

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

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

**Regulation/Package Title:** HB 49 changes to Industrial Minerals (IM) rules (4 rules), plus the IM Incorporation by Reference rules (2 rules)

**Rule Number(s):** 1501:14-1-01, 1501:14-1-09, 1501:14-1-16, 1501:14-2-01, 1501:14-2-03, and 1501:14-2-05.

**Date:** August 20, 2018

**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☐ Rescinded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.

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## **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.*

The Division of Mineral Resources Management (DMRM) is submitting 6 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 amend four of these rules due to changes enacted by HB 49 of the 132<sup>nd</sup> General Assembly, effective 9/29/2017, as follows:

- 1501:14-1-01 Definitions: several proposals per ORC section 1514.41(B) which would: remove two definitions; revise one definition, and create one new definition.
- 1501:14-1-09 Payment of fees and filing of performance bond: fund name changed per ORC section 1514.03.
- 1501:14-2-03 Criteria, standards and procedures governing annual safety performance evaluations of surface mining operations that are inspected by MSHA: changes to four paragraphs to reflect the statutory provisions of ORC section 1514.41(B).
- 1501:14-2-05 Mine safety inspections of surface mining operations that are inspected by MSHA: revised to reflect the statutory provisions of ORC section 1514.41(B).

In addition, DMRM proposes to update the publication dates and simplify the website address in the two IM incorporation by reference rules.

All 6 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 their proposed amendments. (Note: The attachment contains a copy of each rule, accompanied by a summary of proposed changes for the rule.)

**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 from this chapter are proposed for revision:**

- **1501:14-1-01 Definitions.** This rule contains the definitions that apply to OAC Chapters 1501:14-01 to 1501:14-6. The rule is proposed for amendment per amended ORC section 1514.41(B) of HB 49:
  - Definition for “Lost-time accident” revised to refer to the rule that uses this term.
  - Definitions for “Non-fatal days lost incident rate” and “NFDLIR” removed because those terms will no longer be used in the rules.

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- New definition for “violations per day,” a new term added to the law by HB 49. This definition is needed to help explain how ORC 1514.41(B), as amended by HB 49, will be implemented. The definition states that “violations per day” means the same as the MSHA term “violations per inspection day,” and cites where this term is used in the Federal Code of Regulations. MSHA calculates an average number of violations per day that an operation is cited for, based on the number of violations and the number of inspection days for each operation over a 15-month period.
- **1501:14-1-09 Payment of fees and filing of performance bond.** This rule contains the requirements for the payment of fees and the filing of performance bonds related to IM surface mining. The rule is proposed for amendment per amended ORC section 1514.03 of HB 49:
  - (F) revised to change fund to the new Mining Regulation and Safety Fund created under section 1513.30 of the Revised Code.
- **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 and laws can be found. The proposed amendments update of the editions of the Code of Federal Regulations and the United States Code and simplify the website address.

**Chapter 1501:14-2 of the Ohio Administrative Code.** This chapter contains the requirements for mine safety for surface IM operations.

**Three rules from this chapter are 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 amendment updates of the edition of the Code of Federal Regulations and simplifies the website address.
- **1501:14-2-03 Criteria, standards and procedures governing annual safety performance evaluations of surface mining operations that are inspected by MSHA.** This rule implements the provisions of ORC sections 1514.40, 1514.41 and 1514.45 regarding performance evaluations of IM surface operations that are inspected by

MSHA. The rule is proposed for amendment per amended ORC section 1514.41(B) of HB 49:

- (B). Paragraph on the collection of violation data. At the beginning of the State Fiscal Year, the Division of Mineral Resources Management will obtain the MSHA mine data retrieval system's calculation of violations per inspection day ("VPID") for each operation. MSHA's VPID calculation is based on the number of violations and the number of inspection days during a 15-month period. DMRM will look at each operation over the same period of time: the 15 months preceding the new fiscal year. Sub-paragraphs (B)(1) and (2) eliminated.
- (C). Paragraph regarding safety performance evaluation. If an operation has a VPID of 3 or greater, the Chief shall identify the operation as having three or more violations per day. A surface mining operation identified as having three or more violations per day shall receive a minimum of two inspections by DMRM conducted in accordance with ORC sections 1514.41(B) and 1514.43. Sub-paragraphs (C)(1) to (3) eliminated.
- (D). Paragraph on notification. Requires the Chief to notify the operator and the authorized representative of the miners of an operation identified as having three or more violations per day that the operation will be inspected by DMRM at least two times for one year following the identification. Sub-paragraphs (D)(3) to (5) would be eliminated. Current paragraphs (D)(6) and (7) would be revised per amended 1514.41(B).
- (E)(1) Reconsideration by the Chief. An operator may ask the Chief to reconsider the determination that the operation had three or more violations per day. The rule would no longer limit the circumstances that a request for reconsideration must be based on. Subparagraphs (E)(1)(a) and (b) would be eliminated.
- (E)(3). Appeals. Provides that an operator cannot appeal the Chief's decision that an operation had three or more violations per day unless the operator first requests reconsideration under paragraph (E)(1).
- **1501:14-2-05 Mine safety inspections of surface mining operations that are inspected by MSHA.** This rule contains the requirements for conducting a mine safety inspection of an IM surface mining operation that is inspected by MSHA, and for reporting this inspection, as well as the steps that must be taken if the Chief finds a violation of a safety standard, or a condition or practice that could reasonably be

expected to cause the death of or imminent serious physical harm to an employee. The rule is proposed for amendment per amended ORC section 1514.41(B) of HB 49:

- (A)(1)(a) revised to add a reference to section 1514.41(B) and to specify that an operation identified as having three or more violations per day shall be inspected by DMRM.

**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 sections 1514.02 and 1514.08  |
| OAC Chapter 1501:14-2:  | ORC section 1514.40               |
| Additional statutory authority beyond the ORC sections cited above: |                                   |
| For rule 1501:14-1-01:  | ORC section 1514.40               |
| For rule 1501:14-1-16:  | ORC sections 1514.081 and 1514.40 |
| For rule 1501:14-2-05:  | ORC section 1514.43               |

**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 IM 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. In the field, State Mine Safety personnel work in concert with federal MSHA personnel when needed.

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- 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.

- 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.*

In November 2017, DMRM Rules Coordinator Ann Laubach e-mailed an advance copy of the proposed rule changes to the following persons, requesting their review:

Mike Cope, President, Ohio Coal Association (OCA); and  
Pat Jacomet, Executive Director, Ohio Aggregates and Industrial Minerals Association (OAIMA).

Neither organization had any comments on the rules.

By letter dated December 7, 2017, DMRM Chief Erdos provided these rules with their proposed changes, by e-mail, to Mike Cope, Pat Jacomet, and Trent A. Dougherty, General Counsel, Ohio Environmental Council. Chief Erdos requested comments on the rules by January 7, 2017. DMRM received no comments on the rules from the OCA or the OEC.

On March 27, 2018, Pat Jacomet of the OAIMA e-mailed Chief Erdos with a proposed revision to rule 1501:14-2-03. DMRM also made additional proposed changes to this rule and to rule 1501:14-1-01, which were e-mailed to the OAIMA on April 26. Chief Erdos and Deputy Chief Crow met with OAIMA members to discuss all these proposed changes on April 30. A follow-up draft of rule 1501:14-2-03 was e-mailed to the OAIMA on May 4. The OAIMA had no comments on the revised rule.

DMRM also made small changes to rule 1501:14-2-05 to agree with the changes made to rule 1501:14-2-03. This revised rule was e-mailed to the OAIMA on June 8.

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

Patrick Jacomet of the OAIMA commented that the phrase used in rule 1501:14-2-03 as it is currently effective, “unrelated to the mining process,” is undefined and likely to lead to conflicts. The phrase is therefore proposed to be removed from the rule.



**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?**

These rule changes are required to align the rules with the new provisions of HB 49, specifically the provisions of sections 1514.03 and 1514.41(B).

**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 IM 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 change in rule 1501:14-1-09 related to the new Mining Regulation and Safety Fund will not affect the IM surface mining industry.

The changes regarding the annual safety performance evaluations of IM surface mining operations that are inspected by MSHA in rules 1501:14-2-03 and 1501:14-2-05 will be implemented consistently across Ohio through interactions between DMRM and industry staff. (Implementation of these new annual safety performance evaluation requirements began on 9/29/2017, the effective date of HB 49.) The Ohio Aggregates and Industrial Minerals Association will be advised of these rule updates 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: The changes proposed to the rules presented in this Business Impact Analysis will have no impact on business, nor will they specifically add a cost to doing business.

Before the passage of HB 49, DMRM inspections were required if an IM surface mine exceeded a national incident rate (the non-fatal days lost incident rate or NFDLIR). Under the new provision enacted by HB 49, DMRM inspections are required if an IM surface mine is identified as having 3 or more violations per day during an MSHA inspection. The number of inspections will not increase as a result of this amendment.

In general, the rules of Ohio Administrative Code Division 1501:14 do impose a cost on Ohio’s IM surface mining operators, but this cost is imposed in order to protect Ohio’s land and water resources, public health and safety, and Ohio’s miners. The following two paragraphs provide more detail regarding this impact:

Chapter 1501:14-1. The rules in this chapter require the operator to submit a great deal of detailed information regarding the proposed IM surface 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 and investigations; accident reporting; safety audits and training; certified mine forepersons; and 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.

**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:

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- 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.

## IM rules affected by HB 49

### 1501:14-1-01 Definitions.

Changes per amended ORC section 1514.41(B): Definition for Lost-time accident revised. Definitions for Non-fatal days lost incident rate and NFDLIR removed. New definition for “Violations per day.”

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

Change per amended ORC section 1514.03: (F) revised to change fund to the new Mining Regulation and Safety Fund.

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

Update of the editions of the Code of Federal Regulations and the United States Code and simplify the website address.

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

Update of the edition of the Code of Federal Regulations and simplify the website address.

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

Changes per amended ORC section 1514.41(B): (B) to (E) revised.

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

Changes per amended ORC section 1514.41(B): (A)(1)(a) revised.

Draft Rule 1501:14-1-01, dated 3/8/2018.

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

(GG). Definition for Lost-time accident revised to refer to rule 1501:14-2-09 instead of ORC section 1514.41(B). This revision is needed because the term is used in rule 1501:14-2-09 but is no longer used in ORC 1514.41 due to amendments of HB 49 of the 132<sup>nd</sup> General Assembly, effective 9/29/2017.

(KK). Definitions for Non-fatal days lost incident rate and NFDLIR proposed to be removed. This revision is needed because these terms are no longer used in ORC 1514.41 due to amendments of HB 49 of the 132<sup>nd</sup> General Assembly, effective 9/29/2017, and, as part of this rule package, are proposed to be removed from rules 1501:14-2-03 and 1501:14-2-05.

(GGG). New definition for “violations per day,” as used in industrial minerals law (1514.41) and rule (1501:14-2-03). This definition is needed to help explain how the new provision of ORC 1514.41(B), enacted by HB 49, will be implemented. The definition states that “violations per day” means the same as the MSHA term, “violations per inspection day,” and cites where this term is used in the Federal Code of Regulations. MSHA calculates an average number of violations per day that an operation is cited for, based on the number of violations and the number of inspection days for each operation over a 15-month period.

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

**Dated 3/8/2018**

## **1501:14-1-01 Definitions.**

As used in Chapters 1501:14-1 to 1501:14-6 of the Administrative Code, except as may be otherwise specifically provided in the rules adopted pursuant to Chapter 1514. of the Revised Code:

- (A) "Accident," as used in division (C) of section 1514.40 of the Revised Code, means an accident as defined in paragraph (h) of 30 C.F.R. 50.2.
- (B) "Acid Drainage" means the flow of acid water resulting from a surface mining operation.
- (C) "Acid Producing Material" means any material with a pH of 4.0 or less, or a calcium carbonate ( $\text{CaCO}_3$ ) deficiency of more than five tons of calcium carbonate ( $\text{CaCO}_3$ ) per one thousand tons of material.
- (D) "Acid Water" means any water, the pH of which, as determined by standard methods, is below 6.0.
- (E) "Applicant" means any person who applies for a surface mining permit pursuant to Chapter 1514. of the Revised Code.
- (F) "Application" means a surface mining application for the permit required by Chapter 1514. of the Revised Code and division 1501:14 of the Administrative Code, and which is on a form prescribed by the chief.
- (G) "Aquifer" means a consolidated or unconsolidated geologic formation or series of formations that are hydraulically interconnected and that have ability to receive, store, or transmit water.
- (H) "Authorized representative of the miners" means the organization or, if applicable, the individual, authorized by the miners of a surface mining operation as the miners' representative.
- (I) "Beneficial Use" means the use of lime mining wastes within a lime mining and reclamation area for land application when it is utilized for agronomic purposes at standard agronomic rates as determined by standard soil testing, for land reclamation in accordance with Chapter 1514. of the Revised Code and the rules adopted under it, including, but not limited to, use as fill material in quarries, and for any other purposes designated by the chief, including demonstration projects approved by the chief.
- (J) "Building Permit" means a permit issued by a county, township, or municipal governmental authority which authorizes the construction of a commercial, industrial, residential, or public building. For construction of a building for which no building permit is required, detailed plans and specifications may, at the chief's discretion, be accepted in lieu of a building permit.
- (K) "Certified mine foreperson" means the person whom the operator of a surface mining operation places in charge of the conditions and practices at the mine, who is responsible for conducting workplace examinations under 30 C.F.R. part 56, as amended, and who has passed an examination for the position administered by the division of mineral resources management.
- (L) "Chief" means the chief of the division of mineral resources management.
- (M) "Contamination" means the degradation of quality in an underground water supply as a result of surface mining activity under Chapter 1514. of the Revised Code.

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- (N) "Contour" means to grade the affected area to a land configuration similar to that which existed prior to any mining, sufficient to achieve soil stability and control landslides, erosion, and sedimentation with adequate provisions for drainage appropriate to the intended future use.
- (O) "Dam" means any artificial barrier together with appurtenant works, which either does or may impound water.
- (P) "Delay Interval" means the nominal period of time between the detonation of successive explosive charges.
- (Q) "Dewatering" means the withdrawal of ground water from an aquifer or saturated zone which may result in the lowering of the water level within the aquifer or saturated zone, or a decline of the potentiometric surface within that aquifer or saturated zone.
- (R) "Dike" means any artificial barrier together with appurtenant works that will divert or restrain the flow of a stream or other body of water for the purpose of protecting an area from inundation by flood waters.
- (S) "Diversion" means a channel with a ridge on the lower side which is constructed across the slope and is used for intercepting, directing, or channeling water.
- (T) "Drainage Channel" means a natural or constructed watercourse or channel, having a definite bed and sides or banks, through which water flows.
- (U) "Excavate" means to remove topsoil, overburden, minerals, or incidental coal from a natural deposit in the process of surface mining.
- (V) "Fatality," as used in division (C) of section 1514.41 of the Revised Code, means a death of an individual at a mine.
- (W) "Fill in quarries" means the discrete, controlled placement and compaction of lime mining wastes within the mined area of a quarry which is permitted and bonded under Chapter 1514. of the Revised Code. The purposes of the fill include, but are not limited to, raising the general contour back to an approximate original elevation, backfilling highwalls, creating safety egress areas, and fish and wildlife habitat. "Fill in quarries" does not include random deposition of non-calcined materials.
- (X) "Grade" means to reshape the affected area to a reasonably smooth configuration to achieve soil stability and control landslides, erosion, and sedimentation, with adequate provisions for drainage appropriate to the intended future use.
- (Y) "Ground water" means all water occurring in an aquifer.
- (Z) "Hazardous condition" means an unsafe condition at a surface mining operation that could reasonably be expected to cause death or serious physical harm due to the violation of a safety standard contained in 30 C.F.R. part 56 or 58.
- (AA) "Haul Road" means any road used to transport minerals from the area of land affected.
- (BB) "Highwall" means the steeply inclined unexcavated face of exposed consolidated materials or exposed consolidated overburden in an open cut of a surface mine.



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- (CC) "Impervious Material" means a material through which fluid does not readily pass because of low porosity, very small individual pores, or pores that are disconnected.
- (DD) "Incidental to construction work" means the extraction of minerals which is necessary to enable the construction to be accomplished, but does not include generalized site development for the future use of commercial, industrial or residential building construction for which no building permit has been issued.
- (EE) "Life-threatening injury," as used in division (D) of section 1514.41 of the Revised Code, means an accident or injury as defined in paragraphs (h)(2) to (h)(12) of 30 C.F.R. 50.2.
- (FF) "Lime Mining Wastes" means residual solid or semisolid materials generated from lime or limestone mining and processing operations, including, without limitation, lime kiln dust, scrubber sludge from kiln operations, lime or limestone materials not meeting product specification, lime hydrating materials, and other lime or limestone mining, processing, or calcining materials associated with lime or limestone mining or processing. "Lime Mining Wastes" does not include materials generated for the manufacture of cement.
- (GG) "Lost-time accident," as used in ~~division (B) of section 1514.41 of the Revised Code~~ rule 1501:14-2-09 of the Administrative Code, means the same as a "Non-Fatal Days Lost incident" ~~and an~~ ("NFDL incident") as used by MSHA and includes any accident or occupational injury that caused no fatality but that resulted in days away from work or days of restricted work activity for an employee at a surface mining operation.
- (HH) "Mine safety training" means any training relating to mine safety provided by the division of mineral resources management or such other training relating to mine safety as otherwise permitted or required by Chapter 1514. of the Revised Code or these rules.
- (II) "Mining Area" means:
- (1) An area of land affected by the removal of topsoil, overburden, minerals or minerals and incidental coal in the production of such minerals or minerals and incidental coal. Mining areas shall not be considered as contiguous if connected solely by haul roads;
  - (2) For purposes of application for an exemption for extraction of incidental coal, calculation of production or revenues derived from incidental coal extraction, and compliance with or reporting on an incidental coal exemption, an individual excavation site or pit from which coal, other minerals, and overburden are removed.
- (JJ) "MSHA" means the mine safety and health administration in the United States department of labor.
- ~~(KK) "Non-fatal days lost incident rate" and "NFDLIR" mean the number of lost-time accidents multiplied by two hundred thousand, and divided by the hours of employee exposure.~~
- ~~(LL)~~ (KK) "Occupational injury" means occupational injury as defined in paragraph (e) of 30 C.F.R. 50.2.
- ~~(MM)~~ (LL) "Operator" means any person engaged in surface mining who removes minerals, or minerals and incidental coal, from the earth by surface mining or who removes overburden for the purpose of determining the location, quality, or quantity of a mineral deposit. "Operator" also means any person engaged in in-stream mining who removes minerals from the bottom of the channel of a watercourse by in-stream mining.

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~~(NN)~~(MM) "Peak Design Flow" means the maximum rate of runoff that can be expected to occur at a specific location on the average of once in twenty-five years during a twenty-four hour period, except that where adjoining property may be damaged the peak design flow shall be the maximum rate of runoff to be expected on the average of once in fifty years during a twenty-four hour period.

~~(OO)~~(NN) "Permittee" means an operator who has been issued a surface mining permit by the chief.

~~(PP)~~(OO) "Person" means an individual, partnership, corporation, business trust, estate, trust, association, or other legal entity, or any political subdivision, instrumentality or agency of the state or the United States.

~~(QQ)~~(PP) "Probable hydrologic impacts" is applicable to the use of lime mining wastes in rule 1501:14-6-01 of the Administrative Code and means the projected result of proposed surface mining operations which may reasonably be expected to change the quantity or quality of the surface and ground water, the flow, timing, or pattern of the surface and ground water, and the stream channel conditions on or off the proposed permit area or amended area.

~~(RR)~~(QQ) "Production" means excavating minerals, or minerals and incidental coal, from a natural deposit for the purpose of commercial use or sale.

~~(SS)~~(RR) "Quadrangle" means the United States geological survey (U.S.G.S.) 7.5 minute topographic map in which the proposed permit area is located.

~~(TT)~~(SS) "Quadrangle Sketch" means that section of the appropriate county road map which clearly shows the location of the permit area or proposed permit area and appears on the map submitted with the application. Appropriate county road maps are those published by the Ohio department of transportation or by the appropriate county engineer.

~~(UU)~~(TT) A "qualified person" means a person who has fulfilled the requirements of an approved detailed training plan in accordance with division (E) of section 1514.47 of the Revised Code and rule 1501:14-2-08 of the Administrative Code so as to be qualified to conduct and document examinations at a surface mining operation for the purposes of 30 C.F.R. part 56, as amended.

~~(VV)~~(UU) "Resoil" means to distribute topsoil and subsoil, or substitute resoiling material.

~~(WW)~~(VV) "Restrict" means the use of reasonable means including, but not limited to, fencing, earthen barriers, or confining vegetation to prevent access to areas that pose a danger to the public or to domestic animals.

~~(XX)~~(WW) "Rules adopted under," "rules adopted pursuant thereto," "rules thereunder," or "these rules" means all rules contained in Chapters 1501:14-1 to 1501:14-6 of the Administrative Code.

~~(YY)~~(XX) "Seedbed" means an area of land prepared, prior to planting, to promote the germination of seed and the growth of seedlings.

~~(ZZ)~~(YY) "Significant" means the addition of any of the following activities when those activities are not currently approved in the permit plan:

- (1) Blasting activities;
- (2) Dewatering activities;

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- (3) Vertical or horizontal expansion of a permit area that would result in an increase to the geographical area to which the water replacement provisions of rule 1501:14-5-03 of the Administrative Code would apply;
- (4) The beneficial use of lime mining wastes (LMW); or
- (5) Other amendments that the chief determines, within the framework of those performance standards contained in Chapter 1514. of the Revised Code, would increase the likelihood that the mining operation may have a negative impact on the public.

~~(AAA)~~ (ZZ) "Slope Angle" means the inclination of a surface from the horizontal, expressed in degrees.

~~(BBB)~~ (AAA) "Stemming" means the inert material used in a blasthole to confine the gaseous products formed upon explosion.

~~(CCC)~~ (BBB) "Surface mining" means all or any part of a process followed in the production of minerals from the earth or from the surface of the land by surface excavation methods, such as open pit mining, dredging, placering, or quarrying, and includes the removal of overburden for the purpose of determining the location, quantity, or quality of mineral deposits, and the incidental removal of coal at a rate less than one-sixth the total weight of minerals and coal removed during the year, but does not include: test or exploration boring; mining operations carried out beneath the surface by means of shafts, tunnels, or similar mine openings; 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; the extraction of minerals, other than coal, from borrow pits for highway construction purposes, provided that the extraction is performed under a bond, a contract, and specifications that substantially provide for and require reclamation practices consistent with the requirements of Chapter 1514. of the Revised Code; the removal of minerals incidental to construction work, provided that the owner or person having control of the land upon which the construction occurs, the contractor, or the construction firm possesses a valid building permit; 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; routine dredging of a watercourse for purely navigational or flood control purposes during which materials are removed for noncommercial purposes, including activities conducted by or on behalf of a conservancy district, organized under Chapter 6101. of the Revised Code, for flood control purposes that are exempt from permitting requirements under section 10 of the "Rivers and Harbors Act of 1899," 30 Stat. 1151, 33 U.S.C. 403, as amended; or the extraction or movement of soil or minerals within a solid waste facility, as defined in section 3734.01 of the Revised Code, that is a sanitary landfill when the soil or minerals are used exclusively for the construction, operation, closure, and post-closure care of the facility or for maintenance activities at the facility.

~~(DDD)~~ (CCC) "Surface Mining Permit" or "permit" means the permit issued by the chief pursuant to Chapter 1514. of the Revised Code and division 1501:14 of the Administrative Code.

~~(EEE)~~ (DDD) "Surrounding Areas" means those areas within one thousand feet of the beneficial use area or a greater distance based upon site specific characteristics, to allow an adequate description of the geology and quality and quantity of the groundwater and surface water.

~~(FFF)~~ (EEE) "Terrace" means to grade in alternate slopes and plateaus to achieve soil stability and control landslides, erosion, and sedimentation, with adequate provisions for drainage appropriate to the intended future use.

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~~(GGG)~~(FFF) "Topographic Relief" means the difference in elevation between the highest and lowest elevations of the area depicted on any map required by Chapter 1514. of the Revised Code and division 1501:14 of the Administrative Code.

(GGG) "Violations per day," as used in division (B) of section 1514.41 of the Revised Code and rule 1501:14-2-03 of the Administrative Code, means the same as "violations per inspection day" ("VPID") as calculated by MSHA pursuant to 30 C.F.R. 100.3(c)(1).

(HHH) "Year" means twelve successive calendar months.

(III) For dates of federal rules and federal laws referenced in this rule, see rule 1501:14-1-16 or rule 1501:14-2-01 of the Administrative Code.

Draft Rule 1501:14-1-09, dated 9/7/2017.

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

(F). Fund changed per HB 49 of the 132<sup>nd</sup> General Assembly, effective 9/29/2017. HB 49 amended ORC section 1514.03 to state that all fees collected under that section and section 1514.02 shall be deposited in the Mining Regulation and Safety Fund created under ORC section 1513.30. Sections 1514.02 and 1514.03 address permit fees, filing fees and acreage fees.

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**Dated 9/7/2017 Revision per HB 49.**

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

- (A) The applicant shall file the required fees and surety bond, cash, an irrevocable letter of credit, or certificates of deposit within the time prescribed by the chief in the notification of intention to issue an order granting a surface mining permit, a renewal of a surface mining permit, or an amendment to a surface mining permit.
- (1) The requirement of division (A) of section 1514.04 of the Revised Code that the applicant file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of ten thousand dollars shall not apply to permits of twenty or fewer acres issued prior to August 15, 2002. These permits shall instead file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of two thousand dollars, or five hundred dollars per acre of land to be affected, whichever is greater.
- (2) The requirement of division (A) of section 1514.04 of the Revised Code that, if the amount of land to be affected is more than twenty acres, the applicant file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of five hundred dollars per acre of land to be affected that exceeds twenty acres shall apply to all surface mining applications and to all existing permits regardless of issuance date.
- (B) If the applicant fails to file the required fees and/or surety bond, cash, letter of credit, or certificates of deposit within the time prescribed by the chief pursuant to paragraph (A) of this rule, the chief shall issue an order denying the issuance of the surface mining permit, renewal of the surface mining permit, or amendment to the surface mining permit, except that the chief may extend such time for good cause shown.
- (C) All performance bond shall be filed in the name of the applicant or permittee and in a format prescribed by the chief and shall meet the requirements for signature specified in paragraph (D) of rule 1501:14-1-04 of the Administrative Code.
- (D) All performance bond shall be filed at the address, "Division of Mineral Resources Management, Bonding Section, 2045 Morse Road, Building H, Columbus, Ohio 43229."
- (E) If the performance bond is in the form of a certificate of deposit, the applicant shall submit to the chief the original certificate of deposit and the assignment for the certificate of deposit.
- (F) The required fees shall be deposited with the treasurer of state to the credit of the ~~surface-mining~~ [regulation and safety](#) fund created under section ~~1514.06~~ [1513.30](#) of the Revised Code.

Draft Rule 1501:14-1-16, dated 6/6/2018

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 and simplifies the website address.



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

Dated 6/6/2018

## 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 the Administrative Code are those published in the July 1, ~~2016~~2017, C.F.R. These regulations can generally be found in public libraries or electronically at the website ~~http://www.gpo.gov/fdsys/~~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 ~~2015~~2016, effective January ~~36~~, ~~2016~~2017. These laws can generally be found in public libraries or electronically at the website ~~http://www.gpo.gov/fdsys/~~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 1501:14-2-01, dated 6/6/2018

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 and simplifies the website address.

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

**Dated 6/6/2018**

## **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 the Administrative Code are those published in the July 1, ~~2016~~2017, C.F.R. These regulations can generally be found in public libraries or electronically at the website ~~<http://www.gpo.gov/fdsys/>~~[www.gpo.gov/fdsys/](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.

Draft Rule 1501:14-2-03, dated 5/3/2018.

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

This rule is proposed for revision due to amendment of ORC section 1514.41(B) by HB 49 of the 132<sup>nd</sup> General Assembly, effective 9/29/2017.

(B). Paragraph on the collection of violation data. At the beginning of the State Fiscal Year, the Division of Mineral Resources Management will obtain the MSHA mine data retrieval system's calculation of violations per inspection day ("VPID") for each operation. MSHA's VPID calculation is based on the number of violations and the number of inspection days during a 15-month period. DMRM will look at each operation over the same period of time: the 15 months preceding the new fiscal year.

Sub-paragraphs (B)(1) and (2) would be eliminated.

(C). Paragraph regarding safety performance evaluation. If an operation has a VPID of 3 or greater, the Chief shall identify the operation as having three or more violations per day. A surface mining operation identified as having three or more violations per day shall receive a minimum of two inspections by DMRM conducted in accordance with ORC sections 1514.41(B) and 1514.43.

Sub-paragraphs (C)(1) to (3) would be eliminated.

(D). Paragraph on notification. The Chief shall notify the operator and the authorized representative of the miners of an operation identified as having three or more violations per day that the operation will be inspected by DMRM at least two times for one year following the identification.

Current sub-paragraphs (D)(3) to (5) would be eliminated. Current paragraphs (D)(6) and (7) would be revised per amended 1514.41(B).

(E)(1) Reconsideration by the Chief: an operator may ask the Chief to reconsider the determination that the operation had three or more violations per day. The rule would no longer limit the circumstances that a request for reconsideration must be based on.

Subparagraphs (E)(1)(a) and (b) would be eliminated.

(E)(3). An operator cannot appeal the Chief's decision that an operation had three or more violations per day unless the operator first requests reconsideration under paragraph (E)(1).

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

Dated 5/3/2018

## 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~~violation data. At the beginning of each state fiscal year, the chief shall obtain from the MSHA mine data retrieval system the violations per inspection day ("VPID") calculation for the preceding fifteen months for each surface mining operation permitted under Chapter 1514. of the Revised Code.
- ~~(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. If a surface mining operation has a VPID calculation of three or more, the chief shall, pursuant to division (B) of section 1514.41 of the Revised Code, identify the surface mining operation as having three or more violations per day. A surface mining operation identified by the chief as having three or more violations per day shall receive a minimum of two inspections conducted in accordance with division (B) of section 1514.41 and section 1514.43 of the Revised Code for one year following the identification.
- ~~(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.~~

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(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~~ three or more violations per day, 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~~ a minimum of two inspections of the operation will be conducted ~~between July first of the year the notice is sent and July first of the following year~~ for one year following the identification;
- ~~(3) The surface mining operation's NFDLIR;~~
- ~~(4) The national average NFDLIR for that surface mining operation's mine classification;~~
- ~~(5) The number of inspections the surface mining operation will receive;~~
- ~~(6)~~ (3) 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)~~ (4) 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~~ operation had three or more violations per day.

(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~~ had three or more violations per day. ~~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.

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- (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~~operation had three or more violations per day 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.



Draft Rule 1501:14-2-05, dated 6/7/2018.

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

This rule is proposed for revision due to amendment of ORC section 1514.41(B) by HB 49 of the 132<sup>nd</sup> General Assembly, effective 9/29/2017.

(A)(1)(a). Paragraph revised to add a reference to section 1514.41(B) and to use the term “three or more violations per day” per amended 1514.41(B).

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Dated 6/7/2018

## **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 [paragraph \(B\) of section 1514.41 or](#) 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~~ [three or more violations per day](#);
  - (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.

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- (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;
  - (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.

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- (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 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.