

OHIO DEPARTMENT OF NATURAL RESOURCES RULE MAKING GUIDE

Under Executive Order 2008-04S, Governor Ted Strickland required that regulations create an atmosphere in which business and individuals affected by those regulations are treated as partners in identifying and achieving regulatory goals. Accessibility, flexibility, respect, timely responsiveness, problem solving, and continuous improvement must be the hallmarks of Ohio's approach to regulatory activity. These objectives can only be achieved when the process by which regulations are enacted is transparent and accessible to persons outside of government and when those regulations are crafted so they are easy to understand.

Therefore, this guide, which is required under Ohio Revised Code 119.0311, has been updated to reflect Executive Order 2008-04S. The guide is intended to assist members of the public who participate, or may wish to participate, in the rule-making process of the Ohio Department of Natural Resources.

Regulatory Mission:

The regulatory mission of the Ohio Department of Natural Resources is: To ensure a balance between wise use and protection of our natural resources for the benefit of all. The Director of the Ohio Department of Natural Resources has been charged under Section 1501.01 of the Revised Code to "formulate and institute all the policies and programs of the Department of Natural Resources."

Agency Organization:

The Ohio Department of Natural Resources is organized into eleven statutory divisions. Nine of these Divisions, in addition to one Office within the Department, file rules in accordance with the Revised Code to achieve its regulatory mission. Those Divisions and Office authorized to promulgate rules are:

- Division of Engineering
- Division of Forestry
- Division of Geological Survey
- Division of Mineral Resources Management
- Division of Natural Areas and Preserves
- Division of Parks and Recreation
- Division of Soil and Water Resources
- Division of Watercraft
- Division of Wildlife
- Office of Coastal Management

Rule-Making Requirements and Authorization:

The Ohio Revised Code requires and authorizes the Ohio Department of Natural Resources to adopt administrative rules to achieve its regulatory mission. All rules are adopted pursuant to Chapter 119. and section 111.15 of the Ohio Revised Code, which become part of the Ohio Administrative Code, and the agency may also adopt internal management rules.

Rule-Making Process:

Depending upon the rules in question, the rule development process may be lengthy and complex. However, the standard steps of the process for adoption of rules under Chapter 119. include:

- Internal review of the rule by the Ohio Department of Natural Resources.
- Posting on the Ohio Department of Natural Resources website that the rule is being reviewed.
- Electronic notification to interested parties. Interested parties may register on a centralized electronic system at the Ohio Business Gateway (www.business.ohio.gov/reform) to receive notices and communications regarding the proposed development, amendment or rescission of any rule of interest to them. This interested party review occurs prior to the filing of the proposed rule with the Joint Committee on Agency Rules Review (JCARR). JCARR is a committee whose primary function is to review rules in accordance with Ohio's rule-making statutes. JCARR is part of the Ohio Legislature consisting of five State Representatives and five State Senators.
- Meetings with advisory committees, associations and advocacy groups.
- Review of any comments submitted by interested parties, including those submitted through the Ohio Business Gateway. The Ohio Department of Natural Resources will consider each comment, concern or question regarding the draft rule raised during the interested party review and may revise the draft rule as appropriate.
- Complete Common Sense Business Regulation checklist, as required by Executive Order 2008-04S. The Executive Order calls for a top to bottom review of current rules, eliminating those that are unnecessary or needlessly burdensome while establishing regulatory performance standards that will make Ohio a more competitive place to do business.
- Proposal of rules to JCARR. When a rule has been filed with JCARR, it is called a "proposed rule."
- Public notice of rule proposal and public hearing. Notices of public hearings are found in the Register of Ohio at <http://www.registerofohio.state.oh.us>.
- Consideration of comments from a public hearing and comment period. All comments submitted to the Agency are carefully reviewed and the Agency may revise the proposed rule as appropriate.
- JCARR has 65 days to review the rule to ensure the proposed rule does not exceed the agency's authority, conflict with rules of that agency or another rulemaking agency, or conflict with Ohio law. Within 65 days, JCARR holds a hearing to accept public comments on the proposed rule. During the JCARR

hearing, impacted parties are given the opportunity to testify why the rule should not be adopted. JCARR may take action to stop the adoption of a rule.

- Finalization of rules. Following JCARR's 65 day review period, the Agency adopts the rule and establishes the date the rule becomes effective. The adoption of the final rule is also public noticed in the Register of Ohio at <http://www.registerofohio.state.oh.us>.

Public Involvement and How to Participate:

Members of the public may participate in the rule-making process through the following opportunities:

- Signing up to be notified electronically through the Ohio Business Gateway (www.business.ohio.gov/reform) when the review of a rule begins and commenting on the rule.
- Serving on advisory committees, and meeting with associations and advocacy groups.
- Reviewing and commenting on draft rules.
- Viewing the notice of rule proposal and public hearing.
- Attending public hearings conducted by the Ohio Department of Natural Resources.
- Attending hearings conducted by JCARR.

Additional Information:

- The reviews of rules under a Common Sense Business Regulation (CSBR) approach are found on the Ohio Business Gateway at: www.business.ohio.gov/reform.
- Rules that have been proposed and public hearing notices may be accessed on the Internet at the Register of Ohio: <http://www.registerofohio.state.oh.us>.
- Agendas for JCARR hearings on proposed rules may be accessed on the Internet at the JCARR web site: <http://www.jcarr.state.oh.us>.
- Current rules for the Ohio Department of Natural Resources are found at: <http://codes.ohio.gov/oac>.

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Detailed Division Information:

DIVISION OF ENGINEERING

Statement of the Division's Regulatory Mission

The Division of Engineering is authorized under Section 1507 of the Ohio Revised Code to provide engineering, architectural, land surveying, and related technical and administrative support services required by the land holding Divisions within the Ohio Department of Natural Resources. This includes planning, designing, contracting, surveying, inspecting and managing construction projects and capital improvements on Department properties.

Description of the Division's Organization

The Division is organized into four management groups to support its mission. These four groups report directly to the Chief Engineer and Assistant Chief Engineer. The Design Group administers project planning and management and in-house project design. The Surveying and Construction Group oversees land surveying and construction management. The Operations group provides administrative and fiscal support, manages contract compliance and administers all Department capital improvement activities with the State Controlling Board. The Facilities Technical Support Group provides technical support for the Department facilities maintenance program, regulatory compliance, Ohio Department of Transportation roadway maintenance, and the Coastal Engineering Program.

Explanation of the Division's Statutory Rule-Making Authority

Section 1507.04 grants authority to the Chief Engineer to adopt rules for the Coastal Engineering Program. In addition, section 1507.12 grants authority for the Division to promulgate rules for the Burr Oak Water System.

DIVISION OF FORESTRY

Statement of the Division's Regulatory Mission

The Division of Forestry's strategic mission is to promote and apply management for the sustainable use and protection of Ohio's private and public forest lands. Ohio Revised Code chapter 1503 grants the Chief of the Division of Forestry the responsibility for the

administration, use, visitation, and protection of the state forests. This chapter also grants the Chief authority for the conservation and development of forests, acquisition of forest lands, wildfire management, law enforcement and the authority to enter into timber sale agreements.

Description of the Division's Organization

The Division of Forestry is organized into six major groups: State Forest System; Forestry Assistance; Fire Management; Law Enforcement/Recreation; Forest Health; and Public Information and Education. These groups provide the Division of Forestry the expertise to establish rules for the management of both public and private forest lands, mitigate wildfire occurrences, provide public recreation, provide for public safety and the protection of forest resources.

Explanation of the Division's Statutory Rule-Making Authority

Section 1503.01 of the Revised Code authorizes the Chief to adopt, amend and rescind rules that are necessary for the administration and enforcement of the Division of Forestry.

DIVISION OF GEOLOGICAL SURVEY

Statement of the Division's Regulatory Mission

The Division of Geological Survey's mission as authorized under Section 1505 of the Ohio Revised Code is to study and interpret all information relating to the geology of the state and make this information available through reports, maps, samples, and various means for use in economic development, job growth, public safety, and responsible management of Ohio's geologic resources.

Description of the Division's Organization

The Division of Geological Survey is headed by a Chief and organized into four groups. The Administration Group oversees overall management of the agency including personnel (assisted by the Office of Human Resources), budget (assisted by the Office of Budget and Finance), planning, and contracts. The Energy Resources Group studies

geology related to oil and gas production, carbon sequestration, deep well injection, coal, and general subsurface geology. The Geologic Mapping and Industrial Minerals Group studies surface geology of the state relating to industrial minerals, geologic hazards, coastal erosion, geothermal energy, and maintains a sample repository and laboratory. The Technology Transfer Group oversees the Geologic Records Center (the Division's public interaction point), manages the paper and digital records and data, performs computer programming to optimize data, administers the Division website, and the publication of maps and reports. The Ohio Geology Advisory Council advises the Division and is comprised of representatives from seven industry and citizen representatives.

Explanation of the Division's Statutory Rule-Making Authority

Coastal Erosion Area designation (CEA) – The Division, through ORC 1506.06 and 1506.07 and OAC 1501-6-10 through 1501-6-13, is authorized to determine the annual Lake Erie shore recession rates, calculate anticipated recession distances, and prepare CEA maps for the Lake Erie coast.

DIVISION OF MINERAL RESOURCES MANAGEMENT

Statement of the Division's Regulatory Mission

The Division of Mineral Resources Management works to ensure protection of the environment from the effects of present mineral extraction and to remedy the adverse effects of past mineral extraction in a manner that protects natural resources, significant historic property, land productivity, and the health, safety, and welfare of all Ohio citizens while providing for the orderly development of Ohio's mineral resources.

Description of the Division's Organization

In order to fulfill its mission, the Division's hydrologists, geologists, engineers, field inspectors, investigators, archaeologist, and support staff administer the following program areas: Permitting, Soils and blasting, Regulatory, Abandoned Mine Land Programs, Mine Safety, Orphan Well, Underground Injection Control, Ground Water Protection, and Field Enforcement.

Explanation of the Division's Statutory Rule-Making Authority

Coal: Section 1513.02(A)(1) of the Revised Code authorizes the Chief of the Division to adopt, amend and rescind rules to implement, administer, and enforce Chapter 1513. of the Revised Code, Ohio's coal mining and reclamation requirements.

Oil and gas: Section 1509.03 of the Revised Code authorizes the Chief of the Division to adopt, amend and rescind rules to implement, administer, and enforce Chapter 1509. of the Revised Code, Ohio's oil and gas regulatory requirements.

Industrial minerals: Sections 1514.08, 1514.081, 1514.12, and 1514.13 of the Revised Code authorize the Chief of the Division to adopt, amend and rescind rules to implement, administer, and enforce Chapter 1514. of the Revised Code, Ohio's industrial minerals mining and reclamation requirements.

Mine safety: Section 1561.03 of the Revised Code authorizes the Chief of the Division to adopt, publish and enforce rules "for the health and safety of persons and the protection and conservation of property within, about, or in connection with mines, mining, and quarries." Section 1561.05 authorizes the Chief to adopt rules for conducting examinations and for administering the Ohio's mine safety requirements under Chapters 1509., 1561., 1563., 1565., and 1567. of the Revised Code. Section 1571.11 authorizes the Chief to adopt rules to administer Chapter 1571. of the Revised Code, Ohio's underground gas storage requirements. Section 1514.40 authorizes the Chief to adopt rules related to mine safety on industrial minerals sites.

DIVISION OF NATURAL AREAS AND PRESERVES

Statement of the Division's Regulatory Mission

The mission of the Division of Natural Areas and Preserves is to administer a system of natural areas and scenic rivers by identifying, protecting, and managing the best remaining examples of Ohio's natural diversity, for the benefit of present and future generations. The Division conducts research and educational programs designed to further the preservation of biological and geological features.

Description of the Division's Organization

The Division's field operations staff of preserve managers, natural resource specialists and seasonal employees oversees the daily operations of our natural preserve system

and is responsible for law enforcement, preserve development and maintenance and public education programs. Ohio's scenic rivers are managed by four scenic river coordinators, who provide technical assistance to help local agencies develop protection strategies for the rivers, and who are responsible for the environmental review of projects which may impact the scenic rivers.

Explanation of the Division's Statutory Rule-Making Authority

Section 1517.02(E) authorizes the Chief to adopt rules for the use, visitation, and protection of nature preserves, "natural areas owned or managed through easement, licenses, or leases by the department and administered by the division," and lands owned "or managed through easement, licenses, or lease, by the department and administered by the division which are within or adjacent to any wild, scenic, or recreational river area, in accordance with Chapter 119 of the Revised Code. In addition, section 1518 also authorizes the Chief to adopt rules setting forth criteria for identifying and designating species of plants native to Ohio which are in danger of extirpation or which are threatened with becoming endangered.

DIVISION OF PARKS AND RECREATION

Statement of the Division's Regulatory Mission

Section 1541.03 of the Revised Code states that the Division of Parks and Recreation shall create, supervise, operate, protect and maintain a system of state parks and promote the use thereof by the public.

Description of the Division's Organization

The Chief of the Division coordinates the overall operation of the Division. Reporting to the Chief and the Assistant Chief are park managers. The area park managers directly manage the seventy-four journalized state parks located throughout the state of Ohio.

Explanation of the Division's Statutory Rule-Making Authority

Section 1541.01 of the Revised Code authorizes the Division to adopt, rescind, and amend rules necessary for the proper management of state parks, bodies of water, and

the lands adjacent thereto under its jurisdiction and control. The Division has also been authorized to promulgate rules that enable hunting, trapping, and fishing on lands and water administered by the Division.

DIVISION OF SOIL AND WATER RESOURCES

Statement of the Division's Regulatory Mission

The Division of Soil and Water Resources provides leadership and services that enable Ohioans to conserve, protect, enhance, and wisely use soil, water, and land resources to ensure its heritage and viability for all generations.

Description of the Division's Organization

The Division of Soil and Water Resources – The Division is divided into eleven technical/functional sections. These sections, Soil and Water Conservation Districts, Pollution Abatement & Land Treatment, Soil Inventory and Evaluation, Floodplain Management, Dam Safety Engineering, Water Inventory and Planning, Groundwater Technical Assistance, and Groundwater Mapping, are responsible for carrying out the Division's specified regulatory duties. In addition, the Division works in cooperation with the Soil and Water Conservation Commission to ensure Ohio counties are served by effectively administered, adequately supported soil and water conservation districts.

The Ohio Soil and Water Conservation Commission – The OSWCC consists of seven members, four of whom are appointed by the Governor for four year terms and one of whom is designated by the Ohio Federation of Soil and water Conservation Districts. The remaining two members are the Director of the Department of Agriculture and the vice-president of the Agricultural Administration of the Ohio State University. The Chief of the Division of Soil and Water Conservation serves as the commission's Executive Secretary.

Explanation of the Division's Statutory Rule-Making Authority

Section 1511.02(E) of the Revised Code authorizes the Chief of the Division to adopt, amend, or rescind rules, subject to the approval of the Ohio Soil and Water Conservation Commission. Moreover, Section 1515.02 of the Revised Code authorizes the Soil and Water Conservation Commission to adopt rules necessary to carry out the purposes of Section 1515 of the Revised Code.

Section 1521 of the Revised Code authorizes the Chief of the Division to adopt, amend, or rescind rules for program areas not subject to the approval of the Ohio Soil and Water Conservation Commission. These rules include authority for filing of well logs, dam safety standards, and flood hazard reduction standards.

DIVISION OF WATERCRAFT

Statement of the Division's Regulatory Mission

Section 1547.51 of the Revised Code authorizes the Division of Watercraft to administer and enforce all laws and regulations relative to the identification, numbering, registration, titling, use, and operation of vessels operated on the waters in this state.

Description of the Division's Organization

The Division of Watercraft is headed by a Chief and is subsequently organized into 7 sections, 9 area field offices, and 2 remote officer locations.

Explanation of the Division's Statutory Rule-Making Authority

Pursuant to Section 1547.52(A) of the Revised Code, the Chief of the Division of Watercraft may adopt, amend, and rescind rules considered necessary to supplement the identification, operation, titling, use, registration, and number of watercraft or vessels. In addition, the Chief may also adopt rules governing the navigation of vessels on the waters in this state.

DIVISION OF WILDLIFE

Statement of the Division's Regulatory Mission

Pursuant to Section 1531.08 of the Revised Code, the Chief of the Division of Wildlife may regulate the taking and possessing of wild animals, at any time and place or in any number, quantity, or length and in any manner, and with such devices as he prescribes; the transportation of such animals or any part thereof; the buying, selling, offering for sale, or exposing for sale any such animal or part thereof; and the taking, possessing, transporting, buying, selling, offering for sale and exposing for sale commercial fish or any part thereof, including species taken, length, weight, method of taking, mesh sizes, specifications of nets and other fishing devices, seasons and time and place of taking.

Description of the Division's Organization

The Division of Wildlife is organized into four major groups: Law Enforcement; Wildlife Management; Fish Management; and Public Information and Education. These groups provide the technical expertise to establish rules for the protection, preservation, propagation, possession and management of wild animals in Ohio.

Explanation of the Division's Statutory Rule-Making Authority

Section 1531.10 of the Revised Code authorizes the Chief to adopt, amend, and rescind rules that are necessary for the administration and enforcement of the Division of Wildlife.

Section 1531.08 of the Revised Code requires a public Fish and Game hearing to be held once a year. These hearings will include a review of any proposed rule changes. In April, the Wildlife Council will vote on the final proposed rules. The Wildlife Council must approve the rules by a majority vote before the final rules may be filed with JCARR, LSC, The Office of Small Business and the Secretary of State.

OFFICE OF COASTAL MANAGEMENT

Statement of the Office's Regulatory Mission

The ODNR Office of Coastal Management (OCM) administers the federally approved Ohio Coastal Management Program (OCMP) on behalf of the Director of ODNR under

Chapter 1506 of the Ohio Revised Code. The program sets forth policies and guidelines in nine issue areas to monitor activities that affect coastal resources and ensure resource protection while balancing economic, cultural and environmental interests.

The OCM administers the regulatory programs for which it has been delegated direct authority from the Director and coordinates with state, federal, and local authorities to promote the effective management of Ohio's coastal resources. Key Objectives include the 1) Effective administration of permit, lease, and CZMA Consistency Programs as defined in the OCMP core authorities, 2) Development and implementation of a regulatory compliance monitoring and enforcement plan, 3) Creation of a Coastal Design Manual in coordination with the USACE, other ODNR Divisions, and state agencies, 4) Enhanced coordination of regulatory programs between federal, state, and local partners and 5) Utilization of technology to increase the efficiencies within regulatory programs.

Description of the Office's Organization

The OCM is headed by a Chief and is organized into 5 sections that work collectively to support and implement the OCMP regulatory programs.

Explanation of the Director's Statutory Rule-Making Authority Under Chapter 1506

The ODNR Director has broad rulemaking authority under Sections 1506.02 and 1506.21 of the Revised Code and specific rulemaking authority under Section 1506.06 (Identification of Lake Erie coastal erosion areas), Section 1506.07 (Permanent structures in Lake Erie coastal erosion areas), Section 1506.11 (Development and improvement of lakefront land), Sections 1506.30, 1506.31, 1506.34 (Submerged lands preserves), Sections 1506.32, 1506.33, 1506.35 and 1506.36 (Salvage operations for submerged watercraft or aircraft), and Section 1506.40 (Shore structure permits).