



# Common Sense Initiative

Mike DeWine, Governor  
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## Business Impact Analysis

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

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

Fairs Concession Licenses

Rule Number(s): OAC 901:9-2-01 to 21

Date of Submission for CSI Review: 11/7/2023

Public Comment Period End Date: 11/30/2023

**Rule Type/Number of Rules:**

New/     rules

No Change/ 2 rules (FYR? 2)

Amended/ 18 rules (FYR? 18)

Rescinded/     rules (FYR?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.**

***Please include the key provisions of the regulation as well as any proposed amendments.***

The Ohio Department of Agriculture, Division of Amusement Ride Safety inspectors protect consumers by ensuring that midway games (concessions) of skill operating at all 94 county and independent agricultural fairs and the Ohio State Fair are operated in a reasonable and equitable manner. The rules in this package regulate fair concessions in the state. These rules have been reviewed in accordance with Chapter 119 of the Revised Code and are being proposed as follows:

OAC 901:9-2-01 outlines the definitions as used in rules 901:9-2-02 to 21. There are no changes proposed to this rule.

OAC 901:9-2-02 outlines the general provisions in rules 901:9-2-03 to 21. This rule is being amended to provide the concession industry flexibility to introduce new concessions throughout the fair season rather than only during the off-season.

OAC 901:9-2-03 sets forth the requirements for licensing. This rule is being amended to remove duplicate language found in other rules of this chapter.

OAC 901:9-2-04 sets forth requirement of prizes. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-05 sets forth the requirement for signage requirements. This rule is being amended to reformat the existing rule to make comprehension of the rule easier. Additionally, the rule is being amended at the request of industry to allow additional trade up opportunities.

OAC 901:9-2-06 sets forth the requirements for trade up games. This rule is being amended to increase the number of wins from three to five to win the prize. Additionally, the rule is revised to gender neutral language and adds language to clarify the rule.

OAC 901:9-2-07 sets forth the requirements for prohibited games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-08 sets forth the requirements regarding the rules of play for games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier. Additionally, the rule adds a requirement already found in other rules of this chapter that the concessionaire must have a tool on hand that will demonstrate the angle of a game element when a specific angle is required.

OAC 901:9-2-09 sets forth the requirements regarding ball and bag tossing games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-10 sets forth the requirements regarding ring games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-11 sets forth the requirements regarding shooting games. This rule adds the requirement that only non-splatter bullets are to be used in lead galleries. Additionally, this rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-12 sets forth the requirements regarding coin or washer pitch games. This rule is being amended to add that only metal washers or coins are to be used if requested by the Fair Board. Additionally, this rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-13 sets forth the requirements regarding dart games. This rule is being amended to specify that the weight of the dart will have a minimum weight of 12 grams. Additionally, this rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-14 sets forth the requirements regarding miscellaneous games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-15 sets forth the requirements regarding group games. This rule is being amended to remove requirements that are duplicative in the licensing rule, OAC 901:9-2-03 and removes training requirements. Additionally, this rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-16 sets forth the requirements regarding electronic amusement games. This rule is being amended to remove requirements that are duplicative in the licensing rule, OAC 901:9-2-03 and OAC 901:9-2-05. Additionally, this rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-18 sets forth the requirements regarding fish-o-rama games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-19 sets forth the requirements regarding gun ball games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-20 sets forth the requirements regarding tee pool games. This rule is being amended to reformat the existing rule to make comprehension of the rule easier.

OAC 901:9-2-21 sets forth the requirements regarding crazy bike games. There are no changes proposed to this rule.

- 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.**

ORC 1711.11

- 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?**  
*If yes, please briefly explain the source and substance of the federal requirement.*

No

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

Not Applicable

- 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)?**

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.

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

The rules are judged as being successful when inspections find few violations, and when there is no increase in the number of complaints 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?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No

### **Development of the Regulation**

- 9. 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.*

On October 11, 2023, the following stakeholders were emailed a copy of the proposed rules and the comment period remained open until October 25, 2023. 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](http://www.mygosa.net).

**Organization**

Government Advantage Group  
Greater Ohio Showmen Association  
Greater Ohio Showmen Association  
Ohio Fair Managers Association

**Contact**

Amanda Sines  
  
Eric German  
Howard Call

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

The Department emailed the stakeholders listed above a copy of the rules and gave them an opportunity to comment. No comments were received.

**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?**

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

**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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

The Department is statutorily tasked with regulating fair concessions to ensure fairness with fair concession games. The lack of Stakeholder comments 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. 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 through R.C. 1711.11.

**14. 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 rules are already implemented within the industry and the Department works with all concessionaires to educate and inform them on the regulations. Additionally, a member of the Department routinely attends GOSA meetings and will provide an update on the rule changes after passage. Additionally, the Department will notify all concessionaires via email with a rule update. The staff members of the Ride Safety Division ensure that all concessionaires in Ohio are treated in a similar manner.

### **Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

All operators of concessions at fairs in the state of Ohio.

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

*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.*

All concessionaires must obtain a license and be inspected by the division. As stated in section 1711.11 of the Ohio Revised Code, the applicant must pay a license fee which costs \$70 and must be renewed annually. Fines are set by statute and can adversely affect any operator found in violation of the rules of this chapter.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

The proposed changes to the rules help to reduce regulatory burdens imposed on the business community in a few ways. The rules have been amended to increase flexibility in the industry by allowing different types of equipment to be utilized during operation, permit companies to present new game play at any time in the season, and dramatically simplified the rules to improve readability.

**17. 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**

**18. 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.

**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?**

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.

**20. 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.