving support pillars of coal;

(iii) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and

(iv) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface;

(f) A description of the anticipated effects of planned subsidence, if any;

(g) A general description of the measures to be taken, in accordance with rule 1501:13-12-03 of the Administrative Code, to mitigate or remedy any subsidence-related damage to or diminution in value or reasonably foreseeable use of:

(i) The land; or

(ii) Structures, buildings, features, or facilities to the extent required pursuant to ~~this~~ rule 1501:13-12-03 of the Administrative Code; and

(h) Other information required by the chief as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of rule 1501:13-12-03 of the Administrative Code for subsidence control.

(N) Return of coal mine wastes to abandoned underground workings.

(1) Each application shall contain a plan for the return of coal mine wastes to abandoned underground workings. The plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the chief and MSHA under paragraph (A)(7) of rule 1501:13-9-09 of the Administrative Code.

(2) The plan shall describe the source and quality of waste to be stowed, area to be backfilled, per cent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of paragraphs (N)(1) to (N)(4) of this rule shall also apply to pneumatic backfilling operations, except where the operations are exempted by the chief from requirements specifying hydrologic monitoring.

(O) Underground development waste. Each plan shall contain descriptions, including appropriate maps and cross

section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by underground mining surface operations and facilities according to rule 1501:13-9-07 of the Administrative Code. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to paragraph (P) of this rule.

(P) Disposal of excess spoil.

(1) Each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to rule 1501:13-9-07 of the Administrative Code. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and ground-water flow observed or anticipated during wet periods in the area of the disposal site;

(c) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under paragraph (D) of rule 1501:13-9-07 of the Administrative Code, rock-toe buttresses or keyway cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits. The number, location, and depth shall be determined with respect to the size of the spoil disposal structure and sub-surface conditions; and

(b) Engineering specifications utilized to design the rock-toe buttresses or keyway cuts which shall be determined in accordance with paragraph (P)(2)(e) of this rule.

(Q) Air pollution control plan. For all underground mining surface operations, the application shall contain an air pollution control plan in order to address fugitive dust resulting from erosion. The plan shall include the following:

(1) An air quality monitoring program, if required by the chief, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under paragraph (Q)(2) of this rule to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices.

(R) Fish and wildlife plan.

(1) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

(a) The scope and level of detail for such information shall be determined by the chief in consultation with state and federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under paragraph (R)(2) of this rule.

(b) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(i) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the secretary of the interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes;

(ii) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(iii) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(2) Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable.

(a) This description shall:

(i) Be consistent with the requirements of rule 1501:13-9-11 of the Administrative Code;

(ii) Apply at a minimum, to species and habitats identified under paragraph (R)(1) of this rule;

(iii) Include protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(iv) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Fish and wildlife service review. Upon request, the chief shall provide the resource information required under paragraph (R)(1) of this rule and the protection and enhancement plan required under paragraph (R)(2) of this rule to the U.S. department of the interior, fish and wildlife service regional or field office

for their review. This information shall be provided within ten days of receipt of the request from the service.

(S) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-4-15, dated 2/14/2017.

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

(C)(4)(b), (H)(1), (H)(2) and (H)(3). The word “will” changed to “shall” to agree with the general rule-drafting guidelines of the Legislative Service Commission.

(C)(4)(b). Revised to specify that an operator who is issued a non-numeric remining NPDES permit shall not be subject to paragraph (H)(2)(c). Currently, the rule specifies that such an operator is not subject to paragraphs (F)(2) to (F)(6) and paragraph (H)(2)(c), but the reader has to infer that the operator is not subject to (H)(2)(c): since a non-numeric NPDES permit isn’t subject to paragraphs (F)(2) to (F)(6) and paragraph (H)(2)(c) is about the treatment requirements of (F)(5), then (H)(2)(c) must also not apply to non-numeric NPDES permits. It is preferable that the rule clearly state that such an operator is not subject to (H)(2)(c).

(C)(5)(b). Revised to change the requirements for testing overburden and spoil on pollution abatement areas so that they are the same as the requirements for the rest of the permit area. This change will eliminate the potential that twice the number of test holes might be required on remining pollution abatement areas, thereby eliminating a disincentive to remining operations. Note that the revised rule will require that the test holes be representative of the pollution abatement area with at least one test hole drilled through spoil. Moreover, rule 1501:13-4-04 gives the Chief the authority to request additional test holes if necessary.

Currently the rule requires a minimum of one test hole per 25 acres of pollution abatement area and a minimum of one additional test hole in spoil per each 25 acres of pollution abatement area. By contrast, the test hole requirement of OAC 1501:13-4-04(C)(2)(b) for surface mining situations not involving remining pollution abatement areas specifies a minimum of one test hole per 25 acres underlain by coal on the area of land to be mined. Thus, the test hole requirement for remining pollution abatement areas is potentially at least twice that of all the other mining situations. Since the pollution abatement area can encompass the entire permit area, not just the area of land to be mined, the current requirement of 1501:13-4-15 can actually result in a number of test holes that is more than double the normal scenario. Requiring this many test holes is normally not geologically necessary, although 1501:13-4-04 does give the Chief the authority to request additional test holes when needed.

The proposed change removes a disincentive for remining. It also clarifies the test hole requirement in that the current rule requires the number of test holes drilled in spoil to be based on the entire size of the pollution abatement area, regardless of the size and extent of the spoil within that pollution abatement area.

(F)(5). Revised to clarify the meaning of the sentence: paragraph (F)(2) of the rule is related to treating pre-existing discharges rather than to discontinuing treating the discharges.

(F)(5)(b) and (H)(2)(a). Commas added.

(H)(2)(c). Reworded to improve the grammar.

(H)(3)(c). Revised to use similar requirements and sentence structure as (H)(2)(c) and to clarify the requirement for phase III performance security release: for a period of two years after discontinuance of treatment pursuant to (F)(5), the permittee has not exceeded the numeric effluent limitations as shown by all ground- and surface-water monitoring conducted by the permittee or the division of mineral resources management. There is no need to reference the Phase II bond release in this requirement.

DRAFT - NOT FOR FILING

Dated 2/14/2017

1501:13-4-15 Authorization to conduct coal mining on pollution abatement areas.

(A) Applicability.

(1) This rule shall apply to applicants who seek authorization to conduct coal mining operations under modified effluent limitations of a remining NPDES permit on certain previously mined areas in which the earlier coal mining operations have resulted in continuing water pollution, and sets forth the terms and conditions under which the chief may release performance security to permittees who have received the authorization. Receipt of the authorization entitles the permittee to obtain release of performance security, in accordance with this rule, for areas which continue to discharge pollutional material.

(2) All of the provisions of Chapter 1513. of the Revised Code and these rules shall apply to operations with authorizations to mine areas with pre-existing pollutional discharges, unless otherwise specifically provided in this rule.

(B) No authorization may be granted under this rule unless such authorization is requested at the time of permit application and is part of a permit issued by the chief after the effective date of this rule.

(C) Application for authorization. Any applicant who requests authorization under this rule shall comply with the permit application requirements of Chapters 1501:13-4 to 1501:13-6 of the Administrative Code unless otherwise specifically provided in this rule. The applicant shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the pre-existing discharge(s);

(2) Except as provided in paragraph (C)(4) of this rule, provide data necessary to determine the base line pollution load of the proposed pollution abatement area. The sampling locations from which the data is collected shall be selected from among all surface-water bodies such as lakes and impoundments at points within and, for streams, at points upstream and downstream of the proposed pollution abatement area, all ground-water sites, and all discharges from the proposed pollution abatement area into surface-water bodies. The applicant shall submit data from a minimum of twelve samples taken at regular intervals at each selected sampling location and collected over a period of twelve months, unless these sampling requirements are modified by the chief to increase the number of samples or to lengthen the sampling period;

(3) Subject to paragraph (D)(5) of this rule, be exempt from meeting the numeric requirements of total suspended solids and settleable solids if the chief determines that it is infeasible or impractical to set numeric limits on total suspended solids and settleable solids based on the site specific conditions of the soil, climate, topography, steep slopes, or other baseline conditions, provided the applicant demonstrates that significant reductions of total suspended solids and settleable solids will be achieved through the incorporation of sediment control best management practices into the pollution abatement plan as required under paragraph (C)(6) of this rule;

(4) Be exempt from meeting numeric effluent limitations for the pollution abatement area if:

(a) The chief determines that it is infeasible for the applicant to collect samples for establishing the baseline pollution load and that remining will result in significant improvement that would not otherwise occur. Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to, a discharge that exists as a diffuse groundwater flow that cannot be assessed via sample collection; a base flow to a receiving stream that cannot be monitored separate from the receiving stream; a discharge on a steep or hazardous slope that is inaccessible for sample collection; or a number of discharges so extensive that monitoring of individual discharges is infeasible; and

(b) The chief recommends and the Ohio environmental protection agency issues a non-numeric remining NPDES permit. Under this permit, the operator shall implement a pollution abatement plan incorporating best management practices designed to reduce the pollutant levels of acidity, iron, manganese, and settleable and suspended solids in pre-existing discharges. The monitoring plan ~~will~~shall be determined by the chief. An operator who is issued a non-numeric remining NPDES permit shall not be subject to paragraphs (F)(2) to (F)(6) or ~~paragraph~~paragraphs (H)(2)(c) and (H)(3)(c) of this rule;

(5) Provide a description of the hydrology and geology of the proposed pollution abatement area that includes the plans for and results of:

(a) A detailed water quality and quantity sampling program including seasonal variations and variations in response to precipitation events, for pH, total alkalinity, total acidity, total iron, total manganese, total aluminum, total suspended solids, hardness, flow rates, and other water quality parameters the chief deems relevant. The base line pollution load shall be determined from the data collected using this sampling program; and

(b) Testing of the overburden and spoil ~~which shall include chemical analyses for pH, neutralization potential, potential acidity, total or pyritic sulfur, and calcium carbonate deficiency of each stratum within the overburden. Such testing shall consist of test holes made by the boring or drilling method and shall be:~~in accordance with paragraph (C) of rule 1501:13-4-04 of the Administrative Code. The test holes shall be representative of the pollution abatement area with at least one test hole drilled through spoil.

~~(i) Conducted at the rate of one test hole for each twenty-five acres of pollution abatement area or fraction thereof, or more as determined by the chief. If spoil exists on the pollution abatement area, at least one additional test hole per twenty-five acres of pollution abatement area must be drilled through the spoil; and~~

~~(ii) Drilled to the bottom of the material that was previously mined or will be mined. If test holes are drilled through spoil, every five vertical feet of the resulting sample shall be analyzed; and~~

(6) Provide a description of the abatement plan that represents best available technology economically achievable and includes:

(a) Plans, cross sections, and schematic drawings describing the abatement plan proposed to be implemented; and

(b) A description and explanation of each best management practice in the proposed abatement plan.

(D) Approval or denial by the chief.

(1) No authorization shall be granted under this rule unless the applicant seeking the authorization affirmatively demonstrates to the satisfaction of the chief on the basis of information set forth in the application that:

(a) Neither the applicant; any partner if the applicant is a partnership; any officer, principal shareholder, or director, if the applicant is a corporation; any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant; nor any contractor or subcontractor of the applicant has any of the following:

(i) Responsibility or liability under Chapter 1513. of the Revised Code or these rules as a permittee for treating the discharges of water pollutants from or on the proposed pollution abatement area;

(ii) Any responsibility or liability under Chapter 1513. of the Revised Code or these rules for reclaiming the proposed pollution abatement area;

(iii) During the eighteen months prior to submittal of the request for authorization under this rule, had a permit suspension or revocation based on a determination by the chief of a demonstrated pattern of willful violation of Chapter 1513. of the Revised Code or rules adopted thereunder, with respect to water quality, effluent limitations, or surface- and ground-water monitoring; or

(iv) Ever forfeited a coal or surface mining bond, performance security, or similar security deposited in lieu of bond in this state or any other state or with the United States;

(b) The proposed abatement plan represents the best available technology economically achievable and will potentially reduce the base line pollution load;

(c) The surface mining operation on the proposed pollution abatement area will not cause any additional ground water degradation; and

(d) All requirements of paragraph (E) of rule 1501:13-5-01 of the Administrative Code that are not inconsistent with paragraph (D) of this rule have been met.

(2) An authorization may be denied under this rule if granting the authorization will, or is likely to, affect any legal responsibility or liability under Chapter 1513. of the Revised Code or these rules, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

(3) No authorization may be granted under this rule unless there are one or more pre-existing discharge(s) from or on the pollution abatement area.

(4) The authorization allowed under this rule is only for the pollution abatement area and does not apply to other areas of the permit.

(5) No authorization may be granted under this rule until a remining NPDES permit has been issued by the Ohio environmental protection agency and a copy of the remining NPDES permit has been provided to the chief.

(E) Performance standards. Any permittee who receives an authorization under this rule shall comply with Chapters 1501:13-9 to 1501:13-13 of the Administrative Code unless otherwise specifically provided in this rule. The permittee shall also:

(1) Implement and maintain the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of paragraph (H) of this rule are met;

(2) Implement the approved abatement plan; and

(3) As required in the authorization, submit a certification by the supervising professional engineer of the proper construction of certain steps of the abatement plan which may include, but not be limited to, the completion of mine seals, compaction tests, subsurface drains and, where necessary, stability analyses.

(F) Treatment of discharges.

(1) For any pre-existing discharges from or on the pollution abatement area that are commingled with active mining wastewater, the permittee shall comply with paragraph (B) of rule 1501:13-9-04 of the Administrative Code until the pollution abatement plan is implemented and the commingling has ceased.

(2) The permittee shall treat the pre-existing discharges from or on the pollution abatement area in the event that the numeric effluent limitations established in the remining NPDES permit are exceeded as determined by using procedures contained in Appendix B of 40 C.F.R. Part 434.

(3) Treatment shall be initiated if necessary to meet the numeric effluent limitations established in the remining NPDES permit, and shall be continued or reinitiated as long or as often as necessary to meet the numeric effluent limitations established in the remining NPDES permit prior to final performance security release pursuant to paragraph (H)(3) of this rule.

(4) Sampling sites for water samples collected to ensure compliance with 40 C.F.R. Part 434 shall be determined by the chief.

(5) A permittee required to treat pre-existing discharges pursuant to paragraph (F)(2) of this rule will be allowed to discontinue treating the discharges ~~pursuant to paragraph (F)(2) of this rule~~ when the permittee affirmatively demonstrates to the chief's satisfaction that:

(a) The untreated pre-existing discharges are no longer exceeding the effluent limitations established in the remining NPDES permit, as shown by all surface-water monitoring conducted by the permittee or the division of mineral resources management;

(b) Coal mining activities pursuant to the permit, including the pollution abatement area, are being or were conducted in accordance with all of the requirements of the permit and the authorization, Chapter 1513. of the Revised Code and rules adopted thereunder, unless otherwise specifically provided in this rule;

(c) The permittee has satisfactorily implemented each step of the abatement plan as approved in the authorization; and

(d) The permittee is not causing or contributing to any additional ground water degradation by reaffecting the pollution abatement area.

(6) Any discontinuance of treatment pursuant to paragraph (F)(5) of this rule shall not be deemed or construed to be or to authorize a release of performance security under rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

(G) Request for performance security release. Paragraph (H) of this rule shall apply to the release of performance security for pollution abatement areas authorized by this rule. Paragraph (B) of rule 1501:13-7-05 and paragraph (B) of rule 1501:13-7-05.1 of the Administrative Code shall be inapplicable to such release of performance security.

(H) Criteria and schedule for release of performance security on pollution abatement areas.

(1) Phase I performance security release. The chief ~~will~~shall release up to fifty per cent of the amount of performance security for the authorized pollution abatement area if the permittee demonstrates and the chief finds that:

(a) The coal mining operations were conducted on the permit area, including the pollution abatement area, in accordance with all of the requirements of the permit and the authorization, Chapter 1513. of the Revised Code and these rules, unless otherwise specifically provided in this rule; and

(b) The permittee has satisfactorily completed backfilling, regrading, and drainage control in accordance with the approved reclamation plan and each pertinent step of the approved abatement plan;

(2) Phase II performance security release. The chief ~~will~~shall release an additional amount not to exceed thirty-five per cent of the amount of performance security for the authorized pollution abatement area if the permittee demonstrates and the chief finds that:

(a) The permittee has replaced the topsoil or material conserved pursuant to rule 1501:13-9-03 of the Administrative Code, completed planting and established revegetation in accordance with the approved reclamation plan, and achieved the standards of success for such revegetation set forth in rule 1501:13-9-15 of the Administrative Code;

(b) The permittee is not causing or contributing to any surface water pollution or ground water degradation by reaffecting or mining the pollution abatement area;

(c) ~~The permittee has, for~~For a period of twelve months after discontinuance of treatment pursuant to paragraph (F)(5) of this rule, the permittee has not exceeded the numeric effluent limitations established in the remining NPDES permit as shown by all ground- and surface-water monitoring conducted by the permittee or the division of mineral resources management; and

(d) The permittee has implemented all pertinent steps provided in the approved abatement plan.

(3) The chief ~~will~~shall release the remaining portion of the amount of performance security on the authorized pollution abatement area if the permittee demonstrates and the chief finds that:

(a) The permittee has successfully completed all of the approved abatement plan and the reclamation plan, and the pollution abatement area is capable of supporting the postmining land use approved under rule 1501:13-9-17 of the Administrative Code;

(b) The permittee has complied with all of the requirements of the permit and the authorization, Chapter 1513. of the Revised Code and these rules, unless otherwise specifically provided in this rule;

(c) ~~The permittee has not exceeded the numeric effluent limitations established in the remining NPDES permit from the time of performance security release pursuant to paragraph (H)(2) of this rule for~~For a period of two years ~~from the~~after discontinuance of treatment pursuant to paragraph (F)(5) of this rule, the permittee has not exceeded the numeric effluent limitations established in the remining NPDES permit as shown by all ground- and surface-water monitoring conducted by the permittee or the division of mineral resources management; and

(d) The applicable period of extended responsibility for revegetation under rule 1501:13-9-15 of the Administrative Code has expired.

(I) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-4-16, dated 3/4/2016.

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

(D)(9). Address corrected.

DRAFT - NOT FOR FILING

Dated 3/4/2016 Address corrected in (D)(9).

1501:13-4-16 Requirements for exemption for coal extraction incidental to the extraction of other minerals.

The purpose of this rule is to establish exemption criteria so that legitimate operators of industrial minerals mining operations regulated under Chapter 1514. of the Revised Code may extract coal which they encounter incidentally while recovering other minerals, without being subject to the permitting and performance standards of Chapter 1513. of the Revised Code. Continued qualification for the exemption from the requirements of Chapter 1513. of the Revised Code shall depend upon annual demonstration of maintenance of the required ratios between cumulative coal production and revenues and cumulative mineral production and revenues. Each pit or excavation site contained in a single surface mining permit may be included in a single exemption, but must individually comply with all of the requirements of this rule.

(A)

(1) This rule shall apply to the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

(2) Any person who plans to commence or continue coal extraction after the effective date of this rule in reliance on the incidental mining exemption shall file a complete request for exemption with the chief for each mining area. A person shall not commence coal extraction based upon the exemption until the chief approves such request, except as provided in paragraph (E)(3) of this rule.

(B) Definitions.

(1) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured. The cumulative measurement period shall be considered to have begun:

(a) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977; or

(b) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(2) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. Coal extracted and stockpiled may be excluded from cumulative production, and other minerals extracted and stockpiled may be included in cumulative production, if the requirements of paragraph (I) of this rule are met.

(3) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(4) "Mining area" means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(5) "Other minerals" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material, or any material mined and used on-site in the construction of waste

disposal facilities

(C) Application requirements and procedures.

(1) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of this rule may continue mining operations for sixty days after such effective date. Coal extraction shall not continue after such sixty-day period unless that person files an administratively complete request for exemption with the chief. If a complete request is filed within sixty days, the person may continue extracting coal in reliance on the exemption beyond the sixty-day period until the chief makes an administrative decision on such request.

(2) Additional information. The chief shall notify the person seeking exemption if the request for exemption is incomplete and may at any time require submittal of additional information.

(3) Public comment period. Written comments regarding or objections to a request for exemption may be submitted to the chief by any person having an interest which is or may be adversely affected by a decision on the request for exemption within thirty days after the publication of the newspaper notice required by paragraph (D)(9) of this rule.

(D) Contents of request for exemption. A request for exemption shall include at a minimum:

(1) The name and address of the person seeking exemption;

(2) A list of the minerals sought to be extracted;

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

(5) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

(6) The basis for all annual production, revenue, and fair market value estimates;

(7) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(9) Evidence of one-time publication, in a newspaper of general circulation in the county of the mining area, of a public notice that a request for exemption has been filed with the chief. The public notice must identify the person claiming the exemption, must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation, and must specify that comments may be submitted within thirty days to the "Division of Mineral Resources Management, 2045 Morse Road, Building H-3, Columbus, Ohio 43229";

(10) Representative stratigraphic cross-section(s) based on test borings or on other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral

to be extracted for commercial use or sale and the relative position and thickness of the innerburden and overburden;

(11) A map of appropriate scale which clearly identifies the mining area;

(12) A general description of mining and mineral processing activities for the mining area;

(13) A summary of sales commitments and agreements for future delivery, if any, which the person seeking exemption has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(14) If the other minerals are to be commercially used by the person seeking exemption, a description specifying the use;

(15) For operations having extracted coal or other minerals prior to filing a request for exemption, in addition to the information required above, the following information must also be submitted:

(a) Any relevant documents the operator has received from the chief documenting its exemption from the requirements of the Chapter 1513. of the Revised Code;

(b) The cumulative production of the coal and the cumulative production of other minerals from the mining area; and

(c) Estimated tonnages of stockpiled coal and other minerals; and

(16) Any other information pertinent to the qualification of the operation as exempt.

(E) Exemption determination.

(1) No later than ninety days after filing of a complete request for exemption, the chief shall make a written determination whether, and under what conditions, the person claiming the exemption is exempt under this rule, and shall notify the person seeking exemption and persons submitting comments on the request for exemption of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the request for exemption and any other information available to the chief at that time.

(3) If the chief fails to provide a person seeking exemption with the determination as specified in paragraph (E)(1) of this rule, such a person who has not begun may commence coal extraction pending a determination on the request for exemption unless the chief issues an interim finding, together with reasons therefor, that the person shall not begin coal extraction.

(F) Administrative review.

(1) Any person adversely affected by a determination made pursuant to paragraph (E) of this rule may request administrative review within thirty days of the notification of such determination in accordance with section 1513.13 of the Revised Code.

(2) A notice of appeal filed under section 1513.13 of the Revised Code shall not suspend the effect of a determination under paragraph (E) of this rule.

(G) Requirements for exemption.

DRAFT - NOT FOR FILING

(1) Activities are exempt from the requirements of Chapter 1513. of the Revised Code if all of the following are satisfied:

(a) The cumulative production of coal extracted from the mining area and calculated annually does not exceed sixteen and two thirds percent of the total combined cumulative production of coal and other minerals removed during the cumulative measurement period for purposes of bona fide sale or reasonable commercial use;

(b) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use. For the purposes of this paragraph, the term immediately below means that the coal to be mined shall be located not more than three feet below the lowest other mineral to be mined;

(c) The cumulative revenue derived from the coal extracted from the mining area and calculated annually shall not exceed fifty percent of the total combined cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be used to calculate cumulative revenue;

(d) Other minerals mined in a mining area but not in the stratigraphic column of coal removed shall not be used to calculate cumulative production under paragraph (G)(1)(a) of this rule or cumulative revenue under paragraph (G)(1)(c) of this rule; and

(e) Augering of coal is not used as a mining method, except for permits issued prior to February 29, 1988, that had approved mining plans that allowed the augering of coal.

(2) A person seeking or that has obtained an exemption from the requirements of Chapter 1513. of the Revised Code shall comply with the following:

(a) Each mineral other than coal upon which an exemption under this rule is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

The initial request for exemption may be approved by the chief conditioned upon receipt, prior to the commencement of mining, of a legally binding agreement for the future sale of other minerals.

(b) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

(H) Conditions of exemption. A person extracting coal in accordance with this rule shall:

(1) Maintain on-site or at other locations available to authorized representatives of the chief and of the U.S. secretary of the interior information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the request for exemption and exemption approved by the chief;

(2) Notify the chief upon the completion of the mining operation or permanent cessation of all coal extraction

activities; and

(3) Conduct operations in accordance with the approved request for exemption or, when authorized to extract coal under paragraph (C)(1) or (E)(3) of this rule prior to submittal or approval of request for exemption, in accordance with the standards of this rule.

(I) Stockpiling of minerals.

(1) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity, or use:

(a) Up to an amount equaling a twelve-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(b) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a twelve-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

(2) Minerals other than coal.

(a) The chief shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if:

(i) The operator fails to maintain adequate and verifiable records of:

(a) The mining area of origin; or

(b) The disposition of stockpiles; or;

(ii) The disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(b) The chief may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if:

(i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(ii) Except as provided in paragraph (I)(2)(c) of this rule, the stockpiled other minerals do not exceed a twelve-month supply of the mineral required for future sales as relied upon by the chief in the approved request for exemption.

(c) The chief may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve-month limit established in paragraph (I)(2)(b) of this rule if the operator can demonstrate to the chief's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(d) The chief may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (I)(2)(b) and (I)(2)(c) of this rule based on additional information available to the chief.

DRAFT - NOT FOR FILING

(J) Public availability of information.

(1) Except as provided in paragraph (J)(2) of this rule, all information submitted to the chief under this rule shall be made available in accordance with section 149.43 of the Revised Code for public inspection and copying at the district office nearest the mining operation claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

(2)

(a) The chief may keep information submitted under this rule confidential if:

(i) The person submitting it requests in writing, at the time of submission, that it be kept confidential; and

(ii) The information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the person intending to conduct operations under this rule.

(b) Information requested to be held as confidential under paragraph (J)(2)(a) of this rule shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

(K) Reporting requirements.

(1) Following approval by the chief of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the chief, on a form provided by the chief, containing the information specified in paragraph (K)(4) of this rule.

(2) For purposes of the report, the cumulative measurement period defined in paragraph (B)(1) of this rule shall end on the anniversary of the date of issuance of the surface mining permit required under Chapter 1514. of the Revised Code. The report shall be filed no later than thirty days after each anniversary date of issuance of the surface mining permit.

(3) The information in the report shall cover:

(a) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve-month period; and

(b) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(4) The report shall specify for each mining area, over both the preceding twelve-month period and the cumulative measurement period:

(a) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(b) The number of tons of coal extracted and used by the operator or transferred to or used by a related entity and the estimated total fair market value of such coal;

(c) The number of tons of coal stockpiled;

(d) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(e) The number of tons of other commercially valuable minerals extracted and used by the operator or transferred to or used by a related entity and the estimated total fair market value of such minerals; and

(f) The number of tons of other commercially valuable minerals extracted and stockpiled by the operator.

(5) The report shall include projections for each mining area of the anticipated production of coal and of other minerals in the upcoming twelve-month period.

(6) The report shall be accompanied by documentation that a market will exist in the upcoming twelve-month period for each mineral other than coal on which the exemption is based. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate this standard.

Draft Rule 1501:13-5-01, dated 4/4/2017.
HB 64 change re: Restoration off the permit area in (A)(1)(g).
HB 64 change re: Right of Entry in (G)(3).

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

(A)(1)(d). Division’s address corrected.

(A)(1)(g). New sub-paragraph that states that if the application for a coal mining permit, permit renewal, or permit revision includes a request for restoration off the permit area by means of mitigation, this must be specified in the public notice.

(A)(2)(d). Revised to correct the paragraph reference.

(E)(5). Website address simplified.

(G)(3). Revised to add a provision from 1513.07(I)(4) enacted by HB 64, effective 9/29/2015: 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.

DRAFT - NOT FOR FILING

Dated 4/4/2017 Contains off-site restoration and right-of-entry changes.

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~~-3~~, 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;~~ and~~

(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:

(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 ~~(C)~~(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 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 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 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 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 ~~http://www.nationalregisterofhistoricplaces.com/oh/state.html~~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) 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.);

(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:

(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;

(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.

Draft Rule 1501:13-9-04, dated 2/24/2017.

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

(E)(1). Clarification added regarding how to measure the distance from the stream: “measured horizontally.”

(E)(1) and (E)(1)(c). Revised to add a provision regarding restoration off the permit area by means of mitigation: the Chief may approve a variance from the buffer zone requirements for restoration off the permit area approved under rule 1501:13-13-08.

(F)(2)(d). New paragraph proposed to be added to mirror a requirement of 30 CFR 816.43(b)(4).

(H)(1)(a). Addresses updated and corrected.

DRAFT - NOT FOR FILING

Dated 2/24/2017 Revisions in (E)(1), (E)(1)(c), (F)(2)(d), & (H)(1)(e)(i).

1501:13-9-04 Protection of the hydrologic system.

(A) General. Mining shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance in both the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the requirements of mining and reclamation rules. The chief may require additional preventive, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(B) Water quality standards and effluent limitations.

(1) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area until vegetation is established, at which time vegetation of the area may be the best technology currently available, provided that drainage from the area:

(a) Meets effluent limitations; and

(b) Does not contribute suspended solids to streamflow.

(2) Sedimentation ponds and other treatment facilities shall be maintained until the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standard requirements.

(3) The chief may grant exemptions from the requirements of paragraph (B)(1) of this rule only when:

(a) The chief determines that the disturbed drainage area relative to the total disturbed area is small;

(b) Alternative sediment control measures are provided, if required by the chief; and

(c) The operator demonstrates that the drainage from the disturbed area will meet the effluent limitations of mining and reclamation rules.

(4) For the purposes of this rule only, "disturbed area" shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this rule and rule 1501:13-10-01 of the Administrative Code and the upstream area is not otherwise disturbed by the person who conducts coal mining operations.

(5) Before mining commences in any watershed:

(a) A proper sediment control system including sedimentation ponds, diversions, and other treatment methods shall be constructed; and

(b) Upon completion of construction, this sediment control system shall be certified by an engineer or jointly by an engineer and a surveyor, to the extent such joint certification is required or permitted by the chief as meeting the dimensions and design criteria set forth in the engineering plans, drawings, and design details submitted as part of the application for a permit.

(6) Point source discharge of water from areas disturbed by coal mining operations shall be made in compliance with effluent limitations of all applicable federal and state laws and regulations. All other surface drainage shall not cause additional contributions of suspended solids to streamflows.

(7) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations for all of the mixed drainage when it leaves the permit area.

(C) All facilities utilized by an operator to achieve compliance with federal and state water quality laws shall be properly installed, maintained and operated so that they will perform the functions for which they were designed, and shall be removed in accordance with this rule when no longer needed, unless they have been approved as part of the postmining land use.

(D) Sediment control measures.

(1) The purpose of this rule is to meet the applicable state and federal effluent limitations by means of a combination of sediment control measures which, taken together, comprise a complete sediment control system.

(2) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) Meet the more stringent of applicable state or federal effluent limitation; and

(c) Minimize erosion to the extent possible.

(3) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling and grading, and prompt revegetation as required in rule 1501:13-9-15 of the Administrative Code.

(b) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of rule 1501:13-9-14 of the Administrative Code;

(c) Retaining sediment within disturbed areas;

(d) Diverting runoff away from disturbed areas;

(e) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(g) Treating with chemicals.

(E) Stream buffer zones.

(1) No land within one hundred feet, measured horizontally, of a perennial or intermittent stream shall be disturbed unless the chief specifically authorizes coal mining operations closer to or through such a stream. The chief may authorize such operations only upon making a finding ~~that~~under both paragraphs (E)(1)(a) and (E)(1)(b) of this rule or under paragraph (E)(1)(c) of this rule:

(a) The operations will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(b) If there will be a temporary or permanent stream channel diversion, it will comply with paragraph (F) of this rule~~.~~; or

(c) If restoration of a stream or a portion of a stream on the permit area is not possible, restoration off the permit area by means of mitigation has been approved by the chief under rule 1501:13-13-08 of the Administrative Code.

(2) The area not to be disturbed shall be described as a buffer zone, and the operator shall mark it as specified by paragraph (E) of rule 1501:13-9-01 of the Administrative Code.

(F) Diversions.

(1) General requirements.

(a) With the approval of the chief, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of paragraph (G) of this rule for siltation structure removal, may be diverted away from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the chief under paragraph (Q) of this rule.

(b) The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to:

(i) Be stable;

(ii) Provide protection against flooding and resultant damage to life and property;

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(iv) Comply with all applicable local, state, and federal laws and regulations.

(c) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with these rules. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(d) The chief may specify design criteria for diversions to meet the requirements of this rule.

(2) Diversion of perennial and intermittent streams.

(a) Diversion of perennial and intermittent streams within the permit area may be approved by the chief after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(b) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(c) The requirements of paragraph (F)(1)(b)(ii) of this rule shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a ten-year, six hour precipitation event for a temporary diversion and a one-hundred-year, six hour precipitation event for a permanent diversion.

(d) A permanent stream-channel diversion or a stream channel restored after the completion of mining shall be designed and constructed using natural channel design techniques so as to restore or approximate the premining characteristics of the original stream channel, including the natural riparian vegetation and the natural hydrological characteristics of the original stream, to promote the recovery and enhancement of the aquatic habitat and to minimize adverse alteration of stream channels on and off the site, including channel deepening or enlargement, to the extent possible.

~~(d)~~ (e) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by an engineer as meeting the performance standards of Chapter 1501:13-9 of the Administrative Code and any design criteria set by the chief.

(3) Diversion of miscellaneous flows.

(a) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the chief. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(b) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in paragraph (F)(1) of this rule.

(c) The requirements of paragraph (F)(1)(b)(ii) of this rule shall be met when the temporary and

permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a two-year, six hour precipitation event for a temporary diversion and a ten-year, six hour precipitation event for a permanent diversion.

(G) Siltation structures.

(1) Definitions. For the purposes of this rule only:

(a) "Siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility;

(b) "Disturbed" area shall not include those areas:

(i) In which the only surface mining operations include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with mining and reclamation rules; and

(ii) For which the upstream area is not otherwise disturbed by the operator; and

(c) "Other treatment facility" means any chemical treatment, such as flocculation, or mechanical structure, such as a clarifier, that has a point-source discharge and that is utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area.

(2) General requirements.

(a) Additional contributions of suspended solids to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(b) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (B)(3) or (G)(2)(e) of this rule.

(c) Siltation structures for an area shall be constructed before beginning any surface mining operations in that area and, upon construction, shall be certified by an engineer as being constructed as designed and as approved in the reclamation plan.

(d) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with paragraph (H) of this rule.

(e) Siltation structures shall be maintained until removal is authorized by the chief and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two years after the last augmented seeding, unless, after vegetation is established, the operator demonstrates and the chief approves under paragraph (E)(1)(g) of rule 1501:13-4-05 or paragraph (E)(1)(f) of rule 1501:13-4-14 of the Administrative Code alternative methods of sediment control as the best technology currently available.

(f) When a siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and rule 1501:13-9-15 of the Administrative Code.

(3) Sedimentation ponds.

(a) When used, sedimentation ponds shall:

(i) Be used individually or in series;

(ii) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the chief; and

(iii) Be designed, constructed, and maintained to:

(a) Provide adequate sediment storage volume;

(b) Provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations;

(c) Contain or treat the ten-year twenty-four hour precipitation event ("design event") unless a lesser design event is approved by the chief based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of this rule will be met;

(d) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (G)(3)(a)(iii)(b) of this rule;

(e) Minimize, to the extent possible, short circuiting;

(f) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(g) Ensure against excessive settlement;

(h) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-mine waste; and

(i) Be compacted properly.

(4) Other treatment facilities.

(a) Other treatment facilities shall be designed to treat the ten-year, twenty-four-hour precipitation event unless a lesser design event is approved by the chief based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of this rule will be met.

(b) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (G)(3) of this rule.

(H) Impoundments.

(1) General requirements. The requirements of paragraph (H)(1) of this rule apply to both temporary and permanent impoundments.

(a) Impoundments meeting the criteria of 30 C.F.R. 77.216(a) or the class B or C criteria for dams in the U.S. department of agriculture, soil conservation service technical release no. 60, "Earth Dams and

Reservoirs," 1985, (which is hereby incorporated by reference) shall comply with the design and construction requirements of paragraph (H) of this rule and either paragraphs (H)(1) and (H)(2) of rule 1501:13-4-05 or paragraphs (H)(1) and (H)(2) of rule 1501:13-4-14 of the Administrative Code. Copies of technical release no. 60 may be obtained from the national technical information service (NTIS), ~~5285 Port Royal Road, Springfield~~5301 Shawnee Road, Alexandria, Virginia ~~22161~~22312, order No. PB87157509. Copies can be inspected at the division of mineral resources management headquarters office at 2045 Morse road, building H~~-3~~, Columbus, Ohio 43229.

(b) Design certification. The design of impoundments shall be certified in accordance with rule 1501:13-4-05 or 1501:13-4-14 of the Administrative Code as designed to meet the requirements of this rule using current, prudent, engineering practices and any design criteria established by the chief.

(c) Stability.

(i) Impoundments meeting the criteria of 30 C.F.R. 77.216(a) or the class B or C criteria for dams in technical release no. 60 shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not meeting the criteria of paragraph (H)(1)(c)(i) of this rule, except for coal mine waste impounding structures, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or be designed in accordance with paragraph (H)(2)(c) of rule 1501:13-4-05 or paragraph (H)(2)(c) of rule 1501:13-4-14 of the Administrative Code.

(d) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the class B or C criteria for dams in technical release no. 60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in technical release no. 60.

(e) Foundation.

(i) Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. For impoundments meeting the size or other criteria of 30 C.F.R. 77.216(a) or the class B or C criteria for dams in technical release no. 60, sufficient foundation investigations as well as any necessary laboratory testing shall be performed in order to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(f) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(g) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(h)

(i) An impoundment meeting the size or other qualifying criteria of 30 C.F.R. 77.216(a) shall include either a combination of principal and emergency spillways or a single spillway designed and constructed to safely pass a one-hundred-year, six-hour precipitation event, or greater event as specified by the chief.

(ii) An impoundment not meeting the size or other qualifying criteria of 30 C.F.R. 77.216(a) shall include either a combination of principal and emergency spillways or a single spillway designed and constructed to safely pass a twenty-five-year, six-hour precipitation event, or greater event as specified by the chief.

(iii) An impoundment meeting the class B or C criteria for dams in technical release no. 60 shall include either a combination of principal and emergency spillways or a single spillway designed and constructed to safely pass the design precipitation event using the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in technical release no. 60, or greater event specified by the chief.

(iv) Impoundments may use a single open-channel spillway designed and constructed according to paragraph (H)(1)(h)(i) or (H)(1)(h)(ii) of this rule if the spillway:

(a) Is of nonerodible construction and designed to carry sustained flows; or

(b) Is earth- or grass-lined and designed to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected.

(i) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users. For permanent impoundments, the vertical portion of the remaining highwall shall also meet the requirements of paragraph (H)(2)(d) of this rule.

(j) Inspections. An engineer or other qualified professional specialist, under the direction of the engineer, shall inspect the impoundment. The engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance security.

(ii) The engineer shall promptly, after each inspection, provide to the chief a certified report that the impoundment has been constructed and maintained as designed in accordance with the approved plan and these rules. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

(k) Impoundments meeting the class B or C criteria for dams in technical release no. 60 or subject to 30 C.F.R. 77.216 must be examined in accordance with 30 C.F.R. 77.216-3. Other impoundments shall be examined for appearance of structural weakness and other hazardous conditions at least quarterly

by a qualified person designated by the operator.

(l) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the chief of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the chief shall be notified immediately. The chief shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(2) Permanent impoundments. A permanent impoundment of water may be created if authorized by the chief in the approved permit based upon the following demonstration:

(a) The size and configuration of such impoundment will be adequate for its intended purposes;

(b) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards;

(c) The water level will be sufficiently stable and be capable of supporting the intended use;

(d) Final grading will provide for adequate safety and access for proposed water users. For impoundments where the vertical portion of a highwall remains, the vertical portion shall be located at least eight feet below the low-water line;

(e) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(f) The impoundment will be suitable for the approved postmining land use;

(g) The reduced portion of any highwall shall have a final slope appropriate for the postmining land use and shall have a minimum static safety factor of 1.3; and

(h) The face of the reduced portion of any highwall shall be vegetated with species appropriate for the postmining land use.

(3) Temporary impoundments. The chief may authorize the construction of temporary impoundments as part of a mining operation.

(4) Sumps.

(a) Definitions. "Sump" means an excavated temporary impoundment:

(i) Used as:

(a) A secondary structure which discharges into a sedimentation pond, provided the sedimentation pond, in combination with the sump and any other sediment control measures used, achieves the applicable state and federal effluent limitations; or

(b) A primary structure to control the runoff from roads or small drainage exemption areas provided by paragraph (B)(3) of this rule; and

(ii) That has a volume which is compatible with its role within the complete sediment control system.

(b) Sumps are exempt from the requirements of paragraphs (H)(1) to (H)(3) of this rule.

(c) Sump designs shall include size and spillway information and shall address the stability of the structure with respect to public health and safety.

(d) Sumps shall be constructed and maintained to prevent, to the extent possible, additional contributions of suspended solids to runoff outside the permit area.

(e) Before a sump becomes full of sediment, the sediment shall be removed, and the original sump capacity restored.

(I) Discharge structures. Discharges from sedimentation ponds, permanent and temporary impoundments, mine waste disposal areas, and diversions shall be controlled by energy dissipators, riprap channels, and other devices where necessary to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbances to the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

(J) Acid-forming and toxic-forming spoil. Drainage from acid-forming and toxic-forming mine waste materials and spoils into ground and surface water shall be avoided by:

(1) Identifying, burying, and treating where necessary spoil or other materials that, in the judgment of the chief, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with paragraph (J) of rule 1501:13-9-14 of the Administrative Code, and other measures as required by the chief; and

(3) Burying or otherwise treating all acid-forming or toxic-forming spoil within thirty days after it is first exposed on the mine site, or within a lesser period designated by the chief. Temporary storage of the spoil may be approved by the chief upon finding that burial or treatment within thirty days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

(K) Ground-water protection.

(1) Backfilled materials shall be placed so as to minimize contamination of ground-water systems with acid, toxic, or otherwise harmful mine drainage, minimize adverse effects of mining on ground-water systems outside the permit area, and to support approved postmining land uses.

(2) To control the effects of mine drainage, pits, cuts, and other mine excavations or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground-water systems and to prevent adverse impacts on such ground-water systems or on approved postmining land uses.

(L) Protection of ground-water recharge capacity. Other than underground mining operations, all coal mining operations shall be conducted in a manner that facilitates reclamation which will restore approximate

premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground-water system. The recharge capacity shall be restored to a condition which:

(1) Supports the approved postmining land use;

(2) Minimizes disturbances to the prevailing hydrologic balance in the permit and adjacent areas; and

(3) Provides a rate of recharge that approximates the premining recharge rate.

(M) Surface water protection. In order to protect the hydrologic balance, mining operations shall be conducted according to the plan approved under paragraph (E) of rule 1501:13-4-05 or paragraph (E) of rule 1501:13-4-14 of the Administrative Code, and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage, prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area, and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this rule, then the operator shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface-water quality and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under paragraph (E) of rule 1501:13-4-05 or paragraph (E) of rule 1501:13-4-14 of the Administrative Code.

(N) Surface and ground-water monitoring.

(1) Ground-water monitoring.

(a) Surface mining operators shall monitor ground-water levels and the quality of ground water at least quarterly or more frequently as prescribed by the chief, in accordance with the ground-water monitoring plan approved under paragraph (F)(1) of rule 1501:13-4-05 of the Administrative Code, to determine the effects of the coal mining operations on the recharge capacity of reclaimed lands and on the quality and quantity of water in ground-water systems in the permit and adjacent areas.

(i) Monitoring shall include measurements from a sufficient number of wells and springs that are adequate to reflect changes in ground-water quality and quantity resulting from those operations.

(ii) Monitoring shall be adequate to plan for modification of coal mining operations, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(iii) As specified and approved by the chief, the person who conducts surface mining operations shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the chief, to demonstrate compliance with paragraphs (K) to (N) of this rule.

(b) Underground mining operators shall monitor, at least quarterly or more frequently as prescribed by the chief, the quality and quantity of ground water in the permit and adjacent areas in accordance

with the ground-water monitoring plan approved under paragraph (F)(1) of rule 1501:13-4-14 of the Administrative Code. Monitoring of an area shall begin one year before the area is mined, shall continue during mining, and shall continue for at least one year after the area is mined, unless the chief determines that monitoring for a shorter period will allow accurate assessment of the impacts on the ground water of the area.

(c) Ground-water monitoring shall result in quarterly or more frequent reports to the chief, submitted within two weeks following the close of the quarter, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation shall be reported immediately to the chief, and the operator shall immediately take the actions provided in the approved mining plan pursuant to paragraph (H) of rule 1501:13-5-01 and either paragraph (E) of rule 1501:13-4-05 or paragraph (E) of rule 1501:13-4-14 of the Administrative Code.

(2) Surface-water monitoring.

(a) All surface and underground mining operators shall monitor pond discharges for the national pollutant discharge elimination system (NPDES) permit quarterly in accordance with the monitoring plan submitted under either paragraph (F)(2) of rule 1501:13-4-05 or paragraph (F)(2) of rule 1501:13-4-14 of the Administrative Code and approved by the chief. Monitoring shall:

(i) Be adequate to measure and record accurately water quantity and quality of the discharges from the permit area;

(ii) Include notification to the chief of all analytical results of sample collections indicating non-compliance with a permit condition or applicable standard within five days of receipt of such results. If there is a failure to comply with an effluent limitation set forth in a NPDES permit, the person who conducts coal mining operations shall forward the analytical results concurrently with the written notice of non-compliance; and

(iii) Result in quarterly reports to the chief submitted within two weeks following the close of the quarter, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the chief, and the operator shall immediately take the actions provided in the approved mining plan pursuant to paragraph (H) of rule 1501:13-5-01 and either paragraph (E) of rule 1501:13-4-05 or paragraph (E) of rule 1501:13-4-14 of the Administrative Code.

(b) The chief may require additional surface-water monitoring to be conducted quarterly on the permit or adjacent areas in accordance with the monitoring plans submitted under paragraph (F)(2) of rule 1501:13-4-05 or paragraph (F)(2) of rule 1501:13-4-14 of the Administrative Code and approved by the chief. The chief shall determine the nature of the data and reporting requirements. Monitoring shall:

(i) Be adequate to measure and record accurately water quantity and quality;

(ii) Include notification to the chief of all analytical results of sample collections indicating non-compliance with a permit condition within five days of receipt of such results; and

(iii) Result in quarterly reports to the chief, submitted within two weeks following the close of the quarter, to include analytical results from each sample taken during the quarter. Any sample

results which indicate a permit violation will be reported immediately to the chief, and the operator shall immediately take the actions provided in the approved mining plan pursuant to paragraph (H) of rule 1501:13-5-01 and either paragraph (E) of rule 1501:13-4-05 or paragraph (E) of rule 1501:13-4-14 of the Administrative Code.

(3) Duration of and modifications to monitoring.

(a) Monitoring for ground water and surface water shall be conducted throughout mining and reclamation until final performance security release unless the chief determines, pursuant to paragraph (N)(3)(b)(ii) of this rule, that monitoring is no longer necessary.

(b) Any modification of the monitoring requirements of paragraph (N) of this rule, including the parameters covered and the sampling frequency, shall be made by means of a permit revision pursuant to paragraph (E) of rule 1501:13-4-06 of the Administrative Code. A permit revision may be obtained pursuant to this paragraph if the operator demonstrates, using the monitoring data of this rule, that:

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area, water quantity and quality are suitable to support approved postmining land uses, and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under paragraph (F) of rule 1501:13-4-05 or paragraph (F) of rule 1501:13-4-14 of the Administrative Code.

(O) Transfer of wells. Before final release of performance security, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with rule 1501:13-9-02 of the Administrative Code. With the prior approval of the chief, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well in accordance with rule 1501:13-9-02 of the Administrative Code until performance security release.

(P) Water rights and replacement.

(1) Any person who conducts coal mining operations shall:

(a) Replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the coal mining operations; and

(b) Reimburse the owner for the reasonable cost of obtaining a water supply from the time of the contamination, diminution or interruption by the operation until the water supply is replaced.

(2) The hydrologic information required in paragraphs (B) to (G) of rule 1501:13-4-04 or paragraphs (B) to (G) of rule 1501:13-4-13 of the Administrative Code shall, at a minimum, be used to determine the extent of the impact of mining on ground and surface water.

(Q) Discharge of water into underground mines.

(1) Discharges into an underground mine are prohibited, unless specifically approved by the chief after a demonstration that the discharge will:

(a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining operations;

(b) Not result in a violation of applicable water quality standards or effluent limitations;

(c) Be at a known rate and quality which shall meet the effluent limitations of this rule for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the chief; and

(d) Meet with the approval of MSHA.

(2) Discharges shall be limited to the following:

(a) Water;

(b) Coal processing waste;

(c) Fly ash from a coal-fired facility;

(d) Sludge from an acid-mine-drainage treatment facility;

(e) Flue-gas desulfurization sludge;

(f) Inert material used for stabilizing underground mines; and

(g) Underground mine development wastes.

(R) Postmining rehabilitation of sedimentation ponds, diversions, impoundments and treatment facilities. Before abandoning a permit area or seeking performance security release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of these rules for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structure if necessary to meet requirements of these rules and to conform to the approved reclamation plan.

(S) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

Draft Rule 1501:13-9-06, dated 7/14/2017.

This is a summary of the changes made to this rule. The proposed revisions do not reduce the blasting protections that the rule provides to people or property near coal mines.

Title of rule. The title is revised to specify that the rule applies to coal mining and coal exploration operations. This proposed change is for the sake of end users such as certified blasters and consultants who often acquire a stand-alone copy of OAC 1501:13-9-06. The expanded title will clearly distinguish it from OAC 1501:14-3-04, "Use of Explosives in Industrial Minerals Mines," and help on-line users quickly see that it does not apply to non-mining uses of explosives in the construction, demolition, and oil and gas industries.

(A)(1). Proposed new sentence to clarify when the rule will apply to: box and contour cuts used to develop underground mine entries (i.e., "face-ups"); and vertical shafts and drift or slope entries associated with underground mining. This addition will formalize the way the Division of Mineral Resources Management (DMRM) has interpreted such instances for over three decades.

(A)(5). Proposed to be deleted because the chief already has the authority to cease mining and/or blasting for imminent harm situations, per OAC 1501:13-14-02, and the authority to suspend or revoke a blaster's certification for violations, per OAC 1501:13-9-10.

(C)(1). The preblast survey notifications would need to include an additional statement that "…the survey will be conducted at no cost to the resident or owner." This proposed addition would simply formalize something that nearly all permittees have been doing for many years.

(C)(2). The Chief would be allowed to utilize electronic mail, with acknowledgement of receipt, as an alternative to certified mail when notifying the permittee that a request for a preblast survey has been received. Electronic mail is much quicker and less expensive than certified mail.

(D)(6). The requirement regarding the notice that underground mining operations must provide to residents and local governments is proposed to be revised. This revision will clarify that surface blasting incident to underground mining is only exempt from the publication requirements of (D)(3) to (5) of this rule if the underground mine permittee provides notice, in writing, to residents within one-half mile of the blasting site and local governments of the proposed times and locations of blasting operations.

(E)(4) and sub-paragraphs (a) to (j). Language added to clarify the roles of the certified blaster and certified mine foreperson in determining and controlling access to the blasting area. Language also added to define "blasting area," along with a list of the primary factors to be considered in determining the blasting area.

(E)(5). Language revised to clarify that the certified blaster must confirm that the blast area is safe to re-enter before the all-clear signal is given. (E)(4) already states that the certified blaster must contact the certified mine foreperson after a blast, so this does not need to be re-stated in (E)(5).

(E)(6). A definition of “blast site” added for clarification. The duration of the all-clear signal increased from five to ten seconds, to better distinguish it from the five-second sounds of the warning signal.

(F)(2)(a) and (b). Language added to allow the chief to accept a letter attached to the prescribed forms for 300-ft. and 500-ft. blasting consents. This will allow for more flexibility in how the consent forms may be submitted.

(F)(3), “blasting site” changed to “blast site” to be consistent with its definition and usage in other paragraphs of this rule.

(F)(6). The reference to “maximum peak particle velocity limits of paragraph (F)(7)” is proposed to be removed because the three-tiered, distance-dependent limits for ground vibration would no longer be an option for compliance under this proposed rule.

(F)(7). References to the three-tiered, distance-dependent limits are proposed to be removed because those limits would no longer be an option for compliance under this proposed rule. Language from (F)(13) regarding minimum specifications for seismographs is proposed to be moved to (F)(7) and updated. Language added to clarify where the seismograph must be placed in relation to the building or structure being monitored and the blast site.

(F)(8). Language revised to make the frequency-dependent limits the only measurement-based compliance method allowed. DMRM has required this compliance method in industrial minerals mines (quarries) since 2003, and for many years the DMRM has required its application to older houses with plaster-on-lath walls in many coal blast plans. Pennsylvania has required this compliance method for ALL blasting for many years. For all those reasons, the Ohio mining and blasting industry is already familiar with the frequency-dependent limits and has extensive practice with achieving compliance. The three-tiered, distance-dependent method, which would no longer be allowed under this proposed rule, was created by federal Office of Surface Mining over 30 years ago when there was much more limited knowledge of how distance and other factors affect ground vibration frequencies. Decades later, seismographic data from tens of thousands of blasts have shown that the lower frequencies most conducive to damage to residential structures can occur at any distance, making the distance-dependent method archaic. By contrast, the frequency-dependent method simultaneously accounts for the natural frequencies of residential structures, the potential effect of soils, geological structures and distance on ground vibration frequencies, and the modern option of using programmable electronic (digital) detonators and signature-hole analysis to promote the generation of higher frequencies that are less conducive to damage.

(F)(9). The three-tiered, distance-dependent scaled distance (SD) factors are proposed to be replaced by a single SD factor of 90. This more-conservative SD factor will match what is already in rule 1501:14-3-04, Use of Explosives for Industrial Minerals Mines, and will promote seismographic monitoring of more blasts. In the absence of seismographic monitoring, an SD factor of 90 will likely ensure that the particle velocities at the nearest dwelling do not exceed 0.50 inch per second and fall under the frequency-dependent limits of (F)(8).

Also in (F)(9), the option to apply for and use a modified (less conservative) scaled distance factor is proposed to be removed. This method was used only once by a permittee in the last 30 years, and has the potential effect of reducing the amount of blasts that must be monitored at a dwelling for compliance, while increasing the explosive charge-weights per delay. For liability reasons and better proof of compliance, seismographic monitoring of blasts should be encouraged, not discouraged.

(F)(10). The reference to (F)(7) proposed to be removed because the three-tiered, distance-dependent limits of (F)(7) are proposed to be eliminated as a compliance option.

(F)(13). The current language of this paragraph moved to (F)(7) and modified to reference the current ISEE performance specifications for blasting seismographs. New language proposed to be added to (F)(13) specify the training that is required for any person who operates a seismograph to demonstrate compliance under this rule.

(G)(3)(s). Language modified to reflect the frequent use of programmable electronic (digital) detonators, which are now widely available and cost-effective.

(G)(3)(v)(ii). “instrument” replaced by “seismograph” for clarification.

DRAFT - NOT FOR FILING

Dated 7/14/2017

1501:13-9-06 Use of explosives in coal mining and coal exploration operations.

(A) General.

(1) The provisions of this rule shall apply to all surface blasting operations, including surface blasting operations incident to underground mining, on all coal mining and reclamation operations and on coal exploration operations. For box or contour cuts associated with development of underground mine entries, this rule shall apply to all material above the coal seam to be mined. For vertical shafts and drift or slope entries associated with underground mining, this rule shall apply only to the first twenty-five feet of material excavated below or beyond the original ground surface or point of entry. Where the provisions of this rule are in conflict with the conditions described in a permittee's previously approved blasting plan, the provisions of this rule shall apply.

(2) Blasting operations shall be conducted in accordance with all applicable state and federal laws and regulations.

(3) For purposes of this rule, "certified blaster" shall mean a blaster who possesses a valid certificate obtained pursuant to rule 1501:13-9-10 of the Administrative Code and "certified mine foreperson" shall mean a mine foreperson who has a valid certification pursuant to Chapter 1561. of the Revised Code.

(4) Blasting operations shall be conducted only under the supervision of a certified blaster. A certified blaster and at least one other person shall be physically present at the detonation of a blast. Only a certified blaster, or a member of the blasting crew under the direct supervision of the certified blaster, may detonate a blast. Any certified blaster who is responsible for conducting blasting operations at a blasting site shall give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

~~(5) If a permittee violates any of the requirements under paragraph (A)(4) of this rule, the chief shall immediately issue an order requiring the permittee to show cause why blasting operations should not be suspended or revoked.~~

~~(6)~~ (5) Certified blasters, and other persons responsible for blasting operations at a blasting site, shall review and know the permittee's blasting plan and site-specific blasting limitations. The permittee shall keep a copy of the blasting plan and the permit map at the permit site or at the mine office closest to the permit site for use by employees, contract blasters, and any other persons responsible for blasting operations.

(B) Anticipated blast design for special areas.

(1) The permittee or permit applicant must submit an anticipated blast design to the chief before blasting within:

(a) One thousand feet of any dwelling, public or commercial building, school, church, or community or institutional building; or

(b) Five hundred feet of an active or abandoned underground mine.

(2) The blast design must be submitted:

(a) As part of a permit application; or

(b) As a revision to the mining plan, at least sixty days prior to such blasting.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking, and shall indicate the type and amount of explosives to be used, critical dimensions, initiation systems, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable flyrock, airblast, and ground vibration standards in paragraph (F) of this rule.

(4) The blast design shall be prepared by a certified blaster or by a blasting consultant, seismologist, or professional engineer who has been trained in current blasting technology and state and federal blasting laws and regulations. The blast design shall be reviewed, approved, and signed by a certified blaster who has knowledge of the site-specific blasting limitations.

(5) The chief may require revisions to the design submitted.

(C) Preblast survey.

(1) At least thirty days before initiation of blasting, the permittee or permit applicant shall notify, in writing, all residents or owners of dwellings or other structures located within one-half mile of the permit area, about how to request a preblast survey. Such notification shall include the ~~statement~~statements that any preblast survey requested more than ten days before the planned initiation of blasting shall be completed before the initiation of blasting, and that the survey will be conducted at no cost to the resident or owner.

(2) A resident or owner of a dwelling or structure within one-half mile of the permit area may request a preblast survey. This request shall be made, in writing, directly to the permittee or permit applicant by certified mail, or by regular mail to the chief, who shall promptly notify the permittee or permit applicant by certified mail or by electronic mail with acknowledgment of receipt. Within forty-five days after a request is received, the permittee or permit applicant shall conduct a preblast survey of the dwelling or structure and prepare a written report of the survey. Where blasting has not yet begun on a new or proposed permit area, a modified time frame for completion of preblast surveys may be approved by the chief, upon written request to the chief, when circumstances warrant an extension of time. However, any preblast survey requested more than ten days before the planned initiation of blasting shall be completed before the initiation of blasting. An updated survey of any additions, modifications, or renovations shall be performed by the permittee or permit applicant if requested by the resident or owner.

(3) When conducting a preblast survey, the permittee or permit applicant shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, oil and gas wells, cables, communication and transmission towers, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(4) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be provided to the resident or owner of the dwelling or structure, and to the chief. If the resident or owner disagrees with the contents or recommendations contained therein, he or she may submit to both the permittee or permit applicant and the chief a detailed description of the specific areas of disagreement.

(5) Whenever a permittee or permit applicant conducts a preblast survey of a dwelling or structure without receiving a written request to do so, a copy of the written report of the survey shall be given to the resident or the owner.

(D) Blasting schedule.

(1) Blasting shall be conducted between sunrise and sunset at times approved by the chief and announced in the blasting schedule. The chief may limit the time periods, area covered, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(2) Unscheduled blasts may be conducted only in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety so requires. When an unscheduled blast is conducted, the certified blaster in charge shall document the reason for the unscheduled blast in the blast record required under paragraph (G) of this rule.

(3) At least ten days, but not more than ninety days, before initiation of blasting, the permittee or permit applicant shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting area, and distribute copies of the blasting schedule to local governments, public utilities, and each residence and occupied building within one-half mile of the proposed blasting area described in the schedule. A notarized proof of each publication of the blasting schedule required under this rule shall be sent to the division of mineral resources management district office having jurisdiction over the permit.

(4) The permittee shall republish and redistribute the schedule at least every twelve months, and revise, republish, and redistribute the schedule at least ten days, but not more than thirty days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

(5) The blasting schedule shall contain, at a minimum:

(a) Name, address, and telephone number of the permittee or permit applicant;

(b) Permit number or application number, whichever is applicable;

(c) Identification of the specific areas where blasting will occur;

(d) Dates and time periods when blasting will occur;

(e) Methods to be used to control access to the blasting area;

(f) Type and patterns of audible warning and all-clear signals to be used before and after blasting; and

(g) A description of possible emergency situations (defined in paragraph (D)(2) of this rule) when an unscheduled blast may be necessary.

(6) Surface blasting incident to underground mining shall be exempt from the blasting schedule and publication requirements of paragraphs (D)(3), (D)(4), and (D)(5) of this rule~~. Instead, an~~ if, instead, the underground mine permittee or permit applicant ~~shall notify~~provides notice, in writing, to residents within one-half mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of blasting times ~~that blasting is to be conducted~~and locations may be announced weekly, but in no case less than twenty-four hours before blasting will occur.

(E) Blasting signs, warnings, and access control.

(1) Blasting signs shall meet the specifications of rule 1501:13-9-01 of the Administrative Code.

(2) The permittee shall conspicuously place signs reading "BLASTING AREA" along the edge of any blasting area that comes within one hundred feet of any public road right-of-way, and at the edge of blasting areas along access and haul roads within the permit area.

(3) At all entrances to the permit area from any road, the permittee shall conspicuously place signs which state "WARNING! EXPLOSIVES IN USE" which clearly explain the meaning of the audible warning and all-clear signals in use, and the marking of blasting areas and charged holes awaiting firing within the permit area.

(4) For each blast, the certified blaster conducting the blast shall ~~define~~determine the limits of the blasting area ~~where danger from flyrock exists~~and communicate those limits to the certified mine foreperson. The certified mine foreperson shall be responsible for controlling access to the blasting area to prevent the presence of livestock or unauthorized persons at least ten minutes before each blast, and until the certified blaster has determined that no unusual hazards, such as imminent slides or undetonated charges, exist, and access to and travel within the blasting area can safely resume. The certified mine foreperson shall not allow anyone to re-enter the designated blasting area until the certified blaster conducting the blast has contacted the certified mine foreperson, and the all-clear signal has been sounded. "Blasting area" means the area in which airblast (concussion or shock wave), flyrock, or other blasting hazards might cause injury to persons or damage to property. In determining the blasting area, the following factors shall be considered:

(a) Geology of the material to be blasted;

(b) Orientation of the blast bench and rock face(s);

(c) Blast pattern layout, delay system and timing;

(d) Burden, depth, diameter and angle of the blastholes;

(e) Blasting experience of the mine;

(f) Powder factor and pounds of explosives per delay;

(g) Type and amount of explosive material;

(h) Type and amount of stemming;

(i) Atmospheric conditions; and

(j) Topography.

(5) At least one minute, but not more than two minutes, before the detonation of a blast, the certified blaster in charge, or someone directed by the certified blaster, shall give an audible warning signal. If the blast is not detonated within two minutes of the audible warning signal, the warning signal shall be repeated as required by this paragraph before the blast is detonated. After the blast has been detonated and the certified blaster has ~~communicated to the certified mine foreperson~~confirmed that the blast area is safe to re-enter, an audible all-clear signal shall be given.

(6) Warning and all-clear signals, to be produced by an airhorn, siren or similar device, shall be audible to at least one-half mile from the blast site. "Blast site" means the area formed by the perimeter of the loaded blastholes and fifty feet in all directions from loaded blastholes. The warning signal shall consist of three long sounds, each lasting at least five seconds. The all-clear signal shall consist of one long sound lasting at least ~~five~~ten seconds.

(7) When blasting within one-half mile of any public or private institution such as a school or church in session, or a residential mental or physical health care facility, the permittee shall notify the institution by telephone or personal visit on the day of scheduled blasting at least one hour before each blast. This requirement shall not apply if the permittee submits to the chief a copy of a statement signed by the administrator of the institution, waiving the right to be notified.

(F) Control of adverse effects.

(1) Blasting shall be conducted in a manner to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(2) Blasting shall not be conducted within:

(a) Three hundred feet of any public water tower or public reservoir dam, communication or high-voltage transmission tower, railroad tunnel or highway tunnel, public water or sewage line, or major oil or gas pipeline, except where written permission has been obtained from the controlling authority or owners thereof on a form prescribed by the chief or a letter attached to that form; or

(b) Five hundred feet of an active underground mine, except where written permission has been obtained from the owners thereof, and from all state and federal regulatory authorities concerned with the health and safety of underground miners, on a form prescribed by the chief or a letter attached to that form.

(3) "Flyrock," defined as rock, mud, or debris (excluding dust) traveling in the air or along the ground as a result of a blast, shall not be cast from the ~~blasting~~blast site beyond any of the following:

(a) One-half the horizontal distance to any dwelling or other occupied structure;

(b) The area of control required under paragraph (E)(4) of this rule; or

(c) The permit boundary.

(4) If flyrock is cast beyond the permit boundary, the certified blaster in charge shall notify the division of mineral resources management by telephone within two hours after learning of the flyrock incident, and submit a written flyrock incident report to the division of mineral resources management district office having jurisdiction over the permit area within three business days after learning of the incident. The permittee or certified blaster shall not conduct another blast directly beside or behind the blast site where the flyrock originated until the report is properly completed and the division of mineral resources management has acknowledged its receipt. The report shall include, at a minimum, a copy of the blast record required under paragraph (G) of this rule and all available seismographic data, a sketch of the blast site and rock deposition area, and a detailed explanation of: how the blast was designed and loaded; who witnessed the blast and where they were located and what they observed; the location and nature of the flyrock deposition (including property owners, type and approximate number of rocks, size and distance range), property damages (if any) and personal injuries (if any); what measures have been taken to repair all property damages (if any) and address all personal injuries (if any); the probable cause of the flyrock incident~~,~~; and the corrective measures to be taken to prevent another flyrock incident.

(5) Airblast shall not exceed one hundred thirty-three decibels at any dwelling, public or commercial building, school, church, or community or institutional building outside the permit area, except as authorized under paragraph (F)(12) of this rule.

(a) If necessary to prevent damage, the chief shall specify lower maximum allowable airblast levels for use in the vicinity of a specific blasting operation.

(b) The permittee shall conduct periodic monitoring to ensure compliance with the airblast limits. The chief may require airblast measurement of any or all blasts, and may specify the locations at which such measurements are taken.

(6) In all blasting operations, except as authorized in paragraph (F)(12) of this rule, the maximum ground vibration shall not exceed the values specified in this rule or approved in the blasting plan required under paragraph (C) of rule 1501:13-4-05 or paragraph (C) of rule 1501:13-4-14 of the Administrative Code.

(a) The maximum ground vibration at any dwelling, public or commercial building, school, church, or community or institutional building outside the permit area shall be established in accordance with the ~~maximum peak-particle-velocity limits of paragraph (F)(7) of this rule, the~~ frequency-dependent particle velocity limits of paragraph (F)(8) of this rule, or other limits imposed by the chief pursuant to paragraph (F)(10) of this rule.

(b) All other structures in the vicinity of the blasting area not listed in paragraph (F)(6)(a) of this rule, such as water towers, pipelines and other utilities, communication and transmission towers, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the permittee in the blasting plan and approved by the chief.

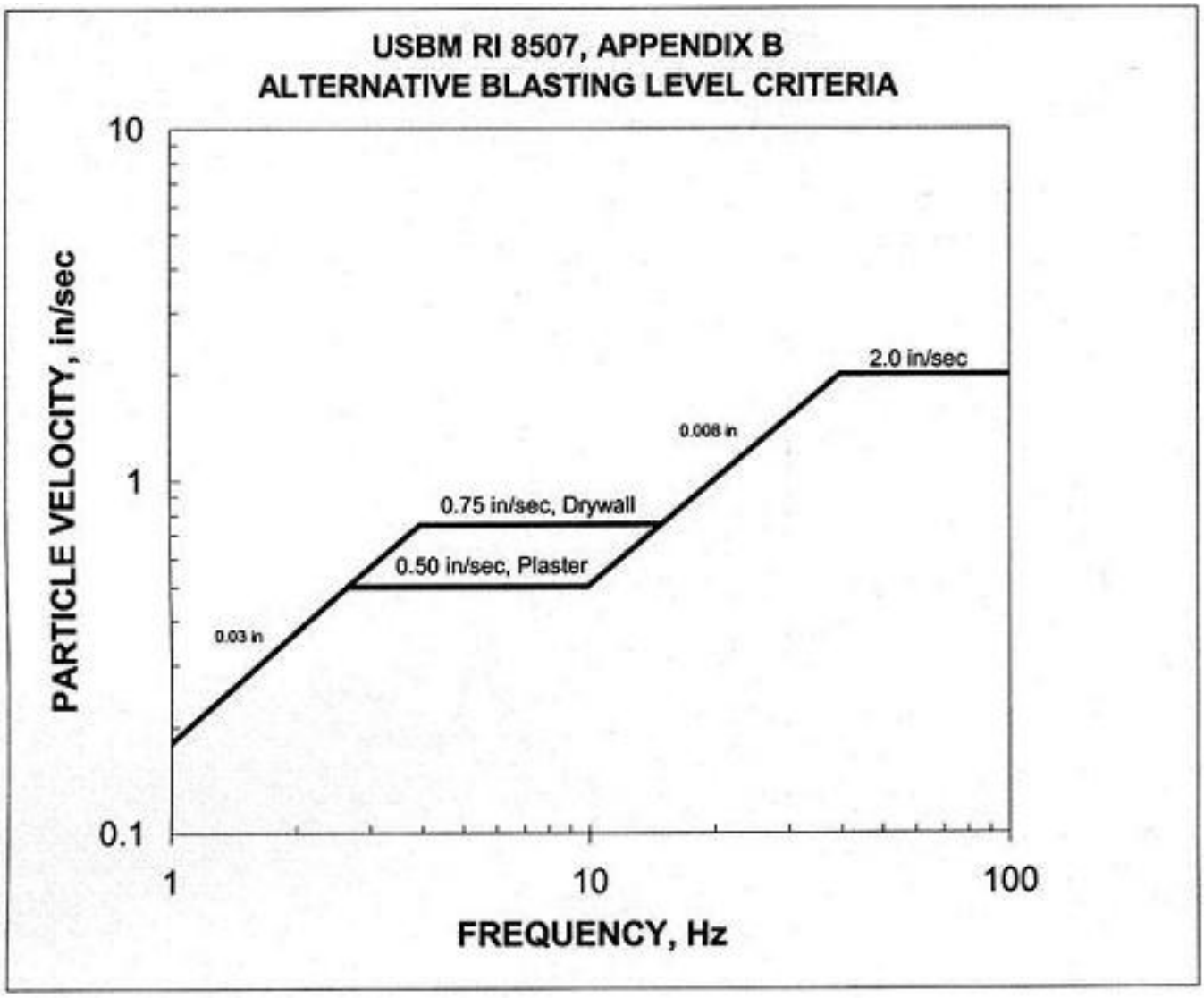
(7) ~~Except as provided in paragraph (F)(8) of this rule, the maximum ground vibration shall not exceed the following limits at any dwelling, public or commercial building, school, church, or community or institutional building outside the permit area:~~All seismographs used to prove compliance with the ground vibration and airblast limits required by this rule shall have seismic and acoustic systems with a minimum frequency range of two to two hundred fifty hertz, with accuracies that meet or exceed the performance specifications for blasting seismographs adopted by the international society of explosives engineers, "ISEE Performance Specifications for Blasting Seismographs, 2011 Edition," available as a digital download from the "International Society of Explosives Engineers" at the website www.isee.org. The ground vibration shall be measured as the particle velocity and recorded in three mutually perpendicular directions. The maximum allowable frequency-dependent particle velocity limits and peak particle velocity limits in this rule shall apply in each of the three directions of measurement. Whenever possible, the seismographic measurement shall be made within ten feet of the building or structure being monitored, at the side or corner of the building or structure closest to the blast site. Otherwise, the seismograph may be placed at some point between the blast site and the building or structure to be protected.

~~Distance (D), from the blasting site, in feet (rounded to the nearest whole foot)~~	~~Maximum allowable peak particle velocity in inches/second~~
~~0 to 300 .....~~	~~1.25~~
~~301 to 5,000 .....~~	~~1.00~~
~~5,001 and beyond .....~~	~~0.75~~

~~(a) Ground vibration shall be measured as the particle velocity and recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three directions of measurement.~~

~~(b) A seismographic record shall be provided for each blast. Whenever possible, the seismograph shall be located at the nearest building to be protected. Otherwise, the seismograph may be placed at some point between the blast site and the nearest building to be protected.~~

(8) ~~In lieu of the requirements of paragraph (F)(7) of this rule,~~Ground vibration, when measured at any dwelling, public or commercial building, school, church or community or institutional building outside the permit area, shall not exceed the frequency-dependent particle velocity limits in the chart, below, ~~may be used to determine compliance at any dwelling, public or commercial building, school, church, or community or institutional building outside the permit area. The chart is adopted~~ from the U.S. bureau of mines (1980), "Report of Investigations 8507~~ (1980)~~, Appendix B~~,~~: Alternative Blasting Level Criteria." ~~A seismographic record including both particle velocities and an electronic analysis of vibration frequencies shall be provided for each blast~~When applying the frequency-dependent particle velocity limits, the lower plateau at 0.50 inches per second shall apply at its corresponding frequencies, unless the permittee or permit applicant submits to the chief evidence to support application of the higher plateau at 0.75 inches per second, and the chief approves a blast plan modification to that effect.



(9) In lieu of the seismographic ~~record~~monitoring required by paragraph (F)~~(7)(b)~~(8) of this rule, the scaled distance equation, W = (D/~~SD~~90)^2, may be used to determine the maximum allowable charge weight of explosives that can be detonated within any period less than eight milliseconds, where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the ~~blast site~~nearest blasthole to the nearest dwelling, public or commercial building, school, church, or community or institutional building outside the permit area; and ~~SD =~~90 is the applicable scaled distance factor~~ applied from the following table:~~.

~~Distance (D), from the blasting site, in feet (rounded to the nearest whole foot)~~	~~Scaled distance factor (SD) to be applied without seismic monitoring~~
~~0 to 300 .....~~	~~50~~
~~301 to 5,000 .....~~	~~55~~
~~5,001 and beyond .....~~	~~65~~

~~The use of a modified scaled distance factor in the scaled distance equation may be approved by the chief on receipt of a written request by the permittee, supported by seismographic records of blasts at the mine site. The modified scaled distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the maximum allowable peak particle velocities prescribed in paragraph (F)(7) of this rule, at a ninety-five per cent confidence level.~~

(10) The chief shall reduce the maximum allowable ground vibration limits prescribed in ~~paragraphs (F)(7) and~~paragraph (F)(8) of this rule, if determined necessary to prevent damage.

(11) The chief may require a permittee to conduct seismic monitoring of any or all blasts, and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(12) The maximum airblast and ground vibration limits of paragraphs (F)(5)to (F)(8) of this rule shall not apply:

(a) At structures owned by the permittee and not leased to another person; and

(b) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the chief before blasting.

(13) ~~All seismographs used to prove compliance with the ground vibration and airblast limits required by this rule shall have seismic and acoustic systems with a minimum frequency range of two to two hundred fifty hertz, with accuracies that meet or exceed the performance specifications for blasting seismographs adopted by the international society of explosives engineers on February 17, 2000 (available from the "International Society of Explosives Engineers, Blast Vibrations and Seismograph Section, 30325 Bainbridge Road, Cleveland, OH 44139" or at the website http://isee.org/sections/2SeisPerfSpecs00.pdf).~~Any person who operates a seismograph for the purpose of demonstrating compliance with the ground vibration and airblast limits of this rule shall have received appropriate training, for the specific seismograph model(s) in use, in: programming the seismograph(s) to record the blast; positioning the geophone and microphone; coupling the geophone to the ground; extracting the data after the blast in digital and printed form; and understanding the results. Such training shall be received from a representative of the seismograph manufacturer or distributor, or other competent person. A record of such training shall be maintained by the seismograph operator or his or her employer, and made available for inspection by the chief or his or her authorized representative upon request.

(G) Blast records.

(1) The permittee shall retain a record of all blasts for at least three years, and shall make copies of these records available for inspection upon request by the public, the chief or an authorized representative of the chief.

(2) Where blast records are normally kept at an office of the permittee not located on the permit site, the record for each blast shall be on file at that office within five business days after the blast is detonated.

(3) Blast records shall be accurately completed at the mine site by the certified blaster in charge, and shall contain the following data:

(a) Name of the permittee and permit number;

(b) Name of the firm conducting the blast, if different from the permittee;

(c) Location, date, and time of the blast;

(d) Printed name, signature, and certification number of the blaster conducting the blast and the name of each person on the blasting crew;

(e) Relative to the nearest blasthole, the identification of, distance to, direction to, and method used to determine the distance and direction to, the nearest dwelling, public or commercial building, school, church, or community or institutional building outside the permit area, except those structures described in paragraph (F)(12) of this rule. The direction shall be stated in degrees, as an azimuth from zero to three hundred sixty degrees. The distance shall be stated in feet, as derived from an aerial photo, a topographic map, conventional field measurement devices (e.g., measuring tape or transit), or electronic devices (e.g., laser-ranging or global positioning system units);

(f) Weather conditions, including temperature and approximate wind direction and velocity;

(g) Type of material blasted;

(h) Number, diameter, and depth of holes;

(i) Depth of subdrilling, where applicable;

(j) Burden and spacing dimensions;

(k) Type, manufacturer, and amount of explosives used, including bulk, bagged, or cartridged explosives, detonating cord, primers, and surface and in-hole delay detonators;

(l) Total weight of explosives used;

(m) Weight of explosives used per hole;

(n) Maximum number of holes and maximum weight of explosives detonated within any period less than eight milliseconds;

(o) The actual scaled distance factor, expressed as the distance, in feet, from the nearest blasthole to the nearest dwelling or building in paragraph (G)(3)(e) of this rule divided by the square-root of the

maximum weight of explosives detonated in any period less than eight milliseconds;

(p) Type of initiation system used, including the type of blasting machine or other power source, and the types of trunkline and downline systems, if not readily apparent from other information in the blast record;

(q) Sequential timer setting, in milliseconds, if applicable;

(r) Type and length of stemming used per hole;

(s) Sketch of the blast pattern showing all holes, delay pattern (including initiation hole, ~~and~~ hole-to-hole and row-to-row delay detonator locations and periods, where applicable, or electronically programmed hole and deck firing times, where applicable), location of free faces and previously blasted material, and a north arrow;

(t) Sketch of a typical blasthole cross section showing the depth and location of stemming and explosive decks, primers, and delay detonators;

(u) Mats or other special protections used;

(v) Seismographic records, when required for compliance, shall be attached to the blast record within five business days of the blast, and shall include:

(i) Make, model and serial number of the seismograph, seismic and acoustic trigger levels, and most recent annual calibration date;

(ii) Exact location of the ~~instrument~~seismograph and distance from the blast, and the date and time of the recorded blast event;

(iii) Name of the person and firm operating the seismograph;

(iv) Full waveform printout, including: three mutually perpendicular channels of ground vibration and an airblast channel; dynamic calibration results; a plot of particle velocity versus frequency with a comparison to the frequency-dependent blast vibration limits in paragraph (F)(8) of this rule, based on a half-cycle zero-crossing analysis method; and the peak particle velocity and airblast levels; and

(v) If the seismograph fails to be triggered by the blast, a printout showing the date and time the seismograph was armed and ready to record a blast and the date and time the seismograph was disarmed or shut down, or a written statement including the above information, signed by the seismograph operator and attached to the blast record; and

(w) Reasons and conditions for each unscheduled blast.

(4) When bulk-loaded explosives are used, blast record data required by paragraphs (G)(3)(k) to (G)(3)(n) of this rule shall be completed as soon as the exact quantity of bulk explosives is determined, but in no case more than twenty-four hours after the blast is detonated.

Rule 1501:13-9-10, dated 7/12/2017.

This is a summary of the changes made to this rule. The proposed revisions do not reduce the blasting protections that the rule provides to people or property near coal mines.

(A)(3) and (C)(3). Language added because at least one primacy state issues a “license” rather than a “certification.” (A)(3) also revised to include full name of the U.S. Department of the Interior’s Office of Surface Mining Reclamation and Enforcement.

(A)(4) and sub-paragraphs. Paragraphs added to formalize an existing process for issuing a highly limited type of certification, available to blasters who conduct small-scale blasting on industrial minerals mining permits issued under Chapter 1514. of the Revised Code.

(B). Language requiring the Chief to conduct workshops proposed to be deleted because, in the past few decades, certified blasters have been notified of rule changes and certification procedure changes via a memo or letter sent directly to each blaster’s home address, as well as via email to the explosives service companies who employ the majority of those blasters; significant changes have also been presented at the Ohio Drilling & Blasting Conference, which is conducted every two years. Language added to clarify that “certified” blasters are the persons who need to be notified about rule and procedural changes.

(B)(5). “Fumes” added to the list of potential adverse effects from blasting.

(B)(14). “Recognizing, preventing and mitigating” added to clarify what trainees need to learn about potential hazards.

(B)(14)(e). Added “including carbon monoxide and nitrogen oxides” to bolster awareness of the two toxic gases from explosives detonations that have the greatest potential to injure persons on and off the mine site.

(C). Language added to clarify the subject matter contained in this paragraph.

(C)(1). Language added to allow the chief to customize the training hours and topics required of persons seeking the limited type of certification available under proposed new paragraph (A)(4).

(C)(5)(a). New language would allow a person seeking certification to take the required examination after completing at least one year of the required two years of blasting crew work experience. (However, upon passing the examination, a person would not be certified until the two-year work experience requirement had been met.)

(C)(5)(b). New language would allow the chief to customize the examination topics required of persons seeking the limited type of certification available under new paragraph (A)(4).

(D)(2)(b). Language added to require only eight hours of continuing education (approved by the chief or an authorized representative of the chief) for persons holding the limited type of certification available under new paragraph (A)(4).

DRAFT - NOT FOR FILING

7/12/2017

1501:13-9-10 Training, examination, and certification of blasters.

(A) General.

(1) All surface blasting operations in coal and industrial minerals mines, including surface blasting operations incident to underground mining and blasting operations on coal exploration operations, shall be conducted by a certified blaster who has obtained certification pursuant to the requirements of this rule.

(2) The chief may enter into agreements with other state agencies, boards, or institutions to administer any or all of the training, examination, and certification requirements of this rule. However, the final authority to accept or reject applicants for certification or recertification and the final authority to suspend or revoke a blaster's certification shall remain with the chief.

(3) The chief may grant reciprocity to any blaster who holds a valid certification or license issued under any state or federal blaster certification or license program approved by the U.S. department of the interior's office of surface mining reclamation and enforcement. However, to obtain certification under this rule, the blaster must apply for and pass an examination on Ohio blasting regulations pertaining to coal and industrial minerals mines, and meet any other requirement deemed necessary by the chief.

(4) The chief may issue a limited type of certification to blasters who conduct small-scale blasting on industrial minerals mining permits issued under Chapter 1514. of the Revised Code, but only when the blasting operations meet all of the following conditions:

(a) The primary purpose is to split natural stone deposits into rectangular blocks, or "dimension stone," for use in buildings, landscaping projects, break walls, or similar purposes;

(b) Detonating cord is the primary explosive charge in all blastholes; small-diameter cartridges, if used, occupy no more than twenty per cent of the blasthole length;

(c) The blastholes do not exceed three inches in diameter, are spaced no greater than thirty-six inches apart in a single row for each fracture plane desired, and are connected on the surface with detonating cord and no delays between the holes; and

(d) The weight of explosives per hole does not exceed five pounds, and the total weight of explosives per blast does not exceed two hundred pounds.

(B) Training. The chief shall ~~conduct workshops, as necessary, to~~ inform certified blasters of changes in blasting rules and certification procedures, and shall ensure that courses are available to train persons responsible for the use of explosives in mining operations. The courses shall provide training and discuss practical applications of:

(1) Explosives, including:

(a) Selection of the type of explosive to be used;

(b) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

(c) Handling, transportation, and storage.

(2) Blast designs, including:

(a) Geologic and topographic considerations;

(b) Design of a blast hole, with critical dimensions;

(c) Pattern design, field layout, and timing of blast holes; and

(d) Field applications.

(3) Loading blast holes, including priming and boostering;

(4) Initiation systems and blasting machines;

(5) Ground vibration, airblast, ~~and~~ flyrock, and fumes, including:

(a) Monitoring techniques; and

(b) Methods to control adverse effects.

(6) Secondary blasting applications;

(7) All federal and state rules applicable to the use of explosives in coal and non-coal surface mines;

(8) Blast records;

(9) Blast Schedules;

(10) Preblasting surveys, including:

(a) Availability;

(b) Coverage; and

(c) Considerations in blast design.

(11) Blast plan requirements;

(12) Certification and training;

(13) Signs, warning signals, and site control; and

(14) ~~Potential~~Recognizing, preventing and mitigating potential hazards, including:

(a) Lightning;

(b) Stray currents;

(c) Radio waves;

(d) Misfires; and

(e) Toxic gases, including carbon monoxide and nitrogen oxides.

(C) ~~Examination~~Requirements for certification and examination.

To become a certified blaster a person must have:

(1) Received a minimum of forty hours of training covering all the topics set forth in paragraph (B) of this rule in a course taught under the supervision of the chief, or in a course, or series of courses, deemed equivalent by the chief. For a person seeking only a limited certification pursuant to paragraph (A)(4) of this rule, the chief may waive some of the required training hours and topics, such that the course or series of courses are relevant to the limited blasting conditions listed under paragraph (A)(4) of this rule;

(2) Worked on a blasting crew for at least two years in mining, excavation, or an equivalent working environment;

(3) Received direction and on-the-job training from a ~~certified~~ blaster certified or licensed in any state;

(4) Exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations; and

(5) Passed a written examination covering, at a minimum, the topics set forth in paragraph (B) of this rule.

(a) A person seeking certification may take the examination after receiving the training required under paragraph (C)(1) of this rule and completing at least one of the two years of blasting crew work experience required under paragraph (C)(2) of this rule. However, upon passing the examination a person shall not be certified until he or she has completed all of the two-year blasting crew work experience requirement.

(b) A person seeking only a limited certification pursuant to paragraph (A)(4) of this rule shall pass a written examination covering only the topics in paragraph (B) of this rule that are relevant to the limited blasting conditions listed under paragraph (A)(4) of this rule.

(D) Certification and recertification.

(1) The chief, or an agency, board or institution authorized by the chief pursuant to paragraph (A)(2) of this rule, shall certify for three years those persons examined and found to be competent and to have the necessary experience to accept responsibility for surface blasting operations in mines. Each person approved for certification shall receive a certificate suitable for office display and a wallet-size identification card. The certificate and identification card shall include, at a minimum, the type of certification, the person's name, certification number and date of expiration, and the name and signature of the chief or of the official of the authorized agency, board or institution granting the certification.

(2) To be recertified without a lapse in certification, a blaster certified under this rule must have:

(a) Applied for recertification no more than ninety days prior to the expiration date of the blaster's current certificate; and

(b) Received a minimum of twenty-four hours of continuing education by attending blasting-related courses, seminars or conferences approved by the chief or an authorized representative, with at least eight hours obtained from an organization or person other than the blaster's employer or its parent company or explosives supplier. A blaster holding only a limited certification pursuant to paragraph (A)(4) of this rule is exempt from meeting the twenty-four-hour continuing education requirement of this paragraph, but must receive a minimum of eight hours of blasting-related training approved by the chief or an authorized representative of the chief.

(3) If a blaster certified under this rule fails to apply for recertification on, or before, the expiration date of his or her certificate, the blaster's certification shall expire, and the blaster shall have thirty days thereafter to apply for recertification without being subject to re-examination under paragraph (C) of this rule.

(E) Conditions of certification.

(1) The certificate or wallet-size identification card issued pursuant to paragraph (D)(1) of this rule, or a copy of the certificate notarized to be a true and exact copy, shall be carried by a blaster, or shall be on file at the mine permit area, during blasting operations.

(2) Upon request by an authorized representative of the chief or other regulatory authority having jurisdiction over the use of explosives, a blaster shall immediately exhibit his or her certificate or wallet-size identification card to the authorized representative.

(3) A blaster's certification shall not be assigned or transferred.

(4) A blaster shall not delegate his or her responsibility to any individual who is not a certified blaster.

(5) A certified blaster shall take every reasonable precaution to protect his or her certificate and wallet-size identification card from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the chief.

(F) Suspension and revocation.

(1) Following written notice and opportunity for a hearing, the chief may, and upon a finding of willful conduct shall, suspend or revoke the certification of a blaster during the term of the certification, or take other necessary action for any of the following reasons:

(a) Noncompliance with any order of the chief, any order issued by a regulatory authority having jurisdiction over the use of explosives, or any order issued by a court of law, relative to the use of explosives;

(b) Violation of any provision of state or federal explosives laws or regulations, a blasting-related permit condition, or any condition of certification;

(c) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(d) Providing false information or a misrepresentation on any application for certification or recertification;

(e) Falsification of blast records; or

(f) Conducting a blast where flyrock was cast beyond the permit boundary of any mine.

(2) If advance notice and opportunity for a hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following suspension, revocation, or other adverse action.

(3) Upon notice of a suspension or revocation, the blaster shall immediately surrender the suspended or revoked certificate and wallet-size identification card and all copies thereof to the chief and may work on a blasting crew only under the direct supervision of a certified blaster.

(4) To repossess a suspended certificate the blaster must:

(a) Exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(b) Pass the written examination administered under paragraph (C) of this rule; and

(c) Meet any other requirements imposed by the chief under the terms of the suspension.

Draft Rule 1501:13-12-03, dated 6/8/2016.

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

(F). Provisions revised to clarify and meet the requirements of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1309a (a)(1) and 30 C.F.R. 817.121(c)(2), consistent with the Ohio General Assembly's directive in Ohio Revised Code 1513.02 (A)(1)(c) to implement standards "to meet the requirements of [SMCRA]."

Consistent with federal law, the term "structures or facilities" is proposed to be replaced with "non-commercial building or occupied residential dwelling and structures related thereto that existed at the time of mining." More closely mirroring federal law on this point will provide greater clarity and certainty to the regulated community, consistent with the Governor's Common Sense Initiative, and those affected by damage from subsidence.

[Note that definitions for "non-commercial building" and for "occupied residential dwelling and structures related thereto" are proposed to be added to the Definitions rule, 1501:13-1-02, as part of this proposed rule amendment package.]

(F) is also revised to add the phrases "the permittee shall" and "the permittee may." This is consistent with LSC's Rule Drafting Manual, which recommends using "the active voice in preference to the passive voice because it clearly identifies who is responsible for doing what the rule requires and eliminates uncertainty."

(H). Revised to remove the term "structures or facilities" and replace with "non-commercial building or occupied residential dwelling and structures related thereto that existed at the time of mining" to be consistent with the changes made to (F).

(H)(1) and (H)(1)(a) and (b). (H)(1) revised to remove a reference to (G)(1) to (3), regarding repair or mitigation plans in case of subsidence. Sub-paragraphs (H)(1)(a) and (b) added regarding repair or compensation plans that must be submitted to the Chief if there is material damage from subsidence to any structure under (F). These changes are consistent with the revision in (F) to mirror the federal requirements: repair or compensation is required for the structures stated in (F), therefore permittees must submit plans for repair or compensation or a request for more time to prepare such plans.

(O) Amended to remove "applicant" and "operator" because surface owner notification is done by the permittee.

(O)(4). New sub-paragraph setting out in rule an existing requirement regarding the pre-subsidence survey. Permittees conduct pre-subsidence surveys for structures that are to be undermined, and permittees must notify surface owners about the pre-subsidence survey.

DRAFT - NOT FOR FILING

Dated 6/8/2016

1501:13-12-03 Subsidence control.

(A) The permittee shall either:

(1) Adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or

(2) Adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room-and-pillar mining.

(B) The permittee and the operator shall comply with all provisions of the approved subsidence-control plan prepared pursuant to paragraph (M) of rule 1501:13-4-14 of the Administrative Code.

(C) The chief or his or her authorized representative shall notify the permittee of any material damage to structures or surface land, or of any failure to maintain the value or reasonably foreseeable use of surface lands. Except where such damage or failure may be a part of a set of circumstances which constitute a violation (for example, material damage which results from a failure to adopt measures consistent with known technology which prevent subsidence from causing material damage), notification shall be by letter or inspection report and shall not be deemed a notice of violation. Such notification shall not be subject to formal review by the chief, the reclamation commission, or the courts unless and until it serves as the basis for issuance of a notice of violation or chief's order.

(D) The underground mine permittee shall correct any material damage caused to surface lands, to the extent technologically and economically feasible, by restoring the land surface to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence.

(E) Any agreement between the permittee and a surface owner which addresses the repair of or the compensation for damage to the surface owner's structures shall take precedence over the provisions of this rule and the provisions of this rule shall not apply to any damage to such structures.

(F) If the permittee and the owner of structures have no agreement for repair and compensation, the permittee shall ~~correct~~promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any ~~structures or facilities by repairing the damage or shall compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from subsidence~~non-commercial building or occupied residential dwelling and structures related thereto that existed at the time of mining. ~~Repair of damage includes rehabilitation, restoration, or replacement of~~If the repair option is selected, the permittee shall fully rehabilitate, restore or replace the damaged ~~structures or facilities~~structure. ~~Compensation may be accomplished~~If compensation is selected, the permittee shall compensate the owner of the damaged structure for the full amount of the diminution in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy for the structures in addition to that required by rule 1501:13-7-07 of the Administrative Code. Structures or facilities not listed in paragraphs (J)(1) to (J)(3) of this rule shall be exempted from the requirements of this paragraph~~,~~ if the permittee or operator submits to the chief copies of documents showing clearly and convincingly that, and the chief determines that, the

owner of the structure or facility is the permittee or operator.

(G) If and when subsidence occurs which causes material damage to structures listed in paragraphs (J)(1) to (J)(3) of this rule, or to surface lands, or reduces the foreseeable use or value of surface lands, the underground permittee shall submit to the chief within thirty days after the damage occurs:

(1) Site specific plans for the repair or mitigation of the damage, including a time schedule for performance of the remedial actions;

(2) A request for more time to prepare such plans; or

(3) Written notification that the permittee feels that repair or restoration measures are not technologically feasible. If repair or restoration measures are not desired by the owner of a structure or if repair or restoration measures are not technologically feasible, describe other mitigatory measures to be taken as provided for in this rule.

(H) If and when subsidence causes material damage to ~~structures or facilities not listed in paragraphs (J)(1) to (J)(3) of this rule~~any non-commercial building or occupied residential dwelling and structures related thereto that existed at the time of mining, and if the permittee has not reached an agreement with the owner of the ~~structures or facilities~~structure:

(1) The underground permittee or operator shall submit to the chief within thirty days after receipt of the notice provided under paragraph (C) of this rule ~~those items required in paragraphs (G)(1) to (G)(3) of this rule;~~:

(a) Site specific plans for the repair of or compensation for the damage, including a time schedule for repair or compensation; or

(b) A request for more time to prepare such plans;

(2) The permittee or operator shall fully perform the obligations specified in any plan submitted in accordance with paragraph (H)(1) of this rule within the time period stated in the plan, provided that the surface owner does not prevent the permittee or operator from performing his or her obligations under the plan; and

(3) If the surface owner prevents the implementation of the permittee's or operator's plan for repair or compensation, then the chief shall take no further action and the surface owner may pursue whatever private rights of action may be available to the surface owner.

(I) All remedial, restoration, and mitigatory actions required under this rule shall be performed as soon as practicable.

(J) Unless the subsidence control plan demonstrates that subsidence will not cause material damage or reduce the reasonably foreseeable use of such features or facilities, underground mining activities shall not be conducted beneath or adjacent to:

(1) Public buildings and facilities;

(2) Churches, schools, and hospitals; or

(3) Impoundments with a storage capacity of twenty acre feet or more, or bodies of water with a volume of twenty acre feet or more.

(K) If the chief determines that it is necessary in order to minimize the potential for material damage to the features or facilities described in paragraphs (J)(1) to (J)(3) of this rule or to any aquifer or body of water that serves as a significant water source for any public water supply system and to protect the public health and safety, he or she may limit the percentage of coal extraction under or adjacent to such features or facilities.

(L) If subsidence causes or does material damage to any of the features or facilities covered by paragraphs (J)(1) to (J)(3) of this rule, the chief may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of material damage to such features or facilities.

(M) The chief shall suspend underground coal mining operations under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(N) Within a schedule approved by the chief, the permittee shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including pillar and entry size, configuration, and approximate locations; extraction ratios; measures taken to prevent or minimize subsidence and related damage; areas of full extraction; and other information required by the chief. Upon request of the permittee, information submitted with the detailed plan may be held as confidential. As a means of complying with the requirements of this paragraph, the permittee may submit a copy of the mine map submitted to the division of mineral resources management pursuant to section 1563.04 of the Revised Code supplemented with any items needed to meet all the requirements of this paragraph.

(O) Surface owner notification. The ~~applicant or~~ permittee shall mail written notice to owners and occupants of surface property or structures, including wells and buried oil, gas, or utility lines, of the intention of the ~~applicant,~~ permittee~~, or operator~~ to mine under such property or structures. Notification shall be mailed at least six months before the mining is to occur or, if a lesser period is approved by the chief, may be mailed less than six months before mining is to occur. The notice shall contain:

(1) Identification of specific areas in which mining will take place;

(2) Approximate dates that specific areas will be undermined; ~~and~~

(3) The location or locations where the subsidence control plan of the ~~applicant or~~ permittee may be examined~~.~~; and

(4) A statement of the permittee's intent to conduct a pre-subsidence survey of all structures, buildings, features and facilities protected under this rule to determine their condition prior to mining, including information on when the survey will be conducted and the area the survey will include. The permittee shall prepare a written report of the survey and provide a copy to the owner or resident of the property which is the subject of the survey and retain a copy for inspection by the chief.

Draft Rule 1501:13-13-08, dated 4/4/2017.

This is a summary of this new rule.

This new rule is proposed to implement and amplify Ohio Revised Code section 1513.16(A)(25), enacted by HB 64 of the 131st General Assembly, effective 9/29/2015.

(A) and sub-paragraphs (A)(1) to (3). Clarifies that a request for restoration off the permit area by means of mitigation is part of an application for a permit or a revision to a permit and that areas to be restored off the permit area must be in compliance with the hydrologic protection provisions of rule 1501:13-9-04.

(B) and sub-paragraphs. Establishes detailed requirements for the hydrologic and engineering assessment required under 1513.16(A)(25)(a).

(C). Provides details about the proposed mitigation plan and mitigation activities pursuant to 1513.16(A)(25)(b).

(D). Requires that the surface owner of record be notified that restoration off the permit area by means of mitigation will be requested.

(E)(1). Provides details about the Chief's written determinations regarding the proposed restoration off the permit area by means of mitigation as required under 1513.16(A)(25)(a) to (d).

(E)(2). Requires the Chief to review any comments and any other relevant information received about the proposed restoration off the permit area.

(E)(3). Clarifies that review and approval of a request for restoration off the permit area is subject to the requirements for permit applications and permit revisions.

(F). Provides details about how restoration off the permit area by means of mitigation will be performed and how performance security will be released for permits with approved restoration off the permit area.

DRAFT - NOT FOR FILING

Dated 4/4/2017 Proposed new rule to amplify ORC section 1513.16(A)(25).

1501:13-13-08 Restoration off the permit area by means of mitigation.

(A) General requirements.

(1) The permittee shall restore on the permit area streams and wetlands affected by mining operations unless the chief approves restoration off the permit area by means of mitigation pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule.

(2) An applicant's or permittee's request for restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule, submitted to the chief as part of an application for a permit or a revision to a permit, shall be subject to the requirements of these rules for applications for permits and revisions to permits.

(3) Areas off the permit area proposed for restoration shall be in compliance with paragraph (E) of rule 1501:13-9-04 of the Administrative Code.

(B) Hydrologic and engineering assessment. An applicant or permittee seeking approval of restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule shall submit a hydrologic and engineering assessment of the affected lands to the chief, on a form provided by the chief, as part of an application for a permit or revision to a permit. The hydrologic and engineering assessment of the affected lands shall include, as applicable, the following information:

(1) Identification of the stream (in linear feet) or the wetland (in acreage) that cannot be restored on the permit area;

(2) A detailed explanation of why restoration of the stream or wetland on the permit area is not possible, including the following:

(a) A description of available water sources and their potential for restoration;

(b) A description of methods such as compaction or lining of the streambed that have been considered and an assessment of why those methods are not viable options to reduce infiltration and restore the stream;

(c) One or more reclamation cross sections showing that each stream and wetland, or portion thereof, cannot be restored on the permit area. The cross section shall include the location of the final highwall and any aquifers;

(3) A discussion of how the permanent loss of the quality and quantity of the stream or wetland on the permit area will be addressed through the mitigation plan, including a description of the pre-mining uses of the stream or wetland and how disturbance to the hydrologic balance within the permit and adjacent areas will be minimized and how material damage outside the permit area will be prevented;

(4) A detailed explanation of how the permit area will not contribute to sediment load downstream without a defined stream; and

(5) Any other information needed for the chief to make a determination pursuant to paragraph (E)(1) of this rule.

(C) Proposed mitigation plan. An applicant or permittee seeking approval of restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule shall submit to the chief the proposed mitigation plan and proposed mitigation activities that the applicant or permittee intends to perform pursuant to a permit issued under sections 401 and 404 of the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code or an isolated wetland permit issued under Chapter 6111. of the Revised Code or pursuant to a no-cost reclamation contract for the restoration of water resources affected by past mining activities pursuant to section 1513.37 of the Revised Code. The mitigation plan shall describe the mitigation activities for the stream or wetland, or the portion of the stream or wetland, for which restoration on the permit area is not possible and, as applicable, identify the location where mitigation activities off the permit area are to be constructed.

(D) Landowner notification. The applicant or permittee shall notify the owner of record of the surface of the permit area by certified mail, on a form provided by the chief, that the applicant or permittee intends to request restoration off the permit area by means of mitigation for a stream or wetland or a portion of a stream or wetland that cannot be restored on the portion of the permit area owned by the owner of record. The applicant or permittee shall submit a copy of the landowner notification to the chief as part of the application for a permit or revision to a permit.

(E) Review by the chief.

(1) No request for restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule shall be approved unless the application affirmatively demonstrates, and the chief makes written determinations, 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:

(a) The hydrologic and engineering assessment submitted under paragraph (B) of this rule demonstrates that restoration on the permit area is not possible;

(b) The proposed mitigation plan under which mitigation activities described in paragraph (C) of this rule will be conducted is limited to a stream or wetland, or a portion of a stream or wetland, for which restoration on the permit area is not possible;

(c) The mitigation activities off the permit area, including mitigation banking, payment of in-lieu mitigation fees or other alternative approved mitigation activities, will be performed pursuant to a permit issued under sections 401 and 404 of the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code or an isolated wetland permit issued under Chapter 6111. of the Revised Code or pursuant to a no-cost reclamation contract for the restoration of water resources affected by past mining activities pursuant to section 1513.37 of the Revised Code; and

(d) The proposed mitigation plan and mitigation activities comply with the standards established in section 1513.16 of the Revised Code and these rules.

(2) The chief shall review any comments and any other relevant information received about the proposed restoration off the permit area.

(3) Review and approval or disapproval by the chief of a request for restoration off the permit area pursuant to division (A)(25) of section 1513.16 of the Revised Code and this rule is subject to the requirements of these rules for applications for permits and revisions to permits.

(F) Restoration off the permit area.

(1) If the chief approves restoration off the permit area by means of mitigation in accordance with division (A)(25) of section 1513.16 of the Revised Code and this rule, the permittee shall complete all mitigation construction or other activities required by the mitigation plan in the approved permit.

(2) Release of performance bond.

(a) If the chief approves restoration off the permit area by means of mitigation in accordance with division (A)(25) of section 1513.16 of the Revised Code and this rule, the chief shall release performance security for reclamation activities on the permit area pursuant to division (F) of section 1513.16 of the Revised Code, except that the chief shall not release the remaining portion of performance security under division (F)(3)(c) of section 1513.16 of the Revised Code prior to completion of construction, to the satisfaction of the chief, of the required mitigation activities off the permit area, as specified in the approved mitigation plan.

(b) If the approved mitigation plan includes only mitigation activities which require no construction, such as mitigation banking or payment of in-lieu mitigation fees or alternative mitigation approved in a permit issued under section 401 and 404 of the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code or an isolated wetland permit issued under Chapter 6111.of the Revised Code, the chief, upon his or her approval of restoration off the permit area in accordance with division (A)(25) of section 1513.16 of the Revised Code and this rule, shall release performance security pursuant to division (F) of section 1513.16 of the Revised Code.

Draft Rule 1501:13-14-02, dated 11/10/2015.

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

(C)(4)(e). Typo corrected.

(D)(1)(b). Added reference to paragraph (B)(1)(a) of rule 1501:13-4-03 for clarification.

DRAFT - NOT FOR FILING

Dated 11/10/2015

1501:13-14-02 Enforcement.

(A) Cessation orders.

(1) Imminent danger; significant harm.

(a) An authorized representative of the chief shall immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if he or she finds on the basis of any inspection, any condition or practice, or any violation of Chapter 1513. of the Revised Code or rules adopted thereunder, or any condition of a coal exploration approval or permit or a coal mining and reclamation permit, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(b) If the cessation ordered under paragraph (A)(1)(a) of this rule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the chief shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished.

(2) Coal mining operations conducted by any person without a valid permit issued pursuant to these rules constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

(3) Failure to abate violation.

(a) An authorized representative of the chief shall immediately order the cessation of coal exploration or coal mining and reclamation operations, or of the relevant portion thereof, when a notice of violation has been issued under paragraph (B) of this rule and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(b) A cessation order issued under paragraph (A)(3) of this rule shall require the person to whom it is issued to take all steps the authorized representative of the chief deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the chief shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this rule, and shall issue an order to show cause as appropriate pursuant to paragraph (C) of this rule.

(4) A cessation order issued under paragraph (A)(1) or (A)(3) of this rule shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(a) The nature of the condition, practice, or violation;

(b) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(c) The time established for abatement, if appropriate, including the time for meeting any interim steps; and

(d) A reasonable description of the portion of the coal exploration or coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until the order is vacated, modified or terminated in writing by an authorized representative of the chief.

(5) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(6) An authorized representative of the chief may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(7) An authorized representative of the chief shall terminate a cessation order, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the chief to assess civil penalties for those violations under rule 1501:13-14-03 of the Administrative Code.

(8) Within thirty days after a cessation order is issued, the permittee shall submit to the chief the information required pursuant to paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code. Within sixty days after issuing a cessation order, the chief shall notify in writing any person who has been identified under paragraph (B)(5) or (B)(7) of rule 1501:13-4-03 or paragraph (G)(5) of rule 1501:13-5-01 of the Administrative Code as owning or controlling the permittee that the cessation order was issued and that the person has been identified as an owner or controller.

(9) If performance security was provided together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code and the chief has issued a cessation order under paragraph (A)(3) of this rule for failure to abate a violation of the contemporaneous reclamation requirement under rule 1501:13-9-13 of the Administrative Code, the chief may require the permittee to increase the amount of performance security for the permit from twenty-five hundred dollars per acre of land to five thousand dollars per acre of land.

(a) If the cessation order is for failure to abate a violation of the contemporaneous reclamation requirement for backfilling and/or grading and permittee has not abated the violation within thirty days of the issuance of the cessation order, the chief may, in writing, order the permittee to increase, within ten days, the amount of performance security to five thousand dollars per acre of land.

(b) If the cessation order is for failure to abate a violation of the contemporaneous reclamation requirement for any reason other than backfilling and/or grading and permittee has not abated the violation within thirty days of the issuance of the cessation order, the chief may determine the amount of performance security increase and may, in writing, order the permittee to increase, within ten days, performance security by the amount specified in the order, not to exceed a total of five thousand dollars per acre of land.

(c) If the chief orders the permittee to increase the amount of performance security under paragraph (A)(9)(a) or (A)(9)(b) of this rule, the chief shall also order the permittee to show cause why the permittee has the ability to comply with the requirements of Chapter 1513. of the Revised Code in accordance with paragraph (B) of rule 1501:13-7-06 of the Administrative Code.

(d) If the chief orders the permittee to increase the amount of performance security under paragraph (A)(9)(a) or (A)(9)(b) of this rule, the increased performance security shall remain in effect for the permit, including all future acreage of the permit, until the chief determines that the amount of performance security may be reduced. When the permittee abates the violation contained in the cessation order that resulted in the increase in performance security, the permittee may request the chief, in writing, to reduce the amount of performance security per acre. The chief shall determine, in writing, whether or not the performance security may be reduced and the amount of performance security reduction, if any, based on the overall site conditions of the permit, the success of the reclamation performed, the permittee's compliance with other enforcement actions, and the outcome of the show cause hearing held pursuant to paragraph (B) of rule 1501:13-7-06 of the Administrative Code or of any show cause hearing requested under paragraph (C) of this rule.

(e) A reduction in the amount of performance security under paragraph (A)(9)(d) of this rule shall not be considered release of performance security and is not subject to division (F) of section 1513.16 of the Revised Code.

(B) Notices of violation.

(1) An authorized representative of the chief shall issue a notice of violation, if, on the basis of an inspection, he or she finds a violation of Chapter 1513. of the Revised Code or rules adopted thereunder or any condition of a permit or an exploration permit, which does not create an imminent danger or harm for which a cessation order must be issued under paragraph (A) of this rule.

(2) A notice of violation issued under this rule shall be in writing, signed by the authorized representative of the chief who issued it, and shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, which may include interim steps;

(c) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(d) A reasonable description of the portion of the coal exploration or coal mining and reclamation operation to which it applies.

(3) An authorized representative of the chief may extend the time set for the abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within ninety calendar days due to one or more of the circumstances listed in paragraph (B)(3) of this rule. An extended abatement date pursuant to this rule shall not be granted when the permittee's failure to abate within ninety days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required. Circumstances which may qualify a coal mining operation for an abatement period of more than ninety days are:

(a) When a permittee has applied in a timely manner for, and diligently pursued, a permit renewal or other necessary approval of designs or plans but such renewal or approval has not been issued within ninety days after the permittee's valid permit expires for reasons not within the control of the permittee;

(b) When there is a valid judicial order precluding abatement within ninety days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(c) When the permittee cannot abate within ninety days due to a labor strike;

(d) When climatic conditions preclude abatement within ninety days or when, due to climatic conditions, abatement within ninety days clearly would cause more environmental harm than it would prevent; or

(e) When abatement within ninety days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977, 30 U.S.C. 801 to 965, as amended.

(4) Whenever an abatement time in excess of ninety days is granted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(5) If any of the conditions in paragraph (B)(3) of this rule exist, the permittee may request the authorized representative to grant an abatement period exceeding ninety days. The authorized representative shall not grant or deny such an abatement period without the concurrence of the chief and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of paragraph (B)(3) of this rule. In determining whether or not to grant an abatement period exceeding ninety days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(6) Any determination made under paragraph (B)(5) of this rule shall be in writing and shall contain a right of appeal to the reclamation commission.

(7) No extension granted under paragraph (B)(5) of this rule may exceed ninety days in length. If the condition or circumstance which prevented abatement within ninety days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (B)(5) of this rule.

(8) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under paragraph (A) of this rule.

(9) An authorized representative of the chief shall terminate a notice of violation by written notice to the person to whom it was issued, when he or she determines that all violations listed in the notice of

violation have been abated. Termination shall not affect the right of the chief to assess civil penalties for those violations under rule 1501:13-14-03 of the Administrative Code.

(C) Show cause orders.

(1) If the chief determines that, for any permit, there exists or has existed a pattern of violations of any requirements of Chapter 1513. of the Revised Code, these rules, or any permit condition, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions, then the chief shall issue an order to the permittee requiring him or her to show cause why his or her permit and right to mine should not be suspended or revoked. Violations by any person conducting coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The chief shall determine that a pattern of violations exists, if he or she finds that there were violations of the same or related requirements of Chapter 1513. of the Revised Code, these rules, or the permit during three or more inspections of the permit area within any twelve-month period.

(3) The chief may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any twelve-month period, after considering the circumstances, including:

(a) The number of violations, cited on more than one occasion, of the same or related requirements of Chapter 1513. of the Revised Code, these rules, or the permit;

(b) The number of violations, cited on more than one occasion, of different requirements of Chapter 1513. of the Revised Code, these rules, or the permit; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(4) A show cause order shall set forth in the order itself or in attachments to the order:

(a) A list of the unwarranted or willful violations which contribute to a pattern of violations;

(b) A copy of each order or notice which contains one or more of the violations listed as contributing to a pattern of violations;

(c) A brief statement indicating the basis for determining that the violations were caused by the permittee willfully or through unwarranted failure to comply;

(d) The chief's intent to either revoke or suspend the permit, including the length and terms of a suspension; and

(e) A statement advising the permittee that if he or she wishes a show cause hearing, he or she must, within thirty days from receipt of the show cause order, file ~~and~~an answer to the show cause order and request a hearing.

(5) The permittee's answer to a show cause order shall contain a statement setting forth:

(a) The reasons in detail why a pattern of violations does not exist or has not existed including all the

reasons for contesting:

(i) The fact of any of the violations alleged by the chief as constituting a pattern of violations;

(ii) The willfulness of such violations; or

(iii) Whether such violations were caused by the unwarranted failure of the permittee;

(b) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length of terms of the suspension; and

(c) Any other alleged relevant facts.

(6) If the permittee files an answer to the show cause order and requests a show cause hearing, the chief shall give thirty days written notice of the date, time and place of the hearing to all interested parties. The chief shall publish notice of the hearing, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and shall post it at the division of mineral resources management district office closest to the coal mining and reclamation operations.

(7) If the permittee files an answer and requests a hearing, the chief or his or her representative shall hold a show cause hearing, which shall be a public adjudicatory hearing of record. The permittee issued the order to show cause shall appear at the hearing. The chief or his or her representative may accept oral or written statements and any other relevant information. An electronic or stenographic record shall be made of the hearing. The record shall be maintained and shall be accessible to the parties of the hearing until final release of the permittee's performance security required by Chapter 1513. of the Revised Code and rules adopted thereunder.

(8) In a show cause hearing, the chief shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(9) Within sixty days following the show cause hearing:

(a) The chief shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order for the suspension or revocation of the permit.

(i) In making a determination that a pattern of violations exists, the chief need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern;

(ii) If the permit is suspended, the minimum suspension period shall be three working days unless the chief finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of Chapter 1513. of the Revised Code; and

(b) The chief shall furnish the permittee and all other parties of the hearing with the written determination, which shall state the reasons for this determination issued pursuant to paragraph (C)(9)(a) of this rule.

(10) Whenever the chief orders the revocation or suspension of the permit in the determination issued pursuant to paragraph (C)(9)(a) of this rule, the permittee shall immediately cease coal mining

operations on the permit area and shall:

(a) If the permit and the right to mine are revoked, complete reclamation within the time specified in the order or the chief shall declare as forfeited the performance security for the operation; or

(b) If the permit and right to mine are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(D) Service of notices and orders.

(1) Any notice or order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:

(a) By tendering a copy at the coal exploration or coal mining and reclamation operation to the person to whom it is directed or to the designated agent, or to the individual who, based upon reasonable inquiry by the chief's authorized representative, appears to be in charge of the coal exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. In the event a notice or order is tendered to anyone other than to whom it is directed or his or her designated agent, service shall also be made by certified mail. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept; or

(b) As an alternative to paragraph (D)(1)(a) of this rule, service may be made by sending a copy of the notice or order by certified mail to the address shown as current on the permit in accordance with paragraph (B)(1)(a) of rule 1501:13-4-03 of the Administrative Code or by hand to the person to whom it is issued or his or her designated agent. Service shall be complete upon tender of the notice or order of the mail and shall not be deemed incomplete because of refusal to accept.

(c) In the event that attempts to deliver the notice or order by hand or by certified mail are unsuccessful, service of the notice or order may be made by first class mail to the most current address on file with the division of mineral resources management.

(2) Designation by any person of an agent for service of notices and orders shall be made in writing to the division of mineral resources management.

(E) Expiration of order of cessation.

(1) Except as provided in paragraph (E)(2) of this rule, a notice of violation or order which requires cessation of mining shall expire within thirty days after it is served unless a hearing has been held pursuant to section 1513.13 of the Revised Code within that time.

(2) A notice of violation or cessation order shall not expire as provided in paragraph (E)(1) of this rule, if the condition, practice, or violation in question has not been abated or if the hearing has been waived by the person to whom the notice or order was issued.

(F) Review of citations.

(1) A person issued a notice of violation or cessation order under this rule, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice

or order may request review of that action by filing an application for review and request for hearing under section 1513.13 of the Revised Code within thirty days after receiving notice of the action. Such person may also request temporary relief under division (C) of section 1513.13 of the Revised Code.

(2) The filing of an application for review and request for a hearing under paragraph (F) of this rule shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

(G) Lack of information. No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated because it is subsequently determined that the chief did not have information sufficient, under these rules, to justify an inspection.

(H) Inability to comply.

(1) No cessation order or notice of violation issued under these rules may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists pursuant to paragraph (C) of this rule.

(3) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under rule 1501:13-14-03 of the Administrative Code and of the duration of the suspension of a permit under paragraph (C) of this rule.

(I) Injunctive relief. The chief may request the attorney general of the state of Ohio to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order in the court of common pleas for the county in which the coal exploration or coal mining and reclamation operation is located or in which the person to whom the notice of violation or order has been issued has his or her principal office whenever that person or his or her agent, in violation of Chapter 1513. of the Revised Code or rules adopted thereunder, or any condition of a coal exploration permit or a coal mining and reclamation permit:

(1) Violates or fails or refuses to comply with any order or decision of the chief or any authorized representative of the chief under Chapter 1513. of the Revised Code or rules adopted thereunder;

(2) Interferes with, hinders or delays the chief or an authorized representative in carrying out the provisions of Chapter 1513. of the Revised Code or rules adopted thereunder;

(3) Refuses to admit an authorized representative of the chief to a mine;

(4) Refuses to permit inspection of a mine by an authorized representative of the chief;

(5) Refuses to furnish any required information or report;

(6) Refuses to permit access to or copying of any required records; or

(7) Refuses to permit inspection of monitoring equipment.

(J) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

2015-2016 Coal Rules

No Change Rules Package:

1501:13-1-03 Restrictions on financial interest of employees
1501:13-1-05 Successor division
1501:13-1-06 Severability
1501:13-3-02 Submission and processing of requests for valid existing rights determinations
1501:13-3-04 Procedures for identifying areas where mining is prohibited or limited
1501:13-3-07 Procedures for designating areas unsuitable for coal mining operations
1501:13-4-01 General contents requirements for permit applications
1501:13-5-02 Improvidently issued permits.
1501:13-5-03 Revocation of exemption for coal extraction incidental to the extraction of other minerals
1501:13-7-02 Amount and duration of performance security
1501:13-7-06.1 Tax credit for reclamation outside an applicant's permit area
1501:13-9-03 Topsoil handling
1501:13-9-09 Disposal of coal mine wastes and noncoal mine wastes
1501:13-9-13 Contemporaneous reclamation
1501:13-14-05 Informal conferences
1501:13-14-06 Individual civil penalties.
16 rules total

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1501:13-1-03 Restrictions on financial interest of employees.

(A) The chief of the division of mineral resources management shall:

(1) Provide advice, assistance, and guidance to all employees of the division of mineral resources management required to file statements pursuant to paragraph (F) of this rule;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in a coal mining operation;

(3) Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the director of the office of surface mining reclamation and enforcement;

(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Submit to the director of the office of surface mining reclamation and enforcement such statistics and information as he or she may request;

(6) Submit to the director of the office of surface mining reclamation and enforcement the initial listing and the subsequent annual listings of positions as required by paragraphs (F)(1) to (F)(3) of this rule;

(7) Furnish a blank statement forty-five days in advance of the filing date established by paragraph (G)(1) of this rule to each employee required to file a statement; and

(8) Annually inform each employee required to file a statement with the chief of the name, address, and telephone number of the person whom the employee may contact for advice and counseling.

(B) Employees performing any duties or functions under Chapter 1513. of the Revised Code shall:

(1) Have no direct or indirect financial interest in coal mining operations;

(2) File a fully completed statement of employment and financial interest upon entrance to duty, and annually thereafter on the specified filing date; and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

(C) Members of the reclamation commission shall recuse themselves from proceedings which may affect their direct or indirect financial interests.

(D) Definitions. For purposes of this rule:

(1) "Coal mining operation" means the business of developing, producing, preparing or loading coal, or of reclaiming the areas upon which such activities occur.

(2) "Employee" as used in this rule means any person employed by the state who performs any function or duty under Chapter 1513. of the Revised Code. However, members of the reclamation commission and members of the reclamation forfeiture fund advisory board are not included within the meaning of this definition.

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(3) "Performing any function or duty under Chapter 1513. of the Revised Code" means those decisions or actions which, if performed or not performed by an employee, affect the regulatory program administered under Chapter 1513. of the Revised Code.

(4) "Direct financial interest" means ownership or part ownership of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(5) "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(6) "Prohibited financial interest," means any direct or indirect financial interest in any coal mining operation.

(E) An employee who fails to file the required statement will be considered in violation of the intended employment provisions of section 1513.04 of the Revised Code and will be subject to removal from his or her position.

(F) Who shall file.

(1) Any employee who performs any function or duty under Chapter 1513. of the Revised Code is required to file a statement of employment and financial interest. Members of the reclamation commission and members of the reclamation forfeiture fund advisory board are required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the chief not to involve performance of any function or duty under Chapter 1513. of the Revised Code or who is no longer employed by the chief at the time a filing is due, is not required to file a statement.

(2) The chief of the division of mineral resources management shall:

(a) Prepare a list of those positions within the division of mineral resources management that do not involve performance of any functions or duties under Chapter 1513. of the Revised Code;

(b) Prepare and submit to the director of the office of surface mining reclamation and enforcement an initial listing of positions that do not involve performance of any functions or duties under Chapter 1513. of the Revised Code.

(3) The chief of the division of mineral resources management shall annually review and update this listing. The listing must be submitted to the director of the office of surface mining reclamation and enforcement and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the director by no later than September thirtieth of each year. The chief of the division of mineral resources management may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of section 1513.04. of the Revised Code or this rule. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

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(G) When to file.

(1) Employees performing functions or duties under Chapter 1513. of the Revised Code, and members of the reclamation commission and members of the reclamation forfeiture fund advisory board, shall file annually on February first of each year or at such other date as may be agreed to by the director of the office of surface mining reclamation and enforcement.

(2) Employees hired, appointed, or transferred to perform functions or duties under Chapter 1513. of the Revised Code, and members of the reclamation commission and members of the reclamation forfeiture fund advisory board, shall be required to file at the time of entrance to duty.

(3) A new employee, and a new member of the reclamation commission or the reclamation forfeiture fund advisory board, is not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after his or her initial statement was filed.

(H) Where to file.

The chief of the division of mineral resources management shall file his or her statement with the director of the office of surface mining reclamation and enforcement. All other employees, as provided in paragraph (F)(1) of this rule, and members of the reclamation commission and members of the reclamation forfeiture fund advisory board, shall file their statements with the chief of the division of mineral resources management.

(I) What to file.

(1) Each employee and member of the reclamation commission and member of the reclamation forfeiture fund advisory board shall report all information required on the statement of employment and financial interests of the employee or member, his or her spouse, minor children, or other relatives who are full-time residents of the employee's or member's home. The report shall be on "OSM Form 23" as provided by the office of surface mining reclamation and enforcement. The statement shall consist of three major parts:

(a) A listing of all financial interests, including employment, security, real property, creditor, and other financial interests held during the course of the preceding year;

(b) A certification that none of the listed financial interests represent a direct or indirect financial interest in a coal mining operation except as specifically identified and described by the employee or member of the reclamation commission or the reclamation forfeiture fund advisory board as part of the certificate; and

(c) A certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(2) Listing of all financial interests. The statement shall set forth the following information regarding any financial interest:

(a) Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee or member of the reclamation commission or the reclamation forfeiture fund advisory board, his or her spouse, or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income, that is,

income which is unlikely to be changed as a result of actions taken by the division of mineral resources management.

(b) Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. An employee or a member of the reclamation commission or the reclamation forfeiture fund advisory board is not required to report holdings in widely diversified mutual funds, investment clubs, or regulated investment companies not specializing in coal mining operations.

(c) Real property. Ownership, lease, royalty, or other interests or rights in lands or minerals. Employees or members of the reclamation commission or the reclamation forfeiture fund advisory board are not required to report lands developed and occupied for a personal residence.

(d) Creditors. Debts owed to business entities and nonprofit organizations. Employees or members of the reclamation commission or the reclamation forfeiture fund advisory board are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(3) Employee certification, and, if applicable, a listing of exceptions.

(a) The statement shall provide for a signed certification by the employee or the member of the reclamation commission or the reclamation forfeiture fund advisory board that to the best of his or her knowledge:

(i) None of the listed financial interests represent an interest in a coal mining operation except as specifically identified and described as exceptions by the employee or the member of the reclamation commission or the reclamation forfeiture fund advisory board as part of the certificate; and

(ii) The information shown on the statement is true, accurate, and complete.

(b) An employee or a member of the reclamation commission or the reclamation forfeiture fund advisory board is expected to:

(i) Have complete knowledge of his or her personal involvement in business enterprises such as sole proprietorship and partnership, his or her outside employment, and the outside employment of the spouse and other covered relatives; and

(ii) Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(c) The exceptions shown in the employee certification of the form must provide enough information for the chief of the division of mineral resources management to determine the existence of a direct or indirect financial interest and shall include:

(i) A list of financial interests;

(ii) The number of shares, estimated value, or annual income of the financial interests; and

(iii) Any other information that an employee believes should be considered in determining whether

the interest represents a prohibited interest or that a member of the reclamation commission believes would support recusal of him or herself from participation in a particular proceeding before the reclamation commission.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification pursuant to paragraph (I)(3) of this rule. Signing the certification without listing known prohibited financial interests may be cause for imposing on an employee the penalty prescribed in paragraph (E) of this rule.

(J) Gifts and gratuities.

(1) Except as provided in paragraph (J)(2) of this rule, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a coal company which:

(a) Conducts or is seeking to conduct, operations, or activities that are regulated by the division of mineral resources management; or

(b) Has interest that may be substantially affected by the performance or nonperformance of the employee's official duty.

(2) The prohibitions in paragraph (J)(1) of this rule do not apply in the context of obvious family or personal relationships, such as those between the parents, children or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. Any employee may accept:

(a) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance, provided the nominal value of food, refreshment, unsolicited advertising or promotional materials accepted from a single coal company does not exceed twenty dollars in one year; and

(b) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(K) The chief shall take the following actions to resolve prohibited interests:

(1) If an employee has a prohibited financial interest, the chief of the division of mineral resources management shall promptly advise the employee, in the form of an order, that remedial action which will resolve the prohibited interest is required within ninety days. Remedial action may include:

(a) Reassignment of the employee to a position which performs no function or duty under Chapter 1513. of the Revised Code; or

(b) Divestiture of the prohibited financial interest; or

(c) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict;

(2) If, ninety days after an employee is notified pursuant to paragraph (K)(1) of this rule to take remedial action, that employee is not in compliance with the requirements of Chapter 1513. of the Revised Code and this rule, the chief of the division of mineral resources management shall report the facts to the

director of the office of surface mining reclamation and enforcement. The report to the director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the director's determination, including a statement of actions being taken at the time the report is made.

(L) Appeals procedures. Employees have the right to appeal an order for remedial action under paragraph (K) of this rule and shall have thirty days to exercise this right before disciplinary action is initiated.

(1) An employee, other than the chief of the division of mineral resources management or a hearing officer of the reclamation commission, may file an appeal in writing with the chief, who will conduct an informal hearing on the merits.

(2) The chief of the division of mineral resources management or a hearing officer of the reclamation commission may file an appeal in writing with the director of the office of surface mining reclamation and enforcement, who will refer it to the conflict of interest appeals board within the United States department of the interior.

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1501:13-1-05 Successor division.

Unless expressly provided to the contrary by any rule or any section of the Revised Code, rules contained in rules 1501:13-1-01 to 1501:13-14-06 of the Administrative Code, shall apply to, and be the rules of, any division or other unit of the department of natural resources which, by virtue of a consolidation or reorganization pursuant to section 121.07 of the Revised Code, or by legislative action, shall succeed to the responsibility of the division of mineral resources management to administer and enforce Chapter 1513. of the Revised Code.

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1501:13-1-06 Severability.

The validity of any rule or portion thereof, adopted or amended by the chief of the division of mineral resources management pursuant to Chapter 1513. of the Revised Code shall not be affected by the invalidity of any other rule or portion thereof adopted or amended thereunder by the chief.

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1501:13-3-02 Submission and processing of requests for valid existing rights determinations.

(A) Except for federal lands subject to 30 C.F.R. Part 761, any person who intends to conduct coal mining operations on the basis of valid existing rights under division (D) of section 1513.073 of the Revised Code and rules adopted thereunder shall file with the chief a request for a valid existing rights determination. This request shall be submitted before preparing and submitting an application for a permit or boundary revision for the land for which the determination is sought.

(B) Requirements for property rights demonstration. If the request relies upon one of the standards of paragraph (A)(2) of rule 1501:13-3-01 of the Administrative Code, the person claiming valid existing rights shall provide a property rights demonstration under paragraph (A)(1) of rule 1501:13-3-01 of the Administrative Code which shall include the following items:

(1) A legal description of the land to which the request pertains;

(2) Complete documentation of the character and extent of the requestor's current interests in the surface and mineral estates of the land to which the request pertains;

(3) A complete chain of title for the surface and mineral estates of the land to which the request pertains;

(4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

(5) A description of the type and extent of coal mining operations that the requestor claims to have the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Ohio property law;

(6) Complete documentation of the nature and ownership, as of the date the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, of all property rights for the surface and mineral estates of the land to which the request pertains;

(7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(8) If the coal interests have been severed from other property interests, documentation that the requestor has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of requestor’s property rights claims; and

(9) Any comments the requestor receives in response to the notification required under paragraph (B)(8) of this rule.

(C) Additional requirements for the good faith/all permits standard. If the request relies upon the good faith/all permits standard under paragraph (A)(2)(a) of rule 1501:13-3-01 of the Administrative Code, the request shall also include the following information about coal mining operations on the land to which the request pertains:

(1) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the person requesting the determination or a predecessor in interest obtained before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code;

(2) Application dates and identification numbers for any permits, licenses, and authorizations for which the person requesting the determination or a predecessor in interest submitted an application before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code; and

(3) An explanation of any other good faith effort that the person requesting the determination or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(D) Additional requirements for the needed for and adjacent standard. If the request relies upon the needed for and adjacent standard under paragraph (A)(2)(b) of rule 1501:13-3-01 of the Administrative Code, the request shall also include:

(1) An explanation of how and why the land is needed for and immediately adjacent to the operation upon which the request is based; and

(2) A demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(E) Requirements for roads. If the request relies upon one of the standards for roads under paragraphs (B)(1) to (B)(3) of rule 1501:13-3-01 of the Administrative Code, the request shall include satisfactory documentation that:

(1) The road existed when the land upon which it is located came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and the requestor has a legal right to use the road for coal mining operations;

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and, under the document creating the right of way or easement, and under any subsequent conveyances, the requestor has a legal right to use or construct a road across that right of way or easement to conduct coal mining operations; or

(3) A valid permit for use or construction of a road in that location for coal mining operations existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(F) Initial review of request.

(1) The chief shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements of paragraphs (B) to (E) of this rule. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

(2) If the request does not include all applicable components of the submission requirements of paragraphs (B) to (E) of this rule, the chief shall notify the requestor and establish a reasonable time for submission of the missing information.

(3) When the request includes all applicable components of the submission requirements of paragraphs (B) to (E) of this rule, the chief shall notify the requestor that the public notice required under paragraph (G) of

this rule can be published.

(4) If the information requested under paragraph (F)(2) of this rule is not provided within the time specified or as subsequently extended, the chief shall issue a determination that valid existing rights have not been demonstrated on the land upon which the request is based, as provided in paragraph (H)(4) of this rule.

(G) Public notice and opportunity to comment.

(1) After the chief determines that a request for a valid existing rights determination is complete, the requestor shall publish a notice inviting comment on the merits of the request in a newspaper of general circulation in the locality of the land to which the request pertains, and shall provide the chief with a copy of the published public notice. The notice shall include:

(a) The location of the land to which the request pertains;

(b) A description of the type of coal mining operations planned;

(c) A reference to and brief description of the applicable standard or standards for demonstrating valid existing rights under rule 1501:13-3-01 of the Administrative Code, and the following:

(i) If the request relies upon one of the standards of paragraph (A)(2) of rule 1501:13-3-01 of the Administrative Code, a description of the property rights that the requestor claims and the basis for this claim;

(ii) If the request is for a road and relies upon the standard in paragraph (B)(1) of rule 1501:13-3-01 of the Administrative Code, a description of the basis for the claim that the road existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and a description of the basis for the claim that the requestor has a legal right to use that road for coal mining operations; or

(iii) If the request is for a road and relies upon the standard in paragraph (B)(2) of rule 1501:13-3-01 of the Administrative Code, a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the requestor has a legal right to use or construct a road across the right of way or easement to conduct coal mining operations;

(d) If the request relies upon one or more of the standards in paragraph (A), (B)(1) or (B)(2) of rule 1501:13-3-01 of the Administrative Code, a statement that the chief will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required under paragraph (G)(3) of this rule, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim;

(e) A description of the procedures the chief will follow in processing the request;

(f) The closing date of the comment period, which must be a minimum of thirty days after the publication date of the notice;

(g) A statement that interested persons may obtain a thirty-day extension of the comment period upon request to the chief; and

(h) The name and address of the district office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

(2) Upon receipt of a complete request for a valid existing rights determination and a copy of the published public notice, the chief shall provide a copy of the published public notice to:

(a) All reasonably locatable owners of surface and mineral estates in the land included in the request.

(b) The owner of the feature causing the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(3) The letter transmitting the notice required under paragraph (G)(2) of this rule shall provide a thirty-day comment period, starting from the date of service of the letter, and specify that another thirty days is available upon request. The chief may grant additional time for good cause upon request. The chief need not necessarily consider comments received after the closing date of the comment period.

(H) Determination of the chief.

(1) The chief shall review the materials submitted under paragraphs (B) to (E) of this rule, comments received under paragraph (G) of this rule, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the chief shall notify the requestor in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information the chief deems necessary to remedy the inadequacy.

(2) Once the record is complete and adequate, the chief shall determine whether the requestor has demonstrated valid existing rights. The chief's decision shall explain how the requestor has or has not satisfied all applicable elements of the standards set forth in rule 1501:13-3-01 of the Administrative Code, contain findings of fact and conclusions, and specify the reasons for the conclusions.

(3) Impact of property rights disagreements. This paragraph applies only when a request relies upon one or more of the standards in paragraphs (A), (B)(1), and (B)(2) of rule 1501:13-3-01 of the Administrative Code.

(a) The chief shall issue a determination that the requestor has not demonstrated valid existing rights if the requestor's property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The chief shall make this determination without prejudice, meaning that the requestor may re-file the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (G)(1) or (G)(3) of this rule.

(b) If the record indicates disagreement as to the accuracy of the requestor's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the chief shall evaluate the merits of the information in the record and

determine whether the requestor has demonstrated that the requisite property rights exist under paragraph (A)(1), (B)(1), or (B)(2) of rule 1501:13-3-01 of the Administrative Code, as appropriate. The chief shall then proceed with the decision process under paragraph (H)(2) of this rule.

(4) The chief shall issue a determination that the requestor has not demonstrated valid existing rights if the requestor does not submit information that the chief requests under paragraph (F)(2) or (H)(1) of this rule within the time specified or as subsequently extended. The chief shall make this determination without prejudice, meaning that the requestor may re-file a revised request at any time.

(5) After making a determination, the chief shall:

(a) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the requestor, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(b) Publish notice of the determination in a newspaper of general circulation in the locality in which the land is located.

(I) Administrative and judicial review. A determination by the chief that the requestor has or does not have valid existing rights is subject to administrative and judicial review under sections 1513.13 and 1513.14 of the Revised Code.

(J) Availability of records. The chief shall make a copy of a request for a determination of valid existing rights, as well as any records associated with that request and any subsequent determination under paragraph (H) of this rule, available to the public in accordance with rule 1501:13-1-10 of the Administrative Code.

(K) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

DRAFT - NOT FOR FILING

1501:13-3-04 Procedures for identifying areas where mining is prohibited or limited.

(A) Upon receipt of a complete application for a coal mining and reclamation operation permit, or a complete application for revision of the boundaries of a coal mining and reclamation operation permit, the chief shall review the application to determine whether coal mining operations are limited or prohibited under rule 1501:13-3-03 of the Administrative Code on the lands which would be disturbed by the proposed operation.

(1) Where the proposed operation would be located on any lands listed in paragraph (A)(1), (A)(6), (A)(7) or (A)(8) of rule 1501:13-3-03 of the Administrative Code, the chief shall disapprove the application if the applicant cannot establish valid existing rights for the area.

(2) If the chief is unable to determine whether the proposed operation is located within the boundaries of any of the lands in paragraph (A)(1) of rule 1501:13-3-03 of the Administrative Code or closer than the limits provided in paragraphs (A)(6), (A)(7), and (A)(8) of rule 1501:13-3-03 of the Administrative Code, the chief shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty days of receipt of the request.

(3) The national park service or the U.S. fish and wildlife service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty days from receipt of the notification in which to respond.

(4) The chief, upon request by the appropriate agency, shall grant an extension to the thirty-day period of an additional thirty days. If no response is received within the thirty-day period or within the extended period granted, the chief may make the necessary determination based on the information he or she has available.

(B) Where the proposed operation would include federal lands within the boundaries of any national forest and the applicant seeks a determination that mining is permissible under paragraph (A)(2) of rule 1501:13-3-03 of the Administrative Code, the applicant shall submit a permit application to the director of the office of surface mining of the U.S. department of the interior for processing under 30 C.F.R. subchapter D or a request to the director of the office of surface mining of the U.S. department of the interior for processing under 30 C.F.R. subchapter F.

(C) Where the proposed permit area includes area within one hundred feet measured horizontally of the outside right-of-way line or includes a portion or all of the right-of-way of a public road, including where the applicant proposes to relocate or close a public road, the applicant shall submit a road permit for the road or portion thereof. The issuance of a road permit shall require:

(1) The applicant to provide notice, in a newspaper of general circulation in the county of the proposed operation at least two weeks prior to the hearing required under paragraph (C)(1)(c) of this rule, that the proposed operation includes area within one hundred feet of the outside right-of-way line of the public road or includes a portion or all of the right-of-way of a public road, or that the applicant proposes to relocate or close a public road. The notice shall include:

(a) A description of the road, to include road number, location and length of road for which the road permit is being requested;

(b) A description of how the proposed mining operation will affect the road; and

(c) The date, time, and location at which the public agency with jurisdiction over the road will hold a public meeting to consider issuing the road permit;

(2) The public authority with jurisdiction over the road to provide an opportunity for a public hearing prior to issuing the road permit and, in issuing the road permit, to make a written finding within thirty days of the completion of the public hearing, based on information gathered at the hearing, that the interests of the public and the affected landowners will be protected; and

(3) The chief's approval of the procedures followed and the decision issued by the public authority.

(D) Occupied dwellings.

(1) Where the proposed permit area includes area within three hundred feet measured horizontally of any occupied dwelling, the applicant shall submit with the application, a written waiver from the owner of the dwelling consenting to such operations within a closer distance of the dwelling. The waiver must state that the owner had the legal right to deny mining and knowingly waived that right. The waiver shall be separate from a lease or deed if the lease or deed does not contain language that authorizes mining within three hundred feet of the occupied dwelling either by an explicit waiver or by a legal description of the area to be mined that contains the area within three hundred feet. The waiver shall specifically state the distance for which the waiver is being granted.

(2) Where the applicant for a permit had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within three hundred feet of such dwelling, a new waiver shall not be required.

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

(4) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to Ohio laws or if the mining has proceeded to within the three hundred foot limit prior to the date of purchase.

(E) Historic places.

(1) Where the chief determines that the proposed coal mining operation will adversely affect any publicly owned park or any place included on the "National Register of Historic Places," the chief shall notify the federal, state, or local agency with jurisdiction over the park or place. The "National Register of Historic Places" is administered by the national parks service, U.S. department of the interior; its website for Ohio sites is http://www.nationalregisterofhistoricplaces.com/oh/state.html. The notification shall include:

(a) A copy of the applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation; and

(b) A notice that the agency has thirty days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval.

(2) The chief, upon request by the appropriate agency, may grant an extension to the thirty-day period of an additional thirty days. Failure to interpose an objection within thirty days or the extended period granted shall constitute an approval of the proposed permit.

(3) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(F) If the chief determines that the proposed coal mining operation is not prohibited under section 1513.073 of the Revised Code and rules adopted thereunder, he or she may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of coal mining operations.

(G) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.

DRAFT - NOT FOR FILING

1501:13-3-07 Procedures for designating areas unsuitable for coal mining operations.

(A) Petitions.

(1) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the chief to have an area designated as unsuitable for coal mining operations, or to have an existing designation terminated. A person having an interest which is or may be adversely affected must demonstrate how he or she meets the "injury in fact" test by describing the injury to the specific affected interests and demonstrating how he or she is among the injured.

(2) Designation. Information that a petitioner must provide is:

(a) The location and approximate size of the area covered by the petition and a U.S. geological survey topographical map outlining the perimeter of the petitioned areas;

(b) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of coal mining operations, assuming that contemporary mining practices required by these rules would be followed if the area were to be mined. Each allegation of fact shall be specific as to the mining operation, if known, the portion(s) of the petitioned area, and the petitioner's interests to which the allegation applies, and shall be supported by evidence that tends to establish the validity of each allegation for the mining operation or portion of the petitioned areas;

(c) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources;

(d) The petitioner's name, address, telephone number and notarized signature; and

(e) Identification of the petitioner's interest which is or may be adversely affected, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (A)(1) of this rule.

(3) Termination. A petitioner must provide the following information to terminate a designation:

(a) The location and approximate size of the area covered by the petition and a U.S. geological survey topographical map outlining the perimeter of the petitioned areas to which the termination petition applies;

(b) Allegations of fact and supporting evidence covering all lands for which termination is proposed. Each allegation of fact shall be specific as to the mining operation, if any, the portions of the petitioned area, and the petitioner's interests to which each allegation applies. Each allegation shall be supported by evidence, not contained in the record of the proceeding in which the area was designated unsuitable, that tends to establish the validity of each allegation for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required by these rules would be followed were the area to be mined. Allegations and supporting evidence should also be specific with regard to the basis for which the designation was made and tend to establish that the designation should be terminated based on:

(i) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in paragraph (A)(2) of rule 1501:13-3-05 of the Administrative Code; or

(ii) Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in paragraph (A)(1) of rule 1501:13-3-05 of the Administrative Code; or

(iii) The resources or condition not being affected by coal mining operations, or in the case of land use plans, not being incompatible with coal mining operations during and after mining, if the designation was based on the criteria found in paragraph (A)(2) of rule 1501:13-3-05 of the Administrative Code;

(c) The petitioner's name, address, telephone number and a notarized signature;

(d) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (A)(1) of this rule; and

(e) For areas previously and unsuccessfully proposed for termination, significant new allegations of fact and supporting evidence must be presented in the petition.

(B) Initial processing, recordkeeping, and notification requirements.

(1) Promptly after a petition is received, the chief shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area.

(2) Within thirty days of receipt of a petition, the chief shall notify the petitioner by certified mail whether or not the petition is complete under paragraph (A)(2) or (A)(3) of this rule.

(3) The chief shall determine whether any identified coal resources exist in the area covered by the petition without requiring any showing from the petitioner. If the chief finds there are not any identified coal resources in that area, he or she shall return the petition to the petitioner with a statement of the findings.

(4) The chief may reject petitions for designations and terminations of designations which are frivolous. A "frivolous petition" is one in which the allegations of harm lack serious merit. Once the requirements of paragraph (A) of this rule are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the chief pursuant to the procedures of this rule.

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the chief shall determine if the new petition presents new allegations of fact. If the petition does not contain new allegations of fact, the chief shall not consider the petition and shall return the petition to the petitioner, with a statement of his or her findings and a reference to the record of the previous designation proceedings where the facts were considered.

(6) If the chief determines that the petition is incomplete or frivolous, he or she shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(7) The chief shall notify the person who submits a complete petition of any application for a permit received which proposes to include any area covered by the petition.

(8) The chief may determine not to process any petition received insofar as it pertains to lands for which a complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the chief may issue a decision on a complete and accurate permit application and

shall inform the petitioner why the chief cannot consider the part of the petition pertaining to the proposed permit area.

(9) Within three weeks after the determination that a petition is complete, the chief shall make copies of the petition available to the public. He or she shall also circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the chief to have an interest in the property.

(10) Within three weeks after the determination that a petition is complete, the chief shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed in the newspaper providing broadest circulation in the region of the petitioned area once a week for two consecutive weeks in the locale of the area covered by the petition.

(11) Beginning immediately after a complete petition is filed, the chief shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the chief. The chief shall make the record available for public inspection, free of charge, and copying, at reasonable cost, during all normal business hours at the division's district office for the multi-county area in which the land petitioned is located, and at the main office of the chief.

(12) Until three days before the chief holds a hearing under paragraph (C) of this rule, any person may intervene in the proceeding by filing allegations of fact, with supporting evidence, describing how the designation determination directly affects the intervenor, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(C) Hearing requirements.

(1)

(a) Within ninety days after receipt of a complete petition, the chief shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held.

(b) The hearing may be conducted with cross-examination of expert witnesses only.

(c) The chief may delay the hearing for up to an additional two hundred ten days when necessary for adequate review.

(d) A record of the hearing shall be made and preserved according to state law. No person shall bear the burden of proof or persuasion. The record shall include all relevant parts of the data base and inventory system and all public comments received during the public comment period. The record shall be considered by the chief in his or her decision on the petition.

(e) The provisions of paragraph (B)(5) of this rule shall also apply to this hearing.

(2) The chief shall give notice of the date, time, and location of the hearing to:

(a) Local, state, and federal agencies which may have an interest in the decision on the petition;

(b) The petitioner and intervenors; and

(c) Any person with an ownership or other interest known to the chief in the area covered by the petition.

(3) Notice of the hearing shall be sent by certified mail and postmarked not less than thirty days before the scheduled date of the hearing.

(4) The chief shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two consecutive weeks and once during the week prior to the hearing in the locale of the area covered by the petition. The advertisement shall begin between four to five weeks before the scheduled date of the public hearing.

(5) The chief may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(6) Prior to designating any land areas as unsuitable for coal mining operations, the chief shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(7) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

(D) Decision.

(1) In reaching his or her decision, the chief shall use:

(a) The information contained in the data base and inventory system;

(b) Information provided by other governmental agencies;

(c) The detailed statement prepared under paragraph (C)(6) of this rule; and

(d) Any other relevant information submitted during the comment period.

(2) A final written decision shall be issued by the chief, including a statement of reasons, within sixty days of completion of the public hearing, or if no public hearing is held, within twelve months after receipt of the complete petition. The chief shall simultaneously send the decision by certified mail to the petitioner, every other party of the proceeding, and to the state office of the United States office of surface mining.

(3) The decision of the chief with respect to a petition, or the failure of the chief to act within the time limits set forth in this rule, shall be subject to administrative and judicial review as provided by sections 1513.13 and 1513.14 of the Revised Code. The record made at the hearing pursuant to paragraph (C)(1) of this rule shall be considered and included in the record of this review.

(E) Data base and inventory system requirements.

(1) The chief shall develop a data base and inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of coal mining operations.

(2) The chief shall add to the data base and inventory system information:

(a) On potential coal resources of Ohio, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the chief to prepare the statements required by paragraph (C)(6) of this rule; and

(b) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

(3) The chief shall include in the system information relevant to the criteria in paragraph (A) of rule 1501:13-3-05 of the Administrative Code, including, but not limited to, information from the United States fish and wildlife service, the Ohio historical preservation officer, and the agency administering section 127 of the Clean Air Act as amended (42 U.S.C. 7470 et seq.).

(F) Public information. The chief shall:

(1) Make the information and data base system developed under paragraph (E) of this rule available to the public for inspection free of charge and for copying at reasonable cost. However, specific information relating to location of properties proposed to be nominated to, or listed in, the "National Register of Historic Places," administered by the national parks service, U.S. department of the interior, need not be disclosed if the chief determines that the disclosure of such information would create a risk of destruction or harm to such properties. The website for the "National Register of Historic Places" for Ohio sites is http://www.nationalregisterofhistoricplaces.com/oh/state.html; and

(2) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(G) Implementation.

(1) The chief shall not issue permits which are inconsistent with designations made pursuant to Chapter 1501:13-3 of the Administrative Code.

(2) The chief shall maintain a map of areas designated as unsuitable for all or certain types of coal mining operations.

(3) The chief shall make available to any person any information within his or her control regarding designations, including mineral or elemental content that is potentially toxic in the environment, but not including proprietary information that pertains only to the analysis of the chemical and physical properties of the coal.

(H) 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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1501:13-4-01 General contents requirements for permit applications.

(A) Responsibilities.

(1) Persons seeking to engage in coal mining and reclamation operations, including underground mining operations, shall submit an application for and obtain a permit for those operations in accordance with Chapters 1501:13-4, 1501:13-5, and 1501:13-6 of the Administrative Code. Persons seeking to conduct coal exploration operations shall comply with rule 1501:13-4-02 of the Administrative Code.

(2) The chief shall review each permit application, renewal, revision and notice of intention to explore, shall approve or disapprove each permit application, renewal, revision or notice of intention to explore, and shall issue, condition, suspend, or revoke exploration permits, permits, renewals, or revised permits.

(B) Coordination with requirements under other laws. The chief shall, to avoid duplication, provide for the coordination of review and issuance of permits for coal mining and reclamation operations with any other federal or state permit process applicable to these operations including, at a minimum, the applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.), the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.), and the Bald and Golden Eagle Protection Act, as amended (16 U.S.C. 668 et seq.) Where there are involved federal or Indian lands covered by the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), the chief shall provide for the coordination of review and issuance of permits for coal mining and reclamation operations with any permit process applicable to these operations under the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.)

(C) Compliance with permits. All persons shall conduct coal mining and reclamation operations under permits issued pursuant to these rules, and shall comply with the terms and conditions of the permit and the requirements of Chapter 1513. of the Revised Code.

(D) Permit applications - general requirements for format and contents.

(1) Applications for permits to conduct coal mining and reclamation operations shall be filed in the format required by the chief. The application shall be complete and include all the applicable information required under these rules.

(2) Information set forth in the application shall be current, shall be presented clearly and concisely, and shall be supported by appropriate references to technical and other written material available to the chief.

(a) All technical data submitted in the application shall be accompanied by:

(i) Names of persons or organizations which collected and analyzed such data;

(ii) Dates of the collection and analyses; and

(iii) Descriptions of methodology used to collect and analyze the data.

(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

(c) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the

application for information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archeological, cultural and historic features.

(3) Maps and plans: general requirements.

(a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the United States geological survey of the 1:24,000 scale series.

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

(i) Prior to August 3, 1977;

(ii) After August 3, 1977, and prior to either:

(a) May 3, 1978; or

(b) In the case of an applicant or operator that obtained a small operator's exemption in accordance with 30 CFR 710.12, January 1, 1979;

(iii) After May 3, 1978 (or January 1, 1979, for operators that obtained a small operator's exemption), and prior to August 16, 1982; and

(iv) After the estimated date of issuance of a permit by the chief under Ohio's approved regulatory program.

(E) Verification of application. Applications for permits, revisions, renewals or transfers, sales or assignments of permit rights shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

(F) 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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1501:13-5-02 Improvidently issued permits.

(A) If the chief has reason to believe that a coal mining and reclamation permit was improvidently issued, the chief shall review the circumstances under which the permit was issued using the criteria in this rule.

(B)

(1) The chief shall make a preliminary finding that a coal mining and reclamation permit was improvidently issued if:

(a) Under the permit eligibility criteria in effect at the time the permit was issued:

(i) The chief should not have issued the permit because of an unabated or uncorrected violation; or

(ii) The permit was issued on the presumption that a violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation; and

(b) The violation:

(i) Remains unabated or uncorrected; and

(ii) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation; and

(c) Through an ownership or control link, the permittee was linked to the violation under the permit eligibility criteria in effect at the time the permit was issued, and the ownership or control link between the permittee and the person responsible for the violation still exists, or, where the link was severed, the permittee continues to be responsible for the violation.

(2) When the chief makes a preliminary finding under paragraph (B)(1) of this rule, the chief shall serve the permittee with a written notice of the preliminary finding, which shall be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

(3) Within thirty days of receiving a notice under paragraph (B)(2) of this rule, the permittee may request an informal review of the preliminary finding pursuant to division (A)(3) of section 1513.13 of the Revised Code and may provide evidence to the chief as to why the permit was not improvidently issued under the criteria in paragraph (B)(1) of this rule.

(C) If, in accordance with paragraph (B) of this rule and after considering any evidence submitted under paragraph (B)(3) of this rule, the chief finds that, because of an unabated or uncorrected violation, a permit was improvidently issued, the chief shall use one or more of the following remedial measures:

(1) Implement, with the cooperation of the permittee or other person responsible, and with the cooperation of the agency with jurisdiction over the violation, a plan for the abatement or correction of the violation;

(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate or correct the violation;

(3) Suspend the permit pursuant to paragraph (D) of this rule until the violation is abated or corrected; or

(4) Rescind the permit pursuant to paragraph (D) of this rule.

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(D)

(1) If, in accordance with paragraph (B) of this rule, the chief finds that a permit was improvidently issued, and if, under paragraph (C)(3) or (C)(4) of this rule, the chief elects to suspend or rescind the permit, the chief shall serve on the permittee notice of proposed suspension and rescission which includes the reasons for the finding and states that in sixty days the permit will be suspended, or in one hundred and twenty days the permit will be rescinded, unless, within either of those periods of time, the permittee submits proof, and the chief finds that:

(a) The chief's finding under paragraph (B) of this rule was erroneous;

(b) The permittee or other person responsible has abated or corrected the violation on which the finding was based to the satisfaction of the agency with jurisdiction over the violation;

(c) The violation is the subject of a good faith administrative or judicial appeal and there does not remain in force an initial judicial decision affirming the violation;

(d) The violation is the subject of an abatement or correction plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the agency with jurisdiction over the violation;

(e) The permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, and this link was severed subsequent to the chief's finding pursuant to paragraph (B) of this rule; or

(f) The permittee is pursuing a good faith appeal of the relevant ownership or control listing or finding and there does not remain in force an initial judicial decision affirming the listing or finding.

(2) When the chief suspends or rescinds a permit pursuant to this rule, the chief shall:

(a) Immediately order the cessation of coal mining and reclamation operations under the permit; and

(b) Post written notice of the cessation order at the division of mineral resources management district office closest to the permit area.

(3) After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement or correction and for reclamation and other environmental protection measures as required by the chief.

(E) Any person having an interest that is or may be adversely affected by a decision of the chief made pursuant to this rule may appeal by filing a notice of appeal with the reclamation commission pursuant to section 1513.13 of the Revised Code.

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1501:13-5-03 Revocation of exemption for coal extraction incidental to the extraction of other minerals.

(A) The chief shall conduct an annual review of compliance with each exemption for coal extraction incidental to the extraction of other minerals approved under rule 1501:13-4-16 of the Administrative Code. The chief shall utilize the annual report submitted in accordance with paragraph (K) of rule 1501:13-4-16 of the Administrative Code, information obtained during an on-site inspection, and any other information available to the chief.

(B) If the chief has reason to believe that a specific mining area was not exempt from the requirements of Chapter 1513. of the Revised Code under the provisions of rule 1501:13-4-16 of the Administrative Code at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the chief shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption shall be revoked unless the operator demonstrates to the chief within thirty days that the mining area in question should continue to be exempt.

(C)

(1) If the chief finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption from the requirements of Chapter 1513. of the Revised Code for incidental coal extraction under rule 1501:13-4-16 of the Administrative Code, the chief shall revoke the exemption and immediately notify the operator by order of the chief. If a decision is made not to revoke an exemption, the chief shall immediately notify the operator. The chief shall also immediately notify any person who submitted written comments in accordance with paragraph (C)(3) of rule 1501:13-4-16 of the Administrative Code, regarding the request for exemption, of the decision to revoke or not to revoke the exemption.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within thirty days of the notification of such decision in accordance with section 1513.13 of the Revised Code.

(3) A notice of appeal filed under section 1513.13 of the Revised Code shall not suspend the effect of a decision whether to revoke an exemption.

(D) Direct enforcement.

(1) Protection from enforcement of coal mining and reclamation standards for operators mining in accordance with an approved exemption.

An operator mining in accordance with the terms of an approved exemption from the requirements of Chapter 1513. of the Revised Code for incidental coal extraction under rule 1501:13-4-16 of the Administrative Code shall not be cited for violations of Chapter 1513. of the Revised Code or these rules which occurred prior to the revocation of the exemption.

(2) Enforcement against operators in violation of an approved exemption.

An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of Chapter 1513. of the Revised Code which occur during the period of such activities.

(3) Operator responsibilities upon revocation of an exemption or denial of an exemption.

Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit to conduct coal mining operations is obtained and shall comply with the reclamation standards of Chapter 1513. of the Revised Code and these rules with regard to conditions, areas and activities existing at the time of revocation or denial.

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1501:13-7-02 Amount and duration of performance security.

(A) Performance security amount for permits for which the applicant or permittee provides performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code.

(1) The amount of the performance security shall be two thousand five hundred dollars per acre of land on which the permittee will conduct a coal mining and reclamation operation under the initial term of the permit as indicated in the application.

(2) A permittee's responsibility for repairing material damage and replacement of water supplies resulting from subsidence may be satisfied by liability insurance required under Chapter 1513. of the Revised Code if the liability insurance policy contains terms and conditions that specifically provide coverage for repairing material damage and replacement of water supplies resulting from subsidence.

(B) Performance security amount for permits for which the applicant or permittee provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of rule 1501:13-7-01 of the Administrative Code.

(1) The amount of performance security shall be equal to the estimated cost of reclamation, as determined by the chief under paragraph (B) of rule 1501:13-7-01 of the Administrative Code, for:

(a) The land on which the permittee will conduct a coal mining and reclamation operation under the initial term of the permit; or

(b) The incremental mining units that will be affected in the first permit year, if the permittee or applicant elects to provide performance security separately for each incremental mining unit in accordance with paragraph (A)(6)(b) of rule 1501:13-7-01 of the Administrative Code.

(2) A permittee's responsibility for repairing material damage and replacement of water supplies resulting from subsidence shall be satisfied by either of the following:

(a) The purchase prior to mining of a noncancelable premium-prepaid liability insurance policy in lieu of the permittee's performance security for subsidence damage. The insurance policy shall contain terms and conditions that specifically provide coverage for repairing material damage and replacement of water supplies resulting from subsidence; or

(b) The provision of additional performance security in the amount of the estimated cost to the division of mineral resources management to repair material damage resulting from subsidence, if the permittee will be repairing material damage, or to replace the water supplies resulting from subsidence, if the permittee will be replacing the water supplies, until the repair or replacement is completed.

(i) If repair or replacement is completed, or compensation for structures that have been damaged by subsidence is provided, by the permittee within ninety days of the occurrence of the subsidence, additional performance security is not required.

(ii) The chief may extend the ninety-day period for a period not to exceed one year if the chief determines that the permittee has demonstrated in writing that subsidence is not complete and that probable subsidence-related damage to lands or protected structures likely will continue to occur or that reasonably anticipated changes affecting the water supplies likely will occur and, as a result, the completion of repairs of subsidence-related material damage to lands or protected

structures or the replacement of water supplies within ninety days of the occurrence of the subsidence would be unreasonable.

(C) Minimum amount. The amount of the performance security for coal mining and reclamation operations shall be ten thousand dollars at a minimum for the entire area under one permit and the minimum amount shall be maintained on deposit until such time as the permittee is released from all liability in accordance with rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

(D) Period of liability

(1) Liability under a performance security or securities applicable to a permit shall continue until all reclamation and restoration work under the requirements of Chapter 1513. of the Revised Code, these rules, and the provisions of the mining and reclamation plan has been completed, the period of extended responsibility for revegetation has expired in accordance with rule 1501:13-9-15 of the Administrative Code, and the permittee is released from liability in accordance with rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code.

(2) The performance security liability of the permittee shall include only those actions which the permittee is obligated to take under the permit, Chapter 1513. of the Revised Code and these rules, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved in the permit under rule 1501:13-9-17 of the Administrative Code.

(3) Implementation of an alternative postmining land use approved under paragraph (D) of rule 1501:13-9-17 of the Administrative Code which is beyond the control of the permittee, need not be covered by the performance security.

(E) Adjustment of amount.

(1) The chief shall adjust the amount of the estimated cost of reclamation determined under paragraph (B) of rule 1501:13-7-01 of the Administrative Code if the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases.

(2) For permits for which the permittee provides performance security without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of rule 1501:13-7-01 of the Administrative Code, the chief shall adjust the amount of a permittee's performance security provided in accordance with this rule if the land that is affected by mining increases or if the cost of reclamation increases and shall allow the permittee the option of reducing the amount of performance security provided in accordance with this rule if the land that is affected by mining decreases or if the cost of reclamation decreases.

(3) The chief may review at any time during the term of the permit the estimated cost of reclamation determined under paragraph (B) of rule 1501:13-7-01 of the Administrative Code and the amount of a permittee's performance security provided in accordance with this rule to determine whether an adjustment is needed, but at a minimum the chief shall review the estimated cost of reclamation and the amount of a permittee's performance security at the following times:

(a) When a permittee files an annual report and annual map with the chief in accordance with paragraphs (A) and (B) of rule 1501:13-4-07 of the Administrative Code, a letter to the chief in accordance with paragraph (C) of rule 1501:13-4-07 of the Administrative Code, or a final report to the chief in accordance with paragraph (D) of rule 1501:13-4-07 of the Administrative Code;

(b) When a permittee files an application for revision of a permit under rule 1501:13-4-06 of the

Administrative Code which contains information that affects the estimated cost of reclamation;

(c) When a permittee files an application for renewal of a permit under rule 1501:13-4-06 of the Administrative Code;

(d) When a permittee files additional performance security in accordance with paragraphs (A)(6)(c) of rule 1501:13-7-01 of the Administrative Code;

(e) When a permittee's operation advances into any succeeding incremental area or incremental mining unit, or begins any new operational stage;

(f) When any event occurs on or results from a mining and reclamation operation, including subsidence, discharges, or contamination, diminution or interruption of a water supply, that affects the estimated cost of reclamation;

(g) When the chief issues a cessation order for failure to abate a violation for non-contemporaneous reclamation under paragraph (A)(3) of rule 1501:13-14-02 of the Administrative Code; and

(h) When the chief issues a show cause order to a permittee to show cause why the performance security should not be forfeited under rule 1501:13-7-06 of the Administrative Code.

(4) The chief shall notify, in writing, persons involved in performance security coverage of any performance security adjustments. For purposes of this rule a person involved in performance security coverage shall include the permittee, the surety, and any other person with a property interest in collateral posted under these rules who has in writing to the chief requested such notification at the time the collateral is posted or the interest is acquired, whichever occurs later.

(5) The permittee may request an informal conference with the chief concerning a performance security adjustment made under paragraph (E) of this rule, and the chief shall provide such an informal conference in accordance with rule 1501:13-14-05 of the Administrative Code.

(6)

(a) If the chief increases the amount of performance security under paragraph (E) of this rule, the permittee shall provide additional performance security in an amount determined by the chief.

(b) If the chief decreases the amount of performance security under paragraph (E) of this rule, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount of reduction to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(7) A permittee may request a reduction in the amount of the performance security by submitting to the chief documentation proving that the permittee's method of operation or other circumstances have changed such that the amount of the performance security provided by the permittee exceeds the estimated cost of reclamation if the reclamation would have to be performed by the division of mineral resources management in the event of forfeiture of the performance security. The chief shall examine the documentation and determine whether the permittee's performance security exceeds the estimated cost of reclamation. If the chief determines that the performance security exceeds that estimated cost, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(8) An adjustment in the amount of performance security under paragraph (E) of this rule shall not be considered release of performance security and is not subject to division (F) of section 1513.16 of the Revised Code.

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1501:13-7-06.1 Tax credit for reclamation outside an applicant's permit area.

(A) Applicability. This rule shall apply to a permittee providing performance security together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code who wishes to claim a tax credit under section 5749.11 of the Revised Code. This rule sets forth the terms and conditions under which the chief may approve an application to perform reclamation pursuant to section 1513.171 of the Revised Code.

(B) Identification of potential reclamation projects.

(1) The chief shall identify forfeited permits that may be eligible for reclamation under this rule.

(2) The chief may exclude a forfeited permit from eligibility under this rule due to the status of existing mining plans, pending abandoned mined lands contracts, or other issues related to reclamation planning.

(C) Permittee eligibility. Only a permittee in good standing pursuant to Chapter 1513. of the Revised Code shall be eligible to perform reclamation under this rule. No permittee is eligible if he or she:

(1) Has a demonstrated pattern of willful violations of Chapter 1513. of the Revised Code or rules adopted thereunder;

(2) Has an outstanding failure to abate cessation order;

(3) Is delinquent in performing reclamation on a permit; or

(4) Is blocked from obtaining a permit by the applicant violator system.

(D) Application to perform reclamation for severance tax credit.

(1) A permittee with a valid permit issued under these rules and in good standing pursuant to paragraph (C) of this rule may submit to the chief, on a form provided by the chief, an application to perform reclamation on land or water resources that are not within the applicant's permit area and that have been adversely affected by past coal mining for which the performance security was forfeited.

(2) The application shall include:

(a) The permittee's name, address, and telephone number;

(b) A statement of any current coal mining permits in the United States held by the permittee and the permittee's valid permit number or numbers;

(c) A description of the area or areas to be reclaimed;

(d) Identification of the owner of the land;

(e) A reclamation plan that describes the work to be done to reclaim the land or water resources, including:

(i) A description of how the plan is consistent with local physical, environmental, and climatological conditions; and

(ii) The measures to be taken during the reclamation to ensure the protection of water systems;

(f) An estimate of the total cost of the reclamation; and

(g) An estimated timetable for accomplishing the reclamation.

(3) The chief shall approve, disapprove, or approve with modifications an application submitted under this rule.

(E) Contract for reclamation. If an application is approved under paragraph (D)(3) of this rule, the chief shall prepare a contract for reclamation pursuant to section 1513.27 of the Revised Code.

(F) Beginning of reclamation. The chief shall notify, in writing, the owner of the land or water resources on which the reclamation work is to be performed, including the date on which the reclamation work is scheduled to begin and the timetable for accomplishing the reclamation.

(G) Reclamation tax credit certificate.

(1) Upon the completion of the reclamation to the satisfaction of the chief, including all contract specifications for the project, the chief shall conduct a substantial completion inspection, during which he or she will complete an accounting of the final actual costs of the project.

(2) The chief shall issue a numbered reclamation tax credit certificate showing the amount of the credit and the identity of the recipient. The amount of the credit shall be equal to the final actual costs of the project as determined under paragraph (G)(1) of this rule, provided the final actual costs do not exceed the estimated cost of reclamation as determined by the chief pursuant to paragraph (E)(3) of rule 1501:13-7-02 of the Administrative Code.

(3) Prior to the close of the fiscal quarter in which a tax credit certificate is issued under paragraph (G)(2) of this rule, the chief shall certify to the tax commissioner the amount of the credit and the identity of the recipient.

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1501:13-9-03 Topsoil handling.

(A) To prevent topsoil from being contaminated by spoil or waste materials or otherwise wasted, the permittee or operator shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of paragraph (C) of this rule on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution. Areas of surplus soil materials may be identified for use in future reclamation.

(B) Topsoil to be salvaged shall be removed before any drilling for blasting, mining, spoil or other surface disturbance.

(1) All topsoil shall be removed and if the topsoil is less than six inches, a six-inch layer that includes the topsoil and the unconsolidated materials immediately below the "A" horizon shall be removed and segregated for resoiling, unless an alternative material is approved by the chief in accordance with paragraph (B)(3) of this rule.

(2) Where necessary to obtain soil productivity consistent with postmining land use, the chief may require that the subsoil be segregated and replaced prior to the redistribution of the topsoil.

(3) Alternative resoiling materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation or if the topsoil is of insufficient quantity or quality for sustaining vegetation and if all the following requirements are met:

(a) The applicant or permittee demonstrates that the alternative resoiling materials, or an overburden topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, per cent organic material, phosphorus, potassium, and texture class, and such other analyses as required by the chief. The chief may require the results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such alternative resoiling;

(b) The chemical and physical analysis and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist; and

(c) If alternative resoiling materials are used, such materials are removed, segregated, and replaced in conformance with this rule.

(4) If there is insufficient topsoil on the permit area, the applicant or permittee shall:

(a) Identify the alternative resoiling materials to be used for resoiling;

(b) Submit the results of the analysis required by paragraph (B)(3)(a) of this rule;

(c) Submit certification by a qualified soil scientist or agronomist that the alternative resoiling materials are suitable for establishing the permanent vegetative species proposed by the applicant in the mining and reclamation plan; and

(d) If alternative resoiling materials are to be used, submit a plan, where appropriate, for the removal, segregation, and replacement of such materials.

(5) Limits on topsoil removal area. Where the removal of vegetation materials, topsoil, or other materials may result in erosion which may cause air or water pollution:

(a) The size of the area from which topsoil is removed at any one time shall be limited;

(b) The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and

(c) Such other measures shall be taken as the chief may approve or require to control erosion.

(6) The chief may choose not to require the removal of topsoil for minor disturbances which:

(a) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(b) Will not destroy the existing vegetation and will not cause erosion.

(C) Final grading and replacement of topsoil. Final grading shall follow the completion of backfilling and rough grading within a time that will allow replacement of topsoil or approved resoiling materials to begin and be completed during either the current normal period for favorable planting or at the start of the first appropriate normal period for favorable planting following final grading, whichever occurs first. After final grading and before the topsoil or approved alternative resoiling materials are replaced, regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration. Resoiling shall begin, continue reasonably uninterrupted, and be completed prior to the end of the normal period for favorable planting unless the permittee receives an extension of the time limit because of climatic conditions in accordance with paragraph (D) of this rule. Topsoil or approved alternative resoiling materials shall be redistributed in a manner that:

(1) Achieves an approximately uniform, stable thickness when consistent with the postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

(2) Prevents excess compaction of the spoil and topsoil; and

(3) Protects from wind and water erosion before and after seeding and planting.

(D) If resoiling and protection of that resoiling cannot reasonably be done within a prescribed time limit because of climatic conditions existing at that time of the year, the permittee may apply to the chief for an extension of the time limit and the chief shall not issue a notice under paragraph (A) of rule 1501:13-7-06 of the Administrative Code during such time extension.

(E) If the permit allows storage of topsoil or approved alternative resoiling materials, such materials shall be placed on a stable area within the permit area where it will not be disturbed or exposed to excessive water, wind erosion, unnecessary compaction and contamination by undesirable materials. Stockpiled materials shall be protected from wind and water erosion, unnecessary compaction, and contaminants either by: an effective cover of non-noxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or other methods demonstrated and approved by the chief to provide equal protection. Unless approved by the chief, stockpiled topsoil or approved alternative resoiling materials shall not be moved until required for redistribution on a disturbed area.

(F) Nutrients and soil amendments in the amounts and analysis as determined by soil tests taken in accordance with agronomically acceptable practices shall be applied to the surface soil layer so that it will support the

postmining requirements of rule 1501:13-9-17 of the Administrative Code and the revegetation requirements of rule 1501:13-9-15 of the Administrative Code.

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1501:13-9-09 Disposal of coal mine wastes and noncoal mine wastes.

(A) Coal mine waste. General requirements.

(1) General. All coal mine waste shall be placed in new or existing disposal areas within a permit area, which are approved by the chief for this purpose. Coal mine waste shall be placed in a controlled manner to:

(a) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;

(b) Ensure mass stability and prevent mass movement during and after construction;

(c) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;

(d) Not create a public hazard; and

(e) Prevent combustion.

(2) Coal mine waste material from operations located outside a permit area may be disposed of in the permit area only if approved by the chief. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this rule.

(3) Design certification.

(a) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the chief. An engineer experienced in the design of similar earth and waste structures shall certify the design of the disposal facility.

(b) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5, except that a long-term static safety factor of 1.3 shall be achieved when coal mine wastes are disposed of in the mined-out area under paragraph (J)(3) of rule 1501:13-9-14 of the Administrative Code. The foundation and abutments must be stable under all conditions of construction.

(4) Foundation. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(5) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the chief shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the chief shall be notified immediately. The chief shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(6) Disposal in excess spoil fills. Coal mine waste may be disposed of in excess spoil fills in accordance with paragraph (J) of rule 1501:13-9-07 of the Administrative Code.

(7) Underground disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the chief and MSHA under paragraph (N) of rule 1501:13-4-14 of the Administrative Code.

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(B) Refuse piles. Refuse piles shall meet the requirements of paragraph (A) of this rule, the additional requirements of paragraph (B) of this rule, and the requirements of 30 C.F.R. 77.214 and 77.215.

(1) Drainage control.

(a) If the disposal area contains springs, natural or man-made water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

(b) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of paragraph (F) of rule 1501:13-9-04 of the Administrative Code to pass safely the runoff from a one-hundred-year, six-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

(c) Underdrains shall comply with the requirements of paragraph (F) of rule 1501:13-9-07 of the Administrative Code.

(2) Surface area stabilization. Slope protection shall be provided to minimize surface erosion. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(3) Placement.

(a) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with rule 1501:13-9-03 of the Administrative Code. If approved by the chief, organic materials may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(b) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v.

(c) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the chief if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(d) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four feet of the best available nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The chief may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of rule 1501:13-9-15 of the Administrative Code will be met.

(4) Inspections. An engineer, or other qualified professional specialist under the direction of the engineer, shall inspect the refuse pile during construction. The engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(a) Inspections by the engineer or specialist shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(i) Foundation preparation including the removal of all organic material and topsoil;

(ii) Placement of underdrains and protective filter systems;

(iii) Installation of final surface drainage systems; and

(iv) The final graded and revegetated disposal area.

(b) Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or to the environment. Inspection shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the chief.

(c) The engineer shall provide a certified report to the chief promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and these rules. The report shall include appearances of instability, structural weakness, and other hazardous conditions. A copy of each inspection report shall be retained at or near the minesite.

(d) The certified report required under paragraph (B)(4)(c) of this rule shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to identify the site specifically and clearly.

(C) Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of paragraph (A) of this rule and the additional requirements of paragraph (C) of this rule.

(1) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the chief that the stability of such a structure comforms to the requirements of this rule and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the chief in accordance with paragraph (H) of rule 1501:13-4-05 or paragraph (H) of rule 1501:13-4-14 of the Administrative Code.

(2)

(a) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with the requirements for temporary impoundments under paragraph (H) of rule 1501:13-9-04 of the Administrative Code. Such structures may not permanently retain the ability to impound as part of the approved postmining land use.

(b) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of 30 C.F.R. 77.216(a), the combination of principal and emergency spillways shall be able to pass safely the probable maximum precipitation of a six-hour precipitation event, or

greater event as specified by the chief.

(3) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(4) Drainage control. Runoff from areas above the disposal facility or runoff from surface of the facility that may cause instability or erosion on the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of paragraph (F) of rule 1501:13-9-04 of the Administrative Code and designed to pass safely the runoff from a one-hundred-year, six-hour design precipitation event.

(5) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety per cent of the water stored during the design precipitation event can be removed within a ten-day period. Within ten days following the occurrence of the design precipitation event, ninety per cent of the water shall be removed.

(D) Burning and burned waste utilization.

(1) Coal mine waste fires shall be extinguished by the person who conducts the coal mining operations, in accordance with a plan approved by the chief and MSHA. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the permittee, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(2) No burning or burned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the chief. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

(E) Disposal of noncoal mine wastes.

(1) Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during coal mining operations shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Final disposal of noncoal mine wastes, as described in paragraph (E)(1) of this rule, shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with rule 1501:13-9-15 of the Administrative Code. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(3) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall an excavation for a noncoal mine waste disposal site be located within eight feet of any coal outcrop or coal storage area.

(4) Notwithstanding any other provision in these rules, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C., Chapter 82,

Subchapter III, Section 6921 et seq., as amended) and 40 CFR part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA (42 U.S.C., Chapter 82, Subchapter III, Section 6921 et seq. as amended) and 40 CFR parts 260 to 270.

(F) 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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1501:13-9-13 Contemporaneous reclamation.

(A) Timing. Reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement, revegetation, and any other work necessary to fulfill the approved mining and reclamation plan, to secure each phase of performance security release in accordance with rule 1501:13-7-05 or rule 1501:13-7-05.1 of the Administrative Code, and to reduce potential reclamation cost liability on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, and in accordance with the following:

(1) Contour mining. Backfilling and rough grading shall be completed within sixty days or one thousand five hundred linear feet following coal removal, whichever occurs first;

(2) Area mining. Backfilling and rough grading shall be completed within one hundred eighty days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge;

(3) Other mining method or combination of methods. The chief may approve an alternate schedule for backfilling and rough grading if the permittee or operator demonstrates that an alternate schedule from that required for contour or area mining is necessary due to the mining method utilized, provided that backfilling and rough grading shall be completed not more than one hundred eighty days following coal removal or the minimum distance necessary to continue the coal mining operation following coal removal;

(4) Auger/highwall mining. Auger/highwall mining shall occur as contemporaneously as practicable and within one hundred eighty days after creation of the highwall to be augered/mined unless an alternative schedule is approved by the chief;

(5) Final grading and replacement of topsoil. Final grading and replacement of topsoil or approved resoiling materials shall occur in accordance with rule 1501:13-9-03 of the Administrative Code;

(6) Seeding and planting. Mulching, seeding, planting, and application of nutrients and soil amendments, as required by these rules and the approved reclamation plan, shall follow resoiling as soon as practicable to minimize erosion of the resoiled area. Seeding and planting shall take place not later than the next appropriate planting and growing season following the completion of backfilling, grading, resoiling, and other reclamation work;

(7) Tree planting. The normal expected time for tree planting is March through April. If the approved reclamation plan specifies use of the forestry reclamation approach, end-dumped soil placed after April shall not be planted with trees until the following spring. Mulching and seeding may occur when the trees are planted or in the fall to help minimize herbaceous competition;

(8) The chief may grant additional time for backfilling and rough grading:

(a) If the chief finds that the permittee or operator cannot comply with the time limits of paragraph (A) of this rule because of a labor dispute;

(b) For periods of not more than one year if the permittee or operator needs more time than otherwise allowed under this rule, for the purpose of removing limestone, clay, or shale which was uncovered by surface mining operations, if the permittee or operator is in a business which substantially utilizes limestone, clay, or shale, and if the chief determines that the permittee or operator has a bona fide need for the extension of time in order to carry out limestone, clay, or shale removal. Removal of

limestone, clay, and shale shall be performed under rules adopted by the chief for the purpose of ensuring compliance with the requirements and objectives of Chapter 1513. of the Revised Code. An extension of time made under this rule shall not delay reclamation on any part of the area of land affected for which the extension is not necessary in order to carry out the limestone, clay, or shale removal; or

(c) If the permittee or operator can demonstrate, through a detailed written analysis of the backfilling, soil stabilization and grading information provided under paragraph (D)(2)(b) of rule 1501:13-4-05 of the Administrative Code as part of the approved reclamation plan, that additional time is necessary. The analysis shall include a map or other description of the area for which additional time is needed;

(9) A request for additional time for backfilling and rough grading that is not addressed in the approved permit shall be filed with the chief as a revision to the permit in accordance with rule 1501:13-4-06 of the Administrative Code. The revision request shall include sufficient justification for the additional time and a time schedule that describes the length of the anticipated delay in backfilling and grading;

(a) Reasons for additional time may include, but are not limited to, auger mining, highwall mining, waste disposal, coal processing, permitting of an adjacent area, mining of a lower coal seam, or mining other minerals;

(b) If the activity that justified the additional time does not take place as stated in the revision to the permit, the permittee shall begin reclamation immediately and continue until completion; and

(10) For purposes of this rule, areas that are backfilled and rough graded shall closely resemble the final ground surface configuration approved in the mining and reclamation plan, but are not necessarily ready for resoiling or eligible for phase I performance security release.

(B) As provided in paragraph (G) of rule 1501:13-4-12 of the Administrative Code, the chief may grant a variance to the requirements of this rule where the applicant proposes to combine surface coal mining and underground coal mining operations.

(C) For underground mining, reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement and revegetation of all areas affected by surface operations, shall occur as contemporaneously as practicable with mining operations.

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1501:13-14-05 Informal conferences.

(A) Procedure for request for informal conference. Any person whose interests are or may be adversely affected by the issuance of a permit, the issuance of a significant revision to a permit or the renewal of a permit, or the officer or head of any federal, state or local government agency or authority, or any permittee whose performance security amount is proposed to be adjusted in accordance with paragraph (E) of rule 1501:13-7-02 of the Administrative Code, may, in writing, request that the chief hold an informal conference on the application for a permit or application for significant revision or renewal of a permit or on the proposed performance security adjustment. The request shall:

(1) Briefly summarize the issues to be raised at the conference by the person requesting the conference; and

(2)

(a) Be filed with the chief not later than thirty days after the last publication of the newspaper advertisement placed by the applicant under paragraph (A)(1) of rule 1501:13-5-01 of the Administrative Code; or

(b) Be filed with the chief not later than thirty days after receipt by the permittee of the proposed performance security adjustment.

(B)

(1) Except as provided in paragraph (C) of this rule, if an informal conference is requested in accordance with paragraph (A) of this rule, the chief shall hold an informal conference within a reasonable time not to exceed sixty days following:

(a) The close of the comment period required by paragraph (B)(1) of rule 1501:13-5-01 of the Administrative Code for a permit application, an application for significant revision to a permit or an application for renewal of a permit; or

(b) Receipt by the permittee of a performance security adjustment under paragraph (E) of rule 1501:13-7-02 of the Administrative Code.

(2) The informal conference shall be conducted as follows:

(a) The conference shall be held in the county where the largest portion of the area permitted or to be permitted is located;

(b) The date, time, and location of the informal conference shall be sent to the applicant or permittee and other parties to the conference and advertised by the chief in a newspaper of general circulation in the locality of the proposed permit or existing permit at least two weeks prior to the scheduled conference;

(c) If requested, in writing, by the person requesting the conference at a reasonable time prior to the conference, the chief may arrange with the applicant or permittee to grant parties to the conference access to the proposed permit or existing permit area and, to the extent that the applicant or permittee has the right to grant access to it, to the adjacent area, prior to the established date of the conference for the purpose of gathering information relevant to the conference; and

(d) The conference shall be conducted by the chief or a representative of the chief. The chief or his or her

representative may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's or permittee's performance security required by Chapter 1513. of the Revised Code and these rules.

(3) If the informal conference has been held pursuant to section 1513.071 of the Revised Code, the chief shall issue and furnish the applicant for a permit, persons who participated in the informal conference, and persons who filed written objections pursuant to division (B) of section 1513.071 of the Revised Code, with the written finding of the chief granting or denying the permit in whole or in part and stating the reasons therefor within sixty days of the conference, provided that the chief shall comply with the time frames established in paragraph (D)(2)(b) of rule 1501:13-5-01 of the Administrative Code.

(C) If all persons requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, the informal conference need not be held.

(D) Conferences for reclamation phase approvals and performance security releases are subject to rule 1501:13-7-08 of the Administrative Code.

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1501:13-14-06 Individual civil penalties.

(A) Definitions. For the purposes of this rule:

(1) "Violation" means a violation of any requirement of Chapter 1513. of the Revised Code, rules adopted thereunder, or of any permit condition.

(2) "Failure or refusal" means a failure or refusal to comply with any notice of violation or order of the chief issued under Chapter 1513. of the Revised Code, except that non-payment of civil penalties assessed against a corporate permittee or non-compliance with any order issued by the chief under section 1513.39 of the Revised Code does not constitute a failure or refusal.

(3) "Willfully" means that an individual acted:

(a) Either intentionally, voluntarily or consciously; and

(b) With intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

(B) Except as provided in paragraph (C) of this rule, the chief may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(C) The chief shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the chief to the corporate permittee for the violation, and the cessation order has remained unabated for thirty days.

(D) Amount of the individual civil penalty.

(1) In determining the amount of an individual civil penalty assessed under paragraph (B) or (C) of this rule, the chief shall consider the criteria specified in division (E)(1) of section 1513.02 of the Revised Code, including:

(a) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular coal mining operation;

(b) The seriousness of the violation, failure or refusal, including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(c) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after receipt of the notice of the violation, failure or refusal.

(2) The penalty shall not exceed five thousand dollars for each violation. Each day of a continuing violation may be deemed a separate violation and the chief may assess a separate individual civil penalty for each day the violation continues, from the date of service of the underlying notice of violation, cessation order or other order incorporating a final decision of the chief, until abatement or compliance is achieved.

(E) Procedure for assessment of the individual civil penalty.

(1) For every imminent harm cessation order or failure-to-abate cessation order issued by the chief in accordance with paragraph (A)(1) or paragraph (A)(3) of rule 1501:13-14-02 of the Administrative

Code, the chief shall immediately serve on each individual to be assessed an individual civil penalty, a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(2) The notice of proposed individual civil penalty assessment shall become a final order of the chief thirty days after service upon the individual unless:

(a) The individual files, within thirty days of service of this notice of proposed individual civil penalty assessment, a notice of appeal to the reclamation commission in accordance with section 1513.13 of the Revised Code; or

(b) The chief and the individual or responsible corporate permittee agree, within thirty days of service of the notice of proposed individual civil penalty assessment, to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(3) For purposes of paragraphs (E)(1) to (E)(2)(b) of this rule, service is sufficient if it would satisfy the requirements of paragraph (D) of rule 1501:13-14-02 of the Administrative Code.

(F) If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(G) If an individual named in a notice of proposed individual civil penalty assessment files a notice of appeal in accordance with section 1513.13 of the Revised Code, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(H) Where the chief and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated notice of violation or cessation order, an individual named in a notice of proposed individual penalty assessment may postpone payment until receiving either a final order from the chief stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(I) Following the expiration of forty-five days after the individual civil penalty is payable, any delinquent penalty shall be certified to the attorney general for collection.