



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

Rule Contact Name and Contact Information:

Morgan M. Lyles

Regulation/Package Title (a general description of the rules' substantive content):

Tyler's Law Rule Supplement

Rule Number(s): 901:9-1-01; 901:9-1-04; 901:9-1-04.1; 901:9-1-04.2;

Date of Submission for CSI Review: \_\_\_\_\_

Public Comment Period End Date: \_\_\_\_\_

Rule Type/Number of Rules:

New/ X rules

No Change/ \_\_\_\_\_ rules (FYR? \_\_\_\_\_)

Amended/ X rules (FYR? Y)

Rescinded/ \_\_\_\_\_ rules (FYR? \_\_\_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

901:9-1-01 requires an amusement ride be operated only upon issuance of a permit pursuant to R.C.1711.53. Further, the rule defines the process and requirements for the granting of the permit. The amendment to the rule requires the owner of an amusement ride to submit a list of locations and dates where a portable ride was either stored for a period longer than thirty (30) days or operated outside of the state of Ohio.

901:9-1-04 requires inspection of amusement rides and devices to be conducted by the department. The amendment to this rule adopts certain chapters from the American society for testing and materials (ASTM) international amusement ride safety standards pursuant to the requirements of R.C. 1711.53(B)(2)(c).

901:9-1-04.1 establishes ride categories for fatigue and corrosion review, fatigue and corrosion review protocols, and effective dates for the implementation of corrosion review.

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901:9-1-04.2 outlines the frequency of inspections the department must conduct, and the number of inspectors, based on the categorization of rides established in 901:9-1-04.1 (i.e. low intensity, intermediate rides, towers, and rollers coasters).

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

901:9-1-01 – R.C. 1711.55

901:9-1-04, 901:9-1-04.1, 901:9-1-04.2 - R.C. 1711.53

- 4. 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

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

- 6. 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)?**

These rules supplement legislation enacted by the 133<sup>rd</sup> General Assembly. The rules were created to promote public safety and enhance amusement ride inspections.

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

The purpose of promulgating these rules is to promote increased safety measures for amusement rides. The adoption of ASTM standards, the collection of information regarding the storage or use of rides outside of Ohio, and the increased frequency of inspections and numbers of inspectors promotes public safety. 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.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

No.

### **Development of the Regulation**

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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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. On July 26, 2019, the Advisory Council unanimously voted to approve the Department filing 901:9-1-04.1. On November 7, 2019, rules 901:9-1-01, 901:9-1-04, and 901:9-1-04.2 were provided to members of the Council for consideration and discussion during the Council's meeting. On January 2, 2020, the Council unanimously voted to approve the filing of 901:9-1-01, 901:9-1-04, and 901:9-1-04.2. The Ohio Advisory Council on Amusement Ride Safety is currently comprised of the following members:

Ohio Department of Agriculture, Director Dorothy Pelanda

Nick Blois – Portable Ride Owners

Tim Bowers – Insurance Industry

Tammy Chapman – Inflatables

Jamie Gaffney – Amusement Park

John Gannon – Amusement Park

Doug Guinsler – Ohio Fair Managers' Association

Jeffrey Kline – Inflatables

Frank Newlon – General Public

Bill Prowant – Greater Ohio Showmen's Association

Chris Seal – Engineer

Chris Small – General public

Michael Vartorella – Designee of Virgil Strickler, Ohio State Fair general manager

Frank Welsh – Ohio Festivals and Events

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Don Woodward – Amusement Park

Cynthia Emerick-Whitson – Engineer

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

The Stakeholders were integrally involved in the drafting of these rules, having formed a subcommittee during the drafting phase and approved the rules by vote.

**11. 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 influenced by and incorporate provisions of standards from the American Society for Testing and Materials (ASTM), where applicable.

**12. 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 rules were promulgated due to new legislation. The Department is statutorily tasked with regulating amusement rides to ensure the safety of all individuals who elect to participate. 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.

**13. 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 minimum safety standards to protect the public, performance-based regulations are not appropriate.

**14. 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.

**15. 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 are already implemented within the industry with regard to fatigue and corrosion review based in part upon mandates and directives from manufacturers. The staff members of the Ride Safety Division ensure that all ride operators in Ohio are treated in a similar manner.

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The Department also participated in round-table amusement ride safety sessions at the Ohio Fair Managers' Association's annual convention to answer questions and provide feedback about the implementation of Tyler's Law.

### **Adverse Impact to Business**

**16. 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; and**

All owners of amusement rides.

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

All amusement ride operations must obtain an amusement ride permit and be inspected by the Division of Ride Safety prior to operation. There will be no additional cost for additional inspections beyond the costs contemplated in ORC 1711.53 and OAC 901:9-1-01. However, the cost of employer time for additional paperwork preparation, inspections, and potential costs to confer with a manufacturer or engineer will vary greatly depending upon the nature, size, and complexity of the ride, and the repairs required and documentation necessary 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 scope of the impacted community is amusement ride owners and the department.

901:9-1-01 requires owners to document locations and dates where portable rides were stored or operated for a period of longer than 30 days outside of the State of Ohio. The rule has a phase in period since owners were not previously required to document this information. This rule does not require a significant expenditure of time or money for compliance.

The amendment to 901:9-1-04 adopts certain ASTM standards. The cost of compliance varies based upon the size, nature, and complexity of the ride.

901:9-1-04.1 categorizes rides and establishes reviews and inspections necessary for corrosion and fatigue review. Additional expenses to the owner could include employer time, in addition to fees charged by a manufacturer, engineer, or non-destructive testing company relative to repairs and inspections. Those costs will vary based upon the size and complexity of the ride, and the repair or review required.

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901:9-1-04.2 primarily affects the department. The department will work with owners to minimize any disruptions to businesses based on increased frequency of inspections.

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

These rules are being adopted pursuant to statutory requirement. 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 amusement rides the regulatory intent justifies the adverse impact to businesses.

**Regulatory Flexibility**

**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No, the inspection requirements are based upon the equipment being inspected rather than the size of the business. As the primary purpose of these rules is public safety, exemptions for smaller operators would not be applicable.

**19. 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?**

The department will work with owners who have paperwork violations in order to gain compliance, provided said waiver is not authorized by R.C.119.14(C)(1)-(6).

**20. What resources are available to assist small businesses with compliance of the regulation?**

The department is available to assist owners with understanding the new rules and maintaining compliance.