



MEMORANDUM

TO: David E. Miran, Jr., Ohio Department of Agriculture

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: March 28, 2014

RE: **CSI Review – Amusement Ride Safety – Electronic Amusement Games (OAC 901:9-2-01; 901:9-2-02; and 901:9-2-16)**

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

I. INTRODUCTION AND BACKGROUND

The Ohio Department of Agriculture (ODA) submitted a rule package containing three (3) amended rules on February 12, 2014, as a result of the five-year review requirement contained in R.C. § 119.032. The rules govern operational standards for Electronic Amusement Games (EAG), along with general standards governing amusement concessions and games. ODA cites R.C. § 1711.11 as authority to establish these rules. The official comment period ended February 27, 2014. One stakeholder comment was submitted during the CSI review period.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

As stated by ODA in the BIA, the scope of the impacted business community is comprised of owners and operators of amusement concessions and games.

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The rules require a person proposing to operate an amusement game to submit each game for initial approval by ODA. The rules also require any EAG to be individually inspected and licensed by ODA. The owner of an EAG must maintain any schematics, manuals or documentation concerning any modifications to the game at the place of play at all times. The owner of an EAG is also required to post the price of the game, and to refund a patron for any mechanical failure.

All of the above requirements demand costs, time and resource expenditures of businesses to ensure compliance with the rules. Therefore, all are considered adverse impacts to owners and operators of amusement concessions and games.

B. JUSTIFICATION FOR ADVERSE IMPACT

As stated by ODA in the BIA, twelve (12) representatives of industry stakeholders were involved in the drafting and early review of these rules.

The only comment received by CSI was submitted by the Greater Ohio Showmen's Association (GOSA). The comment was broken down by GOSA into three (3) sub-parts. All three concerns have been addressed by ODA through discussions with GOSA and incorporation of the comments into new rule drafts.

GOSA's first comment concerned the definition of an EAG. GOSA was concerned the definition could be construed to also include other types of games or concessions already defined in Ohio law, such as "group games." ODA addressed this comment by proposing a new rule draft defining EAG to apply only to a game which "only a single player can play."

GOSA's second comment concerned the current annual deadline of May 31, by which a person wishing to obtain approval of a new game must submit that game to ODA prior to operation. GOSA was concerned this language unnecessarily restrained the time frame in which owners and operators of amusement games could put certain games into operation. ODA addressed this comment by proposing a new rule draft which deletes the May 31 deadline and replaces it with a requirement that the game's submission be accomplished "prior to licensing and operation."

The final GOSA comment concerned a proposed requirement that an owner of an EAG be required to ensure that the manufacturer (1) train and acquaint ODA with various characteristics of the EAG and (2) submit a schematic or manual for the EAG to ODA. GOSA's concern focused on the fact that owners and operators may not be able to ensure any action by the EAG's manufacturer, especially if that manufacturer is based outside of the United States. ODA

addressed this comment by proposing a new rule draft which does not include the above proposed requirement, and instead requires the owner of the EAG to simply “possess” the corresponding schematic or manual “at the place of play at all times.”

As explained above, ODA has sufficiently addressed all of GOSA’s concerns through incorporation of the comments in new rule drafts. No other stakeholders have expressed concerns regarding this rule package.

ODA has determined that these rules are necessary to “ensure fair play and protect public safety by establishing minimum operating standards” for these amusement games.

The CSI Office is satisfied with ODA’s justification because (1) stakeholders were involved and provided input from an early stage of rule drafting, (2) ODA thoroughly discussed all comments submitted and has incorporated those comments into new rule draft language, and (3) ODA has provided sufficient substantive reasoning as to why these proposed rules are necessary (i.e., minimum fair play and public safety standards). Accordingly, the adverse impacts of these rules have been sufficiently justified by ODA.

III. RECOMMENDATIONS

After reviewing the BIA, and pursuant to the more detailed reasons outlined above, the CSI Office has no specific recommendations regarding the rule package.

IV. CONCLUSION

Based on the above analysis and recommendations, CSI concludes that ODA should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor’s Office