

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Natural Resources

Regulation/Package Title: Division of Mineral Resources Management -- 2015 Package, Industrial Minerals rules

Rule Number(s): 1501:14-1-08, 1501:14-1-15, 1501:14-1-16, 1501:14-2-01, 1501:14-2-02, 1501:14-2-03, 1501:14-2-04, 1501:14-2-05, 1501:14-2-06, 1501:14-2-07, 1501:14-2-08, 1501:14-2-09, 1501:14-2-10, and 1501:14-5-01.

Date: April 11, 2016

**Rule Type:**

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

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The Division of Mineral Resources Management (DMRM) is submitting fourteen rules that regulate industrial minerals (IM) surface mining to the Common Sense Initiative pursuant to Ohio Revised Code (ORC) section 107.52. DMRM proposes to continue five of these rules with no changes and amend nine rules as follows:

- Five rules need revisions to remain consistent with the requirements of the Ohio Revised Code
- One rule needs a revision to remove an unnecessary requirement
- One rule needs a small clarification
- Two rules are incorporation by reference rules that need to be updated as the publication dates of the Code of Federal Regulations and the United States Code change.

All fourteen rules have been reviewed by DMRM pursuant to section 106.03; thus, the JCARR filing will indicate that they have undergone their five-year-review.

The following is a list of the rules, their key provisions, and the significant changes proposed for them. (Note: the attachment to this BIA contains all the rules as they will be submitted to JCARR. Each of the nine rules with proposed amendments is accompanied by a summary containing a complete list of every change proposed for the rule. The rules that will be continued with no changes are included at the end of the attachment.)

**Chapter 1501:14-1 of the Ohio Administrative Code (OAC).** This chapter contains the general provisions for the regulation of surface IM mining, including permit applications, liability insurance, performance bonds, mapping and reporting. Three rules in this chapter are proposed for revision.

- **1501:14-1-08 Certificate of liability insurance.** This rule amplifies the public liability insurance requirement of ORC section 1514.02(A)(13) with provisions regarding the effective date, riders, and proof of insurance. The rule is proposed for amendment to remove the requirement that the proof of insurance form contain an original signature because DMRM accepts copies of the insurance form, not only the original, and these copies still fulfill the proof of insurance requirement.
- **1501:14-1-15 Public notice of hearing to adopt, amend, or rescind rules.** This rule contains the requirements for public notice of hearings to adopt, amend, or rescind rules related in IM surface mining. The proposed amendments would make several small revisions so the rule is consistent with the provisions of ORC section 119.03.
- **1501:14-1-16 Incorporation by reference.** This rule contains the dates of publication of the Code of Federal Regulations and the United States Code for those federal regulations and federal laws that are incorporated by reference in the IM rules, other than the IM mine safety rules of OAC Chapter 1501:14-2, and tells the public where these regulations

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and laws can be found. The proposed amendments would update of the editions of the Code of Federal Regulations and the United States Code.

### **Chapter 1501:14-2 of the Ohio Administrative Code.**

This chapter contains the requirements for mine safety for surface IM operations. These rules were created in 2010 to implement the mine safety changes enacted by HB 443 of the 126<sup>th</sup> General Assembly, effective 4/6/2007. HB 443 created ORC sections 1514.40 to 1514.47, which contain most surface IM mine safety statutory provisions. Prior to HB 443, surface IM mine safety was regulated under ORC Chapters 1561., 1563., 1565. and 1567.

The following are the key provisions of HB 443 regarding surface IM mine safety, including the sections of law enacted by HB 443 and the OAC rules created pursuant to HB 443:

- Directed the Chief of DMRM to incorporate by reference and to enforce the federal Mine Safety and Health Administration (MSHA) standards that apply to IM operations. ORC section 1514.40 and OAC rules 1501:14-2-01 and 15-1:14-2-02.
- Directed the Chief to establish rules, requirements and procedures to implement various parts of the new IM mine safety provisions. Section 1514.40.
- Gave the Chief limited authority to inspect surface IM operations that are inspected by MSHA. DMRM inspections of MSHA-inspected operations are limited to operations that exceed the national average for accidents and operations that recently had a fatality or life-threatening injury. (Inspections of surface IM operations that are not inspected by MSHA are required to be inspected by DMRM twice a year.) Sections 1514.41 and 1514.43 and rules 1501:14-2-03, 1501:14-2-04, 1501:14-2-05, 1501:14-2-09, and 1501:14-2-10.
- Required the Chief to do safety performance evaluations of all surface mining operations each year to determine if they exceed the national average for accidents. Section 1514.45 and rules 1501:14-2-03 and 1501:14-2-09.
- Required the Chief to conduct mine safety training for mine employees when requested by an operator. Section 1514.46 and rule 1501:14-2-06.
- Required the Chief to conduct a safety audit at a surface IM operation when mine safety training has been requested. The law does not allow DMRM to issue notices of violation if violations of safety standards are found during an audit, however, unless the violation is one that could reasonably be expected to cause the death of or imminent serious physical harm to an employee. Sections 1514.42, 1514.43 and 1514.44 and rules 1501:14-2-05, 1501:14-2-06 and 1501:14-2-10.
- Gave the Chief the authority to take immediate action if DMRM finds a condition or practice at a mine that could reasonably be expected to cause the death of or imminent

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serious physical harm to an employee. Section 1514.44 and rules 1501:14-2-05 and 1501:14-2-10.

- Established requirements for certified mine forepersons at surface mining operations, including expiration of the mine foreperson certification after five years if it is not renewed. Section 1514.47 and rule 1501:14-2-07.
- Required each operator to employ a certified mine foreperson or a person qualified to conduct examinations pursuant to 30 CFR part 56 of MSHA regulations. Also allowed an operator to submit to the Chief a plan for training persons to be qualified to conduct such examinations. Section 1514.47 and rule 1501:14-2-08.

HB 64 of the 131<sup>st</sup> General Assembly changed some of the mine safety requirements for surface IM operations, effective 9/29/2015. Three of the rules of Chapter 1501:14-2 are proposed for amendment due to these changes. Two rules of this Chapter are proposed for amendment for other reasons (see details below).

**Rules in Chapter 1501:14-2 proposed for amendment:**

- **1501:14-2-01 Incorporation by reference of mine safety standards.** This rule contains the dates of publication of the Code of Federal Regulations for those federal regulations that are incorporated by reference in the IM mine safety rules of OAC Chapter 1501:14-2, and tells the public where these regulations can be found. The proposed amendments would update of the edition of the Code of Federal Regulations.
- **1501:14-2-06 Mine safety training.** This rule implements the mine safety training provisions of ORC section 1514.46 as well as the provision of ORC section 1514.42 regarding auditing prior to training. It is proposed for revision because the requirements for audits in ORC section 1514.42 were amended by HB 64: "...the chief may conduct one safety audit annually if an operator of the operation has requested the division of mineral resources management to conduct mine safety training for that year. The safety audit shall be scheduled at a time to which the chief and the operator mutually agree and shall not continue for than one day." The rule adds another provision from section 1514.42: "...the chief shall conduct additional safety audits at any surface mining operation if requested by the operator of the operation," although the rule proposes to modify this requirement by stating that such additional audits are "subject to the availability of mine safety staff and resources." The rule also clarifies that mine safety training will "be conducted at the surface mining operation where the miners requiring training are employed."

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- **1501:14-2-07 Certified mine foreperson.** This rule implements the provisions of ORC section 1514.47 that are related to certified mine forepersons. The proposed amendments are comprised of several small changes to clarify the rule or to reflect current DMRM operations as well as the following major changes due to HB 64 amendments:
  - An operator of an IM surface mining operation is required to employ a certified mine foreperson to be in charge of the conditions and practices at the mine and to be responsible for conducting examinations of the operation under 30 CFR part 56 of MSHA regulations. Examinations of the operation under 30 CFR part 56 of MSHA regulations are required to be conducted by: a certified mine foreperson; a person qualified to conduct such examinations by means of the training plan approved by the Chief; or a person designated by the certified mine foreperson as a competent person. Paragraph (A) of the rule is proposed to be revised to add the language of ORC section 1514.47(A)(1) to (4).
  - Mine foreperson certifications do not expire unless the certificate holder has not been employed in a surface mining operation for five consecutive years. ORC section 1514.47(C)(1) includes provisions regarding how such persons can obtain a reissued certificate; these provisions are proposed to be added to paragraphs (E)(3) and (4) of the rule, along with requirements and fees as stipulated in ORC section 1514.40(F).
  - The Chief is required to reissue certificates that do not expire to persons whose certificates have not expired (per ORC section 1514.47(C)(4)), as well as to persons whose certificates expired on or after April 7, 2012 (per ORC section 1514.47(C)(5)). These provisions are proposed to be added to paragraphs (E)(1) and (2) of the rule, along with requirements and fees as stipulated in ORC section 1514.40(F). The Chief would charge a reissuance fee of \$25 to persons whose certificates expired, but would charge no fee to persons whose certificates have not expired. This fee structure is proposed to ensure that persons are not charged twice: those persons who applied for renewal of their certificates, which were due to expire under the requirements of HB 443, already paid a \$25 fee for renewal. Those persons who did not apply for renewal under the requirements of HB 443, and instead allowed their certificates to expire, would pay \$25 for reissuance.
- **1501:14-2-08 Training in lieu of employing certified mine foreperson.** This rule implements the provisions of ORC sections 1514.40(G) and 1514.47(A) and (D). The rule is proposed for amendment because HB 64 amended the paragraph numbering of ORC section 1514.47.

- **1501:14-2-09 Requirements governing the reporting and investigation of accidents and injuries for surface mining operations that are not inspected by MSHA.** This rule implements the provisions of sections 1514.40(C) and 1514.41(C) and (D) as those provisions apply to surface IM operations that are not inspected by MSHA. The rule is proposed for revision to add one simple clarification to paragraph (C)(2): the phrase “of a miner.” This phrase is straight from ORC section 1514.41(C) and (D) and is already included in paragraph (C)(1) of the rule.

**Rules in Chapter 1501:14-2 proposed to be continued with no changes:**

- **1501:14-2-02 Safety standards governing surface mining operations.**
- **1501:14-2-03 Criteria, standards and procedures governing annual safety performance evaluations of surface mining operations that are inspected by MSHA.**
- **1501:14-2-04 Requirements governing the reporting and investigation of accidents for surface mining operations that are inspected by MSHA.**
- **1501:14-2-05 Mine safety inspections of surface mining operations that are inspected by MSHA.**
- **1501:14-2-10 Mine safety inspections of surface mining operations that are not inspected by MSHA.**

**Chapter 1501:14-5 of the Administrative Code.** This Chapter contains rules to implement ORC section 1514.13, regarding establishing a projected cone of depression for an IM surface mining operation that may result in dewatering, as well as a rule regarding obtaining a variance from the distance limitations for mining near a watercourse. One rule from this chapter is proposed for amendment.

- **1501:14-5-01 Hydrology.** This rule contains the requirements for an application for a permit that proposes to dewater. Several revisions to clarify the requirements and to correct small errors are proposed. One change is proposed related to changes made by HB 64: effective 1/1/2016, the Division of Soil and Water Resources will be renamed the Division of Water Resources.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

<u>Ohio Administrative Code</u>	<u>Statutory Authority</u>
OAC Chapter 1501:14-1	ORC section 1514.08
OAC Chapter 1501:14-2	ORC section 1514.40
OAC Division 1501:14-5	ORC section 1514.13

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**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No, Ohio's IM surface mining regulations are not related to a federal regulatory program. The federal government does not regulate the mining and reclamation of industrial minerals sites in terms of their impact on the environment and adjoining properties, and there are no federal laws or regulations that are comparable to Ohio's IM Regulatory Program.

With regard to IM surface mine safety, Ohio's IM Mine Safety Program is separate from the federal Mine Safety and Health Administration (MSHA)'s program and the federal government has no oversight authority over Ohio's program.

The Federal and Ohio surface IM Mine Safety programs do have elements in common, however. For example, HB 443 required the Chief of DMRM to incorporate by reference certain federal MSHA regulations related to surface IM mine safety and limited the Chief's authority to inspect those surface IM operations that are inspected by MSHA. HB 443 also required the Chief to minimize duplication with federal reporting and investigation of accidents. When the rules in Chapter 1501:14-2 were being developed in 2010, DMRM decided to mirror the federal definitions for accident, life-threatening injury, occupational injury, and non-fatal days lost incident rate (NFDLIR), and to define the Ohio statutory term, "lost-time accident," using MSHA terms, so that all parties would understand how Ohio's accident reporting requirements relate to the federal requirements. In the field, State Mine Safety personnel work in concert with federal MSHA personnel when needed.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of OAC Division 1501:14 is to protect Ohio's land and water resources, the public, and mine employees from the potential negative impacts of IM surface mining. The IM Regulatory Program oversees active IM surface mining operations and the reclamation of the land by mining companies after extraction of minerals. The IM Mine Safety Program protects Ohio's IM surface mine workers from the potential hazards of mining through audits, training, certification, and inspections. These programs ensure that the requirements of ORC Chapter 1514. are being followed.

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**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

DMRM has the unique and challenging responsibility of regulating the IM surface mining industry in a way which strikes a balance between protecting society and the environment from the potential adverse effects of mining operations and satisfying the nation's need for industrial minerals as essential resources for economic growth. In addition, DMRM has the responsibility to protect mine workers from the occupational hazards of mining.

DMRM will measure the success of the IM Regulatory Program rules by seeing that IM surface mining continues to be carried out in Ohio in an environmentally protective manner and that all mined lands are reclaimed and restored to a productive postmining land use.

DMRM will measure the success of the surface IM mine safety rules by the degree of safety they provide. The Mine Safety Program receives reports of all accidents and fatalities at Ohio's IM surface mines and investigates each serious accident and fatality. DMRM's written report of such an accident includes a recommendation concerning appropriate remedial measures to prevent the reoccurrence of the accident. The DMRM uses the information from these investigations to improve mine safety audits, training and inspections so as to prevent such accidents from happening again.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On October 7, 2015, DMRM Chief Lanny Erdos provided an advance copy of these rules and their proposed changes, by e-mail, to the following persons, requesting their review:

Brian Barger, Attorney at Law, Eastman & Smith, Ltd.

Pat Jacomet, Executive Director, Ohio Aggregates and Industrial Minerals Association.

Pat Jacomet notified Chief Erdos by e-mail on December 2, 2015, that the OAIMA Safety committee had reviewed the rules and they had no comments.

By letter dated December 7, 2015, DMRM Chief Erdos provided these rules with their proposed changes, by e-mail, to Brian Barger, Pat Jacomet, and Trent A. Dougherty, Managing Director of Legal Affairs, Ohio Environmental Council. Chief Erdos requested comments on the rules by January 7, 2016. DMRM received no comments on the rules.

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**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

There have been no comments from stakeholders. Since the changes proposed in these rules are primarily to revise the rules so they reflect the current requirements of Ohio law, DMRM did not anticipate that the changes would be controversial.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

The rule changes are being proposed in order to provide for better clarity and consistency and to update the rules due to changes in the law. The proposed updates are supported by law.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternative regulations were considered; ORC Chapter 1514. does not allow for alternative means of compliance with these rules.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No, because ORC Chapter 1514. dictates the parameters of the regulations.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The ODNR Division of Mineral Resources Management is the sole agency with authority under the ORC to regulate industrial minerals surface mining. The other laws and rules under the authority of the ODNR DMRM were reviewed to avoid conflict.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The changes proposed to rules in OAC Chapters 1501:14-1 and 1501:14-5 are corrections and clarifications that will not change the way that IM surface mining is regulated.

The changes proposed to rules in OAC Chapter 1501:14-2 include several changes due to HB 64 that will affect surface IM mine safety procedures:

1. The operator of a surface IM operation must employ a certified mine foreperson. Prior to HB 64, the operator could employ either a certified mine foreperson or a person who was qualified in accordance with ORC section 1514.47, to conduct examinations of surface mining operations for purposes of 30 CFR part 56.
2. The mine safety examinations that are conducted on an operation under 30 CFR part 56 must be conducted by one of the following: a certified mine foreperson; a person qualified to conduct such examination as provided in ORC section 1514.47(D); or a person designated by the certified mine foreperson as a competent person.
3. IM surface mining mine foreperson certificates expire only if the certificate holder has not been employed in a surface mining operation for five consecutive years. Prior to HB 64, IM surface mining mine foreperson certificates expired after five years. Proposed rule 1501:14-2-07 will implement ORC sections 1514.40(F) and 1514.47(C) regarding how mine forepersons can obtain re-issued mine foreperson certificates that do not expire.

These new requirements will be applied consistently across Ohio via DMRM's Mine Safety training and certification programs. Implementation will occur with updates being given by DMRM staff to the regulated industry during mine safety and certification training classes and during audits and inspections, as well as on DMRM's website. The Ohio Aggregates and Industrial Minerals Association will also be advised of the implementation so they can update their members.

## **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

Answer to question a: The affected business community is all of Ohio’s IM surface mining operators.

Answer to questions b and c: These regulations do not impose an adverse impact on Ohio’s industrial minerals surface mining operations beyond the impact already imposed by ORC Chapter 1514.

Chapter 1501:14-1. These rules require the operator to submit a great deal of detailed information regarding the proposed mining operation, as well as fees, liability insurance, and a performance bond, in order to be granted a permit to mine, a permit renewal, or an amendment to a permit.

Chapter 1501:14-2. These rules contain requirements related to:

- DMRM inspections of IM surface mining operations as well as investigations of fatalities and life-threatening injuries
- Reporting of accidents at IM surface operations to DMRM
- Safety audits and safety training by the DMRM
- Certified mine forepersons
- Persons who are qualified to conduct safety examinations of surface IM operations

These rules impose certification, reporting and record-keeping requirements on mine operators in addition to the costs that all mining operations must incur to maintain a safe working environment.

Chapter 1501:14-5. These rules require operators of IM surface mining operations that will dewater to submit a great deal of supplemental information in the permit application, including a hydrogeologic description and map, as well as ground water data that will allow the Chief to establish a projected cone of depression. The chapter also contains a rule that requires more

detailed information to be submitted by operations that are requesting a variance to mine close to certain size watercourses.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

ORC Chapter 1514. establishes the parameters for these rules. The chapter provides many safeguards to protect the public and the environment from the potential adverse effects of industrial minerals surface mining.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

ORC Chapter 1514. does not contain any small business exemptions but does provide one alternative means of compliance for small operators. ORC section 1514.02 (A)(12) allows operators (other than in-stream mining operators) who intend to extract less than 10,000 tons of minerals annually and no incidental coal to submit a tax map and USGS topographic map in lieu of a map prepared and certified by a surveyor or engineer.

Ohio law also provides for a reduced filing fee for small operators. ORC section 1514.03 requires small operators (those who intend to extract less than 10,000 tons of minerals annually and no incidental coal) and in-stream mining operators to submit a filing fee of \$250 each year with their annual report rather than the \$500 filing fee required of larger operators.

In addition, the definition of “surface mining” in ORC 1514.01 (A) provides exceptions to regulation under Chapter 1514. for certain circumstances, e.g., test or exploration boring, construction operations, routine dredging, and sanitary landfills, as well as “the extraction of minerals, other than coal, by a landowner for the landowner’s own noncommercial use where such material is extracted and used in an unprocessed form on the same tract of land” and “the removal of minerals to a depth of not more than five feet, measured from the highest original surface elevation of the area to be excavated, where not more than one acre of land is excavated during twelve successive calendar months.”

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

DMRM does not normally assess penalties for paperwork violations unless, for example, a pattern of violations develops, or the issue goes into non-compliance, or an operator knowingly or willingly fails to submit required reports. Further, section 119.14 is not applicable to the regulation of IM surface mining because a violation of ORC Chapter 1514. or OAC Division 1501:14:

- Has the potential to cause serious harm to the public interest that DMRM is charged to protect.
- Presents a direct danger to the public health or safety, or the risk of severe environmental harm.

**18. What resources are available to assist small businesses with compliance of the regulation?**

DMRM's IM Program staff are available to help anyone who needs guidance or assistance in complying with these rules.

**2015 IM Rules - 14 rules**

IM Rules with amendments (4 rules):

- 1501:14-1-08 Certificate of liability insurance. Amendments needed in (D).
- 1501:14-1-15 Public notice of hearing to adopt, amend, or rescind rules. Amendments needed in (A) and (B).
- 1501:14-1-16 Incorporation by reference. Annual update needed.
- 1501:14-5-01 Hydrology. Numerous small changes needed to make corrections/clarifications and due to HB 64 (budget bill).

IM Mine Safety rules with amendments (5 rules)

- 1501:14-2-01 Incorporation by reference of mine safety standards. Annual update needed.
- 1501:14-2-06 Mine safety training. Amendments needed per HB 64 (budget bill).
- 1501:14-2-07 Certified mine foreperson. Amendments needed per HB 64 (budget bill).
- 1501:14-2-08 Training in lieu of employing certified mine foreperson. Paragraph references need to be amended per HB 64 (budget bill).
- 1501:14-2-09 Requirements governing the reporting and investigation of accidents and injuries for surface mining operations that are not inspected by MSHA. One correction and one clarification needed.

IM Mine Safety No Change rules (5 rules):

- 1501:14-2-02 Safety standards governing surface mining operations.
- 1501:14-2-03 Criteria, standards and procedures governing annual safety performance evaluations of surface mining operations that are inspected by MSHA.
- 1501:14-2-04 Requirements governing the reporting and investigation of accidents for surface mining operations that are inspected by MSHA.
- 1501:14-2-05 Mine safety inspections of surface mining operations that are inspected by MSHA.
- 1501:14-2-10 Mine safety inspections of surface mining operations that are not inspected by MSHA.



Draft Rule 1501:14-1-08, dated 4/6/2016

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

(D). Revised to remove the requirement that the proof of insurance form contain an original signature. DMRM accepts copies of the proof of insurance form, not only the original, and these copies still fulfill the proof of insurance requirement. Also revised to correct the Division's address.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 4/6/2016**

**1501:14-1-08      Certificate of public liability insurance.**

- (A) Public liability insurance required by division (A)(13) of section 1514.02 of the Revised Code shall be effective from the date of issuance of the permit until the release of the final portion of the performance bond.
- (B) The public liability insurance policy shall include a rider requiring that the insurer notify the chief of termination of the policy or failure to renew.
- (C) The permittee's proof of insurance coverage may be submitted on a form provided by the chief or on a form provided by the insurance provider. At a minimum, the proof of insurance form shall include:
- (1) The name of the permittee covered by the policy, or if the insured is not the permittee, the name(s) of the operator(s) or operation(s) covered by the policy;
  - (2) The policy number;
  - (3) The policy period;
  - (4) The amount of coverage; and
  - (5) The name, address, and telephone number of the insurance provider.
- (D) The proof of insurance form ~~shall contain an original signature and~~ shall be sent to "Ohio Department of Natural Resources, Division of Mineral Resources Management, 2045 Morse Road, Building H-3, Columbus, Ohio 43229."

Draft Rule 1501:14-1-15, dated 5/19/2015

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

(A) and (B). Revisions so the rule is consistent with the requirements of section 119.03 of the Revised Code.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 5/19/2015**

**1501:14-1-15      Public notice of hearing to adopt, amend, or rescind rules.**

- (A) Public notices of hearings to adopt, amend, or rescind rules, which are conducted by the Ohio department of natural resources, division of mineral resources management, ~~will~~shall be given in the register of Ohio as required by Chapter 119. of the Revised Code. The website for the register of Ohio is <http://www.registerofohio.state.oh.us/>.
- (B) Public notice of a hearing to adopt, amend, or rescind rules shall be given at least thirty days, ~~but not more than sixty days~~, prior to the hearing. The notice shall: state the division's intention to consider adopting, amending, or rescinding rules; include a synopsis ~~or full text~~ of the proposed rules, amendments, or rules to be rescinded, or a general statement of the subject matter to which such proposed rules, amendments or rescissions relate; state the reason or purpose for adopting, amending, or rescinding the rules; and enumerate the date, time, and place of the hearing on the proposed action, which shall not be earlier than the thirty-first nor later than the fortieth day after the proposed rules, amendments or rescissions are filed. The notice shall also state the place where a copy of the proposed rules, amendments or rescissions may be obtained. The chief shall provide a copy of the public notice to anyone who requests it and pays a reasonable fee, not to exceed the cost of copying and mailing.

Draft Rule 1501:14-1-16, dated 5/26/2015

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

(A) and (B). Updates of the editions of the Code of Federal Regulations and the United States Code that are incorporated by reference.

*Before this rule is filed with JCARR, the dates in the rule will be updated with the most recent federal publication dates.*

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**Dated 5/26/2015** *Before this rule is filed with JCARR, the dates highlighted below will be updated with the most recent federal publication dates.*

**1501:14-1-16      Incorporation by reference.**

- (A) The Code of Federal Regulations (C.F.R.) references listed in Chapter 1501:14-1 and Chapters 1501:14-3 to 1501:14-6 of these rules are, ~~for Title 40, those published in the July 1, 2013, C.F.R., and for Title 30,~~ those published in the **July 1, 2014, C.F.R.** These regulations can generally be found in public libraries or electronically at the website <http://www.gpo.gov/fdsys/>. These regulations are:
- (1) 30 C.F.R. 50.2.
  - (2) 30 C.F.R. parts 56 and 58, as amended.
  - (3) 40 C.F.R. parts 122, 123, and 136, as amended.
- (B) The federal laws listed in these rules are those published in the 2012 edition of the United States Code (U.S.C.), dated January 15, 2013, **as supplemented in 2013, effective January 16, 2014.** These laws can generally be found in public libraries or electronically at the website <http://www.gpo.gov/fdsys/>. These laws are:
- (1) Section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq., as amended.
  - (2) The Clean Water Act, 33 U.S.C. 1251 et seq., as amended.
  - (3) The Rivers and Harbors Act of 1899, 33 U.S.C. 403, as amended.



Draft Rule 1501:14-5-01, dated 7/16/2015

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

(B)(1), (B)(2)(j), and (B)(4)(a). Small changes related to grammar and spelling.

(B)(4)(a)(ii), (c), and (d). Revised due to a change made by HB 64 of the 131<sup>st</sup> General Assembly: effective 1/1/2016, the Division of Soil and Water Resources will be renamed the Division of Water Resources.

(B)(4)(a)(v). “plan” corrected to “plane.”

(B)(4)(a)(xiii). Unit of measure, “(feet),” added.

(B)(4)(d), (C), and (E). Revised so that the rule speaks consistently of a ground water model. The word “modeling” is still used in reference to modeling software in (C).

(D)(1) and (2). The word “quadrants” removed because not all dewatering permits use quadrants. The last sentence of (D)(1) re-worded to clarify the requirements for a staged cone of depression.

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**Dated 7/16/2015**

**1501:14-5-01 Hydrology.**

Except as provided in paragraph (C) of this rule, each application for a permit that proposes to dewater shall include the following:

- (A) A hydrologic map consisting of a single map using the most recent USGS 7.5 minute topographic maps at a scale of 1:24,000 as a base or other approved format that shall show all of the following:
  - (1) The proposed permit area;
  - (2) A line identifying the area encompassing a four mile radius from the boundary of the proposed permit area, to be known as the hydrologic study area;
  - (3) The location of the cross-sections required under paragraph (B)(5) of this rule;
  - (4) The location of the selected water supply wells identified in paragraph (B)(4)(a) of this rule and other water sources used for domestic, agricultural, or industrial use including an assigned identification number; and
  - (5) Any well, well field, reservoir, river, water source used for a public water supply or facility registered under section 1521.16 of the Revised Code on or within the hydrologic study area.
  - (6) The chief may require additional information within or beyond the hydrologic study area be shown on the map if such identification is necessary based on site-specific conditions.
- (B) A hydrogeologic description in sufficient detail to determine the hydrologic cone of depression for the proposed operation.
  - (1) The description shall include a general statement of the geology within the proposed permit and hydrologic study area down to and including the deeper of either the first stratigraphic unit below the lowest mineral deposit to be mined or any aquifer below the lowest mineral deposit to be mined. It shall also include the areal and structural geology of the permit and hydrologic study area, and other parameters which may affect the occurrence, availability, movement, quantity, and quality of potentially affected ground waters and shall be based on information available to the applicant from test borings, core drillings, well logs, and geologic literature and practices.
  - (2) The description shall contain information available in the public domain related to the ground water hydrology for the proposed permit and hydrologic study area, including, at a minimum:
    - (a) The elevation and the horizontal extent of the aquifer(s), intervening lithology, and overburden;
    - (b) The lithology and thickness of the aquifer(s);
    - (c) Known uses of the water in the aquifer(s);
    - (d) The elevation of water in the mineral deposit(s), and each water-bearing stratum above and below the mineral deposit;
    - (e) The transmissivity of the aquifer(s);
    - (f) The storativity of the aquifer(s);
    - (g) The hydraulic conductivity of the aquifer(s);

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- (h) The specific yield of unconfined aquifer(s);
  - (i) The location and elevation of any existing dewatering sumps (including state plane coordinates and north american datum (NAD) year); and
  - (j) The rate of discharge of any ~~current~~currently registered water withdrawals shown pursuant to paragraph (A)(5) of this rule.
- (3) The description shall include a listing of the published information and data used in preparation of the items in paragraphs (B)(1) and (B)(2) of this rule, and copies of the unpublished records and data used in preparation of these items including, but not limited to, core descriptions, cutting descriptions, stratigraphic descriptions, and pump or slug test records.
- (4) The description shall contain a water supply inventory, representing all aquifers. The inventory shall be submitted in a format prescribed by the chief, and shall include, at a minimum:
- (a) A listing of water sources in the proposed permit and hydrologic study area as shown pursuant to paragraphs (A)(4) and (A)(5) of this rule. The representative water sources selected shall be chosen to include recently drilled wells, represent all aquifers and producing zones within the aquifers, and reflect a uniform geographical distribution of wells within the study area. The inventory shall include all of the existing water wells if there are ~~less~~fewer than one hundred wells. If there are more than one hundred wells within the study area the inventory shall include one hundred wells plus twenty-five per cent of those wells in excess of one hundred but shall not exceed a total of three hundred. The listing shall include to the extent available the:
    - (i) Map identification number assigned under paragraph (A)(4) of this rule;
    - (ii) Ohio department of natural resources, division of ~~soil and~~ water resources number assigned to the log form required to be filed under section 1521.05 of the Revised Code;
    - (iii) Township;
    - (iv) Year drilled;
    - (v) State ~~plan~~plane coordinates (including NAD year);
    - (vi) Surface elevation of the well (feet);
    - (vii) Total depth of the well in feet below the land surface;
    - (viii) Depth to bedrock (feet);
    - (ix) Description of unconsolidated material;
    - (x) Static water level of the well in feet below the land surface;
    - (xi) Casing length (feet);
    - (xii) Lithology of the screen interval/open borehole;
    - (xiii) Length of any well screen (feet);
    - (xiv) Test rate (gallons per minute);

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- (xv) Duration of test; and
- (xvi) Drawdown (feet);
- (b) A listing of the location and type of any public water supply sources on the permit and within the hydrologic study area; and
- (c) A copy of the division of ~~soil and~~ water resources well logs for the selected wells.
- (d) An applicant may, prior to submission of an application, request in writing, a reduction of the number and/or extent of the submittals required in paragraph (B)(4) of this rule. The request may be granted only if the chief makes a written determination that this reduction will not diminish the level of accuracy in the ~~hydrologic~~ground water model. If there is a disagreement as to the amount or extent of the water resources information necessary, the chief shall consult with the chief of the division of ~~soil and~~ water resources prior to determining the final extent of data necessary. If the chief grants a reduction, the written request and determination shall be submitted with the permit application.
- (5) The application shall contain a minimum of two perpendicular hydrogeologic cross-sections of the same scale for the study area based on available information and at a minimum shall:
  - (a) Be of uniform horizontal scale;
  - (b) Be of uniform vertical scale;
  - (c) Depict the information required in paragraphs (B)(2)(a), (B)(2)(b), ~~(B)(2)(c)~~, (B)(2)(d), and (B)(2)(i) of this rule;
  - (d) Intersect the center of the proposed operation; and
  - (e) Include the data points used to construct the cross section.
- (6) Where information required in the water supply inventory of paragraph (B)(4) of this rule is unobtainable, a statement to that effect shall be submitted, giving the reasons therefor.
- (C) ModelingGround water model submitted by the applicant.

An applicant for a permit may choose to submit a ground water ~~modeling~~model with his or her application for a permit that defines the projected cone of depression for the proposed operation. The model must accurately reflect the ground water flow conditions associated with the hydrologic study area and be consistent with ASTM international standards. The website for ASTM international is <http://www.astm.org/>. The submission shall include detailed explanations of the hydrologic and geologic parameters used to construct the model and the model results must be submitted in a format prescribed by the chief.

A ground water model submitted to the chief must be a three-dimensional ground water flow model utilizing finite difference modeling software such as MODFLOW. MODFLOW is available from the U.S. geological survey at the website <http://water.usgs.gov/nrp/gwsoftware/modflow.html>. An applicant may request the chief to accept a two-dimensional ~~groundwater~~ground water flow model using finite difference software, provided the chief determines, based on written justification submitted with the request, that the model will accurately represent the ground water flow in the hydrologic study area.

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**(D) Staging of the projected cone of depression.**

- (1) An applicant for a permit may request the chief to establish the projected cone of depression in stages to reflect the development of the dewatering operations over the life of the proposed permit. Such staged cone of depression shall reflect a maximum of four vertical or horizontal sump locations within the proposed permit area. ~~The~~For each stage, the applicant shall identify the ~~quadrants or elevations of the staged sump locations as part of this request~~sump location and elevation and the part of the permit to be dewatered.
  - (2) If the applicant submits a staged ground water model under paragraph (C) of this rule, the projected cones of depression shall be depicted on the map(s) submitted under paragraph (A) of this rule. The responsibility for water replacement within the cone of depression provided in division (B) of section 1514.13 of the Revised Code will be based on the cones of depression established by the chief at the time of permit issuance. For the purposes of division (B) of section 1514.13 of the Revised Code, where horizontal staging of the cone of depression is accepted for a proposed permit area, the cone of depression applied to water replacement responsibilities will be based on the cumulative boundary of the cones of depression ~~for the quadrants~~ of the permit area affected at the time of the complaint.
  - (3) If the projected cone of depression is staged, the permittee must identify the exact location, elevation, and pumping rate of the dewatering sump(s) for the surface mining operation on each annual map required under section 1514.03 of the Revised Code. The permittee must notify the chief in writing at least sixty days prior to altering the horizontal or vertical location of the dewatering sump.
- (E) For applications that include a ground water ~~modeling~~model submitted under paragraph (C) of this rule and meet all other permit requirements of Chapter 1514. of the Revised Code, the chief may issue a surface mining permit conditioned on final review and approval of the ground water ~~modeling~~model, provided the applicant submits a ground water model pursuant to paragraph (C) of this rule that also contains a preliminary regulatory ten-foot cone of depression map based upon guidelines established by the chief. The permittee shall comply with the final cone of depression as established by the chief.

Draft Rule 1501:14-2-01, dated 5/18/2015

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

(A). Updates the edition of the Code of Federal Regulations that is incorporated by reference.

*Before this rule is filed with JCARR, the date in the rule will be updated with the most recent federal publication date.*



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**Dated 5/18/2015**

**1501:14-2-01      Incorporation by reference of mine safety standards.**

- (A) The Code of Federal Regulations (C.F.R.) references listed in Chapter 1501:14-2 of these rules are those published in the **July 1, 2014, C.F.R.** These regulations can generally be found in public libraries or electronically at the website <http://www.gpo.gov/fdsys/>. These regulations are 30 C.F.R. parts 46, 47, 50, 56, 58, and 62, as amended.
- (B) This rule shall be reviewed and updated as pertinent changes take place in 30 C.F.R. and as the publication date of the C.F.R. is updated. This review shall take place at least annually.

*Before this rule is filed with JCARR, the date highlighted above will be updated with the most recent federal publication date.*

Draft Rule 1501:14-2-06, dated 7/7/2015

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

(B). Revised per HB 64, effective 9/29/2015. Clarifies that the annual audit will be conducted at the surface mining operation where the miners requiring training are employed. Clarifies that additional safety audits conducted by the Chief at the request of the operator are subject to the availability of mine safety staff and resources.

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**Dated 7/7/2015**

**1501:14-2-06      Mine safety training.**

- (A) Upon the request of an operator, the chief shall conduct mine safety training for the employees of that operator.
- (B) ~~Prior to conducting mine safety training, the chief shall perform a safety audit, in accordance with section 1514.42 of the Revised Code, of the surface mining operation where the miners requiring training are employed.~~ The chief may conduct one safety audit at a surface mining operation annually if the operator of the operation has requested the division to conduct mine safety training for that year. The safety audit shall be conducted at the surface mining operation where the miners requiring training are employed and shall not continue more than one day. Subject to the availability of mine safety staff and resources, the chief shall conduct additional safety audits at any surface mining operation if requested by the operator of the operation. All safety audits shall be scheduled at a time to which the chief and the operator mutually agree and shall be conducted in accordance with section 1514.42 of the Revised Code.
- (C) Mine safety training shall be conducted in accordance with these rules and shall emphasize the standards established and incorporated by reference in these rules and include any other content that the chief determines is beneficial.

Draft Rule 1501:14-2-07, dated 4/8/2016

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

Numerous changes made to this rule per the amendments of HB 64, effective 9/29/2015.

(A) and new sub-paragraphs (1) to (4). Revised per HB 64. Language of ORC section 1514.47(A) added.

(B)(9). Revised per HB 64, ORC section 1514.47(C)(1). After September 29, 2015, certificates issued under this rule will no longer expire unless the certificate holder has not been employed in a surface mining operation for five consecutive years.

(C). Revised to reflect how temporary mine foreperson certifications are currently handled: upon the request of the operator, a temporary certification can be given to the employee of a surface industrial minerals operation, provided the employee is within six months of having accumulated the required experience for certification.

(C)(1). Revised to use the active voice, per the Legislative Service Commission's Rule Drafting Manual.

(C)(2). The phrase "the temporary certification shall expire" added to clarify.

(C)(3). New paragraph that reflects how temporary mine foreperson certifications are currently handled: a temporary certification does not expire if the person holding the certification has applied to take the certification examination and the application is postmarked by midnight of the expiration date of the temporary certification. The person then needs to take and pass the next scheduled certification examination.

(E), and (E)(1) to (5). Most currently effective provisions proposed to be removed and replaced with language related to reissuance and expiration of a mine foreperson certificate per HB 64. See ORC sections 1514.40(F) and 1514.47(C).

(E). "renewal" changed to "reissuance" per ORC section 1514.40(F). "Expiration" added per ORC section 1514.47(C)(1).

(E)(1). Establishes requirements for reissuance of mine foreperson certification per ORC sections 1514.40(F) and 1514.47(C)(4). A person holding a certificate that has not expired can request the Chief to reissue a certificate that does not expire; no fee will be charged this person.

(E)(2). Establishes requirements and fee for reissuance of mine foreperson certification per ORC sections 1514.40(F) and 1514.47(C)(5). A person holding a certificate that expired in 2012 who has not been issued a new certificate can request the Chief to reissue a certificate that does not expire. The Chief shall reissue the certificate, provided the

person is in compliance with all other applicable requirements, submits an application for reissuance with the Chief, and pays a fee of \$25.

(E)(3). Provision of ORC section 1514.47(C)(1) added, regarding expiration of a certificate if the certificate holder has not been employed in a surface mining operation for five consecutive years. Includes specifics on the contents of a petition. \$25 fee for reissuance of certification is paid only if petition is granted. If petition is denied, the holder of the expired certificate may apply for a new certificate by retaking the mine foreperson exam and fulfilling the other certification requirements of ORC section 1514.47(B) and paragraph (B) of this rule.

(E)(4). Provision related to ORC section 1514.47(C)(1) added: a certificate holder who has not been employed in a surface mining operation for five consecutive years shall not perform the duties of a certified mine foreperson unless the Chief reissues the certificate under (E)(3) of this rule or issues a new certificate under (B) of this rule.

(F)(1) and (2). “reissued” and “reissuance” added per ORC sections 1514.40(F) and 1514.47(C)(1), (4) and (5). ORC section 1514.47(C)(2) still uses the term “renew” so that word is not proposed to be removed from this paragraph.

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Dated 4/8/2016

1501:14-2-07 Certified mine foreperson.

- (A) ~~The operator of a surface mining operation shall employ either a certified mine foreperson or a person who is qualified in accordance with division (E) of section 1514.47 of the Revised Code and rule 1501:14-2-08 of the Administrative Code to conduct examinations of surface mining operations for purposes of 30 C.F.R. part 56, as amended.~~
- (1) The operator of a surface mining operation shall employ a certified mine foreperson to be in charge of the conditions and practices at the mine and to be responsible for conducting examinations of the surface mining operation under 30 C.F.R. part 56, as amended.
- (2) Examinations of surface mining operations for the purposes of 30 C.F.R. part 56, as amended, shall be conducted by one of the following:
- (a) A certified mine foreperson;
- (b) A person who is qualified to conduct such examinations as provided in division (D) of section 1514.47 of the Revised Code and paragraph (C) of rule 1501:14-2-08 of the Administrative Code;
- (c) A person designated by the certified mine foreperson as a competent person.
- (3) For purposes of this section, a competent person is a person who has been trained in accordance with 30 C.F.R. part 46 and been determined by a certified mine foreperson to have demonstrated the ability, training, knowledge, and experience necessary to perform the duty to which the person is assigned. A person is not a competent person if the chief demonstrates, with good cause, that the person does not have the ability, training, knowledge, or experience necessary to perform that duty.
- (4) The operator of a surface mining operation shall maintain records demonstrating that a competent person designated by a certified mine foreperson has the ability, training, knowledge, and experience to perform the duty to which the person is assigned as well as records of the competent person's training in accordance with 30 C.F.R. part 46. The operator shall make the records available to the chief upon request.
- (B) Qualifications, fees and procedures governing the examination for certification as a mine foreperson for surface mines.
- (1) A person who applies for certification as a mine foreperson shall be able to read and write the English language and shall have at least two years' experience working with or under the direction of a certified mine foreperson.
- (2) Persons may be certified for either or both of the following:
- (a) Sand and gravel mine foreperson for surface mining operations permitted under Chapter 1514. of the Revised Code and these rules which do not use explosives.
- (b) Quarry mine foreperson, which shall be valid for all surface mining operations permitted under Chapter 1514. of the Revised Code and these rules.
- (3) An applicant for certification as a mine foreperson shall file an application for certification with the chief, including a notarized affidavit establishing the applicant's qualifications as set forth in paragraph (B)(1) of this rule, to take the certified mine foreperson examination. An applicant may apply for certification as both a sand and gravel foreperson and a quarry mine foreperson. Such application and affidavit shall be made on a form prescribed by the chief.

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- (4) The chief shall conduct mine foreperson certification examinations as often as practical in accordance with these rules.
  - (5) The chief shall grade each examination, and certify an applicant attaining a grade of seventy per cent or higher on each portion of the examination.
  - (6) An applicant not attaining a passing grade on one part of the examination may apply to be retested on that part only.
  - (7) An applicant not attaining a passing grade on two or more parts of the examination shall wait at least thirty days before reapplying for examination. An applicant not attaining a passing grade on two or more parts of the examination shall retake the entire examination.
  - (8) Each applicant for examination shall pay a non-refundable fee of twenty-five dollars, submitted with each application for examination. This fee shall be paid by check or money order payable to "Treasurer, State of Ohio." Any moneys collected under this rule shall be paid into the state treasury to the credit of the surface mining fund created in section 1514.06 of the Revised Code.
  - (9) A certificate issued under paragraph (B) of this rule after September 29, 2015, shall not expire ~~five years after the date of issuance unless it is renewed in accordance with paragraph (E) of this rule~~ unless, as provided in division (C)(1) of section 1514.47 and paragraph (E)(3) of this rule, the certificate holder has not been employed in a surface mining operation for five consecutive years.
- (C) Temporary certification of mine foreperson. An ~~applicant~~ operator may submit a request to the chief, on a form provided by the chief, asking for temporary certification for one of his or her employees who is within six months of having accumulated the required experience for certification as a sand and gravel foreperson or a quarry mine foreperson so that the employee may ~~submit a request to the chief, on a form provided by the chief, to~~ act in the capacity of a certified sand and gravel foreperson or a certified quarry mine foreperson on a temporary basis until such time as the applicant has accumulated the minimum necessary experience.
- (1) The recipient of a temporary certification may apply for and take the examination for certification, administered under paragraph (B) of this rule, during the period within which the individual has a temporary certification. If the applicant passes the examination and, upon completion of all eligibility requirements, submits the required information on a notarized form provided by the chief documenting the accrual of the balance of the required experience, the chief shall issue the applicant a mine foreperson certification ~~shall be issued by the chief.~~
  - (2) Temporary certification as a mine foreperson shall be valid for a maximum of six months. If the individual holding a temporary certification does not pass the examination by the end of the six-month period, the temporary certification shall expire and the applicant shall cease performing all duties of a certified mine foreperson.
  - (3) If the individual holding a temporary certification has applied to take the examination for certification and the application to take the examination has been postmarked by midnight of the expiration date of the temporary certification, the temporary certification shall remain in effect until the date of the next certification examination scheduled by the division of mineral resources management. The division will notify the applicant of the examination date. If the applicant does not take the next scheduled examination or does not pass that examination, the temporary certification shall expire and the applicant shall cease performing all duties of a certified mine foreperson.

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- ~~(3)~~ (4) No person shall be eligible to receive temporary certification more than one time unless the chief determines that exigent circumstances warrant otherwise.
- ~~(4)~~ (5) The chief may waive any part of the requirements for temporary certification if the chief determines exigent circumstances so warrant.
- (D) A copy of each mine foreperson certificate and temporary certificate shall be kept at the mine site and made available to the chief upon request.
- (E) Qualifications, fees and procedures governing the ~~renewal~~ reissuance and expiration of mine foreperson certification. ~~A certificate issued under paragraph (B) of this rule may be renewed, provided that the applicant verifies that all required training pursuant to 30 C.F.R. part 46, as amended, has been completed and any other requirements for renewal have been satisfied.~~
- (1) ~~A mine foreperson certificate issued pursuant to section 1514.47 of the Revised Code and this rule shall expire five years after issuance of the certificate. If a person holds a certificate issued under paragraph (B) of this rule that has not expired prior to September 29, 2015, the chief, upon request, shall reissue to the person a certificate that does not expire.~~
- (2) ~~A mine foreperson certificate issued pursuant to section 1514.47 of the Revised Code and this rule may be renewed six months prior to expiration of such certification upon completion of the following: If a person holds a certificate issued under this rule that expired on or after April 7, 2012, and has not been issued a new certificate prior to September 29, 2015, the chief, upon request, shall issue to that person a certificate that does not expire, provided that the person is in compliance with all other applicable requirements established in Chapter 1514. of the Revised Code and rules adopted under it. An applicant for reissuance of a mine foreperson certification pursuant to this paragraph shall file an application for reissuance with the chief, on a form prescribed by the chief, and pay a non-refundable fee of twenty-five dollars. This fee shall be paid by check or money order payable to "Ohio Treasurer of State."~~
- ~~(a) An applicant for recertification shall file an affidavit with the chief establishing the applicant's qualifications for recertification. Such affidavit shall be made on a form prescribed by the chief and notarized prior to submission.~~
- ~~(b) An applicant for recertification shall provide the chief with copies of training records verifying that the applicant has received annual refresher training, as required in rules adopted and incorporated by reference pursuant to division (A) of section 1514.40 of the Revised Code, each year during the five preceding years.~~
- ~~(c) An applicant for recertification shall pay a non-refundable fee of twenty-five dollars, submitted with each application for renewal. This fee shall be paid by check or money order payable to "Treasurer, State of Ohio." Any moneys collected under this paragraph shall be paid into the state treasury to the credit of the surface mining fund created in section 1514.06 of the Revised Code.~~
- ~~(d) The chief may issue a certificate of renewal to an applicant completing all requirements of division (C) of section 1514.47 of the Revised Code and this rule.~~
- (3) ~~A foreperson or mine foreperson certificate issued prior to April 6, 2007, shall expire on April 6, 2012. A person holding such a certificate shall be eligible for renewal provided he or she meets the requirements of section 1514.47 of the Revised Code and this rule.~~ A mine foreperson certificate issued pursuant to



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section 1514.47 of the Revised Code and this rule shall not expire unless the certificate holder has not been employed in a surface mining operation for five consecutive years. If the certificate holder has not been employed in a surface mining operation for five consecutive years, the certificate holder may retake the mine foreperson examination and fulfill the other certification requirements of division (B) of section 1514.47 of the Revised Code and paragraph (B) of this rule, or may petition the chief to accept past employment history in lieu of being employed in a surface mining operation for five consecutive years. The petition shall be made on a form prescribed by the chief and shall include a notarized affidavit establishing the certificate holder's qualifications as set forth in paragraph (B)(1) of this rule. The certificate holder shall submit with the petition copies of training records verifying that within the past twelve months the certificate holder has received annual refresher training as required in rules adopted and incorporated by reference pursuant to division (A) of section 1514.40 of the Revised Code. The chief shall grant or deny the petition by issuance of an order. If the chief grants the petition, the certificate holder shall pay a non-refundable fee of twenty-five dollars, paid by check or money order payable to "Ohio Treasurer of State," and the chief shall reissue the certificate. If the chief denies the petition, the certificate holder may apply for a new certificate by retaking the mine foreperson examination and fulfilling the other certification requirements of division (B) of section 1514.47 of the Revised Code and paragraph (B) of this rule.

- (4) ~~A person not renewing his or her certification prior to its expiration shall cease performing all duties of a certified foreperson upon expiration of the certificate.~~ If a certificate holder has not been employed in a surface mining operation for five consecutive years, he or she shall not perform the duties of a certified mine foreperson unless the chief reissues his or her certificate pursuant to division (C)(1) of section 1514.47 of the Revised Code and paragraph (E)(3) of this rule or the chief issues him or her a new certificate pursuant to division (B) of section 1514.47 of the Revised Code and paragraph (B) of this rule.
- (5) ~~A person for whom certification has expired must apply for and pass the examination conducted under paragraph (B) of this rule for the desired certification prior to performing the duties requiring certification.~~

(F)

- (1) If a certificate, including a temporary certificate, issued under this rule is suspended, the certificate shall not be renewed or reissued until the suspension period expires and the person whose certificate is suspended successfully completes all actions required by the chief. If an applicant's license, certificate, or similar authority that is issued by another state to perform specified mining duties is suspended or revoked by that state, the applicant shall be ineligible for a certification test or for renewal or reissuance of a certificate, including a temporary certificate, in this state during that period of suspension or revocation.

- (2) A certificate, including a temporary certificate, issued under this rule that has been revoked shall not be renewed or reissued.

- (G) If a person who has been certified by the chief under section 1514.47 of the Revised Code and this rule purposely violates Chapter 1514. of the Revised Code or Chapters 1501:14-1 to 1501:14-6 of the

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Administrative Code, the chief may suspend or revoke the certificate after an investigation and hearing conducted in accordance with Chapter 119. of the Revised Code are completed.

Draft Rule 1501:14-2-08, dated 7/6/2015

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

(A). Paragraph references revised per HB 64, effective 9/29/2015.

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**Dated 7/6/2015**

**1501:14-2-08      Training in lieu of employing certified mine foreperson.**

- (A) In lieu of employing a certified mine foreperson in accordance with divisions (A) to ~~(D)~~(C) of section 1514.47 of the Revised Code and rule 1501:14-2-07 of the Administrative Code, the operator of a surface mining operation may, in accordance with division ~~(E)~~(D) of section 1514.47 of the Revised Code and this rule, submit to the chief a detailed training plan under which persons who qualify under the plan may conduct and document examinations at the surface mining operation for purposes of 30 C.F.R. part 56, as amended.
- (1) To be eligible to participate in a training plan to become qualified under this rule, a person shall be able to read and write the English language and shall have had at least one year's experience working with or under the direction of a certified mine foreperson.
- (2) The detailed training plan shall contain:
- (a) The name, address, state and MSHA identification number of the operation;
  - (b) The name, position and work experience of each employee to be qualified under the plan;
  - (c) The name, position and work experience of each instructor who will be conducting training under the plan;
  - (d) An outline of the content for initial training;
  - (e) An outline of the content for continuing education; and
  - (f) An explanation of how the operator will provide documentation to the chief pursuant to paragraph (C)(2) of this rule.
- (3) Training provided under the plan shall address the following subject matter:
- (a) Identification and correction of hazards found by the qualified person;
  - (b) Reporting, documentation and follow up procedures to be followed by the qualified person concerning hazards and corrective actions;
  - (c) Safe work practices;
  - (d) Accident prevention, investigation, reporting and documentation;
  - (e) Medical care for injured miners;
  - (f) Training requirements under Chapter 1514. of the Revised Code and rules adopted pursuant thereto;
  - (g) Duties of a qualified person; and
  - (h) Requirements set forth in Chapter 1514. of the Revised Code and all mine safety rules adopted pursuant thereto.
- (4) The length of initial training shall be a minimum of thirty-two hours, which shall include eight hours of in-class training and twenty-four hours of on-the-job training. The training hours specified need not be completed consecutively. Continuing education shall be a minimum of four hours each year.
- (B) The chief shall review the plan and determine if the plan complies with the requirements established in these rules. The chief shall approve or not approve the plan and notify the operator, in writing, of his or her

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decision.

- (1) A plan not approved by the chief shall be returned to the operator with an explanation of the reason(s) for non-approval.
  - (2) Any changes to an approved training plan must be submitted to the chief in writing and approved by the chief in writing prior to implementation.
  - (3) A copy of all approved training plans shall be kept at the mine site and made available to the chief upon request.
- (C) After a detailed training plan is approved by the chief, an operator may train persons in accordance with the plan.
- (1) When a qualified person is added to or removed from the list of persons who qualify under an approved training plan, the operator shall submit, in writing, within thirty days, an updated list of qualified persons at that operation to the chief.
  - (2) When a person at an operation completes initial and annual training under this rule to become or to remain qualified under the approved plan, the operator shall document such training, in writing, to the chief.

Draft Rule 1501:14-2-09, dated 3/2/2016

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

(A)(2). Division's address corrected.

(C)(2). "of a miner" added to clarify the application of the provision.

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Dated 3/2/2016

**1501:14-2-09 Requirements governing the reporting and investigation of accidents and injuries for surface mining operations that are not inspected by MSHA.**

This rule applies to surface mining operations that are not inspected by MSHA.

(A) Accidents and injuries requiring reporting.

- (1)
  - (a) A fatality or a life-threatening injury that occurs at a surface mining operation that is not inspected by MSHA shall be reported to the division within one hour, once the operator knows or should know that the fatality or life-threatening injury has occurred, by contacting the emergency operations center of the Ohio department of natural resources by telephone at (614) 799-9574.
  - (b) If the operator thinks that the accident reported under paragraph (A)(1)(a) of this rule did not occur as a result of an unsafe condition or a practice at the operation, then the operator may, within twenty-four hours after the accident is reported, provide the chief with a written explanation of the reason(s) upon which the operator bases such opinion. The operator may provide this explanation by U.S. mail, facsimile, or electronic mail to the attention of: manager, mine safety program, Columbus office, division of mineral resources management.
- (2) A lost-time accident other than a life-threatening injury that occurs at a surface mining operation that is not inspected by MSHA shall be reported to the chief, in writing on a form provided by the chief, within ten days after the lost-time accident occurs. The accident report form shall be sent to "Mine Safety Section, Division of Minerals Resources Management, Ohio Department of Natural Resources, 2045 Morse Road, Building H-3, Columbus, OH 43229."

(B) Investigation of fatalities and life-threatening injuries.

- (1) Upon receipt of notice that a fatality or a life-threatening injury has occurred at an operation, the chief shall conduct an investigation to determine the events surrounding and causes of the fatality or life-threatening injury.
- (2) If the chief conducts an investigation pursuant to this rule, the operator shall, during the investigation, provide the chief, in writing, the name of the organization identified as the authorized representative of the miners for the operation, if applicable.
- (3) The chief shall prepare a report of the investigation, which shall include a determination of whether such fatality or injury occurred as a result of an unsafe condition or a practice at the operation. Within seven days of the completion of the fatality or life-threatening injury investigation report, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the operation, with a copy of the investigation report.

(C) Notification of determination to conduct inspections.

- (1) If the chief determines that a fatality or a life-threatening injury of a miner has occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall immediately provide the operation with written notice that the operation will be inspected once every three months for a period of two years for a fatality in accordance with division (C) of section 1514.41 of the Revised Code or that the operation will be inspected once every three months for a period of one year for a life-threatening injury in accordance with division (D) of section 1514.41 of the Revised Code. The notice shall contain:
  - (a) A citation of the relevant provision(s) of the Revised Code and the Administrative Code that require

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the inspections;

- (b) A statement that the one-year or two-year time frame for the inspections, as applicable, will begin immediately;
- (c) The number of inspections the surface mining operation will receive; and
- (d) The procedure, pursuant to paragraph (D) of this rule, whereby the operator may request that the chief reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.

- (2) If a fatality or a life-threatening injury [of a miner](#) occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall, as soon as practicable, conduct a mine safety inspection of the operation in accordance with sections 1514.41 and 1514.43 of the Revised Code and these rules. A request for reconsideration pursuant to paragraph (D) of this rule shall not cause a delay in the conduct of this mine safety inspection.

(D) Reconsideration by the chief.

- (1) Within thirty days of receipt of the notification required by paragraph (C) of this rule, a surface mining operator may submit a written request to the chief asking him or her to reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.
- (2) Within fourteen days of receipt of an operator's request for reconsideration under paragraph (D)(1) of this rule, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the surface mining operation, with written notice of his or her decision.
- (3) Within thirty days after receipt of the chief's decision under paragraph (D)(2) of this rule, the operator may appeal the chief's decision to the reclamation commission in accordance with section 1514.09 of the Revised Code. An operator shall not file an appeal with the reclamation commission of the chief's decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation without first requesting reconsideration as provided by paragraph (D)(1) of this rule. The filing of a notice of appeal to the reclamation commission does not operate as a stay of any order, determination, or decision of the chief.



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## **1501:14-2-02      Safety standards governing surface mining operations.**

The safety requirements of 30 C.F.R. parts 46, 47, 50, 56, 58, and 62, as amended, are hereby incorporated by reference and shall be the safety standards governing surface mining conducted pursuant to Chapter 1514. of the Revised Code and these rules. To minimize duplication with MSHA and to fulfill the requirements of divisions (A) and (C) of section 1514.40, of the Revised Code for the purpose of establishing safety standards governing surface mining operations conducted pursuant to Chapter 1514. of the Revised Code, the requirements relating to MSHA's 7000-1 report, as set forth in 30 C.F.R. part 50, subpart C and subpart D, are not incorporated in these rules.

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**1501:14-2-03 Criteria, standards and procedures governing annual safety performance evaluations of surface mining operations that are inspected by MSHA.**

This rule applies to surface mining operations that are inspected by MSHA.

- (A) The chief annually shall conduct, in accordance with these rules, a safety performance evaluation of all surface mining operations in the state that are inspected by MSHA.
- (B) Collection of accident and injury data.
  - (1) Prior to July first of each year, the chief shall obtain from MSHA the NFDL incident data and the NFDLIR data for the preceding year for each surface mining operation permitted under Chapter 1514. of the Revised Code.
  - (2) Prior to July first of each year, the chief shall obtain from MSHA the national average NFDLIR data for each classification of surface mining operations permitted under Chapter 1514. of the Revised Code.
- (C) Procedures governing safety performance evaluations.
  - (1) Prior to July first of each year, the chief shall compare the NFDLIR of each surface mining operation permitted under Chapter 1514. of the Revised Code with the national average NFDLIR for the appropriate mine classification.
  - (2) Prior to July first of each year, the chief shall identify those surface mining operations permitted under Chapter 1514. of the Revised Code that have a NFDLIR greater than the national average. The mining operations shall be identified by mine classification.
  - (3) A surface mining operation identified as having a NFDLIR greater than the national average for its mine classification shall receive two inspections conducted in accordance with division (B) of section 1514.41 and section 1514.43 of the Revised Code during the twelve months following July first.
- (D) Notification of determination to conduct inspections due to the results of a safety performance evaluation. If a surface mining operation is identified under paragraph (C) of this rule as having a NFDLIR greater than the national average for its mine classification, the chief shall, prior to July first of each year, provide written notification to the operator of the operation and, if applicable, the authorized representative of the miners of the operation, that the operation will be inspected pursuant to division (B) of section 1514.41 and section 1514.43 of the Revised Code and as determined by this rule. The notice shall contain:
  - (1) A citation of the relevant provision(s) of the Revised Code and the Administrative Code that require the inspections;
  - (2) A statement that the inspections will be conducted between July first of the year the notice is sent and July first of the following year;
  - (3) The surface mining operation's NFDLIR;
  - (4) The national average NFDLIR for that surface mining operation's mine classification;

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- (5) The number of inspections the surface mining operation will receive;
  - (6) A requirement that the operator provide to the chief within thirty days, in writing, the name of the organization identified as the authorized representative of the miners for the operation, if applicable. The operator may provide this name by U.S. mail, facsimile, or electronic mail to the attention of: manager, mine safety program, Columbus office, division of mineral resources management; and
  - (7) The procedure, pursuant to paragraph (E) of this rule, whereby the operator may request that the chief reconsider the decision that the surface mining operation's NFDLIR exceeds the national average NFDLIR for the relevant mine classification.
- (E) Reconsideration by the chief.
- (1) Within thirty days of receipt of the notification required by paragraph (D) of this rule, a surface mining operator may submit a written request to the chief asking him or her to reconsider the decision that the operation exceeds the national average NFDLIR for the relevant mine classification. The request for reconsideration shall be based on either of the following:
    - (a) The accident(s) or injury(ies) causing the operation's NFDLIR to exceed the national average NFDLIR was improperly reported to MSHA; or
    - (b) The accident(s) or injury(ies) causing the operation's NFDLIR to exceed the national average NFDLIR was not related to the mining process.
  - (2) Within fourteen days of the receipt of an operator's request for reconsideration under paragraph (E)(1) of this rule, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the surface mining operation with written notice of his or her decision.
  - (3) Within thirty days after receipt of the chief's decision upon reconsideration under paragraph (E)(2) of this rule, the operator may appeal the chief's decision to the reclamation commission in accordance with section 1514.09 of the Revised Code. An operator shall not file an appeal with the reclamation commission of the chief's decision that a surface mining operation's NFDLIR exceeds the national average NFDLIR without first requesting reconsideration as provided by paragraph (E)(1) of this rule. The filing of a notice of appeal to the reclamation commission does not operate as a stay of any order, determination, or decision of the chief.

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**1501:14-2-04      Requirements governing the reporting and investigation of accidents for surface mining operations that are inspected by MSHA.**

This rule applies to surface mining operations that are inspected by MSHA.

(A) Accidents requiring reporting.

- (1) An accident that is required to be reported to MSHA pursuant to 30 C.F.R. 50.10 shall be reported to the division of mineral resources management. Accidents requiring notification shall be reported to the division of mineral resources management within one hour, once the operator knows or should know that the accident has occurred, by contacting the emergency operations center of the Ohio department of natural resources by telephone at (614) 799-9574.
- (2) If the operator thinks that the accident reported under paragraph (A)(1) of this rule did not occur as a result of an unsafe condition or a practice at the operation, then the operator may, within twenty-four hours after the accident is reported, provide the chief with a written explanation of the reason(s) upon which the operator bases such opinion. The operator may provide this explanation by U.S. mail, facsimile, or electronic mail to the attention of: manager, mine safety program, Columbus office, division of mineral resources management.

(B) Injuries and illnesses not requiring reporting. An occupational injury or occupational illness that is required to be reported to MSHA pursuant to 30 C.F.R. part 50, subpart C or D, is not required to be reported to the division of mineral resources management.

(C) Investigation of fatalities and life-threatening injuries.

- (1) Upon receipt of notice that a fatality or a life-threatening injury has occurred at an operation, the chief shall conduct an investigation to determine the events surrounding and causes of the fatality or life-threatening injury. To the extent practical, the chief shall coordinate the investigation with MSHA.
- (2) If the chief conducts an investigation pursuant to this rule, the operator shall, during the investigation, provide the chief, in writing, the name of the organization identified as the authorized representative of the miners for the operation, if applicable.
- (3) The chief shall prepare a report of the investigation, which shall include a determination of whether such fatality or injury occurred as a result of an unsafe condition or a practice at the operation. Within seven days of the completion of the fatality or life-threatening injury investigation report, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the operation, with a copy of the investigation report.

(D) Notification of determination to conduct inspections.

- (1) If the chief determines that a fatality or a life-threatening injury of a miner has occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall immediately provide the operator with written notice that the operation will be inspected once every three months for a period of two years for a fatality in accordance with division (C) of section 1514.41 of the Revised

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Code or that the operation will be inspected once every three months for a period of one year for a life-threatening injury in accordance with division (D) of section 1514.41 of the Revised Code. The notice shall contain:

- (a) A citation of the relevant provision(s) of the Revised Code and the Administrative Code that require the inspections;
  - (b) A statement that the one-year or two-year time frame for the inspections, as applicable, will begin immediately;
  - (c) The number of inspections the surface mining operation will receive; and
  - (d) The procedure, pursuant to paragraph (E) of this rule, whereby the operator may request that the chief reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.
- (2) If a fatality or a life-threatening injury of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the chief shall, as soon as practicable, conduct a mine safety inspection of the operation in accordance with sections 1514.41 and 1514.43 of the Revised Code and these rules. A request for reconsideration pursuant to paragraph (E) of this rule shall not cause a delay in the conduct of this mine safety inspection.
- (E) Reconsideration by the chief.
- (1) Within thirty days of receipt of the notification required by paragraph (D) of this rule, a surface mining operator may submit a written request to the chief asking him or her to reconsider the decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation.
  - (2) Within fourteen days of receipt of an operator's request for reconsideration under paragraph (E)(1) of this rule, the chief shall provide the operator and, if applicable, the authorized representative of the miners at the surface mining operation, with written notice of his or her decision.
  - (3) Within thirty days after receipt of the chief's decision under paragraph (E)(2) of this rule, the operator may appeal the chief's decision to the reclamation commission in accordance with section 1514.09 of the Revised Code. An operator shall not file an appeal with the reclamation commission of the chief's decision that a fatality of a miner or a life-threatening injury of a miner occurred at a surface mining operation as a result of an unsafe condition or a practice at the operation without first requesting reconsideration as provided by paragraph (E)(1) of this rule. The filing of a notice of appeal to the reclamation commission does not operate as a stay of any order, determination, or decision of the chief.

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**1501:14-2-05      Mine safety inspections of surface mining operations that are inspected by MSHA.**

This rule applies to surface mining operations that are inspected by MSHA.

(A)

- (1) If a surface mining operation is inspected by MSHA, the chief shall conduct inspections of the operation only under the following circumstances:
  - (a) The operation is identified through a safety performance evaluation conducted under section 1514.45 of the Revised Code or rule 1501:14-2-03 of the Administrative Code as having an NFDLIR that is higher than the national average;
  - (b) A fatality of a miner or a life-threatening injury of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, as determined by the chief under division (C) or (D) of section 1514.41 of the Revised Code and paragraphs (C) and (D) of rule 1501:14-2-04 of the Administrative Code; or
  - (c) The chief determines, pursuant to paragraph (B)(3) of this rule, that the operator has failed to comply with a safety standard that was being violated and the chief, at his or her discretion and based on the severity of the violation or other safety factors, conducts additional mine safety inspections pursuant to paragraph (B)(3)(b) of this rule.
- (2) If, pursuant to paragraphs (A)(1) of this rule, the chief conducts a mine safety inspection of a surface mining operation that is also inspected by MSHA, the chief shall enforce the safety standards established and incorporated by reference in Chapter 1514. of the Revised Code and these rules but shall only review the mine safety training plan required under 30 C.F.R. part 46 insofar as to ensure that the operation has such a training plan.

(B)

- (1) Except as otherwise provided in section 1514.44 of the Revised Code and paragraph (G) of this rule or pursuant to a safety audit conducted under section 1514.42 of the Revised Code, if, during a mine safety inspection, the chief finds a violation of a safety standard, the chief shall, in writing, require the operator to comply with the standard that is being violated within a reasonable period of time.
- (2) If the chief finds a violation of a safety standard, the chief shall return to the surface mining operation after a reasonable period of time only to determine if the operator has complied with the standard that was being violated.
- (3) If the chief determines, under paragraph (B)(2) of this rule, that the operator has failed to comply with the standard that was being violated:
  - (a) The chief shall take appropriate action, if necessary, in the form of an order of the chief to obtain compliance; and
  - (b) The chief may, at his or her discretion and based on the severity of the violation or other safety factors, conduct additional mine safety inspections of the entire surface mining operation pursuant to this rule.

(C) Except as otherwise provided in section 1514.44 of the Revised Code and paragraph (G) of this rule or pursuant to a safety audit conducted under section 1514.42 of the Revised Code, after completion of a mine safety inspection of a surface mining operation, the chief shall prepare a report that:

- (1) Describes the general conditions of the surface mining operation;
- (2) Lists any hazardous conditions at the operation;

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- (3) Lists any violations of the safety standards established or incorporated by reference in these rules; and
  - (4) Describes the nature and extent of any hazardous condition or violation found, the corresponding remedy for each hazardous condition or violation, and a reasonable period of time to remedy the hazardous condition or to comply with the safety standard that is being violated.
- (D) The chief shall provide two copies of the report prepared under paragraph (C) of this rule to the operator. The operator shall post one copy of the report at the operation for review by the employees of the operation.
- (E)
- (1) Except as otherwise provided in section 1514.44 of the Revised Code and paragraph (G) of this rule or pursuant to a safety audit conducted under section 1514.42 of the Revised Code, not later than ten days after receipt of a report under paragraph (D) of this rule, the operator may submit a written request to the chief for a meeting with the chief to review the findings contained in the report.
  - (2) Upon receipt of a request, the chief shall review the report and schedule a meeting with the operator. Within a reasonable period of time after the meeting, the chief shall make a written determination concerning the findings contained in the report and provide one copy of the determination to the operator of the surface mining operation and one copy of the determination to an authorized representative of the miners at the operation. If the chief makes a determination that affirms the findings contained in the report, the chief's determination constitutes an order of the chief for purposes of Chapter 1514. of the Revised Code and these rules.
- (F) An operator shall not appeal the contents of a report prepared under paragraph (C) of this rule to the reclamation commission without first submitting a written request for a review by the chief as provided in paragraph (E)(1) of this rule. If, upon review of the findings in the report, the chief makes a determination that affirms the findings in the report, then the operator may appeal this determination to the reclamation commission in accordance with section 1514.09 of the Revised Code. The filing of a notice of appeal to the reclamation commission does not operate as a stay of any order, determination, or decision of the chief.
- (G)
- (1) If, during a mine safety inspection conducted under section 1514.41 of the Revised Code or this rule or during a safety audit conducted under section 1514.42 of the Revised Code, the chief finds a condition or practice at an operation that could reasonably be expected to cause the death of or imminent serious physical harm to an employee of the operation, the chief immediately shall issue orders to:
    - (a) Safeguard the employees;
    - (b) Notify the operator of the condition or practice; and
    - (c) Require the operator to abate the condition or practice within a reasonable period of time.
  - (2) In all situations under paragraph (G)(1) of this rule, the chief may require the operation to cease in the area in which the condition or practice is occurring or may require the entire operation to cease, if necessary, until the condition or practice that could reasonably be expected to cause death or serious physical harm is eliminated.
- (H)
- (1) The chief shall complete a report that describes:
    - (a) The condition or practice found under paragraph (G) of this rule;
    - (b) The action taken to abate the condition or practice, if applicable pursuant to paragraph (G)(1)(c) of this rule, or to eliminate the condition or practice, if applicable pursuant to paragraph (G)(2) of this

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rule; and

(c) The period of time that was given to abate or eliminate the condition or practice, as applicable.

(2) The chief shall provide two copies of the report to the operator. The operator shall post one copy of the report at the operation for review by the employees of the operation.

(l) No operator shall violate or fail to comply with an order issued pursuant to this rule.



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**1501:14-2-10 Mine safety inspections of surface mining operations that are not inspected by MSHA.**

This rule applies to surface mining operations that are not inspected by MSHA.

(A)

- (1) If a surface mining operation is not inspected by MSHA, the chief shall conduct mine safety inspections of the operation as follows:
  - (a) A minimum of two inspections annually; or
  - (b) If a fatality of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, as determined by the chief under division (C) of section 1514.41 of the Revised Code and paragraphs (B) and (C) of rule 1501:14-2-09 of the Administrative Code, a minimum of one inspection every three months for two years following the fatality; or
  - (c) If a life-threatening injury of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, as determined by the chief under division (D) of section 1514.41 of the Revised Code and paragraphs (B) and (C) of rule 1501:14-2-09 of the Administrative Code, a minimum of one inspection every three months for one year following the life-threatening injury.
- (2) The chief shall conduct mine safety inspections to enforce the safety standards established and incorporated by reference in Chapter 1514. of the Revised Code and these rules and to review for compliance the mine safety training plan required under 30 C.F.R. part 46.
- (3) When the chief conducts a mine safety inspection pursuant to paragraph (A)(1) of this rule, the operator shall, during the inspection, provide the chief, in writing, the name of the organization identified as the authorized representative of the miners for the operation, if applicable.

(B)

- (1) Except as otherwise provided in section 1514.44 of the Revised Code and paragraph (G) of this rule or pursuant to a safety audit conducted under section 1514.42 of the Revised Code, if, during a mine safety inspection, the chief finds a violation of a safety standard, the chief shall, in writing, require the operator to comply with the standard that is being violated within a reasonable period of time.
- (2) If the chief finds a violation of a safety standard, the chief shall return to the surface mining operation after a reasonable period of time to determine if the operator has complied with the standard that was being violated.
- (3) If the chief determines, under paragraph (B)(2) of this rule, that the operator has failed to comply with the standard that was being violated:
  - (a) The chief shall take appropriate action in the form of an order of the chief to obtain compliance if necessary; and
  - (b) The chief may, at his or her discretion and based on the severity of the violation or other safety factors, conduct additional mine safety inspections of the entire surface mining operation pursuant to this rule.

(C) Except as otherwise provided in section 1514.44 of the Revised Code and paragraph (G) of this rule or pursuant to a safety audit conducted under section 1514.42 of the Revised Code, after completion of a mine safety inspection of a surface mining operation, the chief shall prepare a report that:

- (1) Describes the general conditions of the surface mining operation;

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- (2) Lists any hazardous conditions at the operation;
  - (3) Lists any violations of the safety standards established or incorporated by reference in these rules; and
  - (4) Describes the nature and extent of any hazardous condition or violation found, the corresponding remedy for each hazardous condition or violation, and a reasonable period of time to remedy the hazardous condition or to comply with the safety standard that is being violated.
- (D) The chief shall provide two copies of the report prepared under paragraph (C) of this rule to the operator. The operator shall post one copy of the report at the operation for review by the employees of the operation.
- (E)
- (1) Except as otherwise provided in section 1514.44 of the Revised Code and paragraph (G) of this rule or pursuant to a safety audit conducted under section 1514.42 of the Revised Code, not later than ten days after receipt of a report under paragraph (D) of this rule, the operator may submit a written request to the chief for a meeting with the chief to review the findings contained in the report.
  - (2) Upon receipt of a request, the chief shall review the report and schedule a meeting with the operator. Within a reasonable period of time after the meeting, the chief shall make a written determination concerning the findings contained in the report and provide one copy of the determination to the operator of the surface mining operation and one copy of the determination to an authorized representative of the miners at the operation. If the chief makes a determination that affirms the findings contained in the report, the chief's determination constitutes an order of the chief for purposes of Chapter 1514. of the Revised Code and these rules.
- (F) An operator shall not appeal the contents of a report prepared under paragraph (C) of this rule to the reclamation commission without first submitting a written request for a review by the chief as provided in paragraph (E)(1) of this rule. If, upon review of the findings in the report, the chief makes a determination that affirms the findings in the report, then the operator may appeal this determination to the reclamation commission in accordance with section 1514.09 of the Revised Code. The filing of a notice of appeal to the reclamation commission does not operate as a stay of any order, determination, or decision of the chief.
- (G)
- (1) If, during a mine safety inspection conducted under section 1514.41 of the Revised Code or this rule or during a safety audit conducted under section 1514.42 of the Revised Code, the chief finds a condition or practice at an operation that could reasonably be expected to cause the death of or imminent serious physical harm to an employee of the operation, the chief immediately shall issue orders to:
    - (a) Safeguard the employees;
    - (b) Notify the operator of the condition or practice; and
    - (c) Require the operator to abate the condition or practice within a reasonable period of time.
  - (2) In all situations under paragraph (G)(1) of this rule, the chief may require the operation to cease in the area in which the condition or practice is occurring or may require the entire operation to cease, if necessary, until the condition or practice that could reasonably be expected to cause death or serious physical harm is eliminated.
- (H)
- (1) The chief shall complete a report that describes:
    - (a) The condition or practice found under paragraph (G) of this rule;

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

(b) The action taken to abate the condition or practice, if applicable pursuant to paragraph (G)(1)(c) of this rule, or to eliminate the condition or practice, if applicable pursuant to paragraph (G)(2) of this rule; and

(c) The period of time that was given to abate or eliminate the condition or practice, as applicable.

(2) The chief shall provide two copies of the report to the operator. The operator shall post one copy of the report at the operation for review by the employees of the operation.

(I) No operator shall violate or fail to comply with an order issued pursuant to this rule.