

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Racing Commission

Regulation/Package Title: Chapter 5 No change Rules 2014

Rule Number(s): 3769-5-01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 17.1, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

Date: March 17, 2015

These rules are no-change rules and may be found by accessing the Commission's website at <http://www.racing.ohio.gov/pdfs/TbredRul5.pdf> or through LAWriter at <http://codes.ohio.gov/oac/3769-5>.

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☐ Rescinded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.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

3769-5-01 allows racing secretary to prepare books and assign posts before each race

3769-5-02 requires the racing secretary or his/her deputy to serve as clerk of the course

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3769-5-03 allows the racing secretary to determine the weights of handicap in handicap races

3769-5-04 requires racing secretary to receive entrance money and other fees

3769-5-05 allows racing secretary to become informed about failures to pay in order to eliminate certain people from racing

3769-5-06 requires racing secretary to make list of race entries and information about the entries

3769-5-07 requires the racing secretary to create a program for each day of racing

3769-5-08 allows the creation of an “also eligible” list when more horses are entered than there are positions

3769-5-09 allows the creation of a “preferred list” for horses that were not able to race because of too many entries; so that they may have preference in their next race

3769-5-10 allows entries to automatically go on the “preferred” list when the number of entries exceeds the positions plus six

3769-5-11 allows the racing secretary to divide the preferred list

3769-5-12 allows each race track to select a system for determining preference with approval of the commission

3769-5-13 requires preferred list to be posted

3769-5-14 requires entries to claim preference at the time of entry

3769-5-15 allows the racing secretary to receive entries and declarations for races

3769-5-16 requires owners, trainers, and jockeys to be licensed before entering race and requires the racing secretary to enforce this rule

3769-5-17 requires the name of owners to be named on entry and given to racing secretary

3769-5-17.1 outlines other information that is required for entry

3769-5-18 allows entries under a stable name and outline requirements for such stable names

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3769-5-19 requires statements of partnership be given to the racing secretary and copied for the racing commission before a horse may race

3769-5-20 allows racing secretary to be given authority to sign statements of partnerships in an emergency

3769-5-21 outlines how errors in entry are corrected and who qualifies as a trainer for entries

3769-5-22 allows no entry fee unless it is a condition of the race

3769-5-23 allows the stewards to require proof of ownership of a horse and disqualify the horse if unsatisfied with the proof

3769-5-24 limits the entry of horses owned by the same person or under the same trainer to two per purse race

3769-5-25 allows entries to be refused without notice

3769-5-26 requires the identification of the jockey who will ride the horse and the equipment used

3769-5-27 requires horses to be registered with an association, lip tattooed, and to have their registration certificate filed with the racing secretary

3769-5-28 requires entries to include the name, age, and sex of the horse and outlines the additional requirements based on the sex and breeding history of the horse

3769-5-29 requires horses be fully identified by the person in charge of each horse and outlines penalties and suspension for those who fraudulently identify their horse

3769-5-30 outlines the requirement that horses have adequate records of races or workouts so that the public can determine their ability to race

3769-5-31 requires that all horses that race must be starters unless an exception applies

3769-5-32 requires a horse to be eligible at the time of starting

3769-5-33 outlines conditions of horses that will make them ineligible to enter a race

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3769-5-34 outlines the rules for excluding sick or lame horses from racing and requires horses to have a negative equine infectious anemia test within the past twelve months

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 3769.03

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?

No, the commission is the only entity that regulates horse racing in Ohio.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The Commission is the only entity that regulates horse racing in Ohio. The Commission is charged with ensuring the integrity of horse racing in this state. Administrative Rules are promulgated pursuant to the Commission's statutory obligation to regulate this industry.

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)?

These regulations protect the wagering public by specifying eligibility requirements for horses involved in wagered on races.

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

These regulations have been in place for some time and the Commission believes the success of the regulation has been demonstrated. However, the Commission continues to monitor changes in the area of horse eligibility and reserves the ability to change rules to ensure appropriate regulation of horse racing.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The primary stakeholders are the seven commercial permit holders who are required to implement and/or follow these rules pertaining to racing eligibility. As these rules have been in existence, in their current form, for decades, the Commission voted to submit the rules at a public business meeting.

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

No input was received.

- 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?**

As these are no change rules, no additional scientific data was used to develop the rule.

- 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?**

No alternative regulations were considered as these rules have been in existence for several years and no changes were found to be warranted.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**

No, these regulations require permit holders, owners, trainers, and jockeys to follow a consistent set of rules for eligibility in order to maintain the integrity of the each race.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

No measures were taken because no other agency regulate horse racing in Ohio, therefore no duplication will occur.

- 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.**

The regulations have been implemented for several years to all commercial tracks in Ohio.

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;**

The scope of the impacted business community includes permit holders who own the race tracks and licensees who participate in horse racing in Ohio.

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

3769-5-01 The adverse impact is the cost for permit holders to hire a racing secretary and the time required for the racing secretary to prepare books, take entries, and assign post positions.

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3769-5-02 The adverse impact is the cost of hiring a clerk of course and the time for the clerk of course to keep records of all races.

3769-5-03 The adverse impact is the time required for the racing secretary to assign weights.

3769-5-04 The adverse impact is the time required for the racing secretary to receive entry fees.

3769-5-05 The adverse impact is the time required for the racing secretary to keep track of forfeits or arrearages.

3769-5-06 The adverse impact is the time required for the racing secretary to compile and distribute the overnight list.

3769-5-07 The adverse impact is the time required for the racing secretary to compile the official program.

3769-5-08 The adverse impact is the limit of horses which can be entered in a race which impacts anyone with an interest in that horse racing.

3769-5-09 The adverse impact is the time required for the racing secretary to compile the preferred list.

3769-5-10 This rule is not subject to CSI review because there is no adverse impact on business.

3769-5-11 The adverse impact is the time required for the racing secretary to divide the preferred list.

3769-5-12 The adverse impact is the time required for the permit holder to report to the commission about the system used for determining preference.

3769-5-13 The adverse impact is the time and supplies required to post a preferred list.

3769-5-14 The adverse impact is the time required for the steward to consider claims of error on the preferred list and time required for licensees to make claims of error.

3769-5-15 The adverse impact is the time required for the racing secretary to receive entries and declarations.

3769-5-16 The adverse impact is the time required for the racing secretary to enforce the licensing requirement. For the licensees, the adverse impact is the cost of the licensing fees.

3769-5-17 and 3769-5-17.1 The adverse impact is the time required for the licensees to record their ownership and interest. Licensees may also be disqualified from races for failure to comply with this rule. Steward must take the time to decide on these disqualifications which is an adverse impact to the Permit holders who pay them. Also, the adverse impact includes the time required for the racing secretary to accept these records.

3769-5-18 The adverse impact to the licensee includes the cost to register a stable name in time and fees. The permit holders are adversely impacted by the time required for the racing secretary to receive these registrations.

3769-5-19 The adverse impact on the permit holders is the time required for the racing secretary to take statements of partnership and report them to the commission. The cost to the licensee is the time to create the statement of partnership.

3769-5-20 The adverse impact on the licensee is the cost to confirm in writing. The adverse impact on the permit holder is the time required for the racing secretary to sign statements of partnership.

3769-5-21 Change of trainers could result in a scratch, fine, or suspension which adversely impacts the trainers. The stewards' time is required to enforce this rule.

3769-5-22 The adverse impact is the possible entry fee for licensees.

3769-5-23 The adverse impact for licensees is the possibility that a horse is not allowed to race. This impact also applies to 3769-5-24, 3769-5-25, 3769-5-27, 3769-5-28, 3769-5-32, 3769-5-33, and 3769-5-34. Also, the adverse impact for this rule is the time required for stewards to evaluate proof of ownership.

3769-5-26 The licensees must report the equipment to the stewards. This requires time spent by the owners and the stewards.

3769-5-27 The business impact on licensees includes the fee for filing a registration certificate and the cost of lip tattoos. Also, this rule requires the racing secretary to spend time taking these registrations which adversely impacts the permit holder.

3769-5-28 The business impact is the time required for the racing secretary to take reports and post all fillies and mares that have been bred. The licensees are impacted by the time required to report bred mares and fillies. They are also impacted by the potential loss of eligibility to race in a claiming race.

3769-5-29 The business impact is the cost of penalties for the licensees for fraud in identifying horses. This rule requires the steward to spend time suspending licensees which has a business impact on permit holders.

3769-5-30 The business impact on licensees is the time required to exercise a horse and to report to the official timer.

3769-5-31 This rule is not subject to CSI review because there is no adverse impact on business.

3769-5-34 The business impact on permit holders is the time required for the steward to create a list of scratches. The business impact to the licensees is the cost of the equine infectious anemia test.

c. Quantify the expected adverse impact from the regulation.

3769-5-01 The permit holders pay the racing secretary about \$300 per day. The duties described in 3769-5-01 take up most of the 8 hour race day. However, many of the other rules in this chapter describe duties of the racing secretary which take only a few minutes including 3769-5-02, 3769-5-03, 3769-5-04, 3769-5-05, 3769-5-06, 3769-5-07, 3769-5-09, 3769-5-11, 3769-5-15, 3769-5-16, 3769-5-17, 3769-5-17.1, 3769-5-27, and 3769-5-28. It takes the racing secretary about 15 minutes to report statements of partnership to the racing commission under 3769-5-19.

3769-5-02 The permit holders pay the clerk of course about \$150 per day. Generally this position is absorbed into the position of the racing secretary.

3769-5-08, 3769-5-17, 3769-5-21, 3769-5-23, 3769-5-24, 3769-5-25, 3769-5-27, 3769-5-28, 3769-5-32, 3769-5-33, and 3769-5-34 The cost to the licensee when a horse is not allowed to race can vary dramatically depending on the race. The potential lost income

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could be as much as \$180,000 or as low as nothing, depending on whether the horse would have won and how much the purse was for that particular race.

3769-5-13 The cost of posting the preferred list is a few minutes and less than a few dollars.

3769-5-14 Two stewards are paid by the permit holders at a rate of about \$250 per race day. This rule takes up a few minutes of their 8 hour race day. Licensees must spend a few minutes reporting an error should an error occur.

3769-5-16 Besides the adverse impacts stated above, the licensee must pay between \$15 and \$100 in license fees.

3769-5-17 and 3769-5-17.1 Besides the adverse impacts stated above, steward must spend a few minutes to decide on disqualifications and the licensees must spend a few minutes recording their ownership and interest.

3769-5-18 Besides the adverse impacts stated above, it cost licensees \$25 or \$50 in fees and takes about 15 minutes to register a stable name.

3769-5-19 The licensees must spend about 15 minutes creating the statement of partnership.

3769-5-20 Besides the adverse impacts stated above, the cost of confirming in writing is less than \$2 in telegram cost or mailing.

3769-5-21 Besides the adverse impacts stated above, the fine for a licensee cannot exceed \$10,000, but is likely to be much less than that amount. The permit holder must provide a steward and the steward must spend several minutes determining which horses are disqualified.

3769-5-22 There may be no entry fee. At most, entry fees are about \$500.

3769-5-23 Besides the adverse impact stated above, the stewards can evaluate proof of ownership in a few minutes.

3769-5-26 It takes only a few minutes for the licensees to report to the stewards.

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3769-5-27 Besides the adverse impact stated above, registering a horse cost about \$100 and lip tattoos cost about \$200.

3769-5-28 Besides the adverse impact stated above, licensee need only spend a few minutes reporting breeding.

3769-5-29 Besides the adverse impacts stated above, the fine for a licensee cannot exceed \$10,000, but is likely to be much less than that amount. The permit holder must provide a steward and the steward must spend several minutes determining whether to suspend licensees.

3769-5-30 It takes less than 5 minutes for a licensee to exercise a horse and report to the official timer.

3769-5-34 Equine infectious anemia test cost around \$75. Stewards must spend at least 5 minutes creating the scratch list.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Several of these rules govern the actions of the racing secretary and stewards (racing secretary: 3769-5-01, 3769-5-02, 3769-5-03, 3769-5-04, 3769-5-05, 3769-5-06, 3769-5-07, 3769-5-09, 3769-5-11, 3769-5-15, 3769-5-16, 3769-5-17, 3769-5-17.1, 3769-5-27, and 3769-5-28) (stewards: 3769-5-14, 3769-5-17, 3769-5-17.1, 3769-5-21, 3769-5-23, 3769-5-26, 3769-5-29, and 3769-5-34) . These rules are justified because consistent actions by the racing secretary and the stewards are essential to ensure fair racing for race participants and the wagering public.

The following rules require disqualification or the equivalent: 3769-5-08, 3769-5-17, 3769-5-21, 3769-5-23, 3769-5-24, 3769-5-25, 3769-5-27, 3769-5-28, 3769-5-32, 3769-5-33, and 3769-5-34. These rules are justified because they ensure no horse is entered unfairly or without following proper protocol.

3769-5-13 The cost is justified because it is minimal and allows the racing community to stay informed of the preferred list.

3769-5-18 This rule is justified because it protects all race participants and helps permit holders enforce the rules of racing by requiring stable names to be registered. Otherwise it would be difficult to hold the actual owner accountable when using a stable name.

3769-5-19 As with stable names, the knowledge of partnerships is necessary for the proper party to be held accountable for each horse.

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3769-5-21 The adverse impact of this rule is justified because it allows horses to be entered without signed statements of partnership. The potential reward from the horse being able to participate greatly outweighs the minimal impact of requiring a writing. Potential fines are meant to deter licensees from violating the rule.

3769-5-22 Entry fees are justified because they may allow the licensees to win a large purse.

3769-5-26 The time to report is justified because the steward needs this information in order to properly judge the race and identify the winner.

3769-5-27 The cost to register a horse is justified because the registration is important to know which owner is liable for the horse. The cost to get a lip tattoo is justified because it allows the permit holder to easily identify horses.

3769-5-28 This time is justified because it is important for the commission to know about the breeding of horses to determine breeders' awards. Breeder's awards benefit the breeders financially.

3769-5-29 The adverse impact is justified the impact deters licensees from violating this rule and is not applied to all licensees. Determining who is suspended is essential to determine which horses are eligible to race.

3769-5-30 This time is justified because the exercises allow the permit holders to determine whether a horse is prepared to participate in a race and lets the wagering public determine the horses' potential in a race.

3769-5-34 The time for stewards is justified because the scratch list is necessary to determine which horses are eligible to race. The cost for the equine infectious anemia test is justified because it protects the welfare of race horses.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No, this regulation applies to only seven commercial race track permit holders; therefore an exemption for small businesses is not 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?

R.C. 119.14 is not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

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The Commission website at www.racing.ohio.gov

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