



MEMORANDUM

TO: David E. Miran, Jr., Ohio Department of Agriculture

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: June 30, 2014

RE: CSI Review – Go Kart (OAC §§ 901:9-1-42; 901:9-1-43; 901:9-1-44; 901:9-1-45; 901:9-1-46)

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

I. INTRODUCTION AND BACKGROUND

The Ohio Department of Agriculture (ODA) submitted a rule package containing a total of five (5) amended rules. ODA has submitted these rules a result of the five-year review requirement contained in R.C. § 119.032. The rules create safety standards for any concession go kart operators in Ohio. ODA cites R.C. § 1711.53 as authority to establish these rules. The official comment period ended June 23, 2014. No stakeholder comments were submitted during the CSI review period.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

As stated by ODA in the BIA, the scope of the impacted business community is comprised of all go kart facility operators in Ohio.

According to ODA, a facility operator must obtain an annual permit and submit to inspection by the Department prior to operation. The annual operating permit cost is set in statute at \$150. The

annual inspection cost of the facility is also set in statute at \$310, and an individual fee for inspection of each go kart is set at \$5 per go kart. The rules also require a facility operator to install a fence surrounding the track and other parts of the facility. According to ODA, the average cost for such a fence is about \$2,000. The rules enumerate specific requirements concerning the use of go karts with specific design, manufacture, and performance attributes. The rules require specific design and construction attributes of the go kart track, concerning driving surface standards, tire containment systems, illumination, bridges, intersections, and others. The rules also enumerate specific signage which must be posted at the facility. The rules require training of operators and attendants of the go kart track to understand certain safety and operational procedures. The rules require a daily pre-opening inspection of go karts, along with retention of daily inspection and go kart maintenance records. Finally, any plans to construct a new go kart track or make major modification to an existing track must be approved by the Department prior to construction.

The above provisions impose requirements for prior authorization by ODA for any go kart facility operations in the form of an inspection and issuance of a permit, along with required prior ODA approval of new or modified go kart track designs. The provisions impose costs to ensure compliance in the form of fees; required materials and designs; and employee education efforts and inspections. Such requirements match those enumerated in R.C. § 107.52, and therefore, are considered adverse impacts to business.

B. JUSTIFICATION FOR ADVERSE IMPACT

According to ODA, the Department reached to stakeholders within Ohio's amusement ride industry for feedback early in the rule review process, and those stakeholders "agreed with the amendments proposed in the rule package." ODA argues that the safety standards in the rule, which result in business impacts, are necessary as they are based on scientific research standards of the American Society for Testing and Materials and the American National Standards Institute. Further, ODA argues "stakeholder participation in this rule package has indicated to the Department that this is the best regulatory scheme" for go kart facilities in Ohio. Finally, any amendments to the rules have been made either to provide proper incorporation by reference provisions, or to make clerical, stylistic, or grammatical changes to the language.

CSI is satisfied with ODA's justification because (1) the Department reached out to stakeholders from an early stage of rule review, (2) no stakeholder concerns have been expressed to CSI, (3) ODA has provided sufficient substantive reasoning as to why these proposed rules are necessary; specifically, that they are based on national scientific standards that are industry accepted. Accordingly, the adverse impacts of these rules have been sufficiently justified by ODA.

III. RECOMMENDATIONS

After reviewing the BIA, and pursuant to the more detailed reasons outlined above, CSI has no specific recommendations regarding the rule packages.

IV. CONCLUSION

Based on the above analysis and recommendations, CSI concludes that ODA should proceed with the formal filing of these rule packages with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office