



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Natural Resources, Division of Mineral Resources Management

Rule Contact Name and Contact Information:

Brian Becker, Deputy Legal Counsel, 614-265-6861.

Regulation/Package Title (a general description of the rules' substantive content):

2021 Industrial Minerals (IM) – Outdated Communication Rules

Rule Number(s): 1501:14-1-04.

Date of Submission for CSI Review: July 16, 2021

Public Comment Period End Date: August 6, 2021

Rule Type/Number of Rules:

New/_0_ rules

No Change/_0_ rules (FYR? _0_)

Amended/_1_ rules (FYR? _1_)

Rescinded/_0_ rules (FYR? _0_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **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 one rule that regulates industrial minerals (IM) surface mining to the Common Sense Initiative pursuant to Ohio Revised Code (ORC) section 107.52.

The attachment contains a copy of the amended rule.

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

- **1501:14-1-04 Procedure for filing applications.** This rule contains the procedures for filing an application for a surface mining permit or for an amendment to a surface mining permit. The rule is proposed for amendment to allow for electronic signature on an application, amendment, and any form that requires a signature of an applicant or permittee.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Ohio Administrative Code	Statutory Authority	Statute(s) amplified
1501:14-1-04:	1514.08	1514.011, 1514.02

4. 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 MSHA program and the federal government has no oversight authority over Ohio's program. However, the Federal and Ohio surface IM Mine Safety programs do have elements in common. For example, HB 443 (effective 4/6/2007) 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.

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

Not applicable.

6. 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

7. 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.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. 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.

Not required by CSI at this time.

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

Not applicable.

11. 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 proposed rule change will update modes of communication to allow for electronic signatures.

12. 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?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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

- 13. 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.

- 14. 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 regulatory authority over IM surface mining. DMRM's statutes and rules were reviewed to ensure the rules were not duplicative or in conflict with existing Ohio regulations.

- 15. 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 amendment proposed will not change the way that IM surface mining is regulated.

Adverse Impact to Business

- 16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**
- Identify the scope of the impacted business community; and**
 - Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
 - 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 16a: The affected business community is all of Ohio's IM surface mining operators.

Answer to questions 16b and c: In general, the rules of OAC 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 paragraph provides more detail regarding this impact:

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

OAC Chapter 1501:14-1. These rules require the operator to submit 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, or a permit renewal, amendment, or transfer. The proposed amendment does not change anything relative to IM permitting, but merely offers operators an alternative option to allow for electronic signature.

17. 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

18. 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.”

19. 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 a pattern of violations develops, the issue goes into non-compliance, or an operator knowingly or willingly

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

fails to submit required reports. Further, ORC 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.

20. 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.

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

Dated July 15, 2021

1501:14-1-04 Procedure for filing applications.

- (A) An application for a surface mining permit or for an amendment to a surface mining permit shall not be deemed filed when it is received by the chief unless the application contains all substantial information required by Chapter 1514. of the Revised Code and rules adopted pursuant thereto.
- (B) Each application for a surface mining permit or for an amendment to a surface mining permit shall be in the format required by the chief and shall be filed at the address, "Division of Mineral Resources Management, 2045 Morse Road, Building H, Columbus, Ohio 43229."
- (C) Each application for a surface mining permit or for an amendment to a surface mining permit shall contain such attachments as are required by Chapter 1514. of the Revised Code and rules adopted pursuant thereto.
- (D)
 - (1) An application for a surface mining permit or an amendment to a surface mining permit or any other form that requires a signature of an applicant or permittee shall be signed by:
 - (a) The operator, if the applicant or permittee is a sole proprietorship;
 - (b) Any partner, if the applicant or permittee is a partnership;
 - (c) Any officer or director, if the applicant or permittee is a corporation;
 - (d) Any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant, if such person is so designated in the permit application as having such authority; or
 - (e) Any other person who is the authorized agent of the applicant or permittee for purpose of signing and is so designated in the application.
 - (2) One copy of any form that requires a signature of an applicant or permittee shall have an original signature in ink [or electronic signature](#) of a person who meets the requirements of paragraph (D)(1) of this rule.