



OFFICE OF PROFESSIONAL REGULATION

VERMONT SECRETARY OF STATE

Motor Vehicle Racing Sunset Report

Vermont Office of Professional Regulation

January 2025

Executive Summary

The Office of Professional Regulation is responsible for the periodic review of existing regulatory programs. Review criteria are prescribed by 26 V.S.A. § 3104. This review's findings are based on individual meetings with stakeholders and industry experts, analysis of OPR's internal records, and a fifty-state review of the regulation (or non-regulation) of motor vehicle racing.

Review Findings

1. Vermont is one of only five states that prescribe motor vehicle racetrack design and is the only state that requires state inspection of every racetrack.
2. State rules for track design were created without reference to any industry standard, because none exists.
3. The expense of racetrack regulation is disproportionate to any benefit to the public.
4. There have been minimal complaints about motor vehicle racing and consequently minimal enforcement impact.
5. The common-law tort system and the private insurance market sufficiently reduce risk of harm to spectators.

Recommendations

OPR recommends that the General Assembly amend 26 V.S.A. ch. 93 by either:

1. Repealing the entire chapter to eliminate the licensure of motor vehicle racetracks; or
2. Repealing the chapter to eliminate all requirements for motor vehicle racing event licensure other than the requirement for liability insurance.

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Report Purpose and Methods

The General Assembly in its 2023 session instructed OPR to “consult with relevant stakeholders” and

report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations with a sunset review on the regulatory structure for motor vehicle racing in Vermont, including an evaluation of the State’s current regulatory structure, approaches to state oversight over motor vehicle racing in jurisdictions outside Vermont and measures to ensure adequate public safety, and any recommendations for legislative action.¹

In carrying out this mandate, the report’s author conducted a 50-state survey of state law related to motor vehicle racetracks; reviewed all Vermont motor vehicle racing complaints and enforcement actions since 2005; consulted all OPR staff involved in the inspection of motor vehicle racetracks; reviewed secondary sources on the history of motor vehicle racing in Vermont; reviewed records of prior motor vehicle racing rulemaking; held five one-on-one meetings with track owners, a stock-car racing sanctioning official, and a racetrack liability insurance specialist; and consulted with the Vermont Occupational Safety and Health Administration, the Department of Financial Regulation, and the Office of the Governor.

Scope of Current Regulation

Under Vermont licensing law, “motor vehicle” includes any “automobile; midget, sprint, or stock car; go-[k]art; all-terrain vehicle; motorcycle; and snowmobile,” and “race” includes any “race, scramble, demolition derby, or contest involving a motor vehicle as defined in this section at which prizes or other consideration is awarded to participants or admission is charged to spectators.”²

Anyone conducting a race must obtain a permit from OPR. Permits can be requested for annual events, unlimited events, or single events.³

¹ Act 69 (H.493), 2023 session.

² 26 V.S.A. § 4801(3), (7). “Races” do not include events in which a single vehicle competes at a time, such as monster truck rallies.

³ 26 V.S.A. § 4806.

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To obtain a permit, the applicant must:

- File proof of liability insurance of least \$2 million per event and \$500,000 per individual, plus property damage insurance of at least \$2 million.
- Pass an inspection for compliance with “minimum safety standards.” Those standards include:
 - A three-foot fence of steel wire “or plank construction or other barrier” separating tracks from spectators;
 - For motorcycle, ATV, and snowmobile racing, a four-foot snow fence; and
 - “Proper” police, fire, and medical personnel, specified in more detail in rule.

The rules, in turn, lay out fencing requirements down to the gauge of the wire and the diameter of the poles, as well as other detailed track design requirements.⁴

The law confers enforcement responsibility on the Director of OPR and on the Department of Public Safety. In practice, motor vehicle licensing and enforcement are conducted entirely by OPR, whose inspectors inspect each track site at least once per licensing cycle.

National Regulatory Landscape

The vast majority of States do not regulate the design of motor vehicle racetracks.⁵ Of the five states that do prescribe aspects of track design—Georgia,⁶ Maine,⁷ New Jersey,⁸ West Virginia,⁹ and Vermont—only Vermont enforces its requirements through state inspection and licensing of every track.¹⁰ Forty-five states have no requirements

⁴ Administrative Rules of the Motor Vehicle Racing Commission, Parts 3-5.

⁵ A handful of other states regulate other aspects of motor vehicle racing, such as California and Oregon, which regulate the vehicles themselves. Cal. HSC §§ 39048, 43001; ORS 805.035.

⁶ O.G.C.A. § 43-25-8; Ga. Comp. R. & Regs. 120-3-18.

⁷ 8 M.R.S.A. § 562; 16-219 C.M.R. ch. 29.

⁸ N.J.S.A. 5:7; N.J.A.C. 13:62.

⁹ W. Va. Code § 20-19-7 (2023); W. Va. Code St. R. § 145-19.

¹⁰ 26 V.S.A. ch. 93.

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for racetracks¹¹ other than those applicable to the operation of businesses in general, such as compliance with local noise ordinances and ingress/egress requirements for fire safety.

There are no generally recognized standards for stock-car racetrack design. Unlike Formula 1 racing, whose sanctioning body distributes CAD files for Formula 1 tracks, there is no single sanctioning body for stock-car racing, and none of the multiple sanctioning bodies prescribe track design.

The lack of national industry standards is reflected in the variation in requirements among the handful of states that do regulate racetrack design. For example, debris fences around automobile racing tracks must be fifteen feet tall in Georgia¹² and New Jersey¹³; ten feet, in Vermont¹⁴; and five feet, in West Virginia¹⁵ and Maine.¹⁶ We found no publicly available data correlating spectator injury with fence height. This is not to say that debris fences are unimportant, but that the precise line-drawing that regulation requires is a matter of guesswork.

History of the Regulation of Motor Vehicle Racing in Vermont

The Early Years

Like plea bargaining and bathtub gin, stock-car racing has its roots in Prohibition. Instead of open-wheel cars purpose-built for racing, moonshine runners drove ordinary street (“stock”) cars, souped up to outpace law enforcement.¹⁷ Stock-car racing quickly became a popular spectator sport that outlasted its origins and grew by leaps and bounds in the first half of the twentieth century.

¹¹ Many states that do not regulate motor vehicle racing *do* regulate horse and dog racing. This report uses “racing,” “tracks,” and “racetracks” to refer exclusively to motor vehicle racing and motor vehicle racetracks.

¹² Ga. Comp. R. & Regs. 120-3-18-.07(2)(c).

¹³ N.J.A.C. 13:62-4.2(b).

¹⁴ 16-219 C.M.R. § 29.09(B)(2).

¹⁵ W. Va. Code St. R. § 145-19-3.13.3.

¹⁶ Administrative Rules of the Motor Vehicle Racing Commission, R. 3.1.7.

¹⁷ Jennifer Billock, [“How Moonshine Bootlegging Gave Rise to NASCAR,”](#) *Smithsonian Magazine*, Feb. 10, 2017; Adam Krakowski, *Vermont Prohibition: Teetotalers, Bootleggers, & Corruption*, Arcadia Publishing, 2016.

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By 1960, auto racetracks were popping up all over the state: “at fairgrounds, in farmers’ back fields.”¹⁸ There were, at one point, “nearly half a dozen tracks in Chittenden County alone.”¹⁹ “What individuals wanted,” explained the owner of Waterford’s now-defunct Northeastern Speedway, “was a safe place to race. They were racing in fields before that.”²⁰

Creation of the Vermont Motor Vehicle Racing Commission

In 1960, the Vermont Legislature created the Motor Vehicle Racing Commission as a standalone body within the Office of the Secretary of State, responsible for developed standards for racetrack design.²¹ As with today, there were no national or industry design standards for the Commission to refer to; NASCAR, the sport’s first sanctioning body, was less than twenty years old. The Commission in 1967 promulgated its first rules for track design. Through the years the Commission was made up of members of the profession—track owners and drivers, including the legendary Harmon “Beaver” Dragon.

Creation of OPR

In 1989, the General Assembly created the Office of Professional Regulation as an umbrella agency housing the boards of various professions as well as the Motor Vehicle Racing Commission.²² Now, for the first time, the regulation of motor vehicle racing was categorized as a form of professional regulation, though the Commission regulated no professionals, only the tracks themselves.

No rule update attended this structural change in the Commission’s location within state government. Nor was there any formal review of whether there was a “demonstrated need for the State to protect the interests of the public” through racetrack design regulation, nor whether such regulation was the “least restrictive form of regulation necessary to protect the public interest.”²³ These are threshold

¹⁸ Mike Dougherty, “[Before Your Time: Anything for Speed.](#)” *VTDigger*, Dec. 28, 2018.

¹⁹ Amanda Gustin, “[History Space: Auto Racing in Vermont.](#)” *Burlington Free Press*, Apr. 21, 2018.

²⁰ Paul Bellefeuille, [Interview](#), Vermont Historical Society, May 3, 2018.

²¹ Gustin, *id.*

²² An Act Relating to Regulation of Professions and Occupations, No. 250 (Adj. Sess.), § 1.

²³ 26 V.S.A. § 3101. Past [OPR sunrise reviews](#) considered several professions the Office now regulates (e.g. Foresters, Optometrists) and several it does not (e.g. Genetic Counselors, Alarm Installers).

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criteria for the regulation of a new profession, but were never formally considered because motor vehicle racing was already regulated at the time the legislature created OPR and this review process.

In 2005, the Motor Vehicle Racing Commission became the Motor Vehicle Racing Advisory Board, a structure consistent with other non-Board professions within OPR. Instead of Motor Vehicle Racing Commissioners, there are now Motor Vehicle Racing Advisors.²⁴

Inspections by Commissioners and Advisors

From 1967 to 2019, inspection of motor vehicle racetracks was conducted by the Motor Vehicle Racing Commissioners and, later, the Motor Vehicle Racing Advisors (collectively, “advisors”). The advisors brought to the role long experience in the sport and running racetracks, knowledge of the regulations, and commitment to public safety. Paid a small daily stipend, the advisors essentially volunteered their time to the State and the people of Vermont, and they did so generously.

Unfortunately, this system of members of the profession inspecting their peers placed them in an impossible situation, which came to the Office’s attention in 2019 when it was discovered that advisors had “grandfathered” a non-Rule-compliant track wall for many years without documentation. Likewise, a compliance issue with a tire fence went undocumented on inspection paperwork because the advisor and the licensee agreed it would be fixed.

Such practices, while understandable as professional courtesies among peers, effectively cut OPR’s enforcement arm out of the decision as to when and how to enforce design standards, as well as undermined regulatory transparency. These problems were not intended by OPR’s advisors, who volunteered their time and energy in good faith, but resulted from the change from a largely independent Motor Vehicle Commission to an advisory board within OPR.

In sum, the advisor-inspection system brought many challenges inherent in members of a profession regulating their peers, including:

- Uncertainty about legal authority and practical ability to shut down non-compliant tracks.
- Appearance of conflicts of interest and potential for actual conflicts of interest.

²⁴ Act 27 (2005).

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- Potential for personal liability from lack of State oversight.²⁵
- Communication gap between advisors and the Office with potential to hinder enforcement.
- Lack of public record of enforcement and waiver decisions.
- Despite deep expertise in motor vehicle racing, a lack of expertise in State regulatory needs, such as consistency and documentation.

Inspections by OPR

OPR has a full-time, two-person inspection team responsible for biennially inspecting each of Vermont's licensed barber, cosmetology, esthetics, and manicuring shops; tattooing and piercing shops; funeral homes; and, most critically to the health and safety of Vermonters, pharmacies. Because of the problems inherent in peer-to-peer inspections, the decision was made in 2019 to transition responsibility for racetrack inspection from the advisory board to OPR's in-house inspection team.

The inspection of racetracks has proved resource-intensive for OPR. Despite almost all other professions being on a biannual renewal cycle, OPR is required to offer track licenses for individual events or annually, which means OPR inspectors must physically travel to every track at least once annually, before the season or event begins. This includes not only Vermont's three permanent racetracks, but every demolition derby, go-kart race and motocross race, including those within various fairs and expos. The timing of these events often requires OPR inspectors to be available to inspect on evenings and weekends, which, in addition to disrupting the inspectors' lives, adds overtime wages to the cost of regulation.

²⁵ Unless actively supervised by the state, regulators who participate in the market they regulate are at risk of being sued for anticompetitive conduct. *North Carolina St. Bd. of Dental Examiners v. FTC*, 574 U.S. 494, 506 (2015). *North Carolina Dental*, a watershed decision in professional regulation, required increased state oversight of the boards and commissions within OPR. In response, the General Assembly mandated that the Director of OPR actively monitor board actions and overrule those that conflict with state policy. 3 V.S.A. § 123(i) (added Act 48, § 1 (2017)). The shift from advisor inspections to OPR inspections followed a few years later.

Policy Analysis

Introduction and Statutory Requirements

It is the policy of the State that a profession shall be regulated only if three criteria are satisfied:

1. the unregulated occupational services risk non-speculative harm to the public;
2. the public benefits from the assurance of minimum practitioner competence; and
3. the public cannot be protected by other means.²⁶

Typically, when the General Assembly contemplates the regulation of a new profession, OPR performs a “sunrise review” analyzing these factors and recommending for or against regulation.

The regulation of motor vehicle racing predates the law requiring this analysis. As such, the current system of racetrack inspection never underwent the scrutiny the State now requires before intervening in the marketplace of professionals.

Fortunately, there is a corresponding process for review of existing professional licensing schemes—a “sunset review” that considers the continuing need for and appropriateness of such regulation, based, in part, on the factors that would have been considered in an initial sunrise review.²⁷ OPR uses the same criteria for determining the necessity of ongoing professional regulation as for the need for regulation of a new profession.²⁸

The General Assembly in Act 69 (2023) directed OPR to carry out a sunset review of motor vehicle racetrack licensing. Having done so, OPR concludes that the current licensing system does not meet criteria for ongoing regulation to the degree that currently occurs.

²⁶ 26 V.S.A. § 3105(a).

²⁷ 26 V.S.A. § 3101.

²⁸ 26 V.S.A. § 3104(a).

Racetracks Are Not a Profession

Two statutory criteria illustrate the mismatch between professional regulation and the regulation of racetracks.

Professions shall only be regulated when, along with other conditions, “the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability.”²⁹ Once a profession is regulated, in assessing its ongoing regulation, OPR is to consider the extent to which the profession’s “education, training, and examination requirements for a license or certification are consistent with the public interest.”³⁰

These considerations are nonsensical in the context of licensing racetracks themselves, which is all the current system of track licensing accomplishes. No individuals’ ability, education, training, or examination results are assessed. The impossibility of applying these criteria to motor vehicle racing is one major sign that OPR should not be the agency—if any—that regulates racetrack design.

There Are No Universal Standards for Racetrack Design

In other professions in which OPR performs inspections of physical premises, incident to regulating the professionals who work on those premises, OPR can refer to accepted standards in promulgating inspection requirements. For example, OPR inspections of compounding pharmacies look for compliance with USP chapters <795> and <797>, which contain data-driven standards developed by experts and adopted by reference into the federal law.³¹ Inspection standards for tattooing, piercing, cosmetology, barber, esthetics, manicuring, and electrology shops are developed based on CDC infection control standards.³²

In contrast, Vermont’s standards for racetrack design were of necessity made up out of whole cloth. When those standards were developed, as now, there were no universal or authoritative standards for the design of stock car racetracks, demolition derby arenas, or motocross / ATV / go-kart courses. Dirtcar Racing, a race-sanctioning body, has created a visual lineup of aerial track photographs, illustrating

²⁹ 26 V.S.A. § 3105(a)(2).

³⁰ 26 V.S.A. § 3104(b)(4).

³¹ See, e.g., 21 U.S.C. § 353a(b)(1)(A)(i)(I), requiring compounding pharmacists to comply with the applicable chapters of the United States Pharmacopoeia.

³² Administrative Rules Relating to Tattooing and Body Piercing, Appendix A; Administrative Rules for Barbers, Cosmetologists, Estheticians, and Nail Technicians, Part 13-7; Administrative Rules for Electrologists, Appendix.

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four major track shapes, within which still more variation occurs.³³ A representative of Dirtcar estimated that among the roughly 800 dirt tracks in the United States, there are 700 different designs.³⁴

Vermont's standards for racetrack design were not developed thoughtlessly. They were created in consultation with leading figures in the sport and updated by track-owner-advisors committed to the safety of drivers, track personnel, and spectators. The standards were not, however, developed by civil engineers, architects, accident reconstruction experts, or roadway design experts.³⁵

An Expensive System of Oversight

The current licensing system requires OPR to inspect every track prior to an event (for one-time licenses) or prior to the start of the season (for annual licenses). In fiscal year 2024, OPR inspectors traveled to thirteen locations in order to fulfill this mandate.

In addition to the baseline use of OPR personnel time, these inspections required mileage to attend the racing events located in every corner of the State. Because the inspections include verifying a sufficient number of police and EMS personnel on-site, the inspection must take place close in time to the racing event. This means state employee overtime, because motor vehicle racing events typically take place during evenings and weekends.

Chapter 57 asks OPR to consider whether OPR has been efficient in its use of resources regarding this profession.³⁶ In one sense, yes: OPR in 2019 absorbed the inspection of motor vehicle racetracks without hiring additional staff, although doing so has strained OPR's staff as noted above. Before that, OPR relied on what was essentially volunteer labor to perform a core regulatory function. However, even regulation performed as efficiently as possible is a waste of state resources if the regulation itself is unnecessary.

³³ <https://about.dirtcar.com/the-track>

³⁴ Brian Carter, Dirtcar Racing, Personal Interview, December 19, 2024.

³⁵ During a 1987 rule update, one public commenter asked "Why? What has happened to require the state to get this detailed?"

³⁶ 26 V.S.A. § 3104(b)(8).

Minimal Complaints, Minimal Enforcement Impact

Chapter 57 asks OPR to consider several factors that boil down to a cost-benefit analysis of regulation:

- the extent to which regulatory actions have been in the public interest and consistent with legislative intent.³⁷
- the extent to which a regulatory entity's resolutions of complaints and disciplinary actions have been effective to protect the public.³⁸
- the extent to which the profession's historical performance, including the actual history of complaints and disciplinary actions in Vermont, indicates that the costs of regulation are justified by the realized benefits to the public.³⁹
- the extent to which the scope of the existing regulatory scheme for the profession is commensurate to the risk of harm to the public.⁴⁰

OPR receives fewer than one complaint per year about motor vehicle racetracks: only 16 in the 20 years since the Commission was replaced by an advisory board. Those complaints broke down as follows:

- 6 complaints of unauthorized practice without safety concerns raised. Of these, 1 was prosecuted. The respondent became licensed and paid a fine.
- 1 complaint outside of OPR's jurisdiction, which was not prosecuted.
- 1 complaint lacking evidence, which was not prosecuted.
- 4 complaints about spectator seating on the curved side of the track, which the Legislature legalized shortly after the complaints came in. None were prosecuted.
- 1 complaint of a design violation that OPR's advisor-inspectors had previously "grandfathered in" without the knowledge of OPR staff. Upon discovering the grandfathering, OPR gave the licensee a deadline to comply. Because the deadline had not passed at the time of the complaint, the complaint was not prosecuted.
- 2 complaints involved safety violations. These were prosecuted. At an administrative hearing, OPR proved that the track's safety wall was 3 feet, 6 inches instead of the required 4 feet. Although OPR proved the violation, the

³⁷ 26 V.S.A. § 3104(b)(1).

³⁸ 26 V.S.A. § 3104(b)(5).

³⁹ 26 V.S.A. § 3104(b)(2).

⁴⁰ 26 V.S.A. § 3104(b)(3).

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administrative law officer declared the violation de minimus, issued a reprimand, and took no other disciplinary action.

In short, all of the complaints and disciplinary actions in this profession over twenty years resulted in one prosecution for unauthorized practice, which was an issue only because the State licenses tracks; and one prosecution for a “de minimus” safety violation that the administrative law officer declined to enforce beyond a reprimand.

OPR estimates that investigating these complaints, and prosecuting two of them, cost approximately \$30,000 in 2024 dollars.⁴¹ Though not a staggering sum when spread over twenty years, it is still a high price tag for a system that has not resulted in the remediation of any safety violations.

Against this history, OPR concludes that the enforcement of racetrack design standards and licensing requirements has been incommensurate with the risk of harm to the public; is ineffective to protect the public in that it is not necessary to protect the public; is unjustified by the costs of enforcement; and is contrary to legislative intent, since the legislature cannot have intended such costly and ineffective regulation.

The Common-Law Tort System and the Private Insurance Market Sufficiently Reduce Risk

Chapter 57 provides that a profession shall be regulated only if “existing common law and statutory remedies and criminal sanctions are insufficient to reduce or eliminate existing harm.”⁴²

Operating a racetrack that endangers spectators presents obvious civil liability. Racetrack ownership is not a profession in which harm to the consumer may be insidious or impossible for a layperson to detect, as with accountancy or land surveying, for example. If a spectator is harmed during a motor vehicle race, they will know it and may sue the track owner. This is a powerful incentive for track owners to maintain safe tracks and is likely also why many of OPR’s motor vehicle racing licensees carry liability insurance in excess of the \$2 million required by statute.

There are private insurers that specialize in sports and event liability and in racetracks in particular.⁴³ Because racetrack risk is their focus, those insurers have much more information than OPR from which to correlate track design features with

⁴¹ Based on an average 2024 cost of \$1,733 per complaint and \$1,009 per docket across OPR’s advisor-regulated professions.

⁴² 26 V.S.A. § 3105(b)(1).

⁴³ Jeff Ladd, Sports Insurance Specialists, Personal Interview, Dec. 19, 2024.

spectator injury. Private insurers inspect new clients and re-inspect them from time to time--more frequently if the insurer has concerns.⁴⁴ Inspection by OPR is, to a large extent, redundant with these inspections.

Policy Recommendations: Eliminate or Reduce Regulation of Motor Vehicle Racetracks

For the foregoing reasons, OPR recommends that the General Assembly take one of two courses of action:

1. Eliminate state licensing of racetracks entirely, bringing Vermont in line with the vast majority of states that do not license racetracks; or
2. Continue licensing racetracks but make the only licensure requirement proof of liability insurance of \$2 million per incident / \$ 500,000 per individual.⁴⁵

Either of these reforms would reduce track owners' burden of compliance, as well as the state's burden of administering a program that would not meet sunrise criteria if it were a new profession.

If the State does continue mandating track design, OPR would recommend moving the program to an agency with expertise in building and structural safety, rather than an agency that specializes in the professional qualifications of individuals. In addition, OPR would recommend narrowing the statutory definitions of "race" and "motor vehicle," which currently cover more events than intended. Under the current definitions, for example, the statute could be read to reach races in which children race 125cc mini go-karts for prize ribbons.

Final Note

The existing system of licensure originated in an era very different from today. Culturally, people had far less safety awareness and far more risk tolerance; in 1951, when the first motor vehicle racing legislation was passed, few ordinary passenger cars even had seatbelts. To the extent it existed, the racetrack insurance market was in its infancy, and all the while tracks were proliferating much more quickly than they could today under Act 250 and modern zoning.

⁴⁴ Id.

⁴⁵ This is what the law already requires. 26 V.S.A. § 4808.

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Perhaps most importantly, when racetrack regulation began, Vermont policymakers did not have the benefit of half a century of hindsight. In this context, it made sense for lawmakers to wish to intervene in racetrack design, even if only to pump the brakes (so to speak) on an explosion of backyard racing. OPR's recommendation in this report is not a criticism of policymakers who created and maintained motor vehicle racing regulation based on the information and using the tools they had at the time.

OPR is grateful to the advisors and commissioners who volunteered countless hours of their time to protecting the safe enjoyment of a sport they love. In recommending a reduction in State oversight, OPR does not wish to diminish the value of their work or the importance of racetrack safety. Rather, OPR believes that track owners in Vermont are as safety conscious as their colleagues in the many states in which the government does not intervene in track design.

**STATE OF VERMONT
SECRETARY OF STATE
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January 15, 2025

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