



Ohio Administrative Code

Rule 1501:13-3-01 Standards for demonstration of valid existing rights.

Effective: January 17, 2016

(A) Except as provided in paragraph (B) of this rule, a person claiming valid existing rights must demonstrate both of the following:

(1) A property rights demonstration showing that, at the time the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of coal mining operations intended; and

(2) Compliance with one of the following standards:

(a) Good faith/all permits standard. All permits and other authorizations required to conduct coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code. At a minimum, an application must have been submitted for any permit required under Chapter 1513. of the Revised Code; or

(b) Needed for and adjacent standard. The land is needed for and immediately adjacent to a coal mining operation for which all permits and other authorizations required to conduct coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code. To meet this standard, the person claiming valid existing rights shall demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of division (D) of section 1513.073 of the



Revised Code or rule 1501:13-3-03 of the Administrative Code when the chief approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the chief may consider factors such as:

(i) The extent to which coal supply contracts or other legal and business commitments that predate the time the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code depend upon use of that land for coal mining operations;

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code rely upon use of that land for coal mining operations;

(iii) The extent to which investments in the operation before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code rely upon use of that land for coal mining operations; and

(iv) Whether the land lies within the area identified on the life-of-mine map submitted under paragraph (A)(29) of rule 1501:13-4-08 or paragraph (A)(22) of rule 1501:13-4-08.1 of the Administrative Code before the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code.

(B) A person who claims valid existing rights to use or construct a road across the surface of lands protected by division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code shall demonstrate that one or more of the following circumstances exist if the road is included within the definition of coal mining operation of rule 1501:13-1-02 of the Administrative Code:

(1) The road existed when the land upon which it is located came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and the person has a legal right to use the road for coal mining operations;



(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has legal right to use or construct a road across the right of way or easement for coal mining operations;

(3) A valid permit for use or construction of a road in that location for coal mining operations existed when the land came under the protection of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code; or

(4) Valid existing rights exist under paragraph (A) of this rule.

(C) Possession of valid existing rights under this rule only confers an exception from the prohibitions of division (D) of section 1513.073 of the Revised Code or rule 1501:13-3-03 of the Administrative Code. A person seeking to exercise valid existing rights shall comply with all other pertinent requirements of Chapter 1513. of the Revised Code and these rules.