

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Ride Safety – Go Karts – 2018 5YR

Rule Number(s): 901:9-1-42, 43, 44, 45, 46

Date: May 9, 2018

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☐ Rescinded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 Ohio Department of Agriculture, Division of Amusement Ride Safety inspects all amusement rides, including go kart operations, that operate in the state of Ohio. The Department's inspectors work to assure compliance with Ohio's laws and rules and to ensure that rides are have been assembled and are being operated in a safe manner. The rules in this package regulate go kart operations in the state. These rules have been reviewed in accordance with Chapter 119 of the Revised Code and are being proposed as follows:

901:9-1-42 defines terms used in rules 901:9-1-42 to 901:9-1-46 of the Administrative Code. The rule is being amended to include a definition of "ASTM" in order to comply with the incorporation by reference standards.

901:9-1-43 regulates the design and manufacture of concession go karts. These regulations are focused on safety and include such regulations as sufficient padding, seat belt restraints, and braking systems to ensure that all riders are protected while riding. The rule is being amended to update an ASTM standard in compliance with the incorporation by reference rules.

901:9-1-44 regulates the design and manufacture of go kart tracks. These regulations are focused on the safety of the riders and the spectators outside the track. The rule is being amended to require that both the entry and pit areas of the go kart track contain instructions and rules visible to the patrons. Currently, the rules require only one of these areas to have the rules and instructions posted.

901:9-1-45 outlines rules for all concession go kart facility operations. These rules include such regulations as required training, record keeping, and additional safety measures. The rule is being amended to include any manufacturer's instructions in the training of go kart operators and attendants. Further, the rule is being amended to require that records are kept for a period of three calendar years rather than "a period as dictated by insurance carriers, local legal statutes, of for a minimum of two calendar years." This period of time matches the Department's record retention schedules.

901:9-1-46 states that the plans to construct a new go kart track or to make major modifications to an existing tract must be submitted to the department for review and approval. There are no changes proposed to this rule.

- 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?**

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)?**

The Department's purpose for these regulations is to ensure continued public safety on amusement rides by setting minimum safety standards for all go kart operations in Ohio.

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

All go kart 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.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

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 April 25, 2018, the rules were emailed to the Council to review to be prepared to discuss at the May 3, 2018 meeting. The current composition of the Council is:

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CSIOhio@governor.ohio.gov

Ohio Department of Agriculture, Director David Daniels

Tim Bowers – Insurance Industry

Tammy Chapman - Inflatables

John Gannon – Amusement Park

Doug Guinsler - OFMA

Monty Jasper – Amusement Park

Jeffrey Kline - Inflatables

Frank Newlon – General public

Bill Prowant - GOSA

Frank Welsh – Ohio Festivals and Events

Don Woodward – Amusement Park

Cynthia Emerick-Whitson - Engineer

Virgil Strickler/Luis Perez – General manager of Ohio State Fair/designee

Chris Small – General public

Further, on April 25, 2018, the rules were also sent to the Greater Ohio Showman's Association (GOSA). The GOSA is a non-profit organization dedicated to the improvement and perpetuation of the outdoor amusement business in the State of Ohio.)

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. These rules were reviewed in accordance with the five-year rule review requirements. The Advisory Council approved the rules as proposed.

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) and the American National Standards Institute (ANSI) 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?

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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. *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.

- 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 rides 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.**

These rules are already implemented within the industry and the Department works with all go kart operations to educate and inform them on the safety regulations. Additional education and outreach will be performed with the affected communities of the changes by the Ride Safety Division. 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 go kart facility operations in the state of Ohio.

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

All go kart facility operations must obtain an amusement ride permit and be inspected

by the Division of Ride Safety prior to operation. The cost for both the permit and inspection are stated in section 1711.53 of the Ohio Revised Code.

All go karts must be equipped with compartment padding, protective covers for moving or heated components, driver and passenger restraints, and sufficient braking systems.

All go kart tracks must be enclosed by a fence or physical device at least forty two inches high. Any potential obstruction which may be struck by a rider must be protected by a material which may reduce or minimize impact.

All go kart facilities must maintain signs which display instructions and rules in a visible location in both the pit, the queue, and all other appropriate locations.

All go kart facilities must provide training to each operator and attendant. All facilities must develop a written training outline used in all training programs. Track personnel must conduct daily pre-opening inspection and maintain a log of these inspections. Facilities must maintain written maintenance and repair records for each go kart.

All plans to construct a new go kart track or to make major modifications to an existing track must be submitted to the department for review and approval.

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 stated in section 1711.53 of the Ohio Revised Code, go kart facility operations must obtain an amusement ride permit which costs \$150 and be inspected by the Division of Ride Safety prior to operation which costs \$310. Both must be renewed annually. All go karts must be inspected by the Department at a cost of \$5 per kart.

The go kart standards adopted in these rules are industry standards. The majority of go kart manufacturers design and sell their vehicles to meet these standards. As such, the expected adverse impact from this regulation is negligible as there are minimal manufacturers, if any, who manufacture go karts which do not meet these regulations.

The cost of the fence depends on the size and type of barricade selected by the facility. Generally, operators choose to use a wire fence however other materials may be used as well. This is a onetime cost however; additional costs may be incurred to make repairs as the fencing wears over time. The average cost of the fencing is \$2,000.

The expected cost of required signage is minimal and varies depending on the size, color scheme, and material chosen by the go kart facility operation. These costs are generally incurred only one time however, signs may be reproduced due to wear or changes wished to be made. This requirement may be fulfilled for a minimum of \$5 for paper and ink supplies.

Training requirements require employer time for compliance. Each go kart facility may conduct its own training and need not hire or send operators or attendants to outside programs. Recordkeeping requirements require minimal time for employer compliance. It also requires storage of the records which can be done either in paper form or electronically.

The Department does not charge a fee for the review of plans to construct or modify an existing track. It does require the operation to submit the plans which causes an adverse impact of negligible time spent.

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 go kart operations, the adverse impacts are considered 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 smaller operators 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 has online resources and has field staff available. Training and seminars are also available.