

**MEMORANDUM**

**TO:** Brock Miskimen, Deputy Legal Counsel, Ohio Department of Natural Resources

**FROM:** Sarah JanTausch, Regulatory Policy Advocate

**DATE:** February 9, 2016

**RE:** **CSI Review – 2016 Diesel Rules (OAC 1501:10-1-01, 1501:10-1-07, 1501:10-2-01, 1501:10-2-02, 1501:10-2-03, 1501:10-2-04, 1501:10-2-05, 1501:10-2-06, 1501:10-2-07, 1501:10-2-08, 1501:10-2-09, 1501:10-2-10, 1501:10-2-11, 1501:10-2-12, 1501:10-2-13, 1501:10-2-14, 1501:10-2-15, 1501:10-2-16, 1501:10-2-17, 1501:10-2-18, 1501:10-2-19, 1501:10-2-20, 1501:10-2-21, 1501:10-2-22, 1501:10-2-23, 1501:10-2-24, 1501:10-2-25, 1501:10-2-26, and 1501:10-2-27)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of 29 rules – four amended and 25 no-change – submitted pursuant to the statutorily-required five-year rule review by the Ohio Department of Natural Resources (ODNR). It was submitted to the CSI Office on January 12, 2017, and the comment period remained open until February 3, 2017.

The rules regulate the use of diesel equipment in underground coal mines as part of the Ohio Mine Safety Program which is regulated by the Division of Mineral Resources Management (DMRM). Ohio's program is separate from the federal Mine Safety and Health Administration (MSHA) and the federal government has no oversight authority over Ohio's program. According to the BIA, the rules were originally developed between 2009 and 2011 as a result of Ohio's coal mining law. Although the MSHA has no oversight authority, ODNR included references to the Code of Federal Regulations (CFR) when the rules were created in 2009. The incorporations by reference help to align exhaust emission control rates, training and fire drill requirements, and certification with federal regulations and as a result, ease the burden of compliance for businesses in this industry as

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77 South High Street | 30th Floor | Columbus, Ohio 43215-6117  
CSIOhio@governor.ohio.gov

the rules align with bordering states' regulations.

The amended rules contain several updates including the published dates for related CFR references from 2011 to 2015 to align with the new CFR publication date (OAC 1501:10-1-07). The rules also contain several grammatical corrections and revise training requirements to specify training requirements for equipment operators (OAC 1501:10-2-20 and 1501:10-2-22). Lastly, the amended rules help to clarify which actions require "written approval of the chief" rather than "a written request by the chief," which actions are subject to appeal to the Reclamation Commission, and which funds may be used for committee reimbursement for travel expenses (OAC 1501:10-2-27).

According to the BIA, these rules apply to Ohio's underground coal mining operators and mirror similar regulations in Pennsylvania and West Virginia. This allows companies a lower barrier to entry for operating in Ohio and provides a better regulatory climate for businesses who wish to operate here. The proposed amendments contain changes that will aid in compliance with these regulations and do not add any adverse business impact. Existing impacts from these rules include resources associated with compliance with various standards including emissions, record keeping, training, maintenance, and operation. According to the BIA, the DMRM does not assess penalties for paperwork violations unless it becomes habitual non-compliance and has the potential to cause serious harm to the public interest or presents direct danger to the public health or safety. The BIA states the rules provide protection for underground coal mine workers, maintain safe working conditions, allow for the monitoring and correction of mine safety, and help to prevent safety violations.

During early stakeholder outreach, several associations and stakeholder groups including the Ohio Coal Association, Ohio Environmental Council, and the United Mine Workers were provided a copy of the rules. The rules received no comments during early stakeholder outreach. No comments were received during the CSI public comment period. After reviewing the draft rules, BIA, and stakeholder outreach, the CSI Office has determined that the rule package is justified.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that ODNR should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office