



Common Sense Initiative

Mike DeWine, 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:

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

2022 Industrial Minerals (IM) Rules

Rule Number(s): 1501:14-1-02, 1501:14-1-03, 1501:14-1-04, 1501:14-1-12, 1501:14-1-14, 1501:14-1-16, 1501:14-2-01, 1501:14-2-04, 1501:14-2-07, 1501:14-2-09, 1501:14-3-02, 1501:14-3-03, 1501:14-3-04, 1501:14-3-05, 1501:14-3-06, 1501:14-3-07, 1501:14-3-08, 1501:14-3-09, 1501:14-3-10, 1501:14-3-11, 1501:14-4-01, 1501:14-4-02, 1501:14-4-03, 1501:14-4-04, 1501:14-5-02, and 1501:14-5-03.

Date of Submission for CSI Review: May 15, 2023

Public Comment Period End Date: June 6, 2023

Rule Type/Number of Rules:

New/___ rules

No Change/___6___ rules (FYR? ___6___)

Amended/___20___ rules (FYR? ___20___)

Rescinded/___ rules (FYR? ___)

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

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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

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 twenty-six 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 twenty of these rules and file the other six as No-Change rules as follows:

- Nineteen rules are proposed for amendment to comply with ORC 121.951 to reduce regulatory restrictions. A total of one-hundred and seventeen regulatory restrictions are proposed for removal. One of these, 1501:14-2-04, is also updating our Mine Safety office location.
- Two rules are incorporation by reference rules that need to be updated as the publication dates of the Code of Federal Regulations and the United States Code

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change. One of these rules is also proposing to remove a regulatory restriction, which was included in the count of nineteen above.

All twenty-six 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. Six rules from this chapter are proposed for revision.

- **1501:14-1-02 Severability.** Establishes the severability of the rules adopted pursuant to Chapter 1514. of the Revised Code, so that the invalidity of one rule or part of a rule does not affect the validity of the other rules. The proposed amendment would remove a regulatory restriction.
- **1501:14-1-03 Successor division.** Provides for the continued administration and enforcement of Chapter 1514. of the Revised Code and Chapters 1501:14-1 to 1501:14-6 of the Administrative Code if there is a reorganization or a consolidation of the divisions of the Ohio Department of Natural Resources. The proposed amendment would remove a regulatory restriction.
- **1501:14-1-04 Procedure for filing applications.** Contains the procedures for filing an application for a surface mining permit or for an amendment to a surface mining permit. The proposed amendments would remove regulatory restrictions.
- **1501:14-1-12 Maps: general requirements, uniform color code and map symbols.** Contains the general requirements and the uniform color code and uniform symbols for industrial minerals surface mining maps. The proposed amendments would remove regulatory restrictions.
- **1501:14-1-14 Reports.** Establishes a requirement regarding the filing of reports related to industrial minerals surface mining and what must be included in a filing. The proposed amendments would remove regulatory restrictions.
- **1501:14-1-16 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

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regulations and laws can be found. The proposed amendments update the editions the Code of Federal Regulations and U.S. Code.

OAC Chapter 1501:14-2. This chapter contains the requirements for mine safety for IM surface operations. Four rules from this chapter are proposed for amendment.

- **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 would remove a regulatory restriction.
- **1501:14-2-04 Requirements governing the reporting and investigation of accidents for surface mining operations that are inspected by MSHA.** Implements the provisions of ORC sections 1514.40 and 1514.41 as those provisions apply to surface IM operations that are inspected by MSHA. Updating the office location in which the Mine Safety manager is located to the Cadiz, Ohio office and would remove regulatory restrictions.
- **1501:14-2-07 Certified mine foreperson.** Implements the provisions of ORC section 1514.47 that are related to certified mine forepersons. The proposed amendments would eliminate fees and regulatory restrictions.
- **1501:14-2-09 Requirements governing the reporting and investigation of accidents and injuries for surface mining operations that are not inspected by MSHA.** Implements the provisions of sections 1514.40(C) and 1514.41(C) and (D) as those provisions apply to surface IM operations that are not inspected by MSHA. The proposed amendments would remove regulatory restrictions.

OAC Chapter 1501:14-3. This chapter contains performance standards for surface IM mining and reclamation. Seven rules from this chapter are proposed for amendment and three rules from this chapter are proposed as No Change.

- **1501:14-3-02 Minimizing acid drainage and acid water accumulation.** Contains the requirements for isolating and covering acid-producing refuse material in order to minimize acid drainage and the accumulation of acid water. No changes proposed.
- **1501:14-3-03 Permanent water impoundments.** Contains the requirements for permanent water impoundments on industrial minerals surface mining sites. The proposed amendments would remove regulatory restrictions.

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- **1501:14-3-04 Use of explosives in industrial minerals operations.** Contains the requirements for blasting for industrial minerals surface mining. The proposed amendments would remove regulatory restrictions.
- **1501:14-3-05 Underground water supplies.** Contains the requirements an industrial minerals surface mining operator must follow to ensure that contamination, resulting from mining, of underground water supplies is prevented and to prevent the impacts of dewatering from the drilling of boreholes or test holes that have groundwater flowing to the surface. The proposed amendments would remove regulatory restrictions.
- **1501:14-3-06 Final slopes.** Contains the requirements regarding slope angles and diversion ditches for final slopes on industrial minerals surface mined lands. The proposed amendments would remove regulatory restrictions.
- **1501:14-3-07 Final highwalls.** Contains the requirements for highwalls that are to be retained as part of the intended future use of a site that has been surface mined for industrial minerals. The proposed amendment would remove a regulatory restriction.
- **1501:14-3-08 Resoiling.** Contains the requirements for removing and segregating topsoil or subsoil, storing or stockpiling segregated topsoil or subsoil, and resoiling areas affected by industrial minerals surface mining. No changes proposed.
- **1501:14-3-09 Soil amendments.** Contains the requirements for applying soil amendments to areas being reclaimed after industrial minerals surface mining. No changes proposed.
- **1501:14-3-10 Revegetation.** Contains the requirements for the revegetation of industrial minerals surface mined areas. The proposed amendments would remove regulatory restrictions.
- **1501:14-3-11 Construction of dams, dikes, diversions, impoundments, and drainage channels.** Contains Ohio's requirements for the construction and reclamation of dams, dikes, drainage channels, impoundments and diversion channels related to the surface mining of industrial minerals. The proposed amendments would remove regulatory restrictions.

OAC Chapter 1501:14-4. This chapter contains two rules with additional application requirements, one rule with additional reporting requirements, and a rule regarding abandoned and inactive mining areas. Three rules from this chapter are proposed for amendment and one rule from this chapter as No Change.

- **1501:14-4-01 Geological data report.** Contains the requirements for the geological data report that must be included with each application for an industrial minerals

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surface mining application. The proposed amendments would remove regulatory restrictions.

- **1501:14-4-02 Cross sections.** This rule requires that one or more cross sections be submitted with the application map for an industrial minerals mining application, and contains the requirements for these cross sections. The proposed amendment would remove a regulatory restriction.
- **1501:14-4-03 Completion dates.** This rule requires that the operator specify, on each annual report and on the final report, the date on which industrial minerals surface mining was completed, terminated or abandoned for each area of land affected by the operation during the reporting period. No changes proposed.
- **1501:14-4-04 Abandoned and inactive mining areas.** Contains the procedure that the Chief of DMRM follows when considering whether an industrial minerals surface mining area is abandoned or inactive. The proposed amendments would remove regulatory restrictions.

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. Two rules from this chapter are proposed as No Change.

- **1501:14-5-02 Alternative water supply information.** This rule applies to industrial minerals operators who are applying for a permit or an amendment to a permit that includes dewatering and contains the requirements for submitting information about alternative water supply sources. No changes proposed.
- **1501:14-5-03 Water Supply Replacement.** Establishes the applicability of the water replacement provisions of section 1514.13 of the Revised Code. No changes proposed.

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.

Authorized by: ORC sections 1514.08, 1514.40, 1514.081, 1514.12, 1514.02, 1514.13, 1514.47

Amplified by: ORC sections 1514.08, 1514.011, 1514.02, 1514.05, 1514.03, 1514.021, 121.71, 121.75, 1514.01, 1514.10, 1514.40, 1514.41, 1514.42, 1514.43, 1514.47, 1514.09, 1514.081, 1514.12, 1514.07, 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

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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.

By letter dated August 17, 2022, DMRM Chief Benny McCament provided these rules, by e-mail, to the Ohio Coal Association President Mike Cope, Ohio Aggregates and Industrial Minerals Association Executive Director Pat Jacomet, and Ohio Environmental Council's Chris Tavenor. Chief McCament requested comments on the rules by September 16, 2022. DMRM received no comments on the rules.

- 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, one rule is updating the location of the Mine Safety manager and the remainder to reduce regulatory restrictions.

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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?**
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

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

- 13. 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.

- 14. 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 and updating the location of the Mine Safety manager are updates that will not change the way that IM surface mining is regulated. The additional rules proposed for amendments are eliminating fees and removing regulatory restrictions.

Adverse Impact to Business

- 15. 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. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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: 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:

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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, a permit renewal, or an amendment to the permit.

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. 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.

OAC Chapter 1501:14-3. The performance standards established in these rules require IM surface mining operators to mine and reclaim in a manner that protects the environment and neighboring properties. These rules contain many specific requirements that require a great deal of time and equipment: to prevent runoff onto adjoining property and to isolate acid-producing materials; create safe permanent ponds and final slopes and highwalls; control the adverse effects of blasting; protect underground water supplies; properly handle lime mining wastes; and, when mining of an area is completed, to replace soil and subsoil and re-plant. The blasting rule contains detailed requirements for conducting blasting in a safe manner, and documenting compliance with seismographic monitoring and the records that must be maintained for each blast.

OAC Chapter 1501:14-4. The rules in this chapter require additional information from the operator, either in the application to mine or in the annual report. The rule regarding abandoned and inactive mining areas requires the operator to remain in compliance with all the requirements of Ohio Revised Code.

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. The chapter also contains a rule that requires more detailed information to be submitted by operations that are requesting a variance to mine close to certain size watercourses.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

A total of one-hundred and seventeen regulatory restrictions are proposed for amendment. Mostly to streamline the process and improve readability and in 1501:14-2-07 to eliminate fees associated with examinations.

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

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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.
- 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.