



Ohio Administrative Code

Rule 3769-2-11.2 Financial ability of permit holder.

Effective: [March 21, 2024](#)

(A) If, at any time regardless of the filing of a bankruptcy petition, a permit holder finds themselves in a situation where they are unable to make any payments or fulfill any financial obligations that are mandated under the permit, including but not limited to payments due to an aggrieved party as defined under paragraph (C) of rule 3769-2-11 of the Administrative Code, the permit holder will immediately notify the racing commission in writing of its situation.

(B) If, in the racing commission's discretion the permit holder lacks the financial ability to continue its day to day operations; threatens the integrity of pari-mutuel wagering; threatens the health, safety or welfare of the public, horse racing participants or other participants; and/or puts the wagering public at risk, the racing commission will:

(1) Immediately suspend the permit holder's permit until such time that the racing commission determines that the permit holder has the financial ability to continue its day-to-day operations; or

(2) The permit holder has to:

(a) Have a person approved in advance by the racing commission sign a guarantee of performance; or

(b) Set up a trust account, under terms and conditions as approved by the racing commission, for the benefit of the Ohio state racing commission for the benefit of aggrieved parties as defined by paragraph (C) of rule 3769-2-11 of the Administrative Code. The amount in such account is determined by the racing commission; or

(c) Obtain a bond in an amount prescribed by the racing commission, in favor of the Ohio state racing commission as obligee, for the use and benefit of all aggrieved parties as defined by paragraph (C) of rule 3769-2-11 of the Administrative Code. This bond may be in addition to any bond provided in accordance with paragraph (B) of rule 3769-2-11 of the Administrative Code.



(C) The filing of a bankruptcy petition by a permit holder does not relieve the permit holder of any of the minimum requirements necessary to be issued and hold a permit to conduct pari-mutuel horse racing if, in the racing commission's discretion, it threatens the integrity of pari-mutuel wagering; threatens the health, safety, or welfare of the public, horse racing participants or other participants; and/or puts the wagering public at risk.

(D) For purposes of determining the amount payable on any bond, should the racing commission believe it may make a claim upon a bond, the racing commission will notify the permit holder that the permit holder will immediately, but no more than ten days from the date of the notice, provide the racing commission with the following information in writing:

(1) The amount of any unpaid salaries or wages earned or due to the permit holder's employees that are licensed by the commission. The permit holder has to provide a schedule detailing all unpaid wages and salaries by employee, by time period.

(2) The amount of any purse money that is unpaid or owed to any licensed owners by the permit holder. The permit holder has to provide a schedule detailing such unpaid amounts by owner, by race, and by date.

(3) The amount of any entry fees, nominating fees, eligibility fees, or sustaining fees paid by licensed owners that the permit holder has or should have in its possession. The permit holder has to provide a schedule detailing such amounts by owner.

(4) The amounts owed by the permit holder to licensed owners by the horsemen's bookkeeper for horses claimed. The permit holder has to provide a schedule detailing such amounts by owner.

(5) The amount the permit holder owes to the holders of winning uncashed pari-mutuel tickets. The permit holder has to provide a schedule detailing these unpaid amounts, listed by date and race.

(6) The amount of outstanding fees that the permit holder owes to jockeys and/or drivers. The permit holder has to provide a schedule detailing such amounts by jockey and/or driver.

(7) All horsemen's bookkeeper funds, including purse money, should be held as separate interest-



bearing trust funds. The permit holder has to verify that this has been done, that the amounts have not been commingled with other funds, and that the accounts holding such funds will not be subjected to the permit holder's claims of creditors. The permit holder will attach a detailed schedule of all such funds held, and the amounts, by the permit holder on the date prior to the date of filing of the bankruptcy petition, as well as any other amounts that were deposited into those funds after that date.

(8) All Ohio sires stakes monies will be kept in a separate fund which will be used exclusively for payment of purse money to entitled parties in Ohio sires stake fund races. The permit holder has to verify that this has been done, that the amounts have not been commingled with other funds, and the accounts holding such funds will not be subjected to the permit holder's claims of creditors. The permit holder has to attach a detailed schedule of all such funds held, and the amounts by the permit holder on the date prior to the date of bankruptcy, as well as any other amounts that were deposited into those funds after that date.

(9) The amounts of the "Combined Simulcast Horse Racing Purse Fund" due under section 3769.089 of the Revised Code and payments due to the collection and settlement agent under section 3769.0810 of the Revised Code. The permit holder has to provide a detailed schedule.

(10) The amounts due and unpaid to any government authority in Ohio, including, but not limited to, state and local income taxes; commercial activity taxes; sales taxes; use taxes; excise taxes; horse racing taxes; employee withholding for federal, state, and local taxes; net profits taxes; school district income taxes; property taxes; workers' compensations premiums; unemployment compensations; etc. The permit holder has to attach a schedule detailing such liabilities by jurisdiction and time period.

(11) A detailed list of any other amounts that are due or owed by the permit holder to any other aggrieved party as defined by rule 3769-2-11 of the Administrative Code.

(12) A schedule detailing each bank account held in the name of or on behalf of the permit holder. This will include the name of the bank, the account number, the balance in the account as of the day of filing of the bankruptcy petition, and a detailed description of what the account is used for.



(13) Any other information the racing commission believes is necessary.

(E) The failure of the permit holder to provide the information listed in paragraph (D) of this rule in the prescribed time may result in an immediate suspension of the permit holder's permits. The permit is to remain suspended until the permit holder has satisfied the racing commission that it should re-open and continue to operate and that the health, safety, or welfare of the public, horse racing participants, or other participants will be protected; and/or the integrity of pari-mutuel wagering and the wagering public will be protected.

(F) Upon receipt of the information requested in paragraph (D) of this rule, the permit holder and any necessary representatives will appear before the racing commission no later than the racing commission's next regularly scheduled monthly meeting. The racing commission may set a special meeting for the permit holder and its representatives to appear at.

(G) If the racing commission is concerned that the financial condition of the permit holder threatens the integrity of pari-mutuel wagering; threatens the health, safety, or welfare of the public, horse racing participants or other participants; and/or puts the wagering public at risk, then the failure of the permit holder to appear before the racing commission as directed in paragraph (F) of this rule may result in an immediate suspension of the permit holder's permit. The permit will remain suspended until the permit holder has satisfied the racing commission that it should re-open and continue to operate.

(H) All of the above mentioned immediate suspensions may occur without a hearing.

(1) The racing commission will issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If the permit holder subject to the immediate suspension requests an adjudicatory hearing by the racing commission, the date set for the hearing will be within fifteen days, but not earlier than seven days, after the permit holder requests the hearing, unless otherwise agreed to by both the racing commission and the permit holder.

(2) Any immediate suspension imposed under the division remains in effect, unless reversed on appeal, until a final adjudicative order issued by the racing commission becomes effective. The racing commission will issue its final adjudicative order within seventy-five days after completion of



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its hearing. A failure to issue the order within seventy-five days results in dissolution of the summary suspension order but does not invalidate any subsequent, final adjudicative order.