Coal Rules – effective 1/17/2016

Package 3: Performance standards and other rules with amendments.

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Draft Rule 1501:13-1-01, dated 2/11/2014.

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

(C)(4)(a) and (b). Revised to include two new rules, 1501:13-3-01 and 1501:13-3-02, that became effective 10/28/2010.

*** DRAFT – NOT FOR FILING ***

Dated 2/11/2014

1501:13-1-01 **Effective date and applicability.**

(A) No permit to conduct coal mining and reclamation operations shall be issued unless application for the permit has been made in accordance with the requirements of these rules.

(B) Each coal mining and reclamation operation shall comply with all the requirements of these rules, except as provided in paragraphs (C)(1) to (C)(3) of this rule.

(C) Each structure used in connection with or to facilitate a coal exploration or coal mining and reclamation operation shall comply with the performance standards and the design requirements of these rules except that:

(1) If the performance standard in effect prior to August 16, 1982, in Chapter 1513. of the Revised Code and Chapters 1501:13-1 to 1501:13-14 of the Administrative Code, is no less effective than the comparable performance standards of these rules, an existing structure which meets the performance standards of the prior law and rules may be exempted by the chief from meeting the design requirements of these rules.

(2) If the performance standard in effect prior to August 16, 1982, in Chapter 1513. of the Revised Code and Chapters 1501:13-1 to 1501:13-14 of the Administrative Code, is less effective than the comparable performance standards of these rules, the chief shall require an existing structure to be modified to meet either the design requirements of Chapter 1513. of the Revised Code and these rules or the comparable performance standards of Chapter 1513. of the Revised Code and these rules, or both.

(3) The exemptions provided in paragraphs (C)(1) and (C)(2) of this rule shall not apply to:

(a) The requirements for existing and new coal mine waste disposal facilities; and

(b) The requirements to restore the approximate original contour of the land.

(4) These rules shall not govern operations conducted prior to August 16, 1982, except:

(a) Operations conducted under a strip mining permit shall comply with and be governed by rules 1501:13-1-01, 1501:13-1-03 to 1501:13-1-13, ~~1501:13-3-03~~1501:13-3-01 to 1501:13-3-08, 1501:13-6-03, 1501:13-7-06, 1501:13-9-10, and 1501:13-14-01 to 1501:13-14-04 of the Administrative Code, and

all rules expressly made applicable therein, except that a person conducting such operations may choose to design structures in accordance with the design requirements specified in Chapters 1501:13-4, 1501:13-9, 1501:13-10, 1501:13-11, and 1501:13-13 of the Administrative Code.

(b) All operators of underground coal mines who submitted a mine map and affidavit pursuant to section 1513.12 of the Revised Code as it was in effect prior to September 1, 1981, shall comply with and be governed by rules 1501:13-1-01, 1501:13-1-03 to 1501:13-1-13, ~~1501:13-3-03~~1501:13-3-01 to 1501:13-3-08, 1501:13-6-03, 1501:13-12-03, 1501:13-12-04, and 1501:13-14-01 to 1501:13-14-04 of the Administrative Code, and all rules expressly made applicable therein, except that a person conducting such operations may choose to design structures in accordance with the design requirements specified in Chapters 1501:13-4, 1501:13-9, 1501:13-10, 1501:13-11, and 1501:13-13 of the Administrative Code.

(D) Termination of jurisdiction.

(1) The chief may terminate jurisdiction under Chapter 1513. of the Revised Code over the reclaimed site of a completed coal mining and reclamation operation, or increment thereof, upon the chief's final decision in accordance with Chapter 1501:13-7 of the Administrative Code to release the performance security fully.

(2) Following a termination under paragraph (D)(1) of this rule, the chief shall reassert jurisdiction under Chapter 1513. of the Revised Code over a site if it is demonstrated that the performance security release was based on fraud, collusion, or misrepresentation of a material fact.

Draft Rule 1501:13-1-10, dated 4/17/2012.

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

(B)(2). Provision added to keep Ohio's program as effective as the federal program -- 30 CFR 840.14 (c)(1) and (2) require that either a copy of the records be available for inspection in the county where mining is taking place or a description of the records and a description of the procedure for obtaining the records be available in the county where mining is taking place.

(B)(2)(b) and (b)(i). Provision in (b) revised and (b)(i) added for clarification to keep Ohio's program as effective as the federal program -- 30 CFR 840.14 (c)(2) requires that any resident of the area where mining is taking place either be able to inspect copies of the records in the county where the mining is taking place or be provided copies of the records at no charge.

(B)(2)(b)(ii) For other persons who request copies of the records, the Division will follow ODNR policy in charging for the copies.

*** DRAFT – NOT FOR FILING ***

Dated 4/17/2012. Amendments in (B)(2) re: Program Amendment 82.

1501:13-1-10 **Availability of records.**

(A) The chief shall make available to the public for inspection and copying, at reasonable times, all documents relating to:

(1) Applications for permits, revisions, renewals, and transfers, assignments or sales of permit rights; and

(2) Inspection and enforcement actions.

(B)

(1) Copies of such records, reports, inspection materials or information obtained by the chief shall be made immediately available to the public at the local district offices of the division of mineral resources management closest to the coal mining and reclamation operations until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation performance security.

(2) To ensure compliance with paragraph (B)(1) of this rule the chief shall, at the division of mineral resources management district office responsible for inspection of the operation~~,~~ or, if no such office is maintained in the county where the mining is occurring or proposed to occur, at the office of the county recorder of that county or at the county office of the natural resources conservation service of the United States department of agriculture, either:

(a) Make copies of all records, reports, inspection materials, and other subject information available for public inspection; or

(b) Post for public inspection a description of the information available for mailing and a procedure for obtaining such information~~,~~ and, upon request ~~of any resident of the area where the mining is occurring or proposed to occur~~, provide copies of subject information promptly by mail.

(i) If a resident of the area where the mining is occurring or proposed to occur makes a request under paragraph (B)(2)(b) of this rule, the division shall provide copies for no charge.

(ii) If a person other than a resident of the area where the mining is occurring or proposed to occur makes a request under paragraph (B)(2)(b) of this rule, the division shall follow the policy of the department of natural resources in charging for copies.

(C) Records which are confidential and unavailable to the public include:

(1) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on the components of such coal which are potentially toxic in the environment;

(2) Preparatory materials relating to hearings and enforcement proceedings which are investigative in nature, and information provided by an information source or witness to whom confidentiality has been promised;

(3) Information submitted to the chief if the person submitting it requests in writing at the time of submission that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of persons intending to conduct coal exploration; and

(4) Information on the nature and location of archeological resources as required under the Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa et seq., as amended.

(D) Except as otherwise limited by paragraph (C)(1) of this rule, information pertaining to coal seams, test borings, core samplings or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected.

(E) The availability of other records or documents in the possession of the chief is subject to section 149.43 of the Revised Code, Chapter 1347. of the Revised Code, and other state and federal laws as may be applicable.

(F) The chief shall provide for procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to maintain information required to be kept confidential under this rule separately from other portions of the permit application. This information shall be clearly identified by the applicant and submitted separately from other portions of the application.

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

Draft Rule 1501:13-1-14, dated 11/2/2015.

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. Website address simplified.

(B)(16) and (17). These two statutes are proposed to be removed from this list because they do not need to be here -- no reference is made to them in the coal rules (Division 1501:13 of the Administrative Code.)

DRAFT - NOT FOR FILING

Dated 11/2/2015

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 ~~http://www.gpo.gov/fdsys/~~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, ~~2011~~2015; Title 30, Part 77, July 1, 2014; ~~Titles 30~~Title 30, Chapter VII, and Title 40, July 1, ~~2010~~2015; Title 43, October 1, ~~2010~~2014.

(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 ~~2006~~2012 edition of the United States Code (U.S.C.), dated January ~~3, 2007~~15, 2013, as supplemented in ~~2009~~2013, effective ~~February 1, 2010~~January 16, 2014. These federal laws can generally be found in public libraries or electronically at the website ~~http://www.gpo.gov/fdsys/~~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.~~;~~

~~(16) Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 60101 et seq., as amended;~~

~~(17) Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 60101 et seq., as amended.~~

Draft Rule 1501:13-8-01, dated 9/2/2010.

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

(J). Referenced paragraph corrected.

*** DRAFT – NOT FOR FILING ***

Dated 9/2/10 Five-year-review rule. See correction in (J).

1501:13-8-01 **Coal exploration; performance standards.**

This rule shall apply only to coal exploration operations that substantially disturb the natural land surface.

(A) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values, including critical habitats of threatened species and critical habitats of species protected by state or federal law, shall not be disturbed during coal exploration operations.

(B) All roads shall comply with the applicable provisions of rule 1501:13-10-01 of the Administrative Code.

(C) If excavations, artificially flat areas, or embankments are created during coal exploration operations, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration operations.

(D) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation.

(E) All disturbed areas shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If the land use of the explored area is intensive agriculture, planting of crops normally grown will meet the requirements of this paragraph; and

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(F) Use of diversions. Diversions of perennial and intermittent streams and miscellaneous flows shall be made in accordance with paragraph (F) of rule 1501:13-9-04 of the Administrative Code.

(G) Each exploration hole, borehole, or other exposed underground opening created during exploration operations shall be reclaimed in accordance with rule 1501:13-9-02 of the Administrative Code.

(H) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for coal exploration operations, except those facilities and equipment that the chief determines may remain to:

(1) Provide additional environmental data;

(2) Reduce or control on- and off-site effects of the exploration operations; or

(3) Facilitate future coal mining and reclamation operations by the person conducting the exploration operations under an approved permit.

(I) Coal exploration operations shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with rule 1501:13-9-04 of the Administrative Code. The chief may specify additional measures which shall be adopted by the person engaged in coal exploration operations.

(J) Toxic- and acid-forming materials shall be handled and disposed of in accordance with paragraph ~~(I)~~(J) of rule 1501:13-9-14 and paragraph (J) of rule 1501:13-9-04 of the Administrative Code. The chief may specify additional measures which shall be adopted by the person engaged in coal exploration operations.

(K) If explosives are to be used in connection with a coal exploration permit, the explosives shall be used in accordance with rule 1501:13-9-06 of the Administrative Code.

(L) Notification of completion of coal exploration. The person conducting the coal exploration operations shall notify the chief:

(1) Upon completion of the exploration; and

(2) Upon completion of the reclamation of the area after exploration.

Draft Rule 1501:13-9-02, dated 11/29/2012.

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

(A). Small correction.

(C). Small corrections and an addition to clarify that it is the Chief who makes the finding of no adverse environmental or health and safety effect.

DRAFT - NOT FOR FILING

Dated 11/29/12 Five-year review rule. Revisions in (A) and (C).

1501:13-9-02 Casing and sealing of drilled holes.

(A) General requirements. Each exploration hole, other drill or borehole, shaft, well, or other exposed mine opening shall be cased, sealed, or otherwise managed, as approved by the chief, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent areas. If these openings are uncovered or exposed by coal mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the chief. Use of a drilled and cased hole or borehole or monitoring well as a ~~a~~ water well must meet the provisions of rule 1501:13-9-04 of the Administrative Code. This rule does not apply to holes solely drilled and used for blasting.

(B) Temporary sealing of drilled holes.

(1) For all coal mining operations, each exploration hole, other drill or boreholes, wells, and other exposed openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, fences, or other protective devices approved by the chief. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the coal mining activities.

(2) For underground mining operations only, each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good condition by the person who conducts the underground mining activities.

(C) Permanent sealing of drilled holes. When no longer needed for monitoring or other use approved by the chief, upon a finding by the chief of no adverse environmental or health and safety ~~dffect~~effect, or unless approved for transfer as a water well under rule 1501:13-9-04 of the Administrative Code, each exploration hole, other drilled hole or borehole, well, and other exposed opening, and for underground mining operations each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from underground, shall be capped, sealed, backfilled, or otherwise properly managed, as required by the chief under paragraph (A) of this rule. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish~~,~~ and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

Draft Rule 1501:13-9-07, dated 7/2/2014.

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

(K). Reference to 1501:13-4-14 (O) added because (O) also contains requirements for the disposal of excess spoil.

(M)(1). Reference corrected.

(N)(1). Reference to (B) added. Through a rule amendment in 1988, a reference to (B) was removed, although it's not clear why. 30 CFR 816.74 (c) and 30 CFR 817.74 (c) require that the design be certified by a registered professional engineer. (The definition of engineer in rule 1501:13-1-02 already specifies that engineer means a professional engineer registered in accordance with ORC Chapter 4733.)

(N)(5)(d). Reference to rule 1501:13-9-14 added because 1501:13-9-14 also contains requirements for postmining graded slopes.

DRAFT - NOT FOR FILING

Dated 7/2/2014

1501:13-9-07 Disposal of excess spoil.

(A) The objective of this rule is to ensure mass stability and protection from erosion and minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters, using current, recognized engineering standards and practices as evaluated and approved by the chief.

(B) Design certification. The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet the design criteria established in this rule. An engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(C) Location. If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the chief, the spoil could be placed in compliance with the requirements of Chapter 1513. of the Revised Code and these rules, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(D) Foundation.

(1) The foundation and abutments of the fill must be stable under all conditions of construction.

(2) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, as deemed needed by the certifying engineer, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures. The chief may require additional foundation investigations and laboratory testing.

(3) Where the slope along the profile in the disposal area is in excess of 2.8h:1v, keyway cuts or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope in excess of 2.8h:1v, stability analyses shall be performed in accordance with paragraph (N)(3) of rule 1501:13-4-05 or paragraph (P)(3) of rule 1501:13-4-14 of the Administrative Code to determine the size of rock toe buttresses and keyway cuts.

(E) Placement of excess spoil.

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of the excess spoil. 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 material 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.

(2) All backfilling and grading requirements shall be met by placements of spoil. Face slopes shall not exceed 2h:1v. The grade of the outslope between terrace benches shall not be steeper than 2h:1v.

(3)

(a) Excess spoil shall be:

(i) Transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness;

(ii) Concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction;

(iii) Graded so that surface and subsurface drainage is compatible with natural surroundings; and

(iv) Covered with topsoil or substitute material in accordance with rule 1501:13-9-03 of the

Administrative Code.

(b) The chief may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by an engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(4) The fill shall be designed to attain a minimum long-term static safety factor of 1.5.

(5) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use.

(6) No permanent impoundments shall be allowed on the completed fill. 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 are not incompatible with stability of the fill.

(7) Excess spoil that is acid- or toxic-forming or combustible shall be disposed of in accordance with paragraph (J) of rule 1501:13-9-04 of the Administrative Code.

(F) Drainage control.

(1) If the disposal area contains springs, natural or man-made water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of paragraphs (F) and (I) of rule 1501:13-9-04 of the Administrative Code.

(3) Underdrains shall consist of durable rock or pipe and be designed and constructed using current, prudent engineering practices. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid- and nontoxic-forming rock such as natural sand and gravel, sandstone or limestone, that does not slake in water or degrade to soil material, and that is free of coal, clay, or other nondurable material. Perforated pipe underdrains shall be corrosion-resistant and shall have characteristics consistent with the long-term life of the fill.

(G) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(H) Excess spoil may be used outside the permit area to reclaim unreclaimed mined lands adjacent to the permit area under a reclamation contract executed pursuant to section 1513.27 or 1513.37 of the Revised Code, provided that:

(1) If the unreclaimed lands are abandoned mined lands, they are eligible for reclamation under section 1513.27 or 1513.37 of the Revised Code;

(2) The excess spoil is placed in an environmentally and technically sound manner and will constitute sound engineering practices; and

(3) The excess spoil is placed where it will not destroy or degrade features of environmental value.

(I) Inspections. An engineer, or other qualified professional specialist under the direction of the engineer, shall periodically inspect the fill during construction. The engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(a) Foundation preparation, including the removal of organic material and topsoil;

(b) Placement of underdrains and protective filter systems;

(c) Installation of final surface drainage systems; and

(d) The final graded and revegetated fill.

(2) Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(3) The engineer shall provide a certified report to the chief promptly after each inspection certifying that the fill has been constructed and maintained as designed and in accordance with the approved plan, Chapter 1513. of the Revised Code and these rules. Each report shall include appearances of instability, structural weakness, and other hazardous conditions. The report after inspection of the final graded and revegetated fill shall certify, in addition, that the fill is expected to remain stable with the required safety factor.

(4) Photographs.

(a) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(b) When excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with paragraph (N) of this rule, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(c) 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.

(5) A copy of each inspection report shall be retained at or near the mine site.

(J) Coal mine waste. Coal mine waste may be disposed of in excess spoil fills if approved by the chief and if such waste is:

(1) Placed in accordance with rule 1501:13-9-09 of the Administrative Code;

(2) Nontoxic- and nonacid-forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(K) Underground disposal. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the chief and MSHA under ~~paragraph~~paragraphs (N) and (O) of rule 1501:13-4-14 of the Administrative Code.

(L) Valley fills and head-of-hollow fills. Valley fills and head-of-hollow fills shall meet the requirements of paragraphs (A) to (J) of this rule and the additional requirements of paragraph (L) of this rule.

(1) Drainage control.

(a) The top surface of the completed fill shall be graded so that the final slope after settlement will be

toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

(b) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of paragraphs (F) and (I) of rule 1501:13-9-04 of the Administrative Code and, in addition, to pass safely the runoff from a one-hundred-year, six-hour precipitation event.

(2) Rock-core chimney drains. A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed two hundred fifty thousand cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen feet thick, which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of paragraph (F)(3) of this rule.

(b) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.

(c) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v. A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than ten thousand cubic feet of water. Terraces on the fill shall be graded with a one per cent slope toward the rock core.

(M) Durable rock fills. The chief may approve an alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(1) Except as provided in paragraph (M) of this rule, the requirements of paragraphs (A) to ~~(M)~~(J) of this rule are met;

(2) The excess spoil consists of at least eighty per cent, by volume, durable, nonacid- and nontoxic-forming rock such as natural sand and gravel, sandstone or limestone, that does not slake in water or degrade to soil material, and that is free of coal, clay, or other nondurable material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil materials shall be mixed with excess durable rock spoil in a controlled manner so that no more than twenty per cent of the fill volume, as determined by tests performed by an engineer and approved by the chief, is not durable rock;

(3) An engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements;

(4) The fill is designed to attain a minimum long-term static safety factor of 1.5 and an earthquake safety factor of 1.1;

(5) The underdrain system may be constructed simultaneously with excess spoil placement by the natural

segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met; and

(6) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of paragraphs (F) and (I) of rule 1501:13-9-04 of the Administrative Code and to safely pass the runoff from a one-hundred-year, six-hour precipitation event.

(N) Preexisting benches. The chief may approve the disposal of excess spoil through placement on preexisting benches, provided that the following conditions are met:

(1) Except as provided in paragraph (N) of this rule, the requirements of paragraphs (A), (B), and (E) to (J) of this rule are met;

(2) Excess spoil shall be placed only on the solid portion of the preexisting bench;

(3) The fill shall be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill;

(4) The preexisting bench shall be backfilled and graded to:

(a) Achieve the most moderate slope possible which does not exceed the angle of repose; and

(b) Eliminate the highwall to the maximum extent technically practical; and

(5) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the chief provided that:

(a) The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the chief to minimize hazards to health and safety and to ensure that damage will be minimized between benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(b) All gravity-transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(c) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity-transported to the lower bench prior to construction of the berm; and

(d) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses which have been properly prepared according to ~~rule~~rules 1501:13-9-03 and 1501:13-9-14 of the Administrative Code. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of these rules.

Draft Rule 1501:13-9-08, dated 3/17/2014.

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

(A). Revision to clarify that (A) is for surface mining operations (while new paragraphs (B) and (C) are for underground mining operations and coal exploration drilling, respectively). The distance limit requirements for surface mining operations are not being revised.

(A)(1) Revision to comply with LSC's rule-drafting protocol.

(B) and (B)(1) and (2). New provisions to protect underground mining operations from other underground mining operations. The requirements are similar to those of (A), which protect underground mining operations from surface mining operations, except that the distance limit in (B) is 200 feet instead of 500 feet. The distance limit of 200 feet already exists in Mine Safety law, ORC section 1563.39, as well as in federal MSHA regulations, 30 C.F.R. 75.388(a)(2), for underground mining operations near other underground mines.

(C). New provision to protect underground mining operations from coal exploration drilling. The requirements mirror those of (B), and are proposed to establish a clear distance limit for coal exploration drilling near underground mines in the interest of mine safety.

*** DRAFT – NOT FOR FILING ***

Dated 3/17/2014

1501:13-9-08 **Protection of underground mining.**

(A) General requirements for surface mining operations. No surface mining operations shall be conducted closer than five hundred feet to any point of either an active or abandoned underground mine in order to prevent breakthroughs and to protect the health or safety of miners, except to the extent that:

(1) The nature, timing, and sequence of the operations that propose to mine closer than ~~500~~five hundred feet to an active underground mine are jointly approved by the chief and MSHA; and

(2) The operations result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(B) General requirements for underground mining operations. No underground mining operations shall be conducted closer than two hundred feet to any point of either an active or abandoned underground mine in order to prevent breakthroughs and to protect the health or safety of miners, except to the extent that:

(1) The nature, timing, and sequence of the operations that propose to mine closer than two hundred feet to an active underground mine are jointly approved by the chief and MSHA; and

(2) The operations result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(C) General requirements for coal exploration drilling. No coal exploration drilling shall be conducted closer than two hundred feet to any point of either an active or abandoned underground mine in order to prevent breakthroughs and to protect the health or safety of miners, except to the extent that the nature, timing, and sequence of coal exploration drilling closer than two hundred feet to an active underground mine are jointly approved by the chief and MSHA.

Draft Rule 1501:13-9-11, dated 2/8/2013.

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

(C)(1). Revision to mirror the requirements of, and to make the rule as effective as, 30 CFR 816.97(f) and 30 CFR 817.97(f) with regard to the protection of wetlands and riparian vegetation.

(C)(2). Small change in the word order of the requirements of this paragraph to match (C)(1) and 30 CFR 816.97(f) and 30 CFR 817.97(f). Also, the word "disturbance" changed to "disturbances" to be consistent with (C)(1) and 30 CFR 816.97(f) and 30 CFR 817.97(f).

*** DRAFT – NOT FOR FILING ***

Dated 2/8/13 See revisions in (C).

1501:13-9-11 **Protection of fish, wildlife, and related environmental values.**

(A) Any person conducting coal mining operations shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of such resources where practicable.

(B)

(1) No coal mining operation shall be conducted which:

(a) Is likely to jeopardize the continued existence of endangered or threatened species listed by the United States secretary of the interior;

(b) Is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); or

(c) Will result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs.

(2) A person who conducts coal mining operations shall promptly report to the chief the presence in the permit area of any critical habitat of a threatened or endangered species listed by the United States secretary of the interior, any plant or animal listed by the state as threatened or endangered, or any bald or golden eagle nest, of which that person becomes aware and which was not previously reported to the chief by that person. Upon notification the chief shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(3) Nothing in these rules shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or the Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

(C) Each person who conducts coal mining operations shall:

(1) ~~Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas~~Avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes;

(2) ~~Restore, enhance where practicable, or avoid disturbance to~~Avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife;

(3) Afford protection to aquatic communities by avoiding stream channels as required by paragraph (E) of rule 1501:13-9-04 of the Administrative Code or restoring stream channels as required in paragraph (F) of rule 1501:13-9-04 of the Administrative Code;

(4) To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the chief as part of a management plan;

(5) If fish and wildlife habitat is to be a postmining land use, the operator shall in addition to the requirements of rule 1501:13-9-17 of the Administrative Code:

(a) Select plant species to be used on reclaimed areas, based on the following criteria:

(i) Their proven nutritional value for fish and wildlife;

(ii) Their uses as cover for fish and wildlife; and

(iii) Their ability to support and enhance fish and wildlife habitat after release of performance security; and

(b) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(6) Where cropland, grazingland, or pastureland is to be the postmining land use, and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished. When practical and consistent with these rules, ponds shall be designed and built as permanent ponds in order to enhance fish and wildlife habitat;

(7) Where undeveloped land use or fish and wildlife habitat is to be the postmining land use, and as appropriate for wildlife and other management practices, preserve or create rather than drain or permanently abolish wetlands. When practical and consistent with these rules, ponds shall be designed and built as permanent ponds in order to enhance fish and wildlife habitat; and

(8) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use.

(D) Each operator shall, to the extent possible using the best technology currently available:

(1) Ensure that electric powerlines and other transmission facilities used for, and incidental to, mining operations on the permit area are designed and constructed to minimize electrocution hazards to raptors unless the chief determines such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to minimize impacts to important fish and wildlife species or other species protected by state or federal law; and

(3) Fence, cover or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

(E) 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

8/2015 No changes are proposed for this rule. It will be filed as amended rule only to correct the rule's statutory authority in the History Trail.

1501:13-9-12 Slides and other damage.

(A) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the chief as is needed to assure stability. The barrier shall be retained as a barrier to slides and erosion. Where the chief determines that this natural barrier will cause environmental problems, he shall require alternative measures to be taken.

(B) If at any time a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment, the person who conducts the coal mining operation shall notify the chief by the fastest available means and comply with any remedial measures required by the chief.

Draft Rule 1501:13-9-15, dated 2/14/2014.

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

(F)(1), (F)(4)(c) and (F)(4)(c)(ii). Small changes to correct grammatical errors and to conform to rule-writing standards.

(F)(3) and (O)(5)(b). Paragraph references corrected.

(F)(6). Language added to clarify that the Chief has the authority to not require the permittee to wait an additional 12 months after seeding for minor repairs before applying for a phase III release, provided the Chief determines the extent of the area of repair was limited in size and the permittee remains in compliance with paragraph (G)(3)(b).

(I)(1), (5) and (6). Revised to update information about target yields and how the public can access this information.

*** DRAFT – NOT FOR FILING ***

Dated 2/14/2014

1501:13-9-15 **Revegetation.**

(A) Definitions.

(1) "Countable tree" means a tree or shrub that:

(a) Is in place for at least two years;

(b) Is alive and healthy;

(c) Has at least one-third of its length in live crown, with green foliage during its growing season, and is not diseased or insect-infested; and

(d) Has a root crown or root sprouts over one foot in height. Root crowns or root sprouts over one foot in height shall count as one towards meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(2) "Ground cover" means the area of ground covered by the aerial parts of perennial and biennial vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

(3) "Herbaceous species" means grasses and non-woody legumes.

(4) "Woody plants" means woody shrubs, trees, and vines.

(B) General requirements. The permittee shall establish on regraded areas and on all other disturbed areas except water areas and the surface areas of roads that are approved as part of the postmining land use, and other small incidental areas where revegetation would conflict with the postmining land use and no environmental harm would result, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the chief;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(C) Use of native and introduced species.

(1) The reestablished plant species shall:

(a) Be compatible with the approved postmining land use;

(b) Have the same seasonal characteristics of growth as the original vegetation;

(c) Be capable of self-regeneration and plant succession;

(d) Be compatible with the plant and animal species of the area; and

(e) Meet the requirements of applicable state and federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(2) The chief may grant exceptions to the requirements of paragraphs (C)(1)(b) and (C)(1)(c) of this rule when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(3) When the chief approves a cropland postmining land use, the chief may grant exception to the requirements of paragraphs (B)(1), (B)(3), (C)(1)(b) and (C)(1)(c) of this rule. The requirements of rule 1501:13-13-03 of the Administrative Code apply to areas identified as prime farmland.

(D) Time of revegetation. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after replacement of the topsoil or topsoil substitute. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed areas shall be seeded and planted as contemporaneously as practicable after the completion of backfilling, grading, and topsoiling with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

(E) Mulching and other soil stabilizing practices.

(1) Suitable mulch and/or other stabilizing practices shall be used on all areas that have been regraded and resoiled in order to control erosion, promote germination of seeds, or increase the moisture-retention capacity of the soil. The chief may suspend the requirements for mulch if the permittee can demonstrate that:

(a) Seasonal, soil, or slope factors result in a condition for which mulch and other soil-stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover; and

(b) Alternative procedures will achieve the revegetation success standards of this rule for the approved postmining land use and will not cause or contribute to air or water pollution.

(2) Annual grasses and grains may be used alone as natural mulch, or in conjunction with another mulch, when the chief determines that they will provide adequate soil erosion control and cover and will later be replaced by perennial species approved for the postmining land use.

(3) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

(F) General requirements for measuring success of revegetation.

(1) Success standards will differ depending on the approved postmining use of an area. In all revegetation efforts, the general requirements of this rule shall be met and the success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the requirements of paragraphs (B) and (C) of this rule. Statistically valid sampling techniques for measuring success of ground cover, production, or stocking for final performance security release shall be specified in guidelines for evaluating revegetation success compiled by the chief. The statistical sampling techniques shall use a ninety per cent confidence interval (i.e., one-sided test with a 0.10 alpha error).

(2) Except as provided in paragraph (F)(2)(a) of this rule the period of extended responsibility for revegetation success under the performance security requirement shall continue for not less than five full years.

(a) On lands eligible for remining included in permits issued pursuant to the requirements of rule 1501:13-4-12 of the Administrative Code and renewals thereof, the period of extended responsibility for revegetation success under the performance security requirement shall continue for not less than two full years.

(3) Except as provided in paragraph (F)(3)(a) of this rule, the period of extended responsibility shall begin on the date of the last augmented seeding, fertilizing, planting or other work necessary to ensure successful vegetation. The date of this last seeding, fertilizing, planting or other work shall be the same date that is recorded in the planting report required in paragraph ~~(O)~~(P) of this rule.

(a) For row crops planted on areas to be used for agricultural cropland, including prime farmland, the period of extended responsibility for revegetation shall commence on the date on which the initial planting of the crop has been

completed. Promptly thereafter, the chief shall inspect the area to verify that the initial planting has been completed.

(4) The following practices will not be considered augmentative when the practice and the rate of application is an accepted local practice for comparable unmined lands that can be expected to continue as a postmining practice:

(a) Seeding, applying soil amendments, and irrigating to maintain productivity, as recommended by or as specified in technical guidelines published by the Ohio state university cooperative extension service as normal practices on cropland, pasture land or grazing land;

(b) Limited repair of rills and gullies. The chief will classify instances of rill and gully erosion repair as either limited or extensive, based on the extent of repairs needed and the cause of the erosion. The chief will consider extensive repairs to be augmentative;

(c) Reseeding and adding soil amendments when necessary to repair damage to land and/or established permanent vegetation~~,~~ that is unavoidably disturbed in order to meet the reclamation standards of this chapter, provided that:

(i) The damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan, inappropriate reclamation practices on the part of the permittee, or the lack of established permanent vegetation; and

(ii) The total acreage of repaired areas under paragraphs (F)(4)(b) and (F)(4)(c) of this rule does not exceed ten ~~percent~~per cent of the total land affected, with no individual area exceeding three acres;

(d) Replanting of trees as a reinforcement measure on areas for which the approved planting plan requires woody vegetation; and

(e) Reseeding of legumes within three years after the initial planting where the legumes are expected to be present at the end of the period of extended responsibility.

(5) Reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or initial seeding of areas upon which the sediment control system was located and subsequently removed will not restart the period of extended responsibility for revegetation success.

(6) For the purposes of paragraphs (F)(4)(c) and (F)(5) of this rule, permanent vegetation that is established or reestablished on these areas must have been seeded a minimum of twelve months prior to the request for phase III

performance security release unless the chief determines the extent of the area of repair was limited in size and the permittee remains in compliance with paragraph (G)(3)(b).

(G) Revegetation success standards for pasture or grazing land.

(1) Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the reclamation plan.

(2) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when the species planted in accordance with the approved reclamation plan, including natural succession and non-noxious volunteer species consistent with the reclamation plan, are established and the area has sufficient ground cover to control erosion. As used in this paragraph, "established" means that individual plants have matured to the point that they are deriving their nourishment from the soil instead of from stored food in the seed. Development of secondary leaves is considered an indication that a plant is established.

(3) Revegetation shall be determined to be successful for a phase III performance security release when:

(a) The period of extended responsibility has expired and the species planted in accordance with the approved reclamation plan, including natural succession and non-noxious volunteer species consistent with the reclamation plan, equal or exceed the county average yield for hay for any two years of the period of extended responsibility except the first year; and

(b) For the last year of the period of extended responsibility and one additional year, except the first year, the ground cover shall equal or exceed ninety per cent and no single area with less than thirty per cent cover shall exceed the lesser of three thousand square feet or 0.3 per cent of the land affected.

(H) Revegetation success standards for areas to be used for agricultural cropland, other than prime farmland.

(1) Revegetation shall be determined to be successful for a reclamation phase approval or a phase II performance security release for row and hay crops when the species planted in accordance with the approved reclamation plan meet, at a minimum, the ground-cover standards of paragraph (G)(2) of this rule.

(2) Revegetation shall be determined to be successful for a phase III performance security release for row and hay crops when:

(a) The period of extended responsibility has expired and the yield data of crop harvest on the mined area for any two years of the period of extended responsibility, except the first year, equals or exceeds the average county yield for comparable crops and hay crops; and

(b) The vegetation meets, at a minimum, the ground cover standards of paragraph (G)(3)(b) of this rule during the last year of the period of extended responsibility.

(I) Revegetation success standards for prime farmland.

(1) The success in revegetation shall be determined on the basis of an average crop production from the reclaimed prime farmland areas compared to the target yields specified in the ~~"Soil Data Mart" operated~~web soil survey administered by the U.S. department of agriculture, natural resources conservation service, as approved by the chief. The website for the ~~"Soil Data Mart" is http://soildatamart.nrcs.usda.gov~~web soil survey is http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm.

(2) The measurement of soil productivity shall be initiated within ten years after completion of soil replacement.

(3) The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.

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

(5) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release for row and hay crops when the yield data from three years of crop harvest on the mined area equals or exceeds the target yields specified in the ~~"Soil Data Mart" operated~~web soil survey administered by the U.S. department of agriculture, natural resources conservation service, as approved by the chief. The website for the ~~"Soil Data Mart" is http://soildatamart.nrcs.usda.gov~~web soil survey is http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm.

(6) Revegetation shall be determined to be successful for a phase III performance security release for row and hay crops when the period of extended responsibility has expired and the yield data from at least three years of crop harvest on the mined area equals or exceeds the target yields specified in the ~~"Soil Data Mart" operated~~web soil survey administered by the U.S. department

of agriculture, natural resources conservation service, as approved by the chief. The website for the ~~"Soil Data Mart" is http://soildatamart.nrcs.usda.gov~~web soil survey is http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm. The same yield data that was submitted for the phase II approval or the phase II release may be submitted for the phase III release.

(7) The average crop yield for prime farmland may be adjusted, if approved by the chief with the concurrence of the U.S. natural resources conservation service, for:

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

(b) Differences in specific management practices when the overall management practices of the crops being compared are equivalent.

(J) Revegetation success standards for areas for which the postmining land use is industrial, residential, or commercial use, other than commercial forest land.

(1) For areas to be developed for the intended postmining land use within two years after regrading is completed:

(a) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when the species planted in accordance with the approved mining and reclamation plan provide sufficient ground cover to control erosion; and

(b) Revegetation shall be determined to be successful for a phase III performance security release in the last year of the period of extended responsibility for revegetation success when substantial construction has begun, the area not disturbed by construction activity has sufficient ground cover to control erosion and the period of extended responsibility has expired.

(2) For areas to be developed for the intended postmining land use two or more years after regrading is completed, revegetation shall meet the ground cover success standards contained in paragraph (G)(2) of this rule for reclamation phase II approval or phase II performance security release and paragraph (G)(3)(b) of this rule for phase III performance security release, except that only one ground cover evaluation in the last year of the period of extended responsibility for revegetation success is necessary for phase III performance security release.

(K) General requirements for woody vegetation.

(1) For areas for which the approved postmining land use requires woody plants as the primary vegetation, success of revegetation shall be determined on the basis of tree, shrub, or half-shrub stocking and ground cover to ensure that

commercial tree species, non-commercial tree species, or shrubs, sufficient for adequate use of available growing space, are established after coal mining.

(2) Quality stock and proven field techniques in the science of woody revegetation on mined areas shall be employed.

(3) The chief shall determine the appropriate stocking level of trees and shrubs, the appropriate species of trees and shrubs, the appropriate herbaceous species and mixtures of herbaceous species, and the appropriate planting arrangement after consultation with and approval by the division of forestry for areas where the approved postmining land use is forest, or consultation with and approval by the division of wildlife for areas where the approved postmining land use is fish and wildlife habitat or undeveloped land.

(4) The number of stems per unit area will be used to determine the degree to which space is occupied by properly distributed acceptable trees. Volunteer stems of acceptable tree species may also be counted.

(L) Revegetation success standards for forest land, fish and wildlife habitat, or other postmining land uses that require establishment of woody vegetation.

(1) For areas where the approved postmining land use is forest or fish and wildlife habitat, revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when:

(a) There are at least six hundred trees or shrubs per acre on each acre on which trees or shrubs are to be planted; and

(b) The herbaceous ground cover provides the greater of thirty per cent cover or sufficient cover to control erosion.

(2) Revegetation shall be determined to be successful for a phase III performance security release in the last year of the period of extended responsibility for revegetation success when the period of extended responsibility has expired, the herbaceous ground cover is at least seventy per cent, and:

(a) For areas where the approved postmining land use is forest, the area has a minimum of four hundred fifty countable trees per acre, of which a minimum of seventy-five per cent are commercial tree species, and of which eighty per cent have been in place for at least three years, on each acre on which trees or shrubs are to be planted; or

(b) For areas where the approved postmining land use is fish and wildlife habitat, the area has a minimum of two hundred fifty countable trees per acre, of which eighty per cent have been in place for at least three years, on each acre on which trees or shrubs are to be planted.

(M) Revegetation success standards for undeveloped land.

(1) For areas for which the approved postmining land use is undeveloped land, success of revegetation shall be determined on the basis of ground cover and the proper planting of appropriate tree and shrub species specified in the approved planting plan. Such plans shall include tree or shrub plantings over ten to fifty per cent of the revegetated area. Planting locations shall include slopes steeper than twenty degrees and areas along drainways and permanent sources of water.

(2) In addition to meeting the general requirements for woody vegetation contained in paragraphs (K)(2) and (K)(3) of this rule, the selected tree and shrub species and herbaceous ground cover species shall have value as wildlife habitat, and the herbaceous ground cover species shall be compatible with the growth of acceptable species of trees and shrubs, as determined by the chief with consultation of the division of wildlife.

(3) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when the herbaceous ground cover species are established and provide sufficient ground cover to control erosion.

(4) Revegetation shall be determined to be successful for a phase III performance security release when the period of extended responsibility has expired, and:

(a) Acceptable species of trees and shrubs have been properly planted and in accordance with the approved planting plan at a rate of six hundred trees or shrubs per acre on each acre on which trees or shrubs are to be planted;

(b) The herbaceous ground cover on areas not planted with trees or shrubs meets the ground cover standards of paragraph (G)(3)(b) of this rule, except that only one ground cover evaluation in the last year of the period of extended responsibility for revegetation success is necessary for phase III performance security release; and

(c) The herbaceous ground cover on areas on which trees or shrubs are planted is at least seventy per cent in the last year of the period of extended responsibility for revegetation success.

(N) Revegetation success standards for recreation areas.

(1) For areas where the approved postmining land use is developed recreation facilities, including but not limited to portions of parks, camps, and amusement areas where woody vegetation would be incompatible with the approved postmining land use, the area shall meet the ground cover standards of paragraph (G)(2) of this rule for reclamation phase II approval or phase II

performance security release and paragraph (G)(3)(b) of this rule for phase III performance security release, except that only one ground cover evaluation in the last year of the period of extended responsibility for revegetation success is necessary for phase III performance security release.

(2) For areas where the approved postmining land use is recreation area with less intensive uses, such as hiking or canoeing, the area shall meet the general requirements for woody vegetation in accordance with paragraph (K) of this rule, and the revegetation success standards of paragraph (L)(1) of this rule for reclamation phase II approval or phase II performance security release and paragraph (L)(2) of this rule in the last year of the period of extended responsibility for revegetation success for phase III performance security release.

(O) Revegetation success standards on lands eligible for remining.

(1) For pasture and grazing land:

(a) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when the standards of paragraph (G)(2) of this rule are met; and

(b) Revegetation shall be determined to be successful for a phase III performance security release when the period of extended responsibility has expired and the species planted in accordance with the approved reclamation plan, including natural succession and non-noxious volunteer species consistent with the reclamation plan, have provided, during the last year of the period of extended responsibility, ground cover equal to or exceeding seventy percent cover and adequate to control erosion, with no single area with less than thirty percent cover exceeding the lesser of three thousand square feet or 0.3 per cent of the land affected.

(2) For cropland, other than prime farmland:

(a) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when the standards of paragraph (G)(2) of this rule are met; and

(b) Revegetation shall be determined to be successful for a phase III performance security release when:

(i) The period of extended responsibility has expired and the yield data of crop harvest on the mined area for any year of the period of extended responsibility, except the first year, equals or exceeds the average county yield for comparable crops and hay crops; and

(ii) The vegetation meets, at a minimum, the ground cover standards of paragraph (O)(1)(b) of this rule during the last year of the period of extended responsibility.

(3) For industrial, residential, or commercial land use, other than commercial forest land:

(a) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when vegetation meets the ground cover success standards of paragraph (G)(2) of this rule; and

(b) Revegetation shall be determined to be successful for a phase III performance security release when vegetation meets the standards of paragraph (O)(1)(b) of this rule.

(4) For forest land, fish and wildlife habitat, or other land use which requires the establishment of woody vegetation:

(a) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release when vegetation meets the success standards of paragraph (L)(1) of this rule; and

(b) Revegetation shall be determined to be successful for a phase III performance security release when vegetation meets the standards of paragraph (L)(2) of this rule, except that of the minimum countable trees per acre, eighty per cent have been in place for at least two years, on each acre on which trees or shrubs are to be planted.

(5) For undeveloped land:

(a) Success of revegetation shall be determined as provided in paragraphs (M)(1), (M)(2) and (M)(3) of this rule; and

(b) Revegetation shall be determined to be successful for a phase III performance security release when the period of extended responsibility has expired and the vegetation meets the requirements of paragraph (M)~~(3)~~(4) of this rule except that the herbaceous ground cover on areas not planted with trees or shrubs must meet the standards of paragraph (O)(1)(b) of this rule.

(6) For recreation areas:

(a) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release, for areas where herbaceous vegetation comprises the ground cover, when the standard of paragraph (G)(2) of this rule are met;

(b) Revegetation shall be determined to be successful for a phase III performance security release, for the areas listed in paragraph (O)(6)(a) of this rule, when the standards of paragraph (O)(1)(b) of this rule are met;

(c) Revegetation shall be determined to be successful for a reclamation phase II approval or a phase II performance security release, for areas which require the planting of woody vegetation as described in paragraph (N)(2) of this rule, when the standards of paragraph (L)(1) of this rule are met; and

(d) Revegetation shall be determined to be successful for a phase III performance security release for areas listed in paragraph (O)(6)(c) of this rule, when the standards of paragraph (L)(2) of this rule are met.

(P) Planting report. Upon completion of planting, the permittee shall file planting reports with the chief, on a form prescribed and furnished by the chief, providing the following information:

(1) Permit number;

(2) The type of planting or seeding, including mixtures and amounts;

(3) The date of planting, seeding, or reseeding;

(4) The area of land planted; and

(5) Such other relevant information as the chief may require.

Draft Rule 1501:13-9-16, dated 11/28/2012.

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

(A)(1), (A)(2) and (B)(1). Small changes to correct grammatical errors and use consistent terms.

(B)(1). Revised to add a reference to Chapter 1513. of the Revised Code.

DRAFT - NOT FOR FILING

Dated 11/28/2012 Five-year review rule.

1501:13-9-16 Cessation of operations.

(A) Temporary cessation.

(1) Each person who conducts coal mining operations shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his ~~obligations~~or her obligation to comply with any provisions of the approved plan of mining and reclamation for ~~such~~the permit.

(2) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond thirty days, ~~persons who conduct~~a person who conducts coal mining operations shall submit to the chief a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, ~~and~~ identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation, and an estimate of the date that operations will resume.

(B) Permanent cessation.

(1) Persons who cease coal mining operations permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with Chapter 1513. of the Revised Code, these rules and the approved plan of mining and reclamation for the permit ~~area~~.

(2) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the chief as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

Draft Rule 1501:13-9-17, dated 9/24/2014.

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

(B). Noun changed to singular and verb tense changed to present perfect tense to mirror 30 CFR 816.133 (b) and to match the singular noun use of (B)(1) and (2). Comma added to (B)(1).

(D)(2) and (D)(7). Provisions added from 30 CFR 816.133 (c)(3)(i) and (iv). Two criteria that must be met to have an alternative postmining land use approved are: The use will not be impractical or unreasonable, and the use will not cause or contribute to violation of Federal State, or local law.

(D)(8). Rule reference corrected.

DRAFT - NOT FOR FILING

Dated 9/24/2014

1501:13-9-17 Postmining use of land.

(A) All affected areas shall be reclaimed in a timely manner:

(1) To conditions that are capable of supporting the uses which they were capable of supporting before any mining; or

(2) To higher or better uses achievable under criteria and procedures of paragraph (D) of this rule.

(B) The premining uses of land to which the postmining land ~~uses are~~use is compared shall be those uses which the land previously supported, if the land ~~had~~has not been previously mined and ~~had~~has been properly managed.

(1) The postmining land use for land that was mined pursuant to a license issued prior to April 10, 1972, shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(2) The land may be returned to the undeveloped postmining land use category only if the land was categorized as undeveloped land prior to mining.

(C) "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land use is categorized in the following categories. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the chief pursuant to paragraph (D) of this rule.

(1) The cropland category includes land in the production of adapted 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 used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(2) The pastureland category includes land occasionally cut for hay and land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(3) The grazingland category includes both grassland and forest land where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(4) The industrial category includes land used for extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(5) The commercial category includes land used for retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.

(6) The developed water resources category includes land used for storing water for beneficial uses such as

stockponds, irrigation, fire protection, flood control, and water supply.

(7) The recreation category includes land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing and other undeveloped recreational uses.

(8) The residential category includes land used for single and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(9) The forest category includes land used for the commercial or noncommercial production of wood, wood fiber, or wood derived products and land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations.

(10) The fish and wildlife habitat category includes land used wholly or partially for the production, protection or management of species of fish or wildlife.

(11) The undeveloped land use category includes land that is not currently being used or managed or, if previously used or managed, is land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(D) An alternative postmining land use may be approved by the chief of the division of reclamation, after consultation with the landowner or the land management agency having jurisdiction over state or federal lands, if the following criteria are met.

(1) The proposed land use is compatible with adjacent land use and, where applicable, with existing local, state, or federal land use policies and plans.

(2) The use will not be impractical or unreasonable.

~~(2)~~ (3) The plans show the feasibility of the postmining land use and include a schedule showing how the proposed use will be developed and achieved within a reasonable time.

~~(3)~~ (4) The plans include letters of commitment from other parties to provide for necessary public facilities that are required for the proposed use.

~~(4)~~ (5) The proposed use or uses will neither present actual or probable hazard to public health or safety, nor will they pose any actual or probable threat of water flow diminution or pollution.

~~(5)~~ (6) The use or uses will not involve unreasonable delays in reclamation.

~~(6)~~ (7) The use will not cause or contribute to violation of Federal, State, or local law.

~~(6)~~ (8) The proposed postmining land use identifies measures to prevent or mitigate adverse effects on fish and wildlife, and threatened or endangered plants or animals or their critical habitats, and an opportunity to comment has been provided in accordance with ~~rule 1501:13-9-11~~paragraph (A)(3) of rule 1501:13-5-01 of the Administrative Code to appropriate state and federal fish and wildlife management agencies.

Draft Rule 1501:13-10-01, dated 12/18/2013.

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

(B)(2) and (G)(1)(a). Small grammatical corrections.

(G)(4)(f). Sentence re-worded to clarify its meaning and to mirror the language of 30 CFR 816.151(d)(6) and 30 CFR 817.151(d)(6).

*** DRAFT – NOT FOR FILING ***

Dated 12/18/2013. Amendment in (G)(4)(f).

1501:13-10-01 **Roads: performance standards.**

(A) Road classification system.

(1) Each road shall be classified as either a primary road or a secondary road.

(2) A "primary road" is any road which is:

(a) Used for transporting coal or spoil;

(b) Frequently used for access or other purposes for a period in excess of six months; or

(c) To be retained for an approved postmining land use.

(3) A "secondary road" is any road not classified as a primary road.

(B) Performance standards. Primary and secondary roads shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters;

(5) Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels;

(7) Prevent or control damage to public or private property; and

(8) Use nonacid- or nontoxic-forming substances in road surfacing.

(C) Design and construction limits and establishment of design criteria. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the chief.

(D) Location.

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the chief in accordance with paragraphs (A), (B), (E), (F), (J), (K) and (M) of rule 1501:13-9-04 of the Administrative Code.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(E) Maintenance.

(1) A road shall be maintained throughout the life of the permit to meet the performance standards of this rule and any additional criteria specified by the chief.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

(F) Reclamation. A road not to be retained for use under an approved postmining land use shall be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts;

(3) Restoring the natural drainage patterns;

(4) Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain;

(5) Scarifying or ripping the road bed, replacing topsoil and revegetating disturbed surfaces in accordance with rules 1501:13-9-03 and 1501:13-9-15 of the Administrative Code; and

(6) Removing or otherwise disposing of road-surfacing materials that interfere with the postmining land use.

(G) Primary roads. In addition to paragraphs (A) to (F) of this rule, primary roads shall meet the requirements of paragraph (G) of this rule.

(1) Certification.

(a) The plans and drawings of primary roads shall be prepared by, or under the direction of, an engineer, and shall be certified by an engineer, or jointly by an engineer and a surveyor to the extent such joint certification is permitted by state law, as meeting: the requirements of Chapters 1501:13-1 to 1501:13-14 of the Administrative Code; current, prudent engineering practices; and any design criteria established by the chief.

(b) The construction or reconstruction of primary roads shall be certified in a report to the chief by an engineer or a surveyor, or jointly by an engineer and a surveyor to the extent required by state law, as having been completed as designed and in accordance with the approved plan.

(2)

(a) Location. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

(b) Stream fords by primary roads are prohibited unless they are specifically approved by the chief as temporary routes during periods of construction.

(3) Stability. Each primary road embankment shall have a minimum static safety factor of 1.3 or be designed in accordance with paragraph (M)(2) of rule 1501:13-4-05 or paragraph (L)(2) of rule 1501:13-4-14 of the Administrative Code.

(4) Drainage control.

(a) Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to pass the peak runoff safely from a ten-year, six-hour precipitation event or greater event, as specified by the chief.

(b) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(c) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

(d) Culverts shall be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(e) Natural stream channels shall not be altered or relocated without the prior approval of the chief in accordance with rule 1501:13-9-04 of the Administrative Code.

(f) Except as provided in paragraph (G)(2)(b) of this rule, drainage structures - ~~shall be used~~ for stream channel crossings shall be made using bridges, culverts or other structures designed, constructed, and maintained using current, prudent engineering ~~practice~~practices.

(5) Surfacing. Primary roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the chief as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(6) Maintenance. Routine maintenance of primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall also include revegtation, brush removal, and minor reconstruction of road segments as necessary.

Draft Rule 1501:13-12-01, dated 1/22/2013.

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

(B). Revised to clarify that underground operations must meet all applicable requirements of Chapter 1513. of the Revised Code.

*** DRAFT – NOT FOR FILING ***

Dated 1/22/13

1501:13-12-01 **Underground operations.**

(A) Underground operations shall comply with Chapters 1501:13-1 to 1501:13-14 of the Administrative Code except where indicated otherwise.

(B) Underground ~~operation~~operations shall ~~also~~ comply with ~~section 1513.35~~all applicable requirements of Chapter 1513. of the Revised Code.

Draft Rule 1501:13-13-03, dated 11/28/2012.

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

(B). Small corrections.

(D). Paragraph reference corrected.

(E)(1). Small grammatical correction. Revised to change "of" to "to" to mirror the language of 30 CFR 823.14 (b).

DRAFT - NOT FOR FILING

Dated 11/28/12 Five-year review rule.

1501:13-13-03 Operations on prime farmland.

(A) Special requirements. Coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:

(1) A permit shall be obtained for those operations under paragraph (F) of rule 1501:13-4-12 of the Administrative Code; and

(2) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with paragraphs (B) and (C) of this rule and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the chief shall specify methods to control erosion of exposed overburden.

(B) Soil reconstruction specifications. The chief shall use soil reconstruction specifications established by the U.S. ~~soil~~natural resources conservation service for prime farmland soil removal, storage, replacement, and reconstruction as guidelines in carrying out his or her responsibilities under paragraph (F) of rule 1501:13-4-12 of the Administrative Code and Chapter 1501:13-7 of the Administrative Code.

(C) Soil removal.

(1) Coal mining and reclamation operations on prime farmland shall be conducted to:

(a) Separately remove the topsoil or other suitable soil materials if such soil materials will create a final soil having a greater productive capacity than that which existed prior to mining. If not utilized immediately the material shall be stockpiled separately from other rooting medium and spoil; and

(b) Separately remove the B horizon of the soil, or a combination of B horizon and underlying C horizon, or other suitable soil material if such soil material will create a reconstructed soil of equal or greater productive capacity than that which existed before mining.

(2) The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of paragraph (E)(1) of this rule.

(D) Soil stockpiling. If not utilized immediately, the topsoil or other suitable soil materials specified in paragraph (C)(1)(a) of this rule and the B horizon or other suitable soil materials specified in paragraph (C)(1)(b) of this rule shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than thirty days shall meet the requirements of paragraph ~~(D)~~(E) of rule 1501:13-9-03 of the Administrative Code.

(E) Soil replacement. Coal mining and reclamation operations on prime farmland shall be conducted according to the following:

(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight inches, or a depth equal to the depth ~~of~~to a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The chief shall specify a depth greater than forty-eight inches~~,~~

wherever necessary to restore productive capacity. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity;

(2) Soil material shall only be replaced on land which has been first returned to final grade and scarified according to paragraph (C) of rule 1501:13-9-03 of the Administrative Code, unless site-specific evidence is provided and approved by the chief showing that scarification or its equivalent will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield;

(3) The soil horizons or other suitable soil materials shall be replaced with proper compaction and uniform depth;

(4) The B horizon or other suitable material specified in paragraph (C)(1)(b) of this rule shall be replaced to the thickness needed to meet the requirements of paragraph (E) of this rule;

(5) The topsoil or other suitable soil materials specified in paragraph (C)(1)(a) of this rule shall be replaced as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in paragraph (F)(2)(a) of rule 1501:13-4-12 of the Administrative Code, and shall be placed in a manner that protects the surface layer from wind and water erosion before it is seeded or planted; and

(6) Nutrients and soil amendments shall be applied as needed to establish vegetative growth quickly.

(F) Revegetation. Each person who conducts coal mining and reclamation operations on prime farmland shall meet the ground-cover and cropping requirements specified under rule 1501:13-9-15 of the Administrative Code.

Draft Rule 1501:13-14-01, dated 2/12/2014.

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

(A)(2)(b). Revised to move the phrase "Conducted under a D-permit" because it is outdated and no longer needed; all coal mining in Ohio is now conducted under D permits.

*** DRAFT – NOT FOR FILING ***

Dated 2/12/2014

1501:13-14-01 **Inspections.**

(A) For purposes of this rule:

(1) "Chief" shall mean the chief, his or her authorized representative, or any inspection officer.

(2) "Inactive coal mining and reclamation operation" means an operation:

(a) For which the chief has secured from the permittee the written notice required under paragraph (A) of rule 1501:13-9-16 of the Administrative Code; or

(b) ~~Conducted under a D-permit, for~~For which reclamation phase II as defined in paragraph (B)(1)(b) of rule 1501:13-7-05 or paragraph (B)(1)(b) of rule 1501:13-7-05.1 of the Administrative Code has been completed.

(3) "Abandoned coal mining and reclamation operation" means an operation where the chief has found in writing that:

(a) All surface and underground coal mining and reclamation activities at the site have ceased;

(b) The chief has issued at least one notice of violation, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order;

(c) The chief:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to rules 1501:13-14-02 and 1501:13-14-06 of the Administrative Code, or section 1513.02, 1513.15, 1513.40, or 1513.99 of the Revised Code to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances, the chief concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(d) Where the site is, or was, permitted and performance security was provided:

(i) The permit has either expired or been revoked; and

(ii) The chief initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance security.

(4) "Active coal mining and reclamation operation" means an operation other than an inactive or abandoned coal mining and reclamation operation.

(B) The chief shall have a right of entry to, upon, or through any coal mining and reclamation operations, coal exploration operations, any premises in which any records required to be maintained are located and any area of land upon which the chief has reason to believe that coal mining and reclamation operations are being conducted.

(C) The chief shall conduct an average of at least one partial inspection per month of each active coal mining and reclamation operation under his or her jurisdiction, and shall conduct such partial inspections of each inactive coal mining and reclamation operation under his or her jurisdiction as are necessary to ensure effective enforcement. A "partial inspection" is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under Chapter 1513. of the Revised Code and these rules.

(1) If the chief or his or her authorized representative conducts an aerial inspection, the aerial inspection shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days after the aerial inspection, provided that any indication of a condition, practice or violation constituting cause for issuance of a cessation order under division (D)(1) of section 1513.02 of the Revised Code shall be investigated on site immediately, and provided further that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraph (C) or (D) of this rule.

(D) The chief shall conduct an average of at least one complete inspection per calendar quarter of each active and inactive coal mining and reclamation operation under his or her jurisdiction. A "complete inspection" is an on-site review of a person's compliance with all permit conditions and requirements imposed under Chapter 1513. of the Revised Code and these rules.

(E) In lieu of the inspection frequency established in paragraphs (C) and (D) of this rule, the chief shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under paragraph (E) of this rule, the chief shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (E)(2) of this rule. Following the inspection and public notice, the chief shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(a) How the site meets each of the criteria under the definition of an abandoned site under paragraph (A)(3) of this rule and thereby qualifies for a reduction in inspection frequency;

(b) Whether, and to what extent, there exist on the site impoundments, earthen structures, or other conditions that pose, or may reasonably be expected to pose imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(c) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(d) The degree to which erosion and sediment control is present and functioning;

(e) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools, and other public or commercial buildings and facilities;

(f) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(g) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (E)(1) of this rule shall be provided as follows:

(a) The chief shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty-day period in which to submit written comments; and

(b) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the performance security status of the permit, the telephone number and address where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

(F) The chief shall conduct such inspections of all coal exploration operations as are necessary to ensure compliance with Chapter 1513. of the Revised Code and rules adopted thereunder.

(G) Except as provided in paragraph (M) of this rule, the inspections required under paragraphs (C), (D), (E), and (F) of this rule shall:

(1) Occur without advance notice or search warrant and upon presentation of appropriate credentials;

(2) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, holidays, and weekends;

(3) Occur without prior notice to the permittee or operator being inspected or any agent or employee of such permittee or operator, except for necessary on-site meetings;

(4) Include the prompt filing of inspection reports or other documents adequate to enforce the requirements of and to carry out the terms and purposes of Chapter 1513. of the Revised Code and rules adopted thereunder;

(5) Include the collection of evidence with respect to every violation; and

(6) Allow for inspection of any monitoring equipment or method of exploration or operation and allow access to and acquisition of copies of any records required to be maintained under Chapter 1513. of the Revised Code and rules adopted thereunder.

(H) Citizen's request for inspection.

(1) A citizen may request an inspection by furnishing to the chief a signed, written statement (or an oral report followed by a signed, written statement) giving:

(a) The reason for believing that a violation exists; and

(b) A phone number and address where the citizen can be contacted.

(2) The identity of any person supplying the information to the chief in a request for an inspection shall remain confidential, if requested by the person, unless the person elects to accompany the inspector on the inspection or unless disclosure is required under the state's freedom of information laws.

(3) If an inspection is to be conducted as a result of information provided by the citizen, the citizen shall be notified as far in advance as is practicable when the inspection is to occur and shall be allowed to accompany the inspector. The citizen shall be in the presence of and under control, direction, and supervision of the inspector during the inspection. The citizen does not have the right to enter buildings without consent of the permittee or without a search order.

(4) Within ten days of the inspection or, if there is no inspection, within fifteen days of receipt of the citizen's written statement, the chief or his or her representative shall send the citizen and the permittee the following:

(a) If an inspection was made, a description of the enforcement action taken or an explanation of why no enforcement action was taken;

(b) If no inspection was conducted, an explanation of the reason why; and

(c) An explanation of the citizen's right to informal review of the action of the chief.

(5) The chief shall give copies of all materials in paragraphs (H)(4)(a) and (H)(4)(b) of this rule within the time limits specified in those paragraphs to the person, permittee, or operator alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (H)(2) of this rule.

(I) Inspection of operations where coal is extracted incidental to the extraction of other minerals.

(1) Authorized representatives of the chief and of the U.S. secretary of the interior shall have the right to conduct inspections of operations claiming the exemption from the requirements of Chapter 1513. of the Revised Code in accordance with rule 1501:13-4-16 of the Administrative Code.

(2) Each authorized representative of the chief or of the U.S. secretary of the interior conducting an inspection under paragraph (I)(1) of this rule:

(a) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(b) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(c) Shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

(3) No search warrant shall be required with respect to any activity under paragraphs (I)(1) and (I)(2) of this rule, except that a search warrant may be required for entry into a building.

(J) Informal review.

(1) Any person who is or may be adversely affected by a coal mining and reclamation operation may request, in writing, the chief to review informally an authorized representative's or inspection officer's decision not to inspect or take appropriate enforcement alleged by that person in a request for inspection under paragraph (H) of this rule. The request for review shall include a statement of how the person is or may be adversely affected and why the decision merits review.

(2) The chief shall conduct the review and inform the person, in writing, of the results of the review within thirty days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the state's freedom of information laws.

(3) Informal review under this rule shall not affect any right to formal review or to a citizen's suit under Chapter 1513. of the Revised Code and rules adopted thereunder.

(K) Any person who is or may be adversely affected by coal exploration or a coal mining and reclamation operation may notify the chief, in writing, of any alleged failure to make adequate and complete or periodic inspections as provided in paragraphs (C), (D), (E), and (F) of this rule.

(1) The notification shall include sufficient information to create a reasonable belief that this rule is not being complied with and to demonstrate that the person is or may be adversely affected.

(2) The chief shall, within fifteen days of receipt of the notification, determine whether this rule is being complied with, and if not, shall immediately order an inspection.

(3) The chief shall furnish the complainant with a written finding, stating his or her determination and actions.

(L) The permittee or operator may accompany the chief during any inspection.

(M) Compliance review.

(1) A permittee may request an on-site compliance review with the chief or his or her authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such review shall not constitute an inspection within the meaning of division (C)(1) of section 1513.09 of the Revised Code or paragraph (C), (D), (E), or (F) of this rule.

(2) The chief or his or her authorized representative may accept or refuse any request to conduct a compliance review under paragraph (M)(1) of this rule.

(3) The chief or his or her authorized representative shall, at any compliance review, review the proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement under Chapter 1513. of the Revised Code, these rules, or the permit.

(4) Neither the holding of a compliance review under this rule nor any opinion given by the chief or his or her authorized representative at such review shall affect:

(a) Any rights or obligations of the state or the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance review; or

(b) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance review.