



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 Parks & Watercraft

Rule Contact Name and Contact Information:

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

Package 197432: Technical Amendments to Special Event Permit & Concession Fees

Package 197487: No Change – Permits and Fees

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

Date of Submission for CSI Review: 6/12/2022

Public Comment Period End Date: 6/26/2023

Rule Type/Number of Rules:

New/___ rules

No Change/ 3 rules (FYR? Y)

Amended/ 2 rules (FYR? Y)

Rescinded/___ rules (FYR?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 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.

Package 197432:

- Rule 1501:46-2-07 sets a framework for fees and charges that may be collected by concessionaires operating in state parks. The amendments remove two occurrences of the word “shall” and one occurrence of the word “require”.
- Rule 1501:46-5-01 allows the chief of the division to issue permits including necessary terms and conditions. The amendments simplify the language, remove five occurrences of the word “shall”, and eliminates gender references.

Package 197487:

- 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 triathlons, fireworks, and weddings. The administrative fee for the permit is \$50.
- Rule 1501:46-2-37 allows the chief of the division to establish vendor areas and sets fees for vendors to utilize those areas.

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- 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.

1. 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.

ORC 1546.04

2. 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.

Not applicable

3. If the regulation implements a federal requirement, but 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.

4. 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.

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

The proposed amendments do not change the operation of the rules, so success will be evident with the expected continuation of requests for event permits at the same rate.

6. 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.

N/A

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 May 8, 2023, requesting review and comment on the two rules with proposed amendments as well as three no-change rules:

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- John Hoty, Hoty Enterprises
- Anne Wech, US Hotels
- Scott Hale, Freedom Outdoors of Southern Ohio
- Robert Gatewood, Put In Bay Watercraft Rental
- Eric Lee, Edible Appalachia
- David Tasker, West Branch Marina, LLC
- Dan Bailey, Fair Flower Foods
- Jane Wolnik, The Island Grind, LLC
- Andrew Schraedly, Schraedly Marine, Inc.
- US Hotel, US Hotel OSP Ventures, LLC
- Robert Gatewood, Put In Bay Watercraft Rental
- David Tasker, West Branch Marina, LLC
- Lukas Kummer, Naturalist Scouts LLC
- Alvin Eder, Ohio River Road Runners Club
- Marie Francis, Can't Stop Running Co
- Mick Mominee, Zoom Multisport Racing, LLC
- Craig Thompson, Greenswell Events / HP Racing
- Garry Griffith, Alum Creek Sailing Association
- Oliver Thwaite, USA Race Timing
- Sarah Benton, Rural Action
- Ronald Birchak, Lake Milton Association
- Dave Ernst, Portage Lakes Disc Golf Assoc
- Donn Buckingham, Preble County Chapter Ohio Horseman's Council
- Andy Henderson, Fleet Feet Columbus
- Mark Snider, Ohio United States Canoe Association
- Colleen Kerkay, Lake Erie Islands Conservancy
- Michael Owen, Southeastern Ohio Trail Runners
- Samuel Hartman, TINAR Race Series
- Michael Minium, Orienteering Cincinnati, Inc
- Andrew Hypes, Blackjack Disc Golf
- Justin Pritchard, American Rally Association
- Ryan O'Dell, Ohio Mountain Bike Championship Series
- Don King
- Ryan Rex
- Mike and Shelly Rex

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

A comment on rule 1501:46-2-07 was received from one stakeholder (not related to the proposed amendments) expressing the opinion that when the state has a retail / rental operation in the same area as a concessionaire, the state should set any retail / rental rates in a manner commensurate with the rates charged by that concessionaire to preclude any

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inequitable market conditions. Because the comment was not related to the proposed changes, no revisions were made to the proposal.

No comments were received on the “no-change” rules.

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?

Because the proposed amendments do not impact the operation of the rules, no specific research was conducted for these rule packages.

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? *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.*

Not applicable

11. 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.

No other agency has the authority to adopt regulations addressing permit application / issuance process for activities on lands or waters administered by the Division of Parks and Watercraft, nor the specifically activities of any vendor, concessionaires, or special event permit holder.

12. 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 since 1992 and therefore will not require additional implementation.

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

Adverse Impact to Business

13. Provide a summary of the estimated cost of compliance with the rule(s). 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.).

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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.

(a) The impacted business community may include:

- Not for profit community and social organizations (scout groups, racing clubs, sailing associations, historical reenactor groups, various hobby clubs, horseman's clubs, rowing / sculling leagues, etc.)
- Large, statewide or national organizations (Ironman: World Triathlon Corporation, etc.)
- Mobile food vendors
- DJ's / other live entertainment providers
- Marine & RV dealers
- Miscellaneous commodity / product vendors (for events like the Black Swamp Kite Expo, Malabar Heritage Days, etc.)

(b) Any current perceived or adverse impacts will not increase burden for compliance. Persons holding special activities on division land will continue to have to pay a fee 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.

14. 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*).

The language of 1501:46-5-01 is being modernized / simplified to improve readability and comprehension.

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

1501:46-2-29: ODNR has determined that the current \$50 fee for a typical special use permit is justified because the fee is not being changed and ensures that the applicant(s) truly intend to utilize the requested area(s); when permits are issued with no upfront fee, there is no consequence for cancelling without notice to the park which means that other entities wishing to use such an area would be prevented from making a reservation. 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 federal 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:

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- ☐ 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.

1501:46-2-07: When the Division is compelled to take over the operations of any concession, the provisions of this rule do not impact the business directly but provide continuity for the public through continued provision of services without a change in costs.

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 event will interfere with public use of the park or any specific area of a park and may define specific terms for a permit or waive park rules.

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.