

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Ride Safety – 2017 Update

Rule Number(s): 901:9-1-(01, 06, 09, 14.1, and 47)

Date: August 10, 2017

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☒ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Regulatory Intent

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

The rules in Chapter 901:9-1 of the Ohio Administrative Code (“OAC”) regulate amusement rides in the state of Ohio. Amusement rides are defined as “any mechanical, aquatic, or inflatable device, or combination of those devices that carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of providing amusement, pleasure, or excitement.” See 1711.50. The Ohio Department of Agriculture (“Department”) is responsible for adopting rules for the safe operation and inspection of all amusement rides as necessary for amusement ride safety and for the protection of the public. The rules contained in this chapter have been proposed as a result of a combination of legislative amendments and the five year rule review process. The rules and their amendments are more specifically outlined below:

House Bill 49 of the 132nd General Assembly amended portions of the Amusement Ride laws found in Chapter 1711. of the Revised Code. The amendments removed the statutory inspection fee for inflatable devices and required the Department to adopt this fee in rules. Further, the legislative amendment required that the inspection fee be based off of the reasonable cost of an inflatable inspection and be less than \$105. **OAC 901:9-1-01** has been amended to comply with this statutory requirement. The Department conducted a review of the costs associated with inspecting inflatables. Due to the methods in which inflatable companies have requested inspection the cost has varied significantly. The Department compiled information and determined that the average cost of the inspection of an inflatable was greater than \$105. However, as stated above, the legislative amendments required that the inspection fee be less than \$105. Therefore, the Department established an inspection fee of \$104. The rule also establishes a 365-day licensing term for inflatable rides. OAC 901:9-1-01 was also reviewed for purposes of the five year rule review. In order to make the rule easier to read, a significant amount of formatting changes were made. As a result of these changes, OAC 901:9-1-01 has been proposed to be rescinded and replaced with the new OAC 901:9-1-01.

OAC 901:9-1-06 has been amended to make a code reference change. Due to the changes proposed in OAC 901:9-1-01 a code reference in OAC 901:9-1-06 required change.

OAC 901:9-1-09 is also up for five year rule review. The rule sets the schedule of fines for violations to Chapter 1711 of the Revised Code and the rules in OAC Chapter 901:9-1. The rule has been amended to remove statutory references which were unnecessary to the intent of the rule. No substantive changes were made to this rule.

OAC 901:9-1-14.1 is up for five year rule review. The rule regulates ultraviolet disinfection systems for full body contact aquatic devices. The rule has been amended to delete former deadlines which have since passed. No substantive changes have been made.

OAC 901:9-1-47 is up for five year rule review. The rule exempts rides which are powered solely through a three prong plug connected to an existing and permanent 110-volt outlet. The rule is being amended to comply with LSC's guide to administrative rule drafting. No substantive changes have been made.

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?

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 on amusement rides by setting minimum safety standards for all amusement ride operations in Ohio.

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

All amusement ride operations in the state of Ohio are inspected and any complaints regarding unsafe 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 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.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

advise the Department on matters pertaining to the amusement industry and items that need to be addressed through rules. On August 9, 2017, the council met to discuss a variety of topics included the rules in this package.

The current composition of the council is:

Mr. Tim Bowers - Associated Insurance Agencies, Inc.

Ms. Cynthia Emerick-Whitson - Represents Engineering Industry

Mr. John Gannon – Senior Vice President, Columbus Zoo & Aquarium

Mr. Doug Guinsler - Ohio Fair Managers Association

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

Mr. Frank Newlon – General Public

Mr. Luis Perez – Ohio State Fair

Mr. Bill Prowant - Durant Enterprises, Inc.

Mr. John Schlichter – Ohio Department of Agriculture

Mr. Chris Small - American Testing Services Ltd

Mr. Frank Welsh – Ohio Festivals & Events

Mr. Don Woodward - Erieview Park, Inc.

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

The Advisory Council as matter of course reviews and requests changes to rules. On August 9, 2017, these rules were reviewed in accordance with the five year rule review requirements. The Advisory Council agreed to the proposed rules and voted to send them to the Common Sense Initiative.

During the public comment period of the August 9, 2017, meeting, Mr. Weiging, stated that he was representing the Ohio Inflatable Operators Association. Mr. Weiging stated that the Association consisted of a majority of the inflatable operators in Ohio. Mr. Weiging stated that they supported the Department establishing a 12-month permit for inflatable rides.

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), the American National Standards Institute (ANSI) and, the International Mountaineering and Climbing Federation (UIAA) 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?

The Department is statutorily tasked with regulating amusement rides in order to ensure the safety of all individuals who elect to participate. The standards that are contained in these rules are based on scientific research and in most cases are nationally accepted. Stakeholder participation in this rule package has indicated to the Department that this is the best regulatory scheme at this time. For those reasons, no other regulatory alternatives were considered.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

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 Department will work with the affected amusement ride operators to educate them on these changes. The staff members of the Ride Safety Division ensure that all ride operators in Ohio are treated in a similar manner.

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 amusement rides owners/operators in the state of Ohio.

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

All amusement ride operators must obtain an amusement ride permit and be inspected by the Division of Ride Safety prior to operation. The cost of the permit is set in section 1711.53 of the Revised Code. Further, except for inflatable devices, the cost of the inspection is set in 1711.53. The cost of the inspection for inflatable devices is set in OAC 901:9-1-01.

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.

As established in section 1711.53 of the Revised Code, the fees for permits and inspections are as follows:

| | |
|---|--------|
| Permit | \$150 |
| Annual inspection and re-inspection per ride: | |
| Kiddie Rides | \$100 |
| Roller Coaster | \$1200 |
| Aerial lifts or bungee jumping facilities | \$450 |
| Go karts, per kart | \$5 |
| Other rides | \$160 |
| Midseason operational inspection per ride | \$25 |
| Expedited inspection per ride | \$100 |
| Failure to cancel scheduled inspection per ride | \$100 |
| Failure to have amusement ride ready for inspection, per ride | \$100 |

As stated above, H.B. 49 of the 132nd General Assembly required the Department to establish by rule the cost of inspections for inflatable rides. OAC 901:9-1-01 has proposed an inflatable inspection fee of \$104.

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 protect public safety by establishing minimum safety standards for these business communities. Due to the nature of the risk involved with all inflatable operations, the adverse impacts are 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.

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 reduced 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 to provide assistance. Training and seminars are also available.