

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Ohio Concession Rules – Five Year Rule Review

Rule Number(s): 901:9-2-(01-16), (18-21)

Date: October 3, 2016

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☒ Rescinded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.

The rules in Chapter 901:9-2 of the Ohio Administrative Code (“OAC”) regulate “concessions” at fairs and expositions operated by county and independent agricultural societies. Concessions are defined as shows, games, or novelty stands which take place at these county fairs. Classic examples of these games can be found at a fairs “Midway” such as the milk bottle ball game, pop bottle ball game, and the bank-a-ball game.

Pursuant to Chapter 1711 of the Ohio Revised Code (“ORC”), it is the Department’s regulatory mission to protect the public from dishonest and fraudulent dealings with regards to concessions. In order to accomplish this mission, the Department has created a specific set of administrative code rules which outline the way each game shall be played, the manner in which prizes are offered and displayed, and the signage requirements for each game.

The rules have been reviewed by both the Department and the rule’s stakeholders. After several months of discussion, the rules as outlined below represent a compromise between industry and the Department. The rules are more specifically outlined below:

OAC 901:9-2-01 outlines the definitions that are used in the chapter. The rule is being amended to make several stylistic changes which help to clear up any potential ambiguity in interpreting the rule. Substantively, the definition “concession” has been amended to reflect the statutory definition of “concession” as found in ORC 1711.11. Further, a definition of the term “trade up games” has been added to the list of definitions. This definition is necessary for the interpretation and understanding of OAC 901:9-2-06.

OAC 901:9-2-02 sets forth the general provisions that apply to all concessions. The rule has been amended to make stylistic changes which ensure that the correct terminology is being used throughout Chapter 901:9-2. No substantive changes to the rule have been made.

OAC 901:9-2-03 outlines the licensure requirement for all concessions. Formatting changes have been made to the rule which should make the rule easier to read. Further, at the request of industry, the requirement that the price of the concession be listed on the license has been removed from this rule.

OAC 901:9-2-04 has been rescinded and replaced with a new rule. Currently, OAC 901-9-2-04 outlines rules regarding signage and prize requirements. Signage requirements have been moved to a new administrative code rule, OAC 901:9-2-05. Due to the Legislative Service

Commission's rule that requires all administrative rules which undergo 50% amendment to be rescinded and a new rule be drafted in its place. Therefore, new OAC 901:9-2-04 has been drafted and it outlines specific requirements for the prizes offered at the concessions. Many of the original provisions in OAC 901:9-2-04 have been retained.

OAC 901:9-2-05 is a new administrative code rule which outlines the signage requirements for each concession. The signage requirements were a result of a compromise between the Department and Industry. Specifically, the Department removed the requirement that the price of play be listed on the license of the game in return for signage requirements. These new requirements standardize the size, shape, and content of the game signs. The signs alert the game patron to the specific rules and cost of play thereby ensuring a common understanding of what it takes to play the game and leveling the playing field.

OAC 901:9-2-06 is a new administrative code rule which regulates "trade up games." Trade up games are games which allow a player to accumulate up to three wins in order to win a prize of his/her choice. The rules for these types of games were originally found in OAC 901:9-2-08 however, a new rule was created to ensure that these rules were clearly understood. There are no new requirements in this rule; rather, the new rule was explicitly created for formatting and stylistic reasons.

OAC 901:9-2-07 outlines the prohibitions of all concessions. No new prohibitions have been added to this rule. There were small stylistic and grammatical changes made to the rule which do not affect the substance of the rule.

OAC 901:9-2-08 sets forth the requirement that all rules of play must be followed by the concession operators. The rule has been amended to remove the "trade up games" language from this rule. As previously stated above, this language has been moved into a new OAC provision, 901:9-2-06. Further, the rule has been clarified to allow leaning over physical lines/barriers and a restriction that concessions may not force players to stand straight while playing.

OAC 901:9-2-09 outline rules of play for ball and bag tossing games. The rules outline the rules of play for basketball, basketball-type, and football toss games, etc. The rules specifically state how each game is played. Substantively, the rule has been amended to require the ball's air pressure must be within the manufacturer's recommended air pressure – or – if a ball does not have a recommended air pressure, the ball must be within 7.0 to 9.0 psi at the time of play. This new requirement only applies to basketball and basketball-type games.

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OAC 901:9-2-10 outlines the rules of play for ring games. Ring games are games in which rings are thrown over blocks or prizes. The rules state that at a minimum, rings must be round and unwarped. Further, the target must be vertically and horizontally level, as well as vertically straight. The rule has been amended to make stylistic changes which should help with comprehension. No substantive changes have been made.

OAC 901:9-2-11 outlines the rules of play for shooting games. The rules outline requirements on the guns, targets, and bullets used in the games. The rule has been amended to require manufacturer's verification on all paper targets used in the "shoot out the star" games.

OAC 901:9-2-12 outlines the rules of play for coin or washer pitch games. The rules outline that in any game in which washers, disks, or coins are thrown, the target must be level horizontally as well as other, more specific game rules. There have been no substantive changes made to this rule.

OAC 901:9-2-13 outlines the rules of play for dart games. The rule has been amended to make a formatting change which should allow for easier comprehension of the rule. There have been no substantive changes made to this rule.

OAC 901:9-2-14 outlines the rules of play for miscellaneous games. The rule has been amended to make formatting changes which should allow for easier comprehension of the rule. There have been no substantive changes made to this rule.

OAC 901:9-2-15 outlines the rules of play for group games. The rule has been amended to make formatting changes which should allow for easier comprehension of the rule. Additionally, the rule has been amended to make grammatical changes to the rule. There have been no substantive changes made to this rule.

OAC 901:9-2-16 outlines the rules of play for electronic amusement games. No changes have been made to this rule.

OAC 901:9-2-18 outlines the rules of play for the "fish-o-rama" game. The rule has been amended to make a formatting change to ensure compliance with the Legislative Service Commissions guide on administrative rule drafting.

OAC 901:9-2-19 outlines the rules of play for the “Gun ball” game. The rule has been amended to make a formatting change to ensure compliance with the Legislative Service Commissions guide on administrative rule drafting.

OAC 901:9-2-20 outlines the rules of play for the “Tee Pool” game. The rule has been amended to make a formatting change to ensure compliance with the Legislative Service Commissions guide on administrative rule drafting.

OAC 901:9-2-21 outlines rules of play for the game known as “Crazy bike.” No changes have been made to this rule.

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)?

Pursuant to ORC Chapter 1711, it is the Department’s regulatory mission to protect the public from dishonest and fraudulent dealings with regards to games and concessions. The Department’s purpose for these regulations is to ensure continued public trust in the use of concessions by setting minimum operating standards that establish fair play for all operators in Ohio.

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

All concessions covered by these rules are inspected and any complaints regarding 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.

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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 concession industry was heavily involved in the drafting of these rules. Specifically, the Department and the Greater Ohio Showmen's Association worked together to reach several compromises when reviewing these rules. The Greater Ohio Showmen's Association is a non-profit organization, the members of which are dedicated to improvement and perpetuation of the Outdoor Amusement business in the State of Ohio. More information regarding the GOSA can be found at www.mygosa.net

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

On December 16, 2016, the Department received written comments on these rules from GOSA. Specifically, GOSA objected to the following matters:

1. The proposed removal of paragraph (E) in 901:9-2-02.
2. The addition of air pressure requirements in 901:9-2-09.
3. The requirement that for each game licensed with the Department, the price of play for each game must be listed on the license as originally required in 901:9-2-03.

After several rounds of discussion, the Department and GOSA reached a compromise on the items listed above. Specifically, the Department reinserted paragraph (E) in 901:2-02. With regards to the air pressure requirements, the Department originally proposed an air pressure window of 7.5 to 8.5 psi. After discussion, the Department agreed to widen that window to 7.0 to 9.0 psi, thereby doubling the acceptable air pressure range.

Further, the Department and GOSA were able to find common ground with regards to the price of play issue. In removing the requirement that all licenses identify the price of play for each game, GOSA agreed to submit to additional signage requirements. These requirements can now be found in 901:9-2-05.

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?

As these rules are administrative in nature, there was no scientific data used to develop these rules.

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?

The Department, working with its stakeholders, considered a variety of different regulatory options, specifically with regards to air pressure and signage requirements. These rules as proposed represent the best compromise between industry and the Department at this time.

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, 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.

The rules in this chapter are uniformly applied to concession operators without regard to the type or size of the operation. Inspections and investigations are conducted with a focus on fair play and adherence to the rules.

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 concessions within the state of Ohio.

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

All operators must obtain a license prior to operating a concession.

All operators must abide by the specific rules of play for each concession type.

All operators must have a sign conspicuously posted which complies with the requirements of OAC 901:9-2-05

Fines are set by statute 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.

Concession licenses cost \$70 annually. There is no additional cost for inspection associated with the rules. The cost of the sign will depend on the type of game but will dramatically fluctuate by certain design choices selected by the operator and the vendor they utilize to create the sign. At a minimum, the Department believes that an operator can comply with the regulations for a minimum of \$30. This sign can be utilized for a significant number of years.

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

Pursuant to ORC Chapter 1711, it is the Department’s regulatory mission to protect the public from dishonest and fraudulent dealings with regards to concessions. The Department’s believes that the rules as proposed help to ensure continued public trust in the use of concessions by setting minimum operating standards that promote fair play for all operators in Ohio. Therefore, the Department considers the adverse impact 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 always considers itself a resource when assisting operators in compliance of the regulations. The Department has office and field staff available to answer any questions that may arise.