

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Lottery Commission

Regulation/Package Title: Video lottery operations - maintenance and repair; security and surveillance; transportation, relocation, installation and certification;

Rule Number(s): 3770:2-6-02; 3770:2-6-03; and 3770:2-6-04

Date: August 1, 2017

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☐ Rescinded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.

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3770:2-6-02 – This rule describes the expected training, maintenance, repair and service parameters, which need to be followed by video lottery sales agents. The amendments clarify how a maintenance log is actually kept.

3770:2-6-03 – This rule outlines the specifics surrounding the security and surveillance plan requirements, which each video lottery sales agent must adhere to. The amendments clarify the updating requirements of security and surveillance plans and adds the need for an active shooter plan. The lottery's right to review video footage and adjust camera placement is also highlighted.

3770:2-6-04 – This rule pertains to the transportation, relocation and installation, certification and storage of video lottery terminals. The amendments allow for the waiver of the transportation notice requirement, clarifies the timing of notice, and adds a storage provision.

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 questions for the rules in this package.

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

Not applicable to these rules.

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)?

3770:2-6-02 – This rule describes the expected training, maintenance, repair and service parameters, which need to be followed by video lottery sales agents.

3770:2-6-03 – This rule outlines the specifics surrounding security and surveillance plan requirements, which each video lottery sales agent must adhere to.

3770:2-6-04 – This rule pertains to the proper transportation, relocation and installation, certification and storage of video lottery terminals.

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

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3770:2-6-02 – Success will be measured through the consistent enforcement of standardized requirements for training, maintenance, repair and service, which includes updating and keeping maintenance logs and other applicable reports pertaining to the same. This will ensure compliance with lottery rules and regulations while maintaining the integrity of its video lottery sales agents.

3770:2-6-03 – Success will be measured through the consistent enforcement of standardized requirements for the creation, monitoring, updating, and ongoing review of required security and surveillance plans, as well as the licensing of security and surveillance personnel.

3770:2-6-04 – Success will be measured by the consistent enforcement of standardized requirements regarding the transportation, relocation and installation, certification and storage of video lottery terminals.

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.

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
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
Joseph L. Billhimer, Scioto Downs
Troy Buswell, Scioto Downs
Kyle Wentz, Northfield Park
Mark BIRTHA, Northfield Park
Jon Lucas, Northfield Park
Dan Reinhard, Thistledown
Bob Schmitz, Ohio Racing Commission
Bill Crawford, 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?

We had three stakeholders comment on our proposed changes. With regard to 3770:2-6-03(A)(2)(a), two stakeholders were confused with the operation of the proposed language. We responded to the stakeholders, explaining that the rule revisions being proposed were only meant to be grammatical and were not intended to require additional responsibilities. Accordingly, to eliminate confusion, we decided to put a portion of the wording back the way it had been prior to our proposed amendment. The stakeholders were pleased with this decision. Two stakeholders wanted to know what types of changes we would require to be made to the monitoring system. We responded clarifying that such changes would pertain to camera coverage, placement and views. We also clarified the camera coverage we were concerned with only pertained to the gaming floor and applicable financial areas. The stakeholders were satisfied with these responses. With regard to 3770:2-6-03(A)(4), one stakeholder suggested adding the words “or his designee” at the end of (A)(4) to clarify our intent that the director himself not be required to personally approve every change to camera placement or views. We responded by adding these words to the draft of the proposed regulation, as suggested.

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.

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 complete and proper submission of information by video lottery sales agents. They also establish procedures and conditions that help verify consistency with regards to the ongoing operation of video lottery sales agents and the sales

of video lottery games. Being that these rules accomplish these objectives, as it pertains to video lottery sales agents, and do so in the most efficient and least restrictive manner, we believe that this remains the best alternative.

- 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?**

Not applicable.

- 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 with active video sales agent licenses, and employees with active video sales agent employee licenses 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 or sales agent employee.

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

3770:2-6-02 – Requires the video lottery sales agents to be responsible for the costs associated with the maintenance, repair and service of the video lottery terminals, including acquisition costs and paper costs. Further, video lottery sales agents are required to keep a maintenance log for each video lottery terminal in order to record when, and for what purpose, any person gains access into any internal space of a video lottery terminal. Video lottery sales agents may also be

required to make the same available to the director upon request. Finally, video lottery sales agents may also be required by the director to provide additional reports regarding maintenance, repair and service of video lottery terminals.

3770:2-6-03 – Requires each video lottery sales agent to submit a security and surveillance plan for approval by the lottery’s director of security. Such plans are due before video lottery sales can commence, and must be updated annually. The cost of implementing a security and surveillance plan, as well as continuous video monitoring, shall be the responsibility of each video lottery sales agent.

Additionally, any updates or changes to an approved security and surveillance plan, requires prior approval of the director, unless such requirement is waived by the director. Finally, designated security and surveillance personnel are required to apply and be granted the appropriate video lottery sales agent employee license, pursuant to section 3770.02 of the O.A.C.

3770:2-6-04 – Video lottery sales agents are required to provide notice to the director, five days prior to the transportation of video lottery terminals, unless such requirement is waived by the director. Moreover, upon installation and/or relocation, video lottery sales agents are required to provide to the director, a detailed video lottery terminal floor plan. Finally, any video lottery terminals not in use, must be stored in a secured area, which is approved by the director.

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.

3770:2-6-02 – The costs associated with the maintenance, repair and service of video lottery terminals are difficult, if not impossible to quantify. This is because the costs, if any, are the responsibility of the video lottery sales agent and the amounts need not be reported to the lottery. Any costs could also vary greatly, depending on the specific video lottery sales agent’s circumstances.

3770:2-6-03 – The costs associated with maintaining continuous video monitoring, as well as making changes or updates to video surveillance and active shooter plans, are the responsibility of the video lottery sales agent. Again, the costs will vary, they depend on the individual facility, and they are not required to be reported to the lottery.

3770:2-6-04 – Transportation is unlikely, but regardless, notification costs nothing. Notice of relocation and installation, as well as producing and updating a floor plan, which reflects the same, also costs nothing. Any certification costs are not governed by this rule.

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

These rules are justified because they establish standards for current and potential licensees and require ongoing adherence to rules and regulations similarly and consistently imposed on all video lottery sales agent license holders. All licensees are also uniformly afforded the right to a hearing at which they may assert their rights when applicable. Some of the requirements imposed by these rules may be waived, some have little or no cost, and all ultimately are beneficial to licensees, while strengthening the reputation and financial stability of the lottery.

Regulatory Flexibility

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

Video lottery sales agent 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?

The proposed rules and their amendments do not impose fines or penalties that would implicate the applicable provisions of section 119.14 of the O.R.C.

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 rules.

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