



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: State Lottery Commission

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Video Lottery Operations – Hours, Type of Video Lottery Terminals; Maintenance and Repair; Security and Surveillance; Transportation, Relocation, Installation and Certification of Video Lottery Terminals

Rule Number(s): 3770:2-6-01, 3770:2-6-02, 3770:2-6-03, 3770:2-6-04

Date of Submission for CSI Review: 05/14/2021

Public Comment Period End Date: 05/31/2021

Rule Type/Number of Rules:

New/___ rules

No Change/ X rules (FYR? X)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business. 3770:2-6-01, 3770:2-6-02, 3770:2-6-03, 3770:2-6-04
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance. 3770:2-6-02, 3770:2-6-03, 3770:2-6-04
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. 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 3770:2 of the Administrative Code.

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 the security and surveillance plan requirements, which each video lottery sales agent must adhere to, including the need for an active shooter plan, and the lottery's right to review video footage and adjust camera placement.

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

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Ohio Revised Code §3770.03 Commission – power and duties.

- 4. 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.

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

Not applicable.

- 6. 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.

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

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.

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- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**
8. 3770:2-6-01 - 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.
- 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.
- 9. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.
Not applicable.

Development of the Regulation

- 9. 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 April 19, 2021, 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.

Chris Corrado, Boyd Gaming
Justin Remschneider, Boyd Gaming
Jason Newkirk, Boyd Gaming
David Frankhouser, Delaware North Companies
Ron Sultemeier, Miami Valley Gaming/Delaware North Companies

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Karen Cincione, Delaware North Companies
Craig Robinson, Miami Valley Gaming/Delaware North Companies
Austin Miller, Miami Valley Gaming/Delaware North Companies
Rob Swedinovich, Miami Valley Gaming/Delaware North Companies
Sang Nguyen, Miami Valley Gaming/Delaware North Companies
Shawn Bailey, Delaware North Companies
Carl Sottosanti, Penn National
Jim Baldacci, Penn National
Frank Donaghue, Penn National
John Oberle, Penn National
Allie Evangelista, Penn National
Mike Whitemaine, MTR Gaming
Anthony Carano, MTR Gaming
Gary Carano, MTR Gaming
Kyle Wentz, Northfield Rocksin
Ed Dick, Jack Entertainment
Allyson Miller, Jack Entertainment
Lisa Powers, Jack Entertainment
Mary Ellen Corbett, Jack Entertainment
Daneen Petty, Boyd Gaming
Michelle Rasmusson, Boyd Gaming
Daniel Kennedy, Penn National
Ken Ostempowski, Scioto Downs
Louis Theros, MGM Grand
Patrick Madamba, Jr., MGM Grand
Shelly Miller, MGM Grand
Cindy Bliss, MGM Grand
Sam Porter, Ice Miller

10. 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.

11. 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.

12. 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?

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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.

- 13. 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.

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

Not applicable.

- 15. 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

- 16. 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; and**

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 all adverse impact (e.g., fees, fines, employer time for compliance,); and**

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

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technology providers are required to seek prior approval from the lottery before offering any video lottery game for sale.

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 3770:2 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.

3770:2-6-01 – 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

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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.

3770:2-6-02 – 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.

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

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. 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

18. 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.

19. 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?)

Any 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.

Regulatory Flexibility

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

Not applicable.

21. 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?

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

22. 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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