

**MEMORANDUM**

TO: Howard Henry, Ohio Department of Agriculture
FROM: Mark Hamlin, Director of Regulatory Policy
DATE: August 16, 2013
RE: **CSI Review – Amusement Ride Standards (OAC Chapter 901:9-1)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 25 rules being proposed by the Ohio Department of Agriculture dealing with amusement ride safety. The rules have been reviewed by the Department under the five-year review requirement of ORC 119.032, and all are being proposed with no changes except Rule 901:9-1-08, which includes a single amendment to update a statutory reference.

The rules in this package establish minimal operational standards for owners and operators of amusement rides to ensure the safety of the riding public. The definition of "amusement ride" in ORC 1711.50 includes mechanical, inflatable, and aquatic devices; so the rules cover a broad range of rides in a variety of settings. Because of the nature of the rides and the Department's responsibility for ensuring rider safety, the rules in this package are very prescriptive. However, the rules are consistent with the expectations laid out in statute, and the statute also established an Advisory Council on Amusement Ride Safety to assist the Department in enforcing its duties in this area, including the adoption and review of administrative rules.

In its BIA, the Department identifies adverse impacts as permit requirements and associated fees (though it notes that these impacts are created by statute rather than rule), as well as fines for violating the rules. The fines range and can reach up to \$5,000 per violation, although the Department notes that it works closely with operators to bring them into compliance rather than impose fines, and states that

it typically collects an average of \$15,000 in fines per year.

As noted above, the rules in this package are relatively prescriptive and create a number of specific impacts not identified by the Department in its BIA, including the following:

- Minimum operating standards that owners and operators of rides must comply with;
- Department inspections of rides prior to use (Rule 901:9-1-02 states that “no ride can be presumed to be safe until it is inspected”), at regular intervals, and upon complaint;
- Authority of the Director of Agriculture and Department inspectors to prohibit operation of a ride that is found to be out of compliance;
- Requirements that owners maintain liability insurance;
- Requirements that owners and/or operators conduct daily inspections of rides and maintain records on these inspections for the current year and two additional years;
- Employee training requirements for inspection, maintenance, and operation;
- A requirement to create fact sheets – including policies, duties of operators, and emergency procedures – for each ride;
- Signage and fencing requirements in specific situations; and
- Water quality standards and cleaning requirements for aquatic devices.

No comments were submitted during the rule review period expressing views on the rules. However, the CSI Office has previously been contacted by owners of businesses that utilize inflatable equipment expressing concerns about regulations, including permit fees and operational requirements. As identified in its BIA, permitting requirements and fee schedules are established in statute, and the Department has begun an effort to review its fees with the possibility of proposing legislative changes to the schedules. With regard to operational requirements, the rules rely heavily on the standards established by the ride manufacturers, and this seems to be an appropriate standard given the broad scope of rides subject to regulation. Ultimately, the need to protect the safety of the public justifies the adverse impacts, but the CSI Office will continue to work with the Department and the business community to help ensure that the regulations strike the appropriate balance across the spectrum of rides.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.