



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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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) Rules

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

Date of Submission for CSI Review: April 26, 2021

Public Comment Period End Date: May 17, 2021

Rule Type/Number of Rules:

New/_0_ rules

No Change/_7_ rules (FYR? _7_)

Amended/_2_ rules (FYR? _2_)

Rescinded/_0_ rules (FYR?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.

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Reason for Submission

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 nine 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 two of these rules and file the other seven as No-Change rules. All nine 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; those with proposed changes are accompanied by an explanation of the changes.)

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. Two rules from this chapter are No Change and one is proposed for revision:

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- **1501:14-1-08 Certificate of public liability insurance.** Contains the requirements for IM surface mining public liability insurance. No changes are proposed.
- **1501:14-1-15 Public notice of hearing to adopt, amend, or rescind rules.** Contains the requirements for public notice of hearings for IM surface mining rules. No changes are proposed.
- **1501:4-1-16 Incorporation by reference.** 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 the editions the Code of Federal Regulations and U.S. Code and the list of statutes that the rule amplifies (this list is included at the end of the rule as part of the rule’s “History Trail”).

OAC Chapter 1501:14-2. This chapter contains the requirements for mine safety for IM surface operations. One rule from this chapter is proposed for amendment and four are proposed as No Change.

- **1501:14-2-01 Incorporation by reference of mine safety standards.** 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 update the edition of the Code of Federal Regulations and the list of statutes that the rule amplifies (in the rule’s “History Trail”).
- **1501:14-2-02 Safety standards governing surface mining operations.** Specifies that certain Mine Safety and Health Administration (MSHA) federal regulations are incorporated by reference into Ohio's IM mine safety rules and that certain MSHA regulations are not incorporated into the IM mine safety rules. No changes are proposed.
- **1501:14-2-06 Mine safety training.** Contains the requirements for IM mine safety training in Ohio and explains how this training is coordinated with mine safety audits. No changes are proposed.
- **1501:14-2-08 Training in lieu of employing certified mine foreperson.** Contains the requirements for the detailed training plan under which persons who qualify under the plan may conduct and document examinations at an IM surface mining operation for purposes of 30 CFR Part 56, as amended, as well as the requirements for training persons in accordance with an approved plan. No changes are proposed.
- **1501:14-2-10 Mine safety inspections of surface mining operations that are not inspected by MSHA.** Contains the requirements for conducting a mine safety inspection of an IM surface mining operation that is not inspected by MSHA and for reporting this

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inspection, as well as the steps that must be taken if the Chief of DMRM 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. No changes are proposed.

OAC Chapter 1501:14-5. This chapter contains rules to implement ORC section 1514.13, regarding IM surface mining operations 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 as No Change.

- **1501:14-5-01 Hydrology.** Contains the requirements for applications for IM surface mining permits that proposed to dewater.

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.

<u>Ohio Administrative Code</u>	<u>Statutory Authority</u>	<u>Statute(s) amplified</u>
1501:14-1-08:	1514.08	1514.011, 1514.02
1501:14-1-15:	1514.08, 1514.081, 1514.13, 1514.40	1514.08, 1514.081, 1514.13, 1514.40
1501:14-1-16:	1514.08, 1514.081, 1514.40	121.71 to 121.76, 1514.01, 1514.02, 1514.10, 1514.40
1501:14-2-01:	1514.40	121.71 to 121.76, 1514.40, 1514.42, 1514.43, 1514.47
1501:14-2-02:	1514.40	1514.40, 1514.43, 1514.47
1501:14-2-06:	1514.40, 1514.46	1514.42, 1514.46
1501:14-2-08:	1514.40, 1514.47	1514.40, 1514.47
1501:14-2-10:	1514.40, 1514.43	1514.09, 1514.40, 1514.41, 1514.43, 1514.44
1501:14-5-01:	1514.13	1514.011, 1514.02, 1514.13

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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.

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.

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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.

On February 25, 2021, DMRM Rules Coordinator Ann Laubach e-mailed an advance copy of this rule package to Pat Jacomet and Brian Barger of the Ohio Aggregates and Industrial Minerals Association (OAIMA), requesting the OAIMA's preliminary review of these rules. The OAIMA did not have any comments.

By letter dated March 24, 2021, DMRM Chief Dave Crow provided these rules, by e-mail, to OAIMA Executive Director Jacomet and to Trent A. Dougherty, General Counsel, Ohio Environmental Council (OEC). Chief Crow requested comments on the rules by April 24, 2021. DMRM received no comments on the rules from the OCA or the OEC.

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

The stakeholders had no comments on these rules.

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 changes in this package are being submitted to comply with ORC sections 121.71 to 121.75 regarding incorporation by reference. Updates to the IM Program's two incorporation by reference rules are needed regularly as the dates change for the online versions of the Code of Federal Regulations and/or the U.S. Code. In addition, the update to the rules' history trails will remove ORC section 121.76 (so the citations will instead read "121.71 to 121.75"). ORC section 121.76 was repealed by SB 221 of the 132nd General Assembly, effective 8/18/2019.

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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?

No alternative regulations were 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 amendments proposed to the IM incorporation by reference rules are updates that 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:

- a. Identify the scope of the impacted business community; and**
- b. Identify the nature of all adverse impact (e.g., 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 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 paragraphs provide more detail regarding this impact:

Incorporation by reference rules. Rules 1501:14-1-16 and 1501:14-2-01 do not have a direct adverse impact on the regulated business community.

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. Rule 1501:14-1-08 requires that a public liability insurance policy for an IM surface mining operation include a rider requiring that the insurer notify the Chief of DMRM if the policy is terminated or not renewed and that the operator submit proof of insurance to the Chief.

OAC Chapter 1501:14-2. These are mine safety rules 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. Rules 1501:14-2-02 and 1501:14-2-06 do not have a direct adverse impact on the regulated business community. Rule 1501:14-2-08 amplifies ORC section 1514.47(D): the law and the rule provide an surface IM operator with the option of creating a detailed training plan with which to train employees so they can conduct and document mine safety examinations as required by MSHA (30 C.F.R. part 56). The rule would only increase the IM operator's expenses if he or she chooses to follow this option (the increase in expenses would be the cost of the time required to prepare and submit a training plan and to maintain records of persons trained using the plan). Rule 1501:14-2-10 causes a minimal increase in the expenses of a surface IM mining operation that is not inspected by MSHA due to requirements for compliance with safety standards, providing the name of the authorized representative of the miners for an operation, posting of inspection reports, and written requests for review of the findings contained in an inspection report. However, should a Mine Safety inspector find a violation of a safety standard, the operation may incur a significant expense to bring the mining operation back into compliance with mining safety standards.

OAC Chapter 1501:14-5. These rules require operators of IM surface mining operations that will dewater to submit supplemental information in the permit application, including a hydrogeologic description and map, as well as ground water data that will allow the Chief of DMRM to establish a projected cone of depression. Rule 1501:14-5-01 implements and amplifies ORC section 1514.13, which requires the Chief to: establish a cone of depression for any surface IM mining operation that may result in dewatering; and adopt rules regarding establishing a cone of depression and standards for groundwater modeling to be used to establish a cone of depression. The rule increases the expenses of a surface IM operation that may result in dewatering because it requires the operator to submit a detailed hydrogeologic description and map to the Chief or to submit a detailed ground water model to the Chief.

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 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.

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- 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.

IM Rules 2021 (9 rules total)

Rules with proposed amendments (2 rules)

1501:14-1-16 Incorporation by reference. Periodic update, including update to the rule's History Trail.

1501:14-2-01 Incorporation by reference of mine safety standards. Periodic update, including update to the rule's History Trail.

No Change rules (7 rules)

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

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

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

1501:14-2-06 Mine safety training.

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

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

1501:14-5-01 Hydrology.

Draft Rule 1501:14-1-16, dated 4/6/2021.

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 U.S. Code that are incorporated by reference. *Just before this rule is filed with JCARR, it will be updated with the most recent dates for the Code of Federal Regulations and U.S. Code.*

History Trail update: the list of statutes that the rule amplifies, included at the end of the rule, is proposed to be revised to remove ORC section 121.76 (so that the citation will instead read "121.71 to 121.75"). ORC section 121.76 was repealed by SB 221 of the 132nd General Assembly, effective 8/18/2019.

DRAFT - NOT FOR FILING

Dated 4/6/2021. Just before this rule is filed with JCARR, it will be updated with the most recent dates for the Code of Federal Regulations and the U.S. Code. The rule's History Trail (at the end of the rule) will also be updated, as shown below.

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~~on the following date(s): for Title 30, July 1, 2020; for Title 40, July 1, 2019,C.F.R. These regulations can generally be found in public libraries or electronically at the website govinfo.gov/. 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 2018 edition of the United States Code (U.S.C.), dated January 14, 2019. These laws can generally be found in public libraries or electronically at the website govinfo.gov/. 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.

History Trail:

Effective: 11/26/2020

Promulgated Under: 119.03

Statutory Authority: 1514.08, 1514.081, 1514.40

Rule Amplifies: 121.71 to ~~121.76~~121.75, 1514.01, 1514.02, 1514.10, 1514.40

Prior Effective Dates: 09/17/2010, 10/06/2011, 05/15/2015, 08/22/2016, 12/18/2017, 04/18/2019

Draft Rule 1501:14-2-01, dated 4/6/2021.

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

(A). Updated with the most recent edition of the Code of Federal Regulations that is available on the Government Publishing Office (GPO) website. *Just before this rule is filed with JCARR, it will be updated with the most recent date for the Code of Federal Regulations.*

History Trail update: the list of statutes that the rule amplifies, included at the end of the rule, is proposed to be revised to remove ORC section 121.76 (so that the citation will instead read "121.71 to 121.75"). ORC section 121.76 was repealed by the 132nd General Assembly, effective 8/18/2019.

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

Dated 4/6/2021. Just before this rule is filed with JCARR, it will be updated with the most recent date for the Code of Federal Regulations. The rule's History Trail (at the end of the rule) will also be updated, as shown below.

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, ~~2019~~2020, C.F.R. These regulations can generally be found in public libraries or electronically at the website govinfo.gov/. 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.

History Trail:

Effective: 11/26/2020

Promulgated Under: 119.03

Statutory Authority: 1514.40

Rule Amplifies: 121.71 to ~~121.76~~121.75, 1514.40, 1514.42, 1514.43, 1514.47

Prior Effective Dates: 09/17/2010, 10/06/2011, 05/15/2015, 08/22/2016, 12/18/2017, 04/18/2019

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

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 be sent to "Ohio Department of Natural Resources, Division of Mineral Resources Management, 2045 Morse Road, Building H, Columbus, Ohio 43229."

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

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, 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 prior to the hearing. The notice shall: state the division's intention to consider adopting, amending, or rescinding rules; include a synopsis 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 - NOT FOR FILING*****

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.

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

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) 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 - NOT FOR FILING*****

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 (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 (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.

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- (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 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.

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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.

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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

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(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 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.

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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);

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- (g) The hydraulic conductivity of the aquifer(s);
 - (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 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 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 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 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;

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(xiii) Length of any well screen (feet);

(xiv) Test rate (gallons per minute);

(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 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 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 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)(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) Ground water model submitted by the applicant.

An applicant for a permit may choose to submit a ground water 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 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

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represent the ground water flow in the hydrologic study area.

(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. For each stage, the applicant shall identify the 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 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 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 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.