



Business Impact Analysis

Agency, Board, or Commission Name: Ohio State Racing Commission

Rule Contact Name and Contact Information:

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

No Change Chapter 2 5-year rule review.

Rule Number(s): 3769-02-31; 3769-02-40; 3769-02-43

Date of Submission for CSI Review: November 30, 2023

Public Comment Period End Date: December 8, 2023

Rule Type/Number of Rules:

New/___ rules

No Change/___3___ rules (FYR? _Y_)

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Rescinded/___ rules (FYR?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 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.
- 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.

3769-2-31 Should any rule or any part of any rule contained in the commission rules and regulations be found to be unconstitutional, the remaining part of the rule and/or the remaining rules will not be invalidated.

3769-2-40 Lists federal and state statutes which makes personal information maintained by the commission confidential.

3769-2-43 The procedures for the commission to determine distribution percentage of video lottery terminal income.

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.

3769.03

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?

No

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.

This does not exceed any federal requirement

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)?

These rules are necessary to protect the public and to ensure fair and safe racing.

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

The Commission will continue to monitor these rules to ensure the safety of horses and humans.

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?

No.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The primary stakeholders are the seven commercial permit holders, and members of the horsemen's association who are required to implement and/or follow these rules.

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

These rules were provided to the industry for comments. No comments were received for suggested changes. The Commission does not believe that these rules need to be changed.

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?

No additional scientific data was used to develop these rules.

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?

No alternative regulations were considered as these rules have been in existence for several years and no changes were found to be warranted by stakeholders or the commission.

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

No other agency regulates horse racing in Ohio; therefore, no duplication will occur.

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.

The Commission has employees at all commercial tracks to ensure compliance with these rules.

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 scope of the impacted business community includes the seven-commercial permit holders in Ohio and the licensees associated with horse racing.

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

3769-2-31 No adverse impact.

3769-2-40 There is no adverse impact.

3769-2-43 The permit holder could be required to pay a higher percentage.

Each percentage point is worth approximately two hundred thousand dollars.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify.**

These are all 'no- change' rules.

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

3769-2-31 There is no adverse impact.

3769-2-40 There is no adverse impact.

3769-2-43 The commission is required by R.C. 3769.087.

Regulatory Flexibility

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

No, this regulation applies to only seven commercial race track permit holders; therefore, an exemption for small businesses is not applicable.

- 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?**

R.C. 119.14 is not applicable.

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

The Commission website is www.racingohio.net

The Commission phone number is 614-466-2757

The Commission facsimile number is 614-466-1900

3769-2-31

Unconstitutionality.

Should any rule or any part of any rule contained in the Ohio state racing commission rules and regulations be found to be unconstitutional, the remaining part of the rule and/or the remaining rules will not be invalidated.

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	3769.03
Rule Amplifies:	3769.03
Prior Effective Dates:	01/01/1985

3769-2-40

Confidentiality statutes.

The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the commission confidential and identify the confidential personal information within the scope of rules promulgated by this commission in accordance with section 1347.15 of the Revised Code:

- (A) Social security numbers: 5 U.S.C. 552a., unless the individual was told that the number would be disclosed.
- (B) "Bureau of Criminal Investigation and Information" criminal records check results: section 4776.04 of the Revised Code.

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	3769.03
Rule Amplifies:	3769.03
Prior Effective Dates:	02/01/2011

3769-2-43

Commission to determine distribution percentage of video lottery terminal income.

(A) Permit holders licensed by the state racing commission who are video lottery sales agents of the Ohio lottery who have not entered into an agreement with the applicable state racing commission recognized horseman's association in accordance with division (C) of section 3769.087 of the Revised Code shall pay not less than nine per cent or more than eleven per cent of the video lottery terminal income for the benefit of breeding and racing in Ohio. The percentage so determined shall not be less than nine per cent or more than eleven per cent of the video lottery terminal income, and shall be a sliding scale based upon capital expenditures necessary to build the video lottery sales agent's master facility plan that was submitted and approved pursuant to Chapter 3770:2-12 of the Administrative Code. The determination of the amount of the allowable expenditure under the master facility plan will be determined by the Ohio facilities construction commission, unless previously determined by the state architect's office. The incremental adjustments of the sliding scale are set forth in the following table:

Total Investment (\$MM) Inclusive of assumed credit of \$25mm given for the value of existing land & facilities		Effective Horse Rate at 0.15% Buy Down Increment
Excluding License Fee	Including License Fee	11% Rate
\$150.00	\$200.00	11%
\$160.00	\$210.00	10.85%
\$170.00	\$220.00	10.70%
\$180.00	\$230.00	10.55%
\$190.00	\$240.00	10.40%
\$200.00	\$250.00	10.25%
\$210.00	\$260.00	10.10%
\$220.00	\$270.00	9.95%
\$230.00	\$280.00	9.80%
\$240.00	\$290.00	9.65%

\$250.00	\$300.00	9.50%
\$260.00	\$310.00	9.35%
\$270.00	\$320.00	9.20%
\$280.00	\$330.00	9.05%
\$290.00	\$340.00	9.00%

(B) The percentage of video lottery terminal income identified in paragraph (A) of this rule shall be paid and distributed consistent with industry practices.

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	3769.03
Rule Amplifies:	3769.03
Prior Effective Dates:	08/13/2017