



Ohio Administrative Code

Rule 1501:13-4-16 Requirements for exemption for coal extraction incidental to the extraction of other minerals.

Effective: June 28, 2018

The purpose of this rule is to establish exemption criteria so that legitimate operators of industrial minerals mining operations regulated under Chapter 1514. of the Revised Code may extract coal which they encounter incidentally while recovering other minerals, without being subject to the permitting and performance standards of Chapter 1513. of the Revised Code. Continued qualification for the exemption from the requirements of Chapter 1513. of the Revised Code shall depend upon annual demonstration of maintenance of the required ratios between cumulative coal production and revenues and cumulative mineral production and revenues. Each pit or excavation site contained in a single surface mining permit may be included in a single exemption, but must individually comply with all of the requirements of this rule.

(1) This rule shall apply to the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

(2) Any person who plans to commence or continue coal extraction after the effective date of this rule in reliance on the incidental mining exemption shall file a complete request for exemption with the chief for each mining area. A person shall not commence coal extraction based upon the exemption until the chief approves such request, except as provided in paragraph (E)(3) of this rule.

(B) Definitions.

(1) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured. The cumulative measurement period shall be considered to have begun:

(a) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977; or



(b) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(2) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. Coal extracted and stockpiled may be excluded from cumulative production, and other minerals extracted and stockpiled may be included in cumulative production, if the requirements of paragraph (I) of this rule are met.

(3) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(4) "Mining area" means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(5) "Other minerals" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material, or any material mined and used on-site in the construction of waste disposal facilities

(C) Application requirements and procedures.

(1) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of this rule may continue mining operations for sixty days after such effective date. Coal extraction shall not continue after such sixty-day period unless that person files an administratively complete request for exemption with the chief. If a complete request is filed within sixty days, the person may continue extracting coal in reliance on the exemption beyond the sixty-day period until the chief makes an administrative decision on such request.

(2) Additional information. The chief shall notify the person seeking exemption if the request for exemption is incomplete and may at any time require submittal of additional information.



(3) Public comment period. Written comments regarding or objections to a request for exemption may be submitted to the chief by any person having an interest which is or may be adversely affected by a decision on the request for exemption within thirty days after the publication of the newspaper notice required by paragraph (D)(9) of this rule.

(D) Contents of request for exemption. A request for exemption shall include at a minimum:

(1) The name and address of the person seeking exemption;

(2) A list of the minerals sought to be extracted;

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

(5) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

(6) The basis for all annual production, revenue, and fair market value estimates;

(7) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(9) Evidence of one-time publication, in a newspaper of general circulation in the county of the mining area, of a public notice that a request for exemption has been filed with the chief. The public notice must identify the person claiming the exemption, must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation, and must



specify that comments may be submitted within thirty days to the "Division of Mineral Resources Management, 2045 Morse Road, Building H, Columbus, Ohio 43229";

(10) Representative stratigraphic cross-section(s) based on test borings or on other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of the innerburden and overburden;

(11) A map of appropriate scale which clearly identifies the mining area;

(12) A general description of mining and mineral processing activities for the mining area;

(13) A summary of sales commitments and agreements for future delivery, if any, which the person seeking exemption has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(14) If the other minerals are to be commercially used by the person seeking exemption, a description specifying the use;

(15) For operations having extracted coal or other minerals prior to filing a request for exemption, in addition to the information required above, the following information must also be submitted:

(a) Any relevant documents the operator has received from the chief documenting its exemption from the requirements of the Chapter 1513. of the Revised Code;

(b) The cumulative production of the coal and the cumulative production of other minerals from the mining area; and

(c) Estimated tonnages of stockpiled coal and other minerals; and

(16) Any other information pertinent to the qualification of the operation as exempt.

(E) Exemption determination.



(1) No later than ninety days after filing of a complete request for exemption, the chief shall make a written determination whether, and under what conditions, the person claiming the exemption is exempt under this rule, and shall notify the person seeking exemption and persons submitting comments on the request for exemption of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the request for exemption and any other information available to the chief at that time.

(3) If the chief fails to provide a person seeking exemption with the determination as specified in paragraph (E)(1) of this rule, such a person who has not begun may commence coal extraction pending a determination on the request for exemption unless the chief issues an interim finding, together with reasons therefor, that the person shall not begin coal extraction.

(F) Administrative review.

(1) Any person adversely affected by a determination made pursuant to paragraph (E) of this rule may request administrative review within thirty days of the notification of such determination in accordance with section 1513.13 of the Revised Code.

(2) A notice of appeal filed under section 1513.13 of the Revised Code shall not suspend the effect of a determination under paragraph (E) of this rule.

(G) Requirements for exemption.

(1) Activities are exempt from the requirements of Chapter 1513. of the Revised Code if all of the following are satisfied:

(a) The cumulative production of coal extracted from the mining area and calculated annually does not exceed sixteen and two thirds percent of the total combined cumulative production of coal and other minerals removed during the cumulative measurement period for purposes of bona fide sale or reasonable commercial use;



(b) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use. For the purposes of this paragraph, the term immediately below means that the coal to be mined shall be located not more than three feet below the lowest other mineral to be mined;

(c) The cumulative revenue derived from the coal extracted from the mining area and calculated annually shall not exceed fifty percent of the total combined cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be used to calculate cumulative revenue;

(d) Other minerals mined in a mining area but not in the stratigraphic column of coal removed shall not be used to calculate cumulative production under paragraph (G)(1)(a) of this rule or cumulative revenue under paragraph (G)(1)(c) of this rule; and

(e) Augering of coal is not used as a mining method, except for permits issued prior to February 29, 1988, that had approved mining plans that allowed the augering of coal.

(2) A person seeking or that has obtained an exemption from the requirements of Chapter 1513. of the Revised Code shall comply with the following:

(a) Each mineral other than coal upon which an exemption under this rule is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

The initial request for exemption may be approved by the chief conditioned upon receipt, prior to the commencement of mining, of a legally binding agreement for the future sale of other minerals.

(b) If either coal or other minerals are transferred or sold by the operator to a related entity for its use



or sale, the transaction must be made for legitimate business purposes.

(H) Conditions of exemption. A person extracting coal in accordance with this rule shall:

(1) Maintain on-site or at other locations available to authorized representatives of the chief and of the U.S. secretary of the interior information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the request for exemption and exemption approved by the chief;

(2) Notify the chief upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

(3) Conduct operations in accordance with the approved request for exemption or, when authorized to extract coal under paragraph (C)(1) or (E)(3) of this rule prior to submittal or approval of request for exemption, in accordance with the standards of this rule.

(I) Stockpiling of minerals.

(1) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity, or use:

(a) Up to an amount equaling a twelve-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(b) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a twelve-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

(2) Minerals other than coal.

(a) The chief shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if:



(i) The operator fails to maintain adequate and verifiable records of:

(a) The mining area of origin; or

(b) The disposition of stockpiles; or;

(ii) The disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(b) The chief may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if:

(i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(ii) Except as provided in paragraph (I)(2)(c) of this rule, the stockpiled other minerals do not exceed a twelve-month supply of the mineral required for future sales as relied upon by the chief in the approved request for exemption.

(c) The chief may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve-month limit established in paragraph (I)(2)(b) of this rule if the operator can demonstrate to the chief's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(d) The chief may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (I)(2)(b) and (I)(2)(c) of this rule based on additional information available to the chief.

(J) Public availability of information.

(1) Except as provided in paragraph (J)(2) of this rule, all information submitted to the chief under



this rule shall be made available in accordance with section 149.43 of the Revised Code for public inspection and copying at the district office nearest the mining operation claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

(a) The chief may keep information submitted under this rule confidential if:

(i) The person submitting it requests in writing, at the time of submission, that it be kept confidential; and

(ii) The information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the person intending to conduct operations under this rule.

(b) Information requested to be held as confidential under paragraph (J)(2)(a) of this rule shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

(K) Reporting requirements.

(1) Following approval by the chief of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the chief, on a form provided by the chief, containing the information specified in paragraph (K)(4) of this rule.

(2) For purposes of the report, the cumulative measurement period defined in paragraph (B)(1) of this rule shall end on the anniversary of the date of issuance of the surface mining permit required under Chapter 1514. of the Revised Code. The report shall be filed no later than thirty days after each anniversary date of issuance of the surface mining permit.

(3) The information in the report shall cover:

(a) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve-month period; and

(b) The cumulative production of coal and other minerals and the cumulative revenue derived from



coal and other minerals.

(4) The report shall specify for each mining area, over both the preceding twelve-month period and the cumulative measurement period:

(a) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(b) The number of tons of coal extracted and used by the operator or transferred to or used by a related entity and the estimated total fair market value of such coal;

(c) The number of tons of coal stockpiled;

(d) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(e) The number of tons of other commercially valuable minerals extracted and used by the operator or transferred to or used by a related entity and the estimated total fair market value of such minerals;
and

(f) The number of tons of other commercially valuable minerals extracted and stockpiled by the operator.

(5) The report shall include projections for each mining area of the anticipated production of coal and of other minerals in the upcoming twelve-month period.

(6) The report shall be accompanied by documentation that a market will exist in the upcoming twelve-month period for each mineral other than coal on which the exemption is based. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate this standard.