



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: State Lottery Commission

Rule Contact Name and Contact Information: Ian Litherland – OLC, 216-339-7993

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

Licensing Fees

Rule Number(s): 3770:2-11-01

Date of Submission for CSI Review: July 17, 2024

Public Comment Period End Date: July 31, 2024

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ X rules (FYR? X)

Rescinded/___ rules (FYR?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 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.

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

CSIPublicComments@governor.ohio.gov

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.**
- 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.**
- 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.

3770:2-11-01 sets forth rules pertaining to the fees for a video lottery sales license, gaming employee license and a technology provider license. Changes being made to the rules are to reduce unnecessary regulatory language.

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 -powers 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.

No, to both questions.

5. **If the regulation implements a federal requirement, but 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. This rule is necessary to ensure the consistent and ongoing collection of fees associated with licensure of gaming and technology provider license holders. 3770:2-11-01 sets forth rules pertaining to the fees for a Video Lottery Sales Agent key gaming license, gaming employee license and a technology provider license.

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

Success will be measured through consistent enforcement of these and other standardized requirements and guidelines, which will ensure ongoing compliance with lottery rules and regulations, while maintaining the integrity of all licensed gaming and technology employee providers.

8. 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.

No.

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.

The listed stakeholders were notified of the proposed amended Five-Year Rule review rule. The stakeholders consist of representatives of all seven Ohio racetracks. The identified stakeholders were notified through email correspondence on June 27, 2024. They were given until July 12, 2024, to respond with comments or questions. As of this date, no comments have been received.

Chris Corrado, Belterra Park

Justin Remschneider, Belterra Park

Scott Vuko, Belterra Park

Gina Lawwill, MVG

Kevin Davis, MVG

Karen Cincione, Delaware North Companies

Craig Robinson, Miami Valley Gaming/Delaware North Companies

Joel Loots, Miami Valley Gaming/Delaware North Companies
Roger Bryant, Miami Valley Gaming/Delaware North Companies
Edward McNett, Miami Valley Gaming/Delaware North Companies
Rob Swedinovich, Hollywood Gaming Mahoning Valley
Kathy Lenhardt, Hollywood Gaming Mahoning Valley
Tim Kelley, Hollywood Dayton
Matt Becker, Hollywood Dayton
Matt Spitnale, PENN Entertainment Inc.
Samuel Porter, Ice Miller
John Oberle, Ice Miller
Frank Donaghue, PENN Entertainment Inc.
Jim Baldacci, PENN Entertainment Inc.
Amy Ankerson, Scioto Downs
Holly Chandler, Ohio Racing Commission
Sherry White, Ohio Racing Commission
Kyle Wentz, MGM Northfield Park
Nick Monti, MGM Northfield Park
Chris Volle, Jack Entertainment
Ed Dick, Jack Entertainment
Lisa Powers, Jack Entertainment
Scott Borgemenke, Ohio Racing Commission
Chris Dragone, Ohio Racing Commission

10. 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.

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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

This rule is necessary to ensure the consistent and ongoing collection of fees associated with licensure of both gaming and technology provider license holders. Being that this rule accomplishes this objective, as it pertains to gaming employees and technology providers, in the more efficient and least restrictive manner, we believe that this is the best alternative.

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

No other Lottery rules deals with this topic.

14. 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 applicants seeking gaming employee and technology provider licenses will be held to the 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

15. Provide a summary of the estimated cost of compliance with the rule(s). 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. Other entities impacted include those individuals who have applied to become, or who are currently employed as a licensed technology provider.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

Although this rule pertains to gaming employee and technology provider licensing, and is subject to CSI Office review, the Lottery does not view this rule as having an adverse impact. Licensing fees for application and renewal are necessary to cover costs associated with licensure and ongoing operation.

Pursuant to 3770:2-11-01(D), each technology provider must pay a licensing fee of two thousand five hundred dollars, and according to 3770:2:11-01(E), a fee of one hundred dollars for a technology provider individual license. If a technology provider’s license is revoked, the technology provider may reapply, but any subsequent application will require submission of a new application and payment of a separate application fee and licensing fee.

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 must submit two hundred fifty dollars to obtain a license; Gaming employees must submit one hundred dollars to obtain a license. 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 if non-compliance will invoke a monetary penalty.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

No.

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

The Lottery does not view this rule as having an adverse impact on the regulated business community. Rather, the rule merely requires ongoing adherence to the rules and regulations similarly imposed on other technology providers, and affords a right to a hearing upon suspension or revocation

Regulatory Flexibility

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

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 and technology providers 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?**

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

- 20. What resources are available to assist small businesses with compliance of the regulation?**

VLT Management of the Ohio Lottery Commission is available to assist and video lottery sales agent or employee regarding the conditions outlines in the proposed rules.

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