

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Transportation

Regulation/Package Title: Aviation Package 2– 5year Rule Review

Rule Number(s): 5501:1-10, 5501:1-1-01, 5501:1-1-02, 5501:1-1-04, 5501:1-2-01, 5501:1-6-

01

Date: 5-3-18

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Rescinded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.

These rules clarify the role of the Department's Office of Aviation with regard to the permit review process for proposed structures, mobile objects and objects of natural growth near Ohio's airports. The rules regarding the determination of the height and location of these structures and objects of natural growth are based on federal laws, rules and other guidance issued by the FAA. There are no additional criteria used by the Office of Aviation beyond what the FAA uses. The rules clarify that the Office uses all the same FAA criteria in its review process. The rules are also amended to increase the time that an applicant must file the application with the FAA before construction or establishment from 30 days to 90 days to accurately reflect the time it takes to process an application. The FAA takes approximately 45 days to complete their preliminary review and make the application available to the Office of Aviation. The Office of Aviation's review also takes approximately 45 days. The rules are also amended so that if a person builds a structure or establishes an object of natural growth without a permit and it is determined by the Office of Aviation to be an obstruction to the navigable airspace, the person can be ordered to appear before the Administrator of the Office of Aviation to show cause as to why a permit was not needed. If it is determined by the Administrator that a permit was needed, the rules are amended to allow an order of removal, in addition to the current option of an order to cease and desist. As a penalty for violating the Ohio Airport Protection Act, the rules provide that any permit may be revoked or the obstruction removed or the natural growth be maintained or removed. Medical use heliports were added into these rules at the request of medical use helicopter operators and with the input of the Ohio Association of Critical Care Transport (OACCT).

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

RC 4561.05 and 4561.32.

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.

These rules are adopted and amended in order to fully mirror the federally defined navigable airspace and analysis criteria found in 14 CFR Part 77. These rules are

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necessary in order to enforce these federal rules and guidelines due to the fact that the FAA has no enforcement abilities and delegates to the State.

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

Since enforcement is delegated to the states, the federal government has no enforcement power over violators of federal rules that protect the navigable airspace. Current rule 5501:1-10-13, renumbered as 5501:1-08-13, allows for a hearing to determine if a structure is being built without a permit. If it is determined that a permit was needed, but not obtained, the rule allows for a cease and desist order. This enforcement provision is sufficient for any structure in the process of being built; however, it is insufficient if the structure is fully built and is a hazard to air navigation. For this reason, the rules are proposed to include an option for an order to remove the structure. Both the current cease and desist order, as well as the proposed removal order, are subject to a Chapter 119 appeal. These rules complement the federal rules and guidance while providing for enforcement powers in the interest of safety above all other considerations. Further, if a permit is denied, the applicant may appeal this decision pursuant to Chapter 119 (Current rule 5501:1-10-09, renumbered as 5501:1-08-09).

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 rules are required in Ohio Revised Code and are implemented for the safety of those traveling by air, as well as those who are on the ground.

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

The office monitors aviation accidents and incidents within Ohio to identify causation factors and whether they involved structures or objects of natural growth that penetrate the navigable airspace.

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.

See attached stakeholder list. ODOT worked with the aviation community through the Ohio Aviation Association (OAA), County Commissioners (own airports in some counties), Aircraft Owners and Pilots Association (AOPA), and the Ohio Association of Critical Care Transport (OACCT). Comments were sought on the existing rules January 2 – March 2, 2018 and ODOT’s proposed revisions were sought March 21 – April 13, 2018 via email. Early discussions were had regarding all 26 aviation rules beginning July 2017, but it was later broken into two aviation rule packages for simplicity and focused stakeholder comments.

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

The aviation community, specifically the Executive Director for the OAA, the Senior Safety Advisor for Life Flight, and the Senior Advisor for OhioHealth Safety Management Services provided questions as to some of the proposed rule revisions. The office of aviation worked with these stakeholders to answer their questions, as well as to amend some of the rules to clarify possible confusion. The aviation industry was otherwise supportive of these rules following this process.

One Energy, LLC provided comments questioning the Department’s authority to have any rules that cover all of the FAA Obstruction Standards found in 14 CFR 77.13 through 77.23 (also known as 14 CRF Part 77). ODOT issued a written response to One Energy and copied CSI. This authority is also being challenged in the Franklin County Court of Common Pleas where ODOT has maintained the same position.

One Energy also provided suggestions regarding the language for future collection of administrative fees and suggesting consistency between the effective dates of permits issued by the ODOT Office of Aviation and determinations of no hazard by the FAA. ODOT has agreed to those suggestions and changed our proposed rules accordingly.

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 majority of the substantive proposed changes are to mirror federal law, rules and guidelines. There was no scientific data used to develop the proposed changes by the State, as the federal bodies determine standards for implementation at the state level.

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 alternative regulations were considered. The rules reflect federal guidance, Ohio statute and current practice.

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.*

ODOT did not consider a performance-based regulation. The Federal regulations and guidance upon which our current and proposed rules are based are not performance-based regulations.

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

ODOT looked at its existing rules and consolidated as much as possible. ODOT Office of Chief Legal has reviewed OAC to ensure there is no duplication.

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 building and establishing of structures, mobile objects and objects of natural growth are governed by rules and guidance determined by the FAA and are applied consistently by the Office of Aviation.

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;

The impacted business community involves owners and operators of public-use airports, heliports, seaplane landing sites, landing fields and landing areas as well as all neighbors, existing or future, of these areas who seek to install, erect, construct, establish, change or alter any structure, mobile object or object of natural growth.

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

The possible adverse impact for structures, mobile objects or objects of natural growth being installed without a permit and being a hazard to the navigable airspace are fines, as well as possible revocation of permit, a cease and desist order and/or an order of removal. Opportunity cost to a business of not being permitted into the navigable airspace could also be an adverse impact and would be case specific. There could be a cost for compliance with the marking and/or lighting of tall structures and maintaining objects of natural growth.

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.

There is no way to generally quantify adverse impact, as it is case specific. It is the intention of these rules to set forth the requirements in advance so that there will be compliance.

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

The Ohio Legislature, via the Ohio Airport Protection Act of 1991, determined that the safety of the traveling public outweighs any adverse impact. ODOT follows this law. Specifically, R.C. 4561.34 “Granting or denial of permit – issuance of opinion” states “The consideration of safety shall be paramount to considerations of economic or technical factors.”

Regulatory Flexibility

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

Yes. A small business could be issued a permit for a proposed structure that penetrates the navigable airspace by working with the Office of Aviation to see how much it needs to be lowered so that it will not be a hazard. The Office of Aviation will also analyze the proposal to determine if it qualifies for a permit with waiver based upon sound aeronautical principles.

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?

There are no penalties for paperwork violations. The Office of Aviation is focused on working with those it regulates.

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

ODOT Office of Aviation has brochures and a website to assist small businesses. In addition, staff is available to answer questions of small businesses.