3769-18-12 **Independent analysis of official specimen.**

(A) The commission veterinarian shall, whenever physically possible, collect a minimum of fifty milliliters of urine and a minimum of thirty milliliters of blood specimens from each horse selected for testing by the judges.

(1) The official laboratory shall retain all portions of each specimen in secure, limited access, frozen storage at a site approved by the commission for the time period required by this rule;

(2) If the results of tests on a specimen are negative, the official laboratory may discard all portions of said specimen;

(3) If the results of tests on a specimen are positive, the official laboratory shall retain all portions of said specimen until the matter has been finally adjudicated or until directed to forward the specimen or a portion thereof to another laboratory for independent analysis;

(4) The trainer and/or owner shall not be entitled to a retained specimen in those instances where the official laboratory deems it necessary to consume the entirety of an official specimen for official laboratory testing purposes.

(B) The results of all tests performed by the official laboratory shall remain confidential until the time of the judges' hearing, if any, and shall be communicated only to the executive director of the commission, the presiding judge, and the trainer. The trainer shall be responsible for notifying the owner of a horse of a positive test result as reported by the official laboratory.

(1) The trainer or owner of a horse for which a positive test result was reported may request that the retained specimen or a portion thereor be retested in accordance with this rule. A commission approved independent laboratory or the official laboratory must perform the retest;

(2) Approved independent laboratories are identified on a list maintained by the commission;

(3) Approved independent laboratories must establish reasonable fees for testing that may include the costs of testing negative control specimens if requested by the trainer or owner;

(4) The request for retesting shall be in writing and shall be delivered to the judges not more than forty-eight hours after the issuance of the notification to the trainer regarding the positive by ~~ruling of~~ the judges. Notice of a positive test

result shall be communicated in writing to the trainer and may also be communicated orally to the trainer. Failure to request retesting of the retained specimen within forty-eight hours of issuance of notification to the trainer regarding the positive by the ruling of the judges shall constitute a waiver of this right.

(5) The laboratory selected by the trainer or owner for independent testing of the retained specimen shall be contacted by a representative of the commission to request acceptance of the specimen for testing;

(6) The owner or trainer is entitled to be present at the retest if they have requested retesting of the retained specimen by the official laboratory;

(7) The results of testing by an approved independent laboratory shall be furnished to the commission and may be introduced as evidence in any hearing;

(8) If a retained specimen is sent to an independent laboratory for retesting, the official laboratory shall arrange for shipment of the specimen in a manner that ensures the integrity of the sample. Costs of shipping and handling will be paid by the owner or trainer requesting the retest;

(9) The identity of the drug or drug metabolite(s) identified by the official laboratory shall be communicated to the independent laboratory in writing;

(10) Should the independent laboratory determine that there is insufficient sample volume to retest the sample, or if an act of god, power failure, accident, labor strike or any other event beyond the control of the commission or its representatives prevents the retained sample from being tested, then the results of tests performed by the official laboratory shall be prima facie evidence of the presence of the substance(s) identified by the official laboratory.

(11) The trainer or owner may request that negative control samples be tested with the retained sample. The relative identities of the negative control samples and the retained sample shall be known only to the official laboratory.

(C) The independent laboratory shall send a confidential written report of the results of its tests to the commission, which in turn shall send a confidential report to the trainer and owner forthwith.

(1) No action shall be taken against the trainer or owner if the results of the retesting are negative.

(2) Should the results of retesting prove negative, the owner or trainer shall be reimbursed by the commission for all costs of retesting.

Business Impact Analysis

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

Rule Contact Name and Contact Information:

Tanya Boulmetis Tanya.Boulmetis@Racing.Ohio.Gov 614-779-0270

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

Independent analysis of official specimen.

Rule Number(s): 3769-8-12; 3769-18-12

Date of Submission for CSI Review: September 12, 2022

Public Comment Period End Date: September 19, 2022

Rule Type/Number of Rules:

New/___ rules
Amended/___X_ rules (FYR? __Y_)
No Change/____ 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.**

3769-8-12 and 3769-18-12 allow the licensee to obtain an independent analysis of the official specimen by an independent laboratory before sanctions can be imposed on a licensee. The proposed changes allow for the independent analysis to occur prior to issuance of a public ruling.

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.**

   R. C. 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?**

   Yes. The source of the federal regulation is the Horseracing Integrity and Safety Authority.

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

   It does not exceed the 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)?**

The intent of the rule is to protect the integrity of horseracing, guard the health and welfare of the horse, and safeguard the interest of the public and racing participants through the prohibition and/or control of medications, drugs, and substances foreign to the natural horse. The Commission is charged with ensuring the integrity of horseracing in this state.

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

These regulations have been in existence for some time, and the Commission believe the success of the regulation has been demonstrated.

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.**

   Horsemen's groups were consulted in August 2022

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

    The rules were provided to the industry for comment. The Commission reviewed and approved this rule change without objections from the stakeholders.

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 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?**

    There were no alternative regulations considered or suggested by stakeholders. There is industry consensus.

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.

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

No other agency regulates horseracing in Ohio. No duplication will occur.

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.**

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

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**

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

    c. **Quantify the expected adverse impact from the regulation.**

    There are costs to licensees who avail themselves of the opportunity for an independent sample. The rule change affects the timeline of the process. If the independent sample is determined to be negative, the costs of the testing are reimbursed to the licensee, and there is no adverse impact.

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

    To ensure the safety of horses and the integrity of racing.

Regulatory Flexibility

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

    This applies equally to all licensees.

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 RacingOhio.net. The commission phone number is 614.466.2757. Additionally, there are employees at every commercial track.