



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Amusement Ride Safety Five-Year Rule Review Package

Rule Number(s): 901:9-1-02, 901:9-1-03, 901:9-1-05, 901:9-1-06.1, 901:9-1-07, 901:9-1-08, 901:9-1-10, 901:9-1-11, 901:9-1-12, 901:9-1-12.1, 901:9-1-13, 901:9-1-15, 901:9-1-16, 901:9-1-17, 901:9-1-18, 901:9-1-19, 901:9-1-20, 901:9-1-48, and 901:9-1-51.

Date of Submission for CSI Review: January 4, 2021.

Public Comment Period End Date: January 27, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/ 19 rules (FYR? 19)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR?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.

All rules are being proposed as no change filings.

Rule 901:9-1-02 sets forth the powers of the Director, as authorized by Revised Code 1711, to issue stop orders and prevent the operation of unsafe amusement rides.

Rule 901:9-1-03 sets forth specific requirements and prohibitions pertaining to the operation of amusement rides.

Rule 901:9-1-05 sets forth the required maintenance procedures for amusement rides.

Rule 901:9-1-06.1 sets forth the safety standards for inflatable amusement rides.

Rule 901:9-1-07 sets forth the signs required for display at each amusement ride.

Rule 901:9-1-08 sets definitions for standard amusement ride terms.

Rule 901:9-1-10 requires that aquatic devices shall be approved by local building authorities and other regulatory authorities with jurisdiction prior to construction or modification.

Rule 901:9-1-11 sets forth defined terms pertaining to aquatic devices.

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Rule 901:9-1-12 requires operators to comply, at a minimum, with the manufacturer's manual requirements.

Rule 901:9-1-12.1 sets forth the requirements of a "lifeguard", a "shallow water lifeguard" and an "attendant".

Rule 901:9-1-13 sets forth safety standards for wave pools.

Rule 901:9-1-15 sets forth standards for water quality in aquatic devices when treating the water with non-chemical methods.

Rule 901:9-1-16 sets forth standards for general safety in aquatic device areas.

Rule 901:9-1-17 sets forth standards for general safety at water slides.

Rule 901:9-1-18 sets forth standards for safety at lazy rivers.

Rule 901:9-1-19 sets forth standards for safety at water coasters.

Rule 901:9-1-20 sets forth required waterpark signage.

Rule 901:9-1-48 sets forth meetings of the advisory council on amusement ride safety.

Rule 901:9-1-51 outlines the use of multiple vehicle safety systems for all permanent, portable, and water 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.**

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

No.

- 5. If the regulation 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)?**

The purpose of these regulations is to ensure continued public safety on amusement rides by setting minimum safety standards for all operations in Ohio.

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

All amusement rides 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

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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?**

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.

An email notice of a Stakeholder Comment period was emailed on August 31, 2020 to the following stakeholders:

Tim Bowers – Associated Insurance Agencies, Inc.

Jamie Gaffney – Cedar Fair

Nick Blois Jr. – McGinnis Amusement

John Gannon – Columbus Zoo & Aquarium

Tammy Chapman – A & S Party Rental

Doug Guinsler – Ohio Fair Managers Association

Cynthia Emerick-Whitson – Dynamic Attractions

Jeffrey T. Kline – Fun Services

Frank Newlon – Representative for General Public

Virgil Strickler – Ohio State Fair

Michael Vartorella – Ohio State Fair

Bill Prowant – Durant Enterprises, Inc.

Frank Welsh – Representative for Ohio Festivals & Events

Michael Seal – Registered professional engineer

Don Woodward – Erieview Park, Inc.

Chris Small – Representative for General Public.

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

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One commenter noted amendments needed to rule 901:9-1-14 and in response to the comment, the department has removed the rule from this “no change” rule filing package.

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 based on standards from the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) wherever 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?

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.

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 Revised Code 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.

These rules are already implemented within the industry and the department works with all amusement ride operators.

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 operators of amusement rides, aquatic devices, and bungee jumps.

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

Permits are required; however, that requirement and the permit fees are set by statute. Fines are set by these rules and can adversely impact any operator found out of 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	\$225
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 an inflatable inspection fee of \$104.

Many violations are settled for less than the original proposed fine if the operator comes into compliance. The no change rules are not expected to have a direct fiscal impact as there is no increase in license fees, fines, or the time it takes to comply with the rules.

17. 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 amusement ride industry, accordingly the adverse impact is justified.

Regulatory Flexibility

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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 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 has online resources and has field staff available to provide assistance. Training and seminars are also available.