

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Ride Safety 5 Year Rule Review – Electronic Amusement Games

Rule Number(s): 901:9-2-01, 02, 16

Date: January 29, 2014

**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☐ Rescinded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.

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## **Regulatory Intent**

### **1. Please briefly describe the draft regulation in plain language.**

Rule 901:9-2-01 sets forth the definitions that pertain to the chapter. It is amended to include a definition for “electronic amusement games” and, to make several grammatical changes.

Rule 901:9-2-02 sets forth the general provisions for the section. It is amended to make grammatical and stylistic changes to ensure the rule is easy to read and understand. Further, an existing paragraph is moved from the rule and incorporated into Rule 901:9-2-16 with similar content.

Rule 901:9-2-16 sets forth rules pertaining to electronic amusement games. The rule was inappropriately titled as “Electronic Claw Amusement Games.” The existing rule’s scope impacts all electronic amusement games and changes were made to clarify this. The rule is amended to recognize the introduction of term “electronic amusement game.” Further, the rule is amended to break paragraph (F)(1) into a list to provide clarity.

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

R.C. 1711.11

### **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 Department’s purpose for these regulations is to ensure continued public safety and trust in the use of amusement games and concessions by setting minimum safety standards and operating standards that ensure fair play of the amusement games for all operators in Ohio.

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

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All concessions and amusement games covered by these rules are inspected and any complaints regarding unsafe or unfair operations are investigated. The rules are judged as being successful when inspections find few violations, and when there is no increase in the number of complaint 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 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?**

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The Advisory Council as matter of course reviews and requests changes to rules. These rules were reviewed by the council during their January meeting. A discussion was held and the council unanimously supported the rule changes.

**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?**

Each game is thoroughly tested by the Division of Ride Safety using a wide range of age groups to ensure the games may be played safely, are skill-based, and are fair.

**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 fair play and alternatives are generally not applicable.

**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 operating standards which ensure fair play and 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. 1711.11.

**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.**

These rule amendments shall be uniformly applied to amusement operators without regard to the type of operation. Inspections and investigations are conducted with a focus on fair play and safety for the public, and compliance with the rules for the concessions and games are uniformly applied.

**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 concessions and games.

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**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. The amendments do not require any additional fees, fines, or employer time for 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 average of \$1,500.00 in fines for violations by an operator regulated by the Division of Ride Safety for amusement games and concessions. Nearly all violations are settled for less than the original proposed fine, typically less than half of the proposed amount. The amended rules are not expected to have a direct fiscal impact as the amendments do not increase license fees, fines, or the time it takes to comply with the rules.

**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 ensure fair play and protect public safety by establishing minimum operating 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 to ensure fair play of the concessions and games as well as public safety, exemptions for a smaller operator would not be applicable.

**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.