

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Natural Resources, Division of Parks & Watercraft

Regulation/Package Title: Package 46 2017 16 CSI (180317)

Rule Number(s): 1501:46-2-07, 1501:46-2-29, 1501:46-2-37, 1501:46-3-26, 1501:46-5-01

Date: 2/2/18

Rule Type:

☐ New

☐ 5-Year Review

☒ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

- Rule 1501:46-2-07 sets a framework for fees and charges that may be collected by concessionaires operating in state parks. The amendment only changes the authority to adopt rules as enacted by SB 293 of the 131st General Assembly.

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CSIOhio@governor.ohio.gov

- Rule 1501:46-2-29 requires a member of the public to obtain a special activity permit in order to hold special activities in state parks that may have significant impacts on normal public access and activities at the park such as triathlons, fireworks, and weddings. The amendment increases the administrative fee for the permit from \$40 to \$50. The proposed amendment also allows the chief to charge a daily fee up to \$5,000 for large scale activities that impact public use such as movie productions.
- Rule 1501:46-2-37 allows the chief of the division to establish vendor areas and sets fees for vendors to utilize those areas. The amendment updates the rule adoption authority.
- Rule 1501:46-3-26 prohibits vendors from selling any goods or services without first obtaining a permit or concession contract from the chief and lists exceptions. The amendment updates the rule adoption authority.
- Rule 1501:46-5-01 allows the chief of the division to issue permits including necessary terms and conditions. The amendment updates the rule adoption authority.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC 1546.03

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

NA

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

The permits allow certain activities that otherwise are not allowed per Ohio Administrative Code. The permit may contain fees to cover administrative costs as well as other operational costs to the properties.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Permits are provided to limit the extent of land use based on the land base area to avoid overcrowding as well as to allow the activity.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The division can measure the success by the increase or decrease in the amount of permits issued.

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Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The following list of stakeholders were e-mailed a letter on November 15, 2017 requesting review and comment on the above five rules.

Ohio Film Office

Friends for the Preservation of Ohio State Parks

Ohio Parks and Recreation Association

Ohio Travel Association

Ohio Campground Owners Association

Ohio Horseman's Council

Buckeye Trail Association

Ohio Bass Federation

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

The division did not receive any comments from the stakeholders.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

We researched what a typical movie sets pay for film locations. They average \$500 to \$5,000 per day. The rule reflects we can charge up to \$5,000 per day.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

NA

- 11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

NA

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12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The chief of the division, with the approval of the director, is charged with adopting administrative rules establishing requirements governing the administration of state parks.

Additionally, we contacted the Ohio Film Office for comment.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The division of parks currently has a special activity rule in place by administrative code. This rule has been in place and the division has been charging special activity permit fees since 1992 and therefore will not require additional implementation.

Similarly, the other regulations have not been changed and therefore will not require new implementation.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Persons holding special activities on division land will have to pay an additional \$10 to obtain a special activity permit. Groups that wish to have certain large scale events on division property may be charged a higher amount for use that would significantly interfere with regular public use of state lands, for example, filming a movie.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Permit fee.

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.

Groups desiring to use public lands for special activities are already required to obtain a special activity permit from the division and pay a \$40 fee. For typical special events, the proposed amendment increases the fee for such permits by \$10 to \$50. The amendment also allows the chief the discretion to charge up to \$5,000 for groups that wish to have certain large scale events on division property that would

significantly interfere with regular public use of state lands, for example, filming a movie.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

ODNR has determined that the \$10 fee increase for a typical special use permit is justified because the fee has not been raised in ten years. The last time the fee was raised was in 2008. The additional fee will cover the additional administrative costs that have arisen during this time period. ODNR determined that allowing the chief discretion to charge up to \$5,000 for large scale events is justified due to the significant impact they would have on the public's use of public land. Similarly certain statutes expressly authorize the National Park Service to recover costs related to special park uses and/or charge fees for the use of park lands and facilities. These include:

- ☐ 16 U.S.C. § 3a, for cost recovery for most special park uses
- ☐ 31 U.S.C. § 9701, for land and facility charges
- ☐ 16 U.S.C. §§ 460l-6d, for cost recovery and location fees for commercial filming and certain still photography activities

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The regulation gives the chief the discretion to determine if an amount higher than \$50 should be charged to a permittee. If the event is co-sponsored, the chief of the Division of Parks and Watercraft may waive the event fees.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODNR would evaluate such a violation on a case-by-case basis with the assistance of counsel.

18. What resources are available to assist small businesses with compliance of the regulation?

The division of parks and watercraft staff are available to help anyone who needs guidance or assistance in complying with these rules.