

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture_____

Regulation/Package Title: Amusement Ride Standards; Bungee Jumping Standards

Five Year Review - 2013

Rule Number(s): 901:9-1-02 through 25._____

Date: 6/25/2013

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☐ Rescinded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.

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The following rules have been reviewed pursuant to R.C. 119.032 and are being renewed as no change, except where noted.

901:9-1-02: Sets forth the powers of the Director, as authorized by R.C. 1711, to issue stop orders and prevent the operation of unsafe amusement rides.

901:9-1-03: Prohibits the interference with an inspector in the conduct of duties under the conditions set forth in the rule.

901:9-1-04: Sets forth the procedures for safety inspections of amusement rides.

901:9-1-05: Sets forth the required maintenance procedures for amusement rides.

901:9-1-06: Sets forth operational procedures for amusement rides.

901:9-1-07: Sets forth the signs required for display at each amusement ride.

901:9-1-08: Sets definitions for standard amusement ride terms. This rule is being amended to correct a reference to the Revised Code in paragraph (I).

901:9-1-09: Sets forth the statutorily required schedule of fines.

901:9-1-10: Requires that aquatic devices shall be approved by local building authorities or other regulatory authorities with jurisdiction prior to construction or modification.

901:9-1-11: Sets forth defined terms pertaining to aquatic devices.

901:9-1-12: Requires that operators must comply, at a minimum, with the manufacturer's manual requirements.

901:9-1-12.1: Sets forth the requirements of a "lifeguard", a "shallow water lifeguard", and an "attendant".

901:9-1-13: Sets forth safety standards for wave pools.

901:9-1-14: Sets forth standards for water quality in aquatic devices when treating the water with chemicals.

901:9-1-15: Sets forth standards for water quality in aquatic devices when treating the water with non-chemical methods.

901:9-1-16: Sets forth standards for general safety in aquatic device areas.

901:9-1-17: Sets forth standards for safety at water slides.

901:9-1-18: Sets forth standards for safety at lazy rivers.

901:9-1-19: Sets forth standards for safety at water coasters.

901:9-1-20: Sets forth required waterpark signage.

901:9-1-21: States the purpose of the rules in 901:9-1-01 and 901:9-1-21 to 901:9-1-41 is to set forth standards for the operation of bungee jumps.

901:9-1-22: Sets forth definitions for terms used in bungee jumping.

901:9-1-23: Sets forth the materials required to accompany a bungee jump permit application.

901:9-1-24: Sets forth safety spaces for the area around bungee jumps.

901:9-1-25: Sets forth the procedures for determining the safe working load for bungee jump platforms.

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

R.C. 1711.53

- 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.**

Not applicable.

- 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 purpose of the rules in this package is to protect public safety on amusement rides, aquatic devices, and bungee jumps by setting minimum safety standards for all operators in Ohio.

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

All rides and devices covered by these rules are inspected and any complaints regarding unsafe operations are investigated. The rules are judged as being successful when inspections and investigations find few violations, and when there is no increase in the number of accident reports filed with the Department.

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's amusement ride industry is heavily involved in the initial drafting of these rules and keeping them updated as the technology of the industry changes. The Advisory Council on Amusement Ride Safety is a statutory body that meets throughout the year to discuss and advise the Department on matters pertaining to the amusement industry and items that need to be addressed through rules. The current composition of the council is:

Mr. Geary Bates - Bates Brothers Amusements, Inc

Mr. Monty Jasper - Corporate VP of Safety & Engineering - Cedar Point LP

Mr. Tim Bowers - Associated Insurance Agencies, Inc.

Mr. Doug Kramer (Chairperson) – Cedar Fair Kings Island

Ms. Cynthia Emerick-Whitson - Represents Engineering Industry

Mr. Bill Prowant - Durant Enterprises, Inc.

Mr. Doug Guinsler - Ohio Fair Managers Association

Mr. Chris Small - American Testing Services Ltd

Mr. Virgil Strickler - Ohio State Fair

Mr. Frank Newlon – General Public

Mr. Frank Welsh – Ohio Festivals & Events

Mr. Don Woodward - Erieview Park, Inc.

(<http://www.agri.ohio.gov/divs/rides/forms/Amusement%20Ride%20Safety%20Advisory%20Council.pdf>)

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

The council as matter of course reviews and requests changes to rules. One rule that is being renewed as no change in this package has an amendment pending with the council and may be put forth as a proposed amended rule in late summer of this year.

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Additionally, the council is finalizing new rules to be proposed that cover relatively new types of amusement rides/devices and those are expected to be presented later this year as well. However, the council has no recommendations for changes to the rules in this package.

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 are based on standards from the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) wherever applicable.

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?

These are the minimum standards for safety and alternatives are generally not applicable. The industry is trying to make use of technological alternatives in some areas. Water quality standards are set for chemically treated or non-chemically treated water in 901:9-1-14 and 15. The Department and the industry have worked to incorporate an new alternative using ultra-violet light treatment options, which can be found in 901:9-1-14.1 and are just now being phased in.

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.*

As these regulations set minimum safety standards to protect the public, performance-based regulations are not appropriate.

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

The Department is given the sole regulatory authority over these devices through R.C. 1711.53.

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 rules have been in effect for years and are uniformly applied to amusement operators without regard to the type of operation. Inspections and investigations are conducted with a focus on safety for the public, and compliance with the industry standards and the manufacturer's requirements for the rides and devices is uniformly applied.

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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;**
All operators of amusement rides, aquatic devices, and bungee jumps.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
Permits are required; however that requirement and the permit fees are set by statute. Fines are set by these rules and can adversely impact any operator found not to be in compliance.
- 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 Department collects an approximate annual average of \$15,000 in fines for violations across all operators regulated by the Division of Ride Safety. Nearly all violations are settled for less than the original proposed fine, typically less than half of the proposed amount.

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

The regulatory intent of the statute and rules is to protect public safety by establishing minimum safety standards for these business communities, accordingly the adverse impact is considered to be justified.

Regulatory Flexibility

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

As the primary purpose of these rules is public safety, exemptions for a smaller operator would not be applicable.

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- 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?**

Paperwork violations rarely reach the enforcement stage so long as the operator is willing to correct the violation and has no history of prior violations. First-time offenders are also routinely offered settlements that are appropriate to the circumstances of the violation, and in almost all cases have their fines waived or settled for small fines.

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

The Department has online resources and has field staff available through a 24 hour helpline to provide assistance. Training and seminars are also available.