

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Lottery Commission

Regulation/Package Title: Technology providers

Rule Number(s): 3770:2-5-01; 3770:2-5-02; 3770:2-5-03; 3770:2-5-04; 3770:5-07; 3770:2-5-09; 3770:2-11-01

Date: January 9, 2018

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☐ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

3770:2-5-01 – sets forth requirements for approval of technology providers consisting of independent test labs and requirements for certification by independent test labs of video lottery terminals, video lottery games and associated equipment.

3770:2-5-02 – establishes those items that must be provided to the lottery by a technology provider, and conditions to which a technology provider must agree, in order for the applicant to be considered for a license as a technology provider.

3770:2-5-03 – sets forth the factors that may be considered by the director in the review of a technology provider's application.

3770:2-5-04 – sets forth the requirements of a technology provider licensee to pay a fee, limits license transferability, requires approved equipment and games, authorizes the sale of video lottery games and video lottery terminals to licensed video lottery sales agent, and subjects licensees to certain other division rules.

3770:2-5-07 – establishes monetary fines, requires development of a fine schedule and provides for a hearing when required.

3770:2-5-09 – relates to records, audits and inspection of technology provider premises.

3770:2-11-01 – sets forth rules pertaining to the fees for a video lottery sales license, gaming employee license and a technology provider license.

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.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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 regards to the sale of lottery games, and their integrity under standards set forth in the rules.

3770:2-5-01 – sets forth requirements for approval of independent test labs and requirements for certification by independent test labs of video lottery terminals, video lottery games and associated equipment.

3770:2-5-02 – establishes those items that must be provided to the lottery by a technology provider, and conditions to which a technology provider must agree, in order for the applicant to be considered for a license as a technology provider.

3770:2-5-03 – sets forth the factors that may be considered by the director in the review of a technology provider's application.

3770:2-5-04 – sets forth the requirements of a technology provider licensee to pay a fee, limits license transferability, requires approved equipment and games, authorizes the sale of video lottery games and video lottery terminals to licensed video lottery agents, and subjects licensees to certain other division rules.

3770:2-5-07 – establishes monetary fines, requires development of a fine schedule and provides for a hearing when required.

3770:2-5-09 – relates to records, audits and inspection of technology provider premises.

3770:2-11-01 – sets forth rules pertaining to the fees for a video lottery sales license, gaming employee license and a technology provider license.

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

3770:2-5-01 - The lottery would measure the success of this regulation by 1) the elimination of unnecessary delay in application processing time; 2) the speed with which revenue can begin flowing for both the state (for education purposes) and for the technology providers; and 3) the increase rate at which economic development can proceed in terms of new employment opportunities at technology provider facilities.

3770:2-5-02 – See above.

3770:2-5-03 – Success will be measured through the consistent enforcement of standardized requirements for technology providers, which will ensure initial and ongoing compliance with lottery rules and regulations, while maintaining the integrity of that entity.

3770:2-5-04 – The lottery will monitor information supplementation required by 3770:2-5-02, review annual certifications of no material changes to information provided in the application and fully review renewal applications every five years as required by 3770:2-5-08. From this information, the Lottery can assess the effect of the rule on technology providers.

3770:2-5-07 – Success will be measured through the consistent enforcement of standardized requirements for technology providers, which will ensure initial and ongoing compliance with lottery rules and regulations, while maintaining the integrity of that entity. Additionally, in some instances, an adjudication hearing is required, which ensures fair, impartial review by a hearing officer, as well as published outcomes.

3770:2-5-09 – Success will be measured by allowing the lottery to monitor compliance with its rules and regulations on an ongoing basis. This process will also allow the lottery to hold technology providers to the same standards that they met upon initial licensure.

3770:2-11-01 - Success will be measured through consistent enforcement of these standardized requirements and guidelines, which will ensure ongoing compliance with lottery rules and regulations, while maintaining the integrity of all licensed lottery sales agents.

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 March 21, 2017, the below listed stakeholders were notified of the proposed no change rules via email. The stakeholders consist of representatives of all seven Ohio racetracks.

Chris Corrado, Pinnacle
David Frankhouser, Delaware North Companies
Ron Sultemeier, Miami Valley Gaming/Delaware North Companies
Karen Cincione, Delaware North Companies
Fred Mills, Delaware North Companies
Domenic Mancini, Miami Valley Gaming/Delaware North Companies
Craig Robinson, Miami Valley Gaming/Delaware North Companies
Austin Miller, Miami Valley Gaming/Delaware North Companies
John Howard, Miami Valley Gaming/Delaware North Companies
John Marshall, Miami Valley Gaming/Delaware North Companies
Rob Swedinovich, Miami Valley Gaming/Delaware North Companies
Shawn Bailey, Delaware North Companies
Brock Milstein, Northfield Rocksino
Carl Sottosanti, Penn National

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Jim Baldacci, Penn National
Frank Donaghue, Penn National
John Oberle, Penn National
Jason Birney, Penn National
Tony Frabbiele, Penn National
Robert Allen, Pinnacle
Sue Ascanio, Pinnacle
Vicky Litz, River Downs
Bill Gustafson, MTR Gaming
Mike Whitemain, MTR Gaming
Anthony Carano, MTR Gaming
Gary Carano, MTR Gaming
Kyle Wentz, Northfield Rocksino
Mark BIRTHA, Northfield Rocksino
Dan Reinhard, Rock Gaming
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?

No comments 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.

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?

The rules are necessary to ensure the complete and proper submission of information by technology provider applicants, and to ensure their integrity under standards set forth in the rules. Being that these rules accomplish this objective, as it pertains to technology providers, 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?

The granting of a license to an independent test lab seeking to provide certification or testing services in connection with video lottery terminals, video lottery games and/or associated equipment is given by statute exclusively to the State Lottery Commission. No other state agency has authority to promogulated rules relating to these technology providers. No other Lottery rules address the topic.

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 technology provider applicants will be held to these same standards. Fees for re-licensure are consistent with fees paid at licensure. Application forms are the same for all applicants and re-applicants, as are the penalties imposed and the appeal procedures followed.

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 entities or individuals who have applied to become, or who are currently licensed by the State Lottery Commission as licensed independent test labs.

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

3770:2-5-01 and 3770:2-5-02– An independent test lab may apply and pay a fee to the commission to be licensed to provide certification or testing services in connection with video lottery terminals, video lottery games and associated equipment.

3770:2-5-03 – If after reviewing a technology provider application, the Lottery determines that an applicant has not met the requirements for issuance of a technology provider license, the director may deny the application. Before the application can be considered, applicants must submit multiple pieces of

supporting documentation and information to the lottery as part of a complete application packet.

3770:2-5-04 – A technology provider license is not transferable. Upon meeting all the conditions required for issuance of a license, a licensing fee must be paid. Failure to comply with any and all obligations required of a licensee may subject the licensee to suspension or revocation, or to monetary penalties.

3770:2-5-07 – Monetary fines, suspension or revocation of a license may be imposed for non-compliance with the Lottery Act or any rules, regulations, terms and conditions, policies, orders and directives adopted, promulgated or issued by the commission or the director.

3770:2-5-09 – Requires technology providers to regularly maintain, and make available for inspection, electronic, paper and computer records, files and other documents, video lottery terminals, and hardware and software under in connection with video lottery whether kept or maintained by the licensee, its affiliated companies, employees, representatives and/or other entity assisting the video lottery terminal manufacturer, distributor or provider licensee in the operation of video lottery in the state.

3770:2-11-01 - Requires the director to collect licensing fees for the licenses issued to video lottery sales agent, gaming employees, or technology provider as outlined in the rule.

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.

A partial payment in the amount of ten million dollars is due at the time of submission of a completed application. This partial payment is refunded, however, if an application is denied, less any actual costs expended by the lottery for investigation and processing of the licensing application. These costs cannot exceed \$250,000.00. The only other adverse impact to a potential video lottery license applicant, as a result of this rule, would only be felt after an application denial. A denial could trigger additional expenses for the video lottery applicant,

which are impossible to quantify, but which would be necessary should an applicant wish to attempt reapplication.

Key gaming employees shall submit two hundred fifty dollars to obtain a license; Gaming employees shall submit one hundred dollars to obtain a license.

An entity submitting an application for a technology provider license as described in rule 3770:2-5-02 of the Administrative Code shall pay a license fee of two thousand dollars.

An applicant identified as requiring an individual license as described in paragraph (A)(5) of rule 3770:2-5-02 of the Administrative shall pay a license fee of one hundred dollars.

If a technology provider is in violation or non-compliance, the adverse impact can be measured by the dollar amounts associated with monetary penalties, suspension or revocation. However, there is no way of knowing how many technology providers, if any, will be suspended or revoked in any given time period, or in non-compliance with evoke a monetary penalty.

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

The licensing of technology providers is justified because that process ensures consistent enforcement of standardized requirements. The process also guarantees initial and ongoing compliance with lottery rules and regulations, while maintaining the security and integrity of the lottery.

Fines that may be imposed are justified because they incentivize ongoing compliance with lottery standards, as well as adherence to the Lottery Act, and lottery policies, rules and regulations. Fairness is built into the process because any imposition of a fine triggers the right of any licensed technology provider to request an adjudication hearing in front of an impartial third party hearing examiner.

Requiring technology providers to keep regular records is good business practice and it protects the technology provider from blame or liability if there is a discrepancy between lottery records and those of the technology provider, 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

All businesses, regardless of size, are held to the same standards. If a business is too small, it may fail to operate within required goals or at a level of quality that is consistent with the Ohio Lottery's security and profitability obligations. 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?

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, include 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 technology provider regarding the conditions outlines in the proposed no change rules.

615 W. Superior Avenue
Cleveland, Ohio 44113-1879
(800) 686-4208
vlt@lottery.ohio.gov