



## Ohio Administrative Code

### Rule 1501:13-7-06 Performance security forfeiture criteria and procedures.

Effective: February 14, 2022

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(A) Performance security forfeiture criteria. The chief shall forfeit performance security under the procedures contained in paragraph (C) of this rule whenever any of the following criteria applies:

(1) The permittee failed to comply with a notice of violation issued for failure to complete any phase of reclamation within the time required by the mining and reclamation plan and any time extensions given for good cause; or

(2) The coal mining and reclamation operations on the area under performance security are abandoned; or

(3) The permittee lacks the ability to continue to operate in compliance with the requirements of Chapter 1513. of the Revised Code, these rules, or the permit; or

(4) The permittee defaults on the conditions under which the performance security was accepted.

(B) Opportunity to show cause why performance security should not be forfeited.

(1) Before performance security is forfeited under the criteria of paragraph (A)(2) or (A)(3) of this rule, because of abandonment of the coal mining and reclamation operation or inability of the permittee to comply, the chief shall order the permittee to show cause why the operation should not be deemed abandoned or why the permittee has the ability to comply with the requirements of Chapter 1513. of the Revised Code.

(2) The show cause order shall:

(a) Identify the coal mining and reclamation operations covered by the performance security to be forfeited;



(b) Give notice of the time, date, place, and purpose of the show cause hearing at which the permittee may show cause why the operation should not be deemed abandoned or why the permittee has the ability to comply with the requirements of Chapter 1513. of the Revised Code; and

(c) Be issued at least twenty-one days before the show cause hearing is held.

(3) If the chief determines that the show cause order sent by certified mail or other method able to track receipt of delivery is not received by the permittee within seven days after the order is mailed, the chief shall, as soon as possible, publish notice of the date, time, place, and purpose of the show cause hearing in a newspaper of general circulation in the locality of the operation.

(C) Forfeiture procedures. When performance security is to be forfeited, the chief shall issue a performance security forfeiture order to the permittee.

(1) The chief shall identify in the performance security forfeiture order the entire permit area or, when applicable, the incremental area or the incremental mining unit, for which performance security is to be forfeited. The order shall forfeit all remaining performance security on deposit for the permit.

(2) The performance security forfeiture order may include the terms of a reclamation agreement with the chief which, if complied with, shall result in avoidance of the forfeiture. The terms of the agreement shall include performance of reclamation operations and abatement of all unabated violations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, Chapter 1513. of the Revised Code and these rules, and a timetable specified by the chief.

(a) If the permittee fails to enter into a reclamation agreement within twenty days of the issuance of a performance security forfeiture order containing such agreement, the chief shall immediately forfeit the performance security and notify the permittee's surety, if applicable, of the permittee's failure to comply.

(b) If the permittee demonstrates to the chief's satisfaction within twenty days of the issuance of a performance security forfeiture order that the permittee has the ability to meet the terms and



conditions of the reclamation agreement contained in the performance security forfeiture order, the chief shall monitor compliance with the terms and conditions of the reclamation agreement.

(i) Upon the permittee's satisfactory performance under the terms and conditions of the reclamation agreement, the chief shall rescind the performance security forfeiture order.

(ii) Upon the permittee's failure to comply with any of the terms or conditions of the reclamation agreement, the chief shall immediately forfeit the performance security and notify the permittee's surety, if applicable, of the permittee's failure to comply.

(c) The surety's time to elect to reclaim under paragraph (E) of this rule shall not begin to run until the permittee has failed to enter into an agreement under paragraph (C)(2) of this rule or has failed to comply with the terms of such agreement, and the surety has been notified of such failure.

(3) The performance security forfeiture order shall be sent by certified mail, return receipt requested, or other method able to track receipt of delivery and shall inform the permittee and surety of the reasons for the forfeiture.

(4) In the event that the permittee does not enter into a reclamation agreement or fails to comply with the terms of a reclamation agreement under paragraph (C)(2) of this rule, when the performance security filed with the division of mineral resources management is supported by or in the form of:

(a) Cash, certificates of deposit or negotiable government bonds, then the order shall declare the cash, certificates of deposit, or negotiable government bonds property of the state;

(b) A letter of credit, then the order shall inform the permittee that the state will immediately draw on the letter of credit; or

(c) A trust fund, then the order shall inform the permittee that the state will proceed as set forth in the terms of the trust agreement.

(5) If the performance security filed with the division of mineral resources management is in the form of a surety bond, the chief shall also issue a performance security forfeiture order to all sureties



involved, and, in addition to the requirements of paragraphs (C)(1) and (C)(3) of this rule, the order shall inform each surety of its rights and the extent of its obligations and liabilities for the entire permit area or, when applicable, for the incremental area or the incremental mining unit.

(D) Issuance of a performance security forfeiture order does not relieve a permittee from the responsibility for complying, and does not prevent the permittee from being subject to civil penalties for not complying with any order or notice of violation issued for conditions existing on the entire permit area or, when applicable, on the incremental area or the incremental mining unit.

(E) Reclamation by the surety.

(1) Within sixty days after it receives a performance security forfeiture order, or within sixty days of notification of the permittee's failure to elect to enter into a reclamation agreement under paragraph (C)(2) of this rule or the permittee's failure to comply with the terms of a reclamation agreement under paragraph (C)(2) of this rule, each surety:

(a) Shall notify the chief that it will not complete reclamation and shall make payment under the surety bond for the full amount of its liability under the surety bond; or

(b) Shall notify the chief that it will complete reclamation and shall submit to the chief a plan, including a timetable for performing reclamation in accordance with the reclamation plan and the requirements of Chapter 1513. of the Revised Code and these rules.

(2) The chief may allow the surety to complete reclamation if the surety can demonstrate an ability to complete reclamation in accordance with Chapter 1513. of the Revised Code, these rules and the reclamation plan.

(3) A surety completing a reclamation phase on the entire permit area or, when applicable, on the incremental area or incremental mining unit, may obtain a release of its performance security obligation in the same manner as a permittee or operator pursuant to division (F) of section 1513.16 of the Revised Code.

(4) The rights of a surety to perform reclamation shall be terminated if the surety fails to:



(a) Notify the chief within sixty days after receipt of the performance security forfeiture order, or within sixty days of notification of the permittee's failure to elect to enter into a reclamation agreement under paragraph (C)(2) of this rule or the permittee's failure to comply with the terms of a reclamation agreement under paragraph (C)(2) of this rule, that it will or will not perform reclamation.

(b) Submit a reclamation timetable at the same time it notifies the chief that it will perform reclamation; or

(c) Commence, continue, or complete reclamation in accordance with the reclamation timetable.

(5) When the chief determines that the rights of a surety shall be terminated, the chief shall issue an order terminating the rights of the surety and demanding payment from the surety for the entire amount of performance security filed with the chief by the surety for the entire permit area or, when applicable, for the incremental area or incremental mining unit.

(F) Reclamation by the chief.

(1) After receiving the moneys collected under paragraph (C) or (E) of this rule, the chief shall proceed to reclaim the entire permit area or, when applicable, the incremental area or the incremental mining unit, in accordance with:

(a) The requirements of section 1513.18 of the Revised Code if the permit that was forfeited was not a permanent program permit; or

(b) In accordance with Chapter 1513. of the Revised Code, these rules and the approved reclamation plan if the permit that was forfeited was a permanent program permit.

(2) Any revisions that the chief wishes to make to the approved reclamation plan of a permanent program permit on which the performance security has been forfeited shall be made in accordance with paragraph (E) of rule 1501:13-4-06 of the Administrative Code. As used in paragraph (F) of this rule, "permanent program permit" means any permit issued after August 16, 1982, and any permit



AUTHENTICATED,  
OHIO LEGISLATIVE SERVICE  
COMMISSION  
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issued between September 1, 1981 and August 16, 1982 that was subsequently revised to meet the criteria of the approved program.