

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Natural Resources

Regulation/Package Title: Mineral exploration prohibited, exceptions, fee.

Rule Number(s): 1501:3-5-03

Date: March 9, 2018

Rule Type:

☐ New

☒ X Amended

☐ 5-Year Review

☐ Rescinded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.

The regulation requires persons desiring to conduct commercial exploration of state forests for minerals or oil and gas exploration activities to apply to the Chief of the Division of Forestry for a special use permit thirty days in advance of the planned activity in the form and manner prescribed by the Division. The regulation also requires a nonrefundable application fee of \$100. The regulation allows the Chief to require the permittee to pledge a

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performance guarantee deposit that may be retained by the Division if damages or additional expenses are incurred and documented as a result of the activity. . The proposed amendment would decrease the application fee from \$100.00 to \$50.00, which matches the application fee for other special use permit type applications (foot races, etc.).

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

1503.01

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.

No.

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

N/A

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)?

In order for safety measures to be met and for the Division of Forestry to effectively manage state forests, it is critical that the Division is aware of any activity that is occurring on state forest lands. By requiring a special use permit application for this type of activity, the Division is notified of the location and type of activity. Additionally, the permit fee helps to offset Division staff time spent evaluating the permit application and evaluating post-activity land conditions.

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

The Division of Forestry will evaluate post-activity land conditions, as well as the safety aspects in terms of notification of potential land management conflicts.

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.

Ohio Oil and Gas Association

Ohio Coal Association

Ohio Aggregates & Industrial Minerals Association

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Columbia Gas Transmission

NEXUS Gas Transmission

All of these stakeholders were contacted via email on June 28, 2016. We provided the proposed rule amendments with a request for feedback on these amendments to the Division of Forestry on or before July 20, 2016.

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

As of March 9, 2018, no input or feedback was provided by 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?

No scientific data was used to develop this regulation. Written permission from a Chief to conduct a specific or unique activity on public lands is common in most land holding divisions of the Ohio Department of Natural Resources.

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?

No alternatives were considered because this regulation has been effectively accomplishing its purpose since 2004 when this regulation went into effect.

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.*

Because of the unique nature of the activities in this proposed rule language, it is important that the Chief review, and in certain instances, impose special conditions and waive other rules in the form of an approved Special Use Permit.

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

13. Pursuant to Ohio Revised Code 1503.01, the Chief of the Division of Forestry has the statutory authority to adopt rules for the administration, use, visitation, and protection of the state forests. 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.

This regulation has been effective since January 9, 2004 and so no further implementation is necessary aside from lowering the permit fee amount.

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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;**
- b. Identify the nature of the adverse impact (e.g., license 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.

The estimated costs of compliance will typically be no more than \$500.00 per application, and in some cases may be lower depending on the nature of the exploration activity. The impacted business community will primarily be mineral and oil/gas companies. The potential adverse impact will be the \$50.00 non-refundable application fee and any additional performance bond payments.

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

In order for the Division of Forestry to ensure a safe visitor environment and accomplish the Division’s mission, the Division determined that a review and approval process by the Chief is necessary.

Regulatory Flexibility

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

In previous years, most applicants of this activity are large oil and mineral companies (for example: Columbia Gas Transmissions, NEXUS Gas Transmissions, Access Midstream, etc.). However, small businesses would still need to comply with the provisions of this regulation.

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?

N/A

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

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The Division is available to answer questions and assist with the special use permit application process.

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