

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Lottery Commission

Regulation/Package Title: Video lottery operations' game requirements

Rule Number(s): 3770:2-6-01, 3770:2-6-05; 3770:2-7-01; 3770:2-7-02

Date: November 1, 2016

Rule Type:

☒ New

☐ Amended

☒ X5-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☐ Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

3770:2-6-01 – Sets forth rules pertaining to the hours of operation and number and type of video lottery terminals under division 3770:02 of the Administrative Code.

3770:2-6-05 – Sets forth directives pertaining to video lottery operations related to advertising and promotions under division 3770:2 of the Administrative Code.

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3770:2-7-01 – Sets forth rules pertaining to video lottery game play under division 3770:02 of the Administrative Code.

3770:2-7-02 – Sets forth various administrative functions related to the determination and validity of prize payments.

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

Ohio Revised Code 3770.03 Commission – powers and duties.

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.

The answer is no to both Part 1 and Part 2.

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 Ohio Constitution Article 15, Section 15.06 permits the General Assembly to authorize a state agency to conduct lotteries. The General Assembly has authorized the State Lottery Commission, a state agency, to license video lottery sales agents to sell video lottery, the net proceeds of which are used for elementary, secondary, vocational and special education in the state. These rules are necessary to ensure the consistent and proper conduct of video lottery sales agents with regard to the operation of video lottery games, the advertising and promotion of video lottery games, and the game play and payment of prizes for the video lottery games.

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

Success will be measured through the consistent enforcement of these standardized requirements pertaining to video lottery sales agents. They will ensure initial and ongoing compliance with lottery rules and regulations, while maintaining the integrity of each individual entity and all video lottery operations as a whole. These regulations also enable the lottery to continue to hold video lottery sales agents to the same standards that they met upon initial licensure.

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.

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On May 5, 2016 the below listed stakeholders were notified of the proposed amendment to the rules via email. The stakeholders consist of representatives of all seven Ohio racetracks.

David Frankhouser, Miami Valley Gaming
Ron Sultemeier, Miami Valley Gaming
Karen Cincione, Miami Valley Gaming
Fred Mills, Miami Valley Gaming
Domenic Mancini, Miami Valley Gaming
Craig Robinson, Miami Valley Gaming
Austin Miller, Miami Valley Gaming
Phil Milliner, Miami Valley Gaming
John Marshall, Miami Valley Gaming
Rob Swedinovich, Miami Valley Gaming
Shawn Bailey, Churchill Downs
Brock Milstein, Northfield Park
Luther Heckman, Northfield Park
Carl Sottosanti, Mahoning Valley
Jim Baldacci, Mahoning Valley
Frank Donaghue, Mahoning Valley
John Oberle, Mahoning Valley
Rod Thomas, Mahoning Valley
Kevin Kaufman, Belterra Park
Robert Allen, Belterra Park
Sue Ascanio, Belterra Park
Vicky Litz, Belterra Park
John W. Bittner, Jr., Scioto Downs
Troy Buswell, Scioto Downs
Kyle Wentz, Northfield Park
Mark Birtha, Northfield Park
Greg Margaris, Thistledown
Dan Reinhard, Thistledown
Lee Dillard, Thistledown
Gary Carano, Eldorado Resorts
Mike Whitemaine, Eldorado Resorts
Bill Crawford, Ohio Racing Commission
Bob Schmitz, Ohio Racing Commission

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

No input or suggested revisions were 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?

Not applicable.

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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?

These rules are necessary to ensure the consistent and proper conduct of video lottery sales agents with regard to the video lottery operations and game requirements, and to ensure their integrity under standards set forth in the rules. Being that these rules accomplish this objective, as it pertains to video lottery sales agents, in the most efficient and least restrictive manner, we believe that these are the best alternatives.

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.*

Not applicable.

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

OAC §3770:2 is the only OAC section that pertains to video lottery operations. These regulations do not duplicate or resemble any other regulation in that section.

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.

All video lottery sales agents will be held to these same standards.

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 seven horse racing organizations currently holding racing permits granted by the Racing Commission will be impacted, including those individuals interested in affiliating with these horse racing organizations. Others impacted include those individuals who have applied to become, or who are currently operating as, a licensed video lottery sales agent.

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

3770:2-6-01 – This rule requires a video lottery sales agent to seek prior approval from the director before altering hours of operation and when they desire to operate more than two thousand five hundred video lottery terminals at their facility. Video lottery technology providers are required to seek prior approval from the lottery before offering any video lottery game for sale.

3770:2-6-05 – To avoid the costs associated there with, video lottery sales agents are required to seek approval from the director before engaging in their own advertising and promotions. The director may prohibit video lottery sales agents from engaging in advertising and promotions that he finds to be inappropriate.

3770:2-7-01 – Video lottery games offered by video lottery sales agents on the video lottery terminals in their facilities must be approved by the director and/or the commission.

3770:2-7-02 – Video lottery sales agents, located at the facility where a valid credit voucher was issued, are responsible for the payment and/or redemption of that credit voucher. Video lottery sales agents who participate in redeeming credit vouchers also are required to comply with all applicable laws regarding withholding of taxes, debts, and obligations and reporting requirements.

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.

3770:2-6-01 – A monetary estimate is not possible because penalties for non-compliance with the Lottery Act, if any, are discretionary. If a video lottery sales agent is in violation, the adverse impact can be measured by the dollar amounts associated with monetary penalties, or can be measured by the dollar amounts associated with the immediate and indefinite disabling of all or a portion of the video lottery operations and/or removal of video lottery equipment at a video lottery sales agent’s video lottery facility.

3770:2-6-05 – If a video lottery sales agent fails to acquire the director’s approval before engaging in advertising not otherwise approved by the director, any costs associated with advertising or promotions initiated by the video lottery sales agent are the responsibility of the video lottery sales agent. The amount of the adverse impact is directly proportionate to the amount of advertising or promotions, if any, that a video lottery sales agent engages in on its own.

3770:2-7-01 – Failure to obtain approval from the director and/or the commission to offer video lottery games could result in a penalty and/or fine. A monetary estimate is not possible because penalties for non-compliance with the Lottery Act, if any, are discretionary. If a video lottery sales agent is in violation, the adverse impact can be measured by the dollar amounts associated with monetary penalties, or can be measured by the dollar amounts associated with the immediate and indefinite disabling of all or a portion of the video lottery operations and/or removal of video lottery equipment at a video lottery sales agent’s video lottery facility

3770:2-7-02 – A monetary estimate is not possible because penalties for non-compliance with the Lottery Act, if any, are discretionary. Similarly, it is unknown how many credit vouchers will be issued, which a video lottery sales agent is required to redeem. If a video lottery sales agent is in violation, the adverse impact can be measured by the dollar amounts associated with monetary penalties, or can be measured by the dollar amounts associated with the immediate and indefinite disabling of all or a portion of the video lottery operations and/or removal of video lottery equipment at a video lottery sales agent's video lottery facility. The required payment of video credit vouchers should not have an adverse impact because video lottery sales agents are only required to redeem video credit vouchers that were issued by their video lottery facility. Said payments and all prize payments, are to be considered a cost of engaging in the gaming business.

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

3770:2-6-01 - Requiring the approval of the director before altering hours of operation, offering games for sale and should they desire to exceed the allowed number of terminals, eliminates confusion, and helps ensure consistency between facilities and adherence with other lottery standards, rules and regulations.

3770:2-6-05 – Requiring the approval of the director before engaging in their own advertising and promotions protects lottery licenses and trademarks, ensures consistency and legality, helps maintain decency standards, and increases retailer profit margins.

3770:2-7-01 – Requiring that video lottery games, which are offered in licensed lottery facilities, be approved by the director and/or the commission, ensures consistency and legality, which protecting product integrity, decency, and security standards.

3770:2-7-02 – Fines or any other punitive licensing actions are justified because they incentivize ongoing compliance with lottery standards, as well as adherence to the Lottery Act, and lottery policies, rules and regulations.

Regulatory Flexibility

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

Video lottery sales agents are not considered small businesses according to the size standards dictated by 13 C.F.R. 121.201.

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?

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All monetary fines and penalties for non-compliance are discretionary. There is no automatic penalty for a paperwork violation and all individual facts and circumstances are taken into account, including experience level, when exercising discretion.

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

VLT Management of the Ohio Lottery Commission is available to assist any video lottery sales agent or employee regarding the conditions outlined in the proposed no change rules.

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