

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Transportation

Regulation/Package Title: Advertising Device Control (ADC)

Rule Number(s): 5501:2-2

Date: January 12, 2018

**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Rescinded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 Advertising Device Control (ADC) program originated from the 1965 Federal Highway Beautification Act (“HBA”) to control outdoor advertising and impose limits on various aspects of advertising devices, including the locations, size, spacing, and lighting of those structures. ADC control exists along the right of way of all Interstates, Federal Aid Primaries, and the National Highway System.

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

The Department has authority under section ORC 5516.03 to prescribe rules for the ADC program.

**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 rules being proposed are part of maintaining a federal requirement.

The ADC program operates under a Federal-State Agreement, signed in 1968, whereby the Department agreed to uphold more stringent signage regulations in exchange for a one and a half percent “bonus” payment from FHWA on its Federal-Aid highway apportionment funds. Failure to provide adequate control of the erection and maintenance of outdoor advertising displays brings the potential penalty of 10% reduction of the Department’s Federal-aid highway apportionment funds.

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

These rules and regulations are necessary to allow the program to operate in a consistent and equitable manner.

**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)?**

Regulation is required to protect the safety of the traveling public, as well as to preserve the state’s historic areas and natural beauty.

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

ODOT will measure the success of the program through the effective and customary control of outdoor advertising that is consistent with national policy.

### **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.*

ODOT communicated via email with USDOT and the Ohio Outdoor Advertising Association 11/8/2017. A timeline of correspondence with OAAO is also attached.

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

ODOT engaged in conversations with the OAAO and made edits to response to most comments. Please see timeline attachment.

- 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?**

The rules were developed taking into consideration recent judicial decisions and challenges encountered in the enforcement of the rules, and where clarification was deemed helpful or necessary.

- 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?**

The Department did not consider alternatives as they could result in a fee increase.

- 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.***

The Department did not consider a performance-based regulation as it is deemed inappropriate for the ADC permitting process.

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

The Ohio Department of Transportation is the only entity authorized to conduct this program.

**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 ADC program has a staff dedicated solely to these enforcement activities that is housed by the Department in its Division of Construction Management.

**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;**

Currently, there are approximately 600 sign owners with outdoor advertising devices permitted by the ADC program.

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

Each sign owner is assessed a biennial renewal fee for each of its permitted advertising devices. The cost is \$125 per static billboard, and \$325 for each digital advertising device. Applications fees for new permits are \$225 for static billboards and \$625 for digital advertising devices.

**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.*

All fees assessed for ADC permits and fines are used by the Department for ADC enforcement purposes, in accordance with ORC 5516.15. Net fees would be decreased with these rule changes, saving businesses \$100 on each application for a modification of a static billboard to a digital device.

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

The Department has the obligation to maintain a fiscally responsible transportation program as well as assign rates for permits that assist in the funding of the ADC program.

### **Regulatory Flexibility**

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

No. The permit fees and sign regulations are the same for any sized business.

**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 ADC program does not impose fines or penalties for paperwork violations and first-time offenders.

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

The Department offers a downloadable manual and personalized assistance from ADC program personnel, who are available to assist all sign owners who have difficulty understanding and complying with ADC rules.