

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Transportation_____

Regulation/Package Title: Outdoor Advertising Control_____

Rule Number(s): 5501:2-2-01, 5501:2-2-02, 5501:2-2-10_____

Date: 7/11/12_____

Rule Type:

☐ New

☒ 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☐ Rescinded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 draft rules implement advertising device controls along highways within the state of Ohio. Updates to the rules include a new definition of a "Business District". This district would lie within the boundaries of municipalities, front a portion of the state or national

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

highway system, and have 50% or more of the frontage dedicated to commercial activities. This defined district would then be exempt from the advertising device spacing requirement found in less-congested areas.

The draft rules also expand advertising devices that are allowed on Professional Sports Stadium facilities. Current regulation limits advertising devices that are within 50 feet of the structure of the sports facility. The proposed rule would expand that distance to 350 feet.

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

The Director is authorized to adopt rules with respect to advertising devices along highways pursuant to ORC 5516.06 and ORC 5516.02.

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.

The proposed amendments to the regulations do not implement or fulfill a federal obligation.

However, the Director is obliged to fulfill a federal requirement to regulate outdoor advertising devices along highways that receive a portion of federal funding pursuant to the Highway Beautification Act of 1965 which implemented Title 23 USC Section 131 – Control of Outdoor Advertising.

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

The amended regulations contain no provisions that exceed the federal requirement.

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)?

The proposed amendments will provide less regulation and greater flexibility for owners of professional sports facilities, owners of property within business districts, and local governments to erect and maintain advertising devices. The rules that currently exist are more restrictive on a property owner's ability to erect advertising devices on their property. The proposed amendments would exempt business districts from spacing requirements, thereby allowing greater control by local governments to regulate and/or permit such devices. The proposed amendments also provide more opportunity for professional sports facilities to advertise on their property.

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

The Department anticipates that the proposed amendments will clarify permissible advertising devices with respect to “business districts” in municipal areas and sports facilities. These amendments would decrease regulations placed upon the advertising industry, professional sports facilities and local governments.

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.

Stakeholders include representatives from Crew Stadium located in Columbus, Ohio; Outdoor Advertising Association of Ohio; and property owners within the City of Columbus. They include the following individuals:

(1) Scott DeBolt

VP Operations for the Columbus Crew
1 Black & Gold Blvd.
Columbus, OH 43211
614-447-2739

(2) Jameel Turner, Esq.

Attorney for the Columbus Crew
Bailey Cavaliere, LLC
10 W. Broad Street, Suite 2100
Columbus, OH 43215
614-221-3155

(3) James Horner

1 Spring LLC
22 East Gay Street, Suite 300
Columbus, OH 43215
614-284-8888

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

(4) Sam Horner

1 Spring LLC

22 East Gay Street, Suite 300

Columbus, OH 43215

614-284-8000

(5) Kevin Futryk

Executive Director, Ohio Advertising Association of Ohio

100 E. Gay Street, Suite 701

Columbus, OH 43215

614-223-9580

Stakeholders Scott DeBolt and Jameel Turner from the Columbus Crew met with agency representatives on May 11, 2012 to discuss the draft amendments to the rules.

Agency representatives met with stakeholder Kevin Futryk on May 11, 2012 and spoke via telephone on May 16, 2012.

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

The Outdoor Advertising Association of Ohio has raised objections to the 350 foot spacing change as it is considered unfair by the current owners and operators of outdoor advertising devices that these amendments would give an advantage to sports stadium owners at the expense of local outdoor advertisers.

Despite these objections, representatives from Crew Stadium have expressed to ODOT that the existing 50 foot spatial requirement would be difficult for a sports facility to conform to and that the requested amendment expanding the distance requirement would open up competition and allow an under-used facility to obtain extra revenue dollars that may help to defray expenses.

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?

Given the nature of the regulation, these questions do not apply to the amended rules.

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?

Regulatory alternatives were not considered due to the fact that the proposed amendments provide for less regulation than what is currently in place.

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.

Given the nature of the amendments to the regulations, this question is not applicable.

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

The Department has control of outdoor advertising devices per Federal Code and as prescribed in ORC 5516.02 and ORC 5516.06.

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 Department already has an Advertising Device Control Section responsible for ensuring that applicants for outdoor advertising are following all federal and state regulations.

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.

It is anticipated that these rule changes would allow for more advertising devices, thereby increasing permit revenue for the Department and revenue for those that own and manage outdoor advertising devices, sports stadiums in Ohio, and property owners within "business districts" as defined by the proposed amendment.

The nature of the adverse impact is not clear at this point in time. The amended rules expand the boundaries for advertising devices that are permissible around sports stadiums

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

and create a business district that would allow more advertising devices be permitted by local authorities by eliminating spacing requirements within the current rule.

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

Given the nature of the amended regulation, this question does not apply.

Regulatory Flexibility

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

No, the amended rules do not provide any exemptions or alternative means of compliance for small businesses as small businesses are not a target for the 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?

The agency will adhere to the requirements of ORC § 119.14 should such a violation occur through implementation of the proposed regulation.

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

Small Businesses that have questions about our regulations and outdoor advertising control may contact the Department's Advertising Device Control Section.