

**Rule Summary and Fiscal Analysis (Part A)****Department of Natural Resources**

Agency Name

**Division of Mineral Resources Management- Ashley Montgomery Hively****Industrial Mineral**

Division

**2045 Morse Road Bldg. D-3 Columbus OH**

Contact

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**1501:14-1-09**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Payment of fees and filing of performance bond.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **1514.08**
5. Statute(s) the rule, as filed, amplifies or implements: **1514.011, 1514.02, 1514.021, 1514.03, 1514.04**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

To comply with Ohio's five-year-review requirement pursuant to Ohio Revised Code section 106.03.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule contains the requirements for the payment of fees and the filing of performance bonds related to industrial minerals surface mining. The Division of Mineral Resources Management has fully reviewed this rule consistent with ORC section 106.03, and has determined that the following revision is needed:

(D). Division's address corrected.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date: **9/14/2017**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current

biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

The amendment proposed in this rule consists of a minor correction and will have no fiscal impact on the agency during the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not Applicable.

15.

Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The amendment proposed in this rule consists of a minor correction and will impose no cost of compliance upon any directly affected persons.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

This rule amplifies ORC sections 1514.02, 1514.021, 1514.03, and 1514.04, which require a performance bond and fees to be submitted before a permit to mine is issued.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

This rule amplifies ORC sections 1514.02, 1514.021, 1514.03, and 1514.04, which require a performance bond and fees to be submitted before a permit to mine is issued. This rule requires the Chief to issue an order denying the issuance of a surface mining permit, permit renewal, or amendment to a permit if the required fees and or performance bond are not filed, except that the Chief may extend the time required for filing such fees or bond for good cause shown.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

This rule amplifies ORC sections 1514.02, 1514.021, 1514.03, and 1514.04, which require a performance bond and fees to be submitted before a permit to mine is issued.

**Environmental Rule Adoption/Amendment Form**

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

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(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? **Yes**

Please list each contact.

Ohio Aggregates and Industrial Minerals Association

Ohio Environmental Council

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

Ohio Revised Code sections 1514.011, 1514.02, 1514.021, 1514.03, 1514.04, and 1514.08.

(C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? **No**

Is the proposed rule or rule amendment more stringent than its federal counterpart?  
**No**

(D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**

**Liability Insurance Certification**Substitute House Bill 26 (132<sup>nd</sup> General Assembly)

Date: August 23, 2017

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

Pursuant to ORC 106.03 (A) and 119.03 (C) this document serves as certification with the Joint Committee on Agency Rule Review (JCARR) that a search was conducted by our agency to determine if liability insurance, bond or other financial responsibility instrument was readily available in the amounts required as a condition of licensure for the following proposed rule(s) contained in this filing:

1501:14-1-09 Payment of fees and filing of performance bond.

This rule amplifies section 1514.04 of the Ohio Revised Code, which requires the applicant for an industrial minerals permit to file performance security, in the form of a surety bond, cash, irrevocable letter of credit, or certificates of deposit, prior to being granted a permit to mine. Pursuant to this statutory requirement, the Ohio Department of Natural Resources, Division of Mineral Resources (DMRM) accepts the following as acceptable forms of bond or other financial responsibility instrument: 1) Cash; 2) Certificate of Deposit; 3) Irrevocable Letter of Credit; and 4) Surety Bond.

Cash (check), Certificates of Deposit and Letters of Credit must be drawn on a financial institution authorized to do business in the state of Ohio, or issued by a bank with a branch in Ohio and the bank is a qualified public depositor. The availability of financial institutions meeting this requirement is in every county statewide in the state of Ohio. The availability for a mining company to use these instruments is dependent upon the mining company's cash flow and/or collateral. Verification that the financial institution meets the listed requirements is completed by DMRM upon receipt of each financial instrument.

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