

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

Agency Name: Ohio Casino Control Commission (“Commission”)

Regulation/Package Title: 2016 5 Year Review Batch #5 (Testing; Testing results; Transportation of electronic gaming machines to and from a casino facility; Possession and storage of electronic gaming equipment; Transportation of electronic gaming equipment to and from a certified independent testing laboratory located in this state; Electronic gaming equipment authentication; Promotional activities; Independent testing certification; Independent testing laboratory information, certification period, and certification renewal; Certification fees; Background investigation of an independent testing laboratory; Conditions of certificate; Duties of a certified independent laboratory.)

Rule Number(s): 3772-9-03 (amendment); 3772-9-04 (rescind); 3772-9-05 (amendment); 3772-9-06 (amendment); 3772-9-07 (amendment); 3772-9-12 (amendment); 3772-13-03 (amendment); 3772-15-01 (amendment); 3772-15-02 (amendment); 3772-15-03 (amendment); 3772-15-04 (amendment); 3772-15-05 (amendment); 3772-15-06 (amendment).

Date: November 21, 2016

Rule Type:

- New
 Amended

- 5-Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

This is the Commission’s fifth package of five-year review rules for 2016. This batch includes rules relating to electronic gaming equipment, promotional activities, and certified independent

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testing laboratories. Many of the changes are small housekeeping amendments to clean up and clarify rule language. Several of the amendments remove the terms “applicant or licensee” and instead use the name of the entity in an effort to streamline and clarify Ohio Adm. Code 3772 in its entirety. Another consistent change ensures that provisions of general applicability apply to all Commission rules by replacing the words “this chapter” with “rules adopted by the commission.”

- **3772-9-03**, titled “Testing.” This rule requires all gaming-related devices, software, hardware, and technology to be tested by a certified independent testing laboratory before they are included in the Commission’s database of approved equipment. The rule further specifies that the equipment will not be included in the database unless the lab concludes that the equipment is compliant with R.C. Chapter 3772. and the administrative rules adopted thereunder, and is approved by the Commission. The amendments to this rule are largely intended to streamline the code by moving language regarding testing results to this rule from Ohio Adm. Code 3772-9-04 and rescinding that rule. Finally, the rule clarifies that the vendor of such equipment seeking testing must also submit information to the Commission, if requested, allowing the Commission to make its own informed, independent determination. The purpose of this rule is to implement the statutory requirement that gaming-related equipment be tested by certified independent laboratories under R.C. 3772.03(D)(4) and R.C. 3772.31.
- **3772-9-04**, titled “Testing results.” This rule is being rescinded and reserved. The requirement that only equipment that has been approved by both the certified independent testing laboratory and the Commission before the equipment can be included on the Commission’s list of approved equipment has been moved to Ohio Adm. Code 3772-9-03. The purpose of the amendment is to streamline Ohio Adm. Code 3772.
- **3772-9-05**, titled “Transportation of electronic gaming machines to and from a casino facility.” This rule specifies how electronic gaming equipment is to be transported and stored. Broadly, the rule requires notice to the Commission of the transportation, written approval from the Commission, and the presence of a Commission staff member when a shipment is received by a casino operator. The amendments to this rule narrow the presently broad applicability of this rule from all electronic gaming equipment to only electronic gaming machines, a newly defined term, in addition to some rearrangement and clarifying changes. This amendment will remove the notification requirement for the shipment of individual pieces of hardware and focuses instead on slot machines and mechanical, electromechanical, and electronic table games. The purpose of this rule is to ensure that all electronic gaming machines shipped or received by casino operators or gaming-related vendors are accounted for and not tampered with during transport, ensuring that when the machine arrives at its destination, it is still in compliance with the technical standards required under R.C. Chapter 3772. and the rules adopted thereunder.
- **3772-9-06**, titled “Possession and storage of slot machines.” This rule relates to how electronic gaming equipment can be possessed or stored. The rule generally requires the equipment to be possessed only by licensed entities or by others as is necessary and

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appropriate to fulfill the goals and objectives of R.C. Chapter 3772. and the rules adopted thereunder. Further, the Commission must be provided with an inventory list of all electronic gaming equipment so possessed. Storage must occur in a secure area, approved by the Commission. The amendments to this rule consist of some streamlining and clarifying changes, including clarifying that the rule applies only to such equipment used for any gaming activity, in addition to several changes aimed at providing more flexibility to stakeholders and the Commission in how the inventory list is kept and how the machines are stored. The purpose of this rule is to ensure that electronic gaming equipment used for any gaming activity is only possessed by those authorized under R.C. Chapter 3772. and the rules adopted thereunder and that such equipment is not tampered with and maintains compliance with the technical standards required under R.C. Chapter 3772. and the rules adopted thereunder.

- **3772-9-07**, titled “Transportation of electronic gaming equipment to and from a certified independent testing laboratory located in this state.” This rule provides an exception from the provisions of Ohio Adm. Code 3772-9-05 and 3772-9-06 for certified independent testing laboratories located in this state solely for the purpose of testing electronic gaming equipment. The purpose of this rule is to exempt certified independent testing laboratories in this state from the requirements of Ohio Adm. Code 3772-9-05 and 3772-9-06, while ensuring that all electronic gaming equipment meets the technical requirements of R.C. Chapters 2915., 3769., 3770., and 3772., and the rules adopted thereunder. The only amendment to this rule is the removal of the terms “licensee or applicant,” as described above.
- **3772-9-12**, titled “Game authentication.” This rule provides the authentication requirements that electronic gaming equipment must support, so that the Commission and certified independent testing laboratories can verify the electronic gaming equipment’s critical program storage media. The rule also provides some grandfathering provisions for electronic gaming equipment that was submitted for approval before December 1, 2012. The amendments to this rule provide for a waiver from some of the general requirements if requested in writing and also remove some authentication requirements. The purpose of this rule is to ensure that all electronic gaming equipment can be verified by the Commission and certified independent testing laboratories as containing critical program storage media compliant with R.C. Chapter 3772. and the rules adopted thereunder.
- **3772-13-03**, titled “Promotional activities.” Presently, this rule specifies that each casino operator must submit written internal controls for all promotional activities to the Commission and outlines specific criteria the internal controls must include. The rule further details specific standards every promotional activity must meet and provides the guidelines casinos must follow when issuing these promotions. The purpose of this rule is to protect Ohio patrons from deceptive and misleading promotional activities, as well as to ensure a uniform, easily audited system of issuing promotions. The only amendment to this rule extends the time period for which a casino operator must retain records of

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promotional documents from two years to five years to mirror the general required retention period for casino operators.

- **3772-15-01**, titled “Independent testing laboratory certification.” This rule allows independent testing laboratories to apply for certification to the Commission to test electronic gaming equipment for compliance with R.C. Chapter 3772. and the rules adopted thereunder. The amendment to this rule specifies that if the Commission certifies independent testing laboratories to test skill-based amusement machines for compliance with R.C. 2915 and R.C. 3772 and the rules adopted thereunder that such certification does not grant authority to test electronic gaming equipment. The purpose of this rule is to carry out the Commission’s statutory mandate to certify independent testing laboratories under R.C. 3772.31.
- **3772-15-02**, titled “Independent testing laboratory information, certification period, and certification renewal.” This rule provides for the process by which an independent testing laboratory can be certified by the Commission. The certification lasts for three years, and the laboratory must provide the Commission with all documents necessary for the Commission to investigate the laboratory. Finally, the rule provides for a process by which confidential information will be handled in dealing with public records requests. The amendment to this rule removes superfluous steps in the public records process, while still ensuring that R.C. 149.43 and R.C. 1333.61 are met. A similar change has been made throughout Ohio Adm. Code 3772, during the five-year review process. The purpose of this rule is to ensure the Commission can properly investigate, on an ongoing basis, certified independent testing laboratories to ensure they meet the requirements under R.C. 3772.31 and Chapter 3772-15 of the Ohio Adm. Code.
- **3772-15-03**, titled “Certification fees.” This rule provides that each independent testing laboratory applying for certification shall pay a \$2,000.00 fee, which may be increased if the cost of investigation exceeds the fee. The amendment to this rule clarifies that while the Commission is waiting for a testing laboratory to submit any additional certification fee, the Commission may continue its investigation of the laboratory, but may not certify the laboratory. A similar change has been made throughout Ohio Adm. Code 3772, during the five-year review process. The purpose of this rule is to ensure that the Commission has the funding necessary to properly investigate and certify independent testing laboratories.
- **3772-15-04**, titled “Background investigation of an independent testing laboratory.” This rule provides the factors the Commission will consider when conducting a background investigation of an independent testing laboratory, including the laboratory’s ability to test for the technical requirements under R.C. Chapter 3772. and the rules adopted thereunder, the lab’s corporate structure, its policies and procedures, its staff experience and expertise, and its equipment. The amendments to this rule are simple housekeeping amendments meant to streamline rule language and fix typographical errors. The purpose of this rule is to provide guidelines by which laboratories will be evaluated when

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applying for certification, so as to ensure the requirements of R.C. 3772.31 and Ohio Adm. Code 3772-15 are met.

- **3772-15-05**, titled “Conditions of certification.” This rule provides the conditions certified independent testing laboratories must agree to in order to obtain and maintain certification. These conditions include, among others, obtaining professional liability insurance, ensuring consistent testing, maintaining accreditation, maintaining testing records, and providing assistance to the Commission. The amendments to this rule consist of streamlining and clarifying amendments. Additionally, the rule extends the records retention period for certified independent testing laboratories to five years to be consistent with the general records retention period and requires laboratories to maintain a database of reports that the Commission may access. The purpose of this rule is to ensure that certified independent testing laboratories meet the requirement of R.C. 3772.31 and Ohio Adm. Code Chapter 3772-15.
- **3772-15-06**, “Duties of a certified independent testing laboratory.” This rule provides for the general duties of a certified independent testing laboratory. These duties include to test electronic gaming equipment for compliance with R.C. Chapter 3772 and the rules adopted thereunder; providing reports to the Commission of test results; serving as a witness in legal proceedings; and internal procedures to ensure the suitability of the laboratories’ procedures, equipment, and employees. The amendments to this rule are largely streamlining and clarifying amendments, including clarifying that until electronic gaming equipment is approved by the Commission and in the Commission’s database under Ohio Adm. Code 3772-9-02, it is not approved for use in Ohio. The purpose of this rule is to ensure the ongoing ability and suitability of certified independent testing laboratories to test for compliance under R.C. Chapter 3772. and the rules adopted thereunder, as required by R.C. 3772.31.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 3772.03, 3772.31, 3772.033

3. 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.

Not applicable.

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

This question does not apply to these amendments because the federal government does not regulate casino gaming in this state. Rather, casino gaming is permitted pursuant to Article

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XV, Section 6(C) of the Ohio Constitution and is controlled by Ohio's Casino Control Act (i.e., R.C. Chapter 3772).

5. 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)?

Article XV, Section 6(C) of the Ohio Constitution and R.C. Chapter 3772 require the Commission to ensure the integrity of casino gaming and to prescribe rules for how casino gaming should be conducted, including the use of electronic gaming equipment, certified independent testing laboratories, and promotional activity. To ensure the integrity of casino gaming, it is imperative to protect casino patrons and to maintain the integrity of electronic gaming equipment, by ensuring the equipment meets the statutory requirements of R.C. Chapter 3772. These amendments are designed to effectuate this constitutional and statutory mandate by establishing minimum standards for the transportation, storage, and testing of electronic gaming equipment; promotional activities; and certification of independent laboratories.

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

Overall, the Commission will measure the success of these amended rules in terms of whether they help to ensure the integrity of casino gaming and protect the casino patrons. This can be done in two ways: First, through evaluating whether the administrative cost of implementing and enforcing the proposed rules outweighs their public benefit. Second, through analyzing the regulated community's comments about requests for waivers or variances from these rules.

Development of the Regulation

7. 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.

Casino Operators

- Penn National Gaming, Inc. (Hollywood Casinos Columbus & Toledo)
- JACK Entertainment, LLC (JACK Cincinnati and Cleveland Casinos)

Certified Independent Testing Laboratories

- BMM North America, Inc.
- Nick Farley & Associates, Inc. (D/B/A Eclipse Compliance Testing)
- Gaming Laboratories International, LLC

The above-listed casino operators and certified independent testing laboratories were contacted via email with the amendments on September 9, 2016. Notably, both sets of

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stakeholders were permitted to review and comment on the amendments before submission to the members of the Commission for consideration of initial filing, at the September 21, 2016 Commission Meeting, where stakeholders had an additional chance to comment. (Exhibits 1-2.)

The casino operators were also contacted on September 28, 2016 via email with the amendments to Rule 3772-13-03, and given the opportunity to review and comment on the changes. (Exhibit 3.)

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

After sending the amendments to chapters 3772-9 and 3772-15 to the above stakeholders on September 9, 2016, the Commission received some feedback, asking for clarification on certain matters, and the Commission responded with the necessary information. (Exhibit 4.)

The Commission received no feedback following the September 29, 2016 email regarding Rule 3772-13-03.

9. 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?

This question does not apply to these amendments because no scientific data was necessary to develop or measure their outcomes. Instead, the Commission staff reviewed how other jurisdictions approached rules relating to electronic gaming equipment and independent testing laboratories. Further, the Commission staff considered whether existing rules were the most efficient means by which to maintain the integrity of casino gaming and whether any waivers or variances had been requested and granted to the regulated community. In so doing, the Commission was able to use, as much as possible, rules the regulated community is accustomed to, with minor adaptations to remain in compliance with Ohio law.

10. 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?

Commission staff reviewed the rules adopted in other jurisdictions, including Kansas and New Jersey. Further, Commission staff considered any waivers or variances to existing rules that had been requested and/or granted. The amendments are a conglomeration of the rules used in other jurisdictions with adaptations made for Ohio law and are, in some cases, the result of discussions between Commission staff and the regulated community, including reflections of existing waivers.

11. 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.*

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Where appropriate, the rules include a performance-based component wherein they set the floor for compliance but do not completely dictate how the casino operators, gaming-related vendors, and certified independent testing laboratories are supposed to achieve compliance. However, the rules related to achieving certification are not performance-based because they govern minimum standards for independent testing laboratory certification. Additionally, Ohio Adm. Code 3772-1-04 allows stakeholders to seek waivers and variances from these rules, which the Commission will evaluate on a case-by-case basis and may grant as long as it determines that doing so is in the public's best interest. Past performance of a casino may be considered in determining whether a waiver from any specific provisions of these rules could be granted.

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

This question does not apply to these amendments because no other regulations in this area currently exist with respect to casino gaming in this state. To the extent that this package amends existing administrative rules, several within the package bring clarity to requirements in R.C. Chapter 3772 and Ohio Adm. Code 3772 and codify existing waivers.

13. 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.

At each casino facility, there are gaming agents and financial auditors observing, evaluating, and investigating the operations. In addition, the Commission's Regulatory Compliance personnel, including the Manager of Electronic Gaming Technology, consistently perform various operational audits, including electronic gaming equipment audits. Any issues that arise in the gaming process (i.e., from manufacturing to the actual conducting of casino games) will be funneled to the Commission's central office in Columbus, Ohio, where the Executive Director and his division directors can coordinate a consistent response and conduct outreach to the regulated community.

For those amendments dealing with the certification of independent testing laboratories, the Commission follows a similar process. Certification of independent testing laboratories is handled by the Commission's regulatory compliance staff, who are then managed by a single director in the Commission's main office. From there, the Executive Director, his division directors, and legal staff can coordinate a consistent response and conduct outreach to the regulated community.

Adverse Impact to Business

14. 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;

The casino operators, management companies, gaming-related vendors, and certified independent testing laboratories are the impacted business community with respect to these amendments.

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

The nature of the potential adverse impact from the amendments includes costs related to submitting electronic gaming equipment for testing, retaining records, training employees, submitting written notifications and reports to the Commission, fines for noncompliance, employer time and payroll, and certification fees, as described more fully below.

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.

3772-9-03 Testing.

This rule requires all gaming-related devices, software, hardware, and technology to be tested by a certified independent testing laboratory before they are included in the Commission’s database of approved equipment.

The Commission does not anticipate an adverse impact to business from this rule. This rule simply implements the statutory requirement that gaming-related equipment be tested by certified independent laboratories under R.C. 3772.03(D)(4) and R.C. 3772.31. The amendments to this rule are largely intended to streamline the code by moving language regarding testing results to this rule from Ohio Adm. Code 3772-9-04 and rescinding that rule. Finally, the amendment clarifies that the vendor of such equipment seeking testing must also submit information to the Commission, if requested, allowing the Commission to make its own informed, independent determination. This is the current practice that all gaming-related vendors are accustomed to when seeking approval from the Commission.

3772-9-04 Testing results.

This rule is being rescinded and reserved. The requirement that equipment be approved by both the certified independent testing laboratory and the Commission before it can be included on the Commission's database has been moved to Ohio Adm. Code 3772-9-03. Therefore, there is no expected adverse impact to business or added cost of compliance related to this proposed change.

3772-9-05 Transportation of electronic gaming machines to and from a casino facility.

This rule specifies how electronic gaming equipment is to be transported and stored. While the rule specifies how machines must be shipped and requires that the Commission be notified of shipments, the Commission does not anticipate a significant adverse impact on business from this rule. These requirements are common in the casino industry and the licensees have been operating under this rule since the inception of casino gaming in the state. The purpose of this rule is crucial to the Commission's mission in ensuring the integrity of casino gaming because the measures will significantly reduce the risk of tampering with the machines. The amendments to this rule narrow the applicability of this rule from all electronic gaming equipment to only electronic gaming machines, a newly defined term, in addition to some rearrangement and clarifying changes.

3772-9-06 Possession and storage of electronic gaming equipment.

This rule relates to how electronic gaming equipment can be possessed or stored. The Commission does not anticipate a significant impact or cost of compliance as a result of this rule. While this rule specifies certain aspects of how electronic gaming equipment is to be kept, the Ohio Constitution Article XV, Section 6(C) permits casino gaming, including the use of slot machines, only at the four specifically enumerated properties. Given this constitutional mandate, as well as the mandate to ensure the integrity of casino gaming, the rule is justified to ensure that slot machines are only used at the specifically enumerated properties and that those machines conform to the standards in R.C. Chapter 3772. and the rules adopted thereunder, including ensuring the minimum 85% theoretical payout percentage in R.C. 3772.20. The amendment to this rule consists of some streamlining and clarifying changes, in addition to several changes aimed at providing more flexibility to stakeholders and the Commission in how the inventory list is kept and how the machines are stored, all of which the casino operators already comply with, so no change is necessary to obtain compliance.

3772-9-07 Transportation of electronic gaming equipment to and from a certified independent testing laboratory located in this state.

This rule provides an exception from the provisions of Ohio Adm. Code 3772-9-05 and 3772-9-06 for certified independent testing laboratories located in this state solely for the purpose of testing electronic gaming equipment. The only amendment to this rule is the removal of the terms “licensee or applicant”. As a result, there is no expected adverse impact to business as a result of this amendment. Rather, in-state certified independent testing laboratories will actually likely benefit from this rule.

3772-9-12 Electronic gaming equipment authentication.

This rule provides the authentication requirements that electronic gaming equipment must support, so that the Commission and certified independent testing laboratories can verify the electronic gaming equipment’s critical program storage media. The amendments to this rule provide for a waiver from some of the general requirements if requested in writing and approved by the Executive Director or their designee, and also remove some authentication requirements.

As most equipment is manufactured to meet these requirements and the Commission has included a grandfathering provision, and certain waiver provisions, the Commission does not anticipate an adverse impact on business from this rule. Further, these technical requirements are common in the industry. The changes to this rule do not impose additional requirements or restrictions, but instead allow for greater flexibility for casino operators by providing an opportunity of waiver for some general requirements. Therefore, the Commission does not anticipate an adverse impact on business.

3772-13-03 Promotional activities.

Presently, this rule specifies that each casino operator must submit written internal controls for all promotional activities to the Commission and outlines specific criteria the internal controls must include. The purpose of this rule is to protect Ohio patrons from deceptive and misleading promotional activities, as well as to ensure a uniform, easily audited system of issuing promotions. The only amendment to this rule extends the time period for which a casino operator must retain promotional records.

Negligible costs of compliance include certain administrative costs related to the preparation of and adherence to Commission-approved internal controls for all promotional activities. The rule echoes rules in other casino gaming jurisdictions that the operators are accustomed to and helps ensure promotional play is offered properly. The amendment to this rule will require casinos to keep promotional records for five years. However, casino operators are already accustomed to five-year retention for most other records under the general retention rule. As a result, casinos

may use the same timeframe on all records retention issues, ensuring consistency and predictable regulation, while facing little to no additional cost for record retention.

3772-15-01 Independent testing laboratory certification

This rule allows independent testing laboratories to apply for certification to the Commission to be able to test electronic gaming equipment for compliance with R.C. Chapter 3772. and the rules adopted thereunder. The amendment to this rule specifies that if the Commission certifies independent testing laboratories to test skill-based amusement machines for compliance with R.C. 2915 and R.C. 3772 and the rules adopted thereunder that such certification does not grant authority to test electronic gaming equipment. This is important because the Commission will likely test different criteria to determine whether an independent testing laboratory is suited to test electronic gaming equipment versus skill-based amusement machines. Given that this rule merely implements the Commission's statutory mandate to certify independent testing laboratories under R.C. 3772.31, the Commission does not anticipate an adverse impact on business.

3772-15-02 Independent testing laboratory information, certification period, and certification renewal.

This rule provides for the process by which an independent testing laboratory can be certified by the Commission. The amendment to this rule removes superfluous steps in the public records process, while still ensuring that R.C. 149.43 and R.C. 1333.61 are met. A similar change has been made throughout Ohio Adm. Code 3772, during the five-year review process.

While the Commission acknowledges the cost of submitting information for certification and undergoing an investigation, this cost is outweighed by the Commission's statutory mandate under R.C. 3772.31 to certify independent testing laboratories. Further, obtaining certification would likely allow a testing laboratory the chance to expand its business to include testing items for use in Ohio.

3772-15-03 Certification fees.

This rule provides that each independent testing laboratory applying for certification shall pay a \$2,000 fee, which may be increased if the cost of investigation exceeds the fee. The amendment to this rule clarifies that while the Commission is waiting for a testing laboratory to submit any additional certification fee, the Commission may continue its investigation of the laboratory, but may not certify the laboratory. While the Commission acknowledges the fee charged in the rule, the Commission is statutorily mandated under R.C. 3772.31 to certify testing labs, and the fee is intended to cover the cost of certification, without which a laboratory cannot legally conduct testing for compliance with R.C. Chapter 3772 and the rules adopted thereunder.

Again, detaining certification would allow a testing laboratory the chance to expand its business to include testing items for use in Ohio.

3772-15-04 Background investigation of an independent testing laboratory.

This rule provides the factors the Commission will consider when conducting a background investigation of an independent testing laboratory and the rules adopted thereunder. The amendments to this rule are simple housekeeping changes meant to streamline rule language and fix typographical errors. Given that the rule merely provides clear guidelines by which laboratories will be evaluated when applying for certification, so as to ensure the requirements R.C. 3772.31 and Ohio Adm. Code Chapter 3772-15, the Commission does not anticipate an adverse impact on business from this rule.

3772-15-05 Conditions of Certification

This rule provides the conditions that certified independent testing laboratories must agree to in order to obtain and maintain certification. The changes to this rule consist of streamlining and clarifying amendments. Additionally, the rule extends the records retention period for certified independent testing laboratories to five years to be consistent with the general records retention period and specifies that laboratories must maintain a database of reports that the Commission may access.

While this rule does place conditions on obtaining and maintaining certification, the rule is necessary to ensure the laboratories can appropriately and effectively test to the standards in R.C. Chapter 3772 and the rules adopted thereunder. To be clear, this rule only impacts those independent testing laboratories who have obtained certification from the Commission, a voluntary business decision. Further, the Commission received no feedback regarding the extension of the retention period and anticipates minimal cost of compliance to extend the time that records must be kept, because the certified independent testing labs do maintain records for two years.

Finally, the Commission does not expect adverse impact to business from the database requirement, as this is already currently in practice for all certified independent testing laboratories.

3772-15-06 Duties of a certified independent testing laboratory.

This rule provides for the general duties of a certified independent testing laboratory. The amendments to this rule are largely housekeeping changes, including clarifying that until electronic gaming equipment is approved by the Commission and in the Commission's database under Ohio Adm. Code 3772-9-02, and it is not approved for use in Ohio.

The Commission does not anticipate an adverse impact on business from this rule. The rule merely implements R.C. 3772.31, and specifically enumerates in one place, all of the functions of a certified independent testing laboratory. The amendment to this rule is not a new requirement, but a clarifying statement as to how the rules have previously been interpreted, and therefore no additional cost of compliance is anticipated.

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

Each of the rules and amendments in this package is needed to correct current issues, such as conflicting requirements, clarifying the Commission's interpretation of a particular rule, and developing a more uniform, streamlined set of rules. Additionally, the regulatory intent justifies any adverse impact because Article XV, Section 6(C) of the Ohio Constitution and R.C. Chapter 3772 require the Commission to ensure the integrity of casino gaming, specifically by ensuring that all electronic gaming equipment meet the requirements of R.C. Chapter 3772 and that independent testing laboratories are certified and able to do so. Casino gaming is a highly regulated industry. Unregulated and noncompliant gaming poses a threat to the public welfare and raises the potential for fraud and abuse. To mitigate these threats, the Commission, like other gaming regulatory bodies, is using its regulatory authority to establish a best practice framework for stakeholders.

Regulatory Flexibility

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

Yes (indirectly), though it is unlikely this will be necessary since these proposed regulations only impact businesses in the casino industry, none of which likely constitute a small business. Further, these amendments indirectly provide exemption or alternative means of compliance through Ohio Adm. Code 3772-1-04, which permits the Commission, upon written request, to grant waivers and variances from the rules adopted under R.C. Chapter 3772, including these rules, if doing so is in the best interest of the public and will maintain the integrity of casino gaming in the State of Ohio.

17. 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?

Though it is unlikely R.C. 119.14 will apply to these amendments because the rules only impact businesses in the casino industry, none of which likely constitute a small business, the Commission will adhere to the statutory requirements thereunder, if applicable.

To the extent R.C. 119.14 would apply to a violation of these amendments, the Commission will provide verbal and written notification to the small business in an attempt to correct the

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paperwork violation. Thereafter, the Commission would allow the small business a reasonable time to correct the violation. The Commission and its staff would also offer any additional assistance necessary to aid in remediation of the violation. No further action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the Commission.

18. What resources are available to assist small businesses with compliance of the regulation?

The Commission and its staff are dedicated to working with members of the regulated community and the public to effectively and efficiently regulate casino gaming in this state. As a result, the following resources are available:

- Commission's mailing address:
10 W. Broad Street, 6th Floor
Columbus, Ohio 43215
- Commission's toll free telephone number: (855) 800-0058
- Commission's fax number: (614) 485-1007
- Commission's website: <http://www.casinocontrol.ohio.gov/>
- Commission's email: info@casinocontrol.ohio.gov

Also, all members of the regulated community and public may, in accordance with rule 3772-2-04, request to address the Commission during a public meeting. Finally, all members of the regulated community may, pursuant to rule 3772-1-04, request waivers and variances from Commission regulations.

From: Martin, Patrick
Sent: Friday, September 09, 2016 10:24 AM
To: Siba, Michelle; Lisa Powers; Robert Wamsley; Lynne Mackin; Jessica.McGrady@pngaming.com; Samuel Porter
Cc: Cox, William; Donahue, Craig; Fleenor, Chris
Subject: RE: 5YR Batch 5: Chapters 9 and 15

RCOs:

To put you at some ease, the changes are all part of the “five year review” that we have to do on administrative code sections. I suspect that you’re not too interested in Chapter 15 because that applies to our Independent Testing Labs. There are no duties imposed on your properties under that chapter.

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Patrick D. Martin
Director of Regulatory Compliance
Ohio Casino Control Commission
614-387-5860

From: Siba, Michelle
Sent: Friday, September 9, 2016 10:10 AM
To: Lisa Powers <LisaPowers@jackentertainment.com>; Robert Wamsley <RobertWamsley@jackentertainment.com>; Peculis, Lynn <Lynn.Peculis@casinocontrol.ohio.gov>; Jessica.McGrady@pngaming.com; Samuel Porter <Samuel.Porter@pngaming.com>
Cc: Cox, William <William.Cox@casinocontrol.ohio.gov>; Martin, Patrick <Patrick.Martin@casinocontrol.ohio.gov>; Donahue, Craig <Craig.Donahue@casinocontrol.ohio.gov>; Fleenor, Chris <chris.fleenor@casinocontrol.ohio.gov>
Subject: 5YR Batch 5: Chapters 9 and 15

Good morning RCOs,

Attached are proposed amendments to Chapters 9 and 15, which will be up for initial approval at the September Commission meeting. Please review and provide any comments you may have by 12pm on Tuesday, September 13. If you have any questions, please call me at 614-387-0485.

Thanks and have a great weekend,

Michelle



Michelle Siba
Deputy General Counsel
Ohio Casino Control Commission
(614) 387-0485

Michelle.Siba@casinocontrol.ohio.gov

From: Siba, Michelle
Sent: Friday, September 09, 2016 11:20 AM
To: 'Jeffj@eclipsetesting.com'; k.mullally@gaminglabs.com; 'Doron Irungaray'
Cc: Martin, Patrick; Cox, William
Subject: 5 Year Review: Ohio Adm. Code 15
Attachments: 3772-15-01.pdf; 3772-15-02.pdf; 3772-15-03.pdf; 3772-15-04.pdf; 3772-15-05.pdf; 3772-15-06.pdf

Good Morning,

As you may know, every state agency is required to review its administrative rules at least once every 5 years. Of late, the Commission has been conducting this review and moving rules through the filing process. At the September commission meeting, we will offer for approval Chapter 15, which is the independent testing lab chapter. Before commencing the formal process, we wanted to give you a chance to review the proposed changes. You'll notice very little substance has changed; rather, most of the amendments are housekeeping to streamline all of Ohio Adm. Code 3772. This is the beginning of the process for these amendments and there are still several months before they would go into effect.

Please review these rules and provide any comments you may have by Tuesday, September 13 at 12pm. If you just have a question or need additional clarification, you may contact me at 614-387-0485.

Respectfully,



Michelle Siba

Deputy General Counsel
Ohio Casino Control Commission
(614) 387-0485

Michelle.Siba@casinocontrol.ohio.gov

From: Cox, William
Sent: Wednesday, September 28, 2016 3:09 PM
To: Siba, Michelle; Lisa Powers; Robert Wamsley; Samuel Porter; Lynne.Mackin@pngaming.com; Jessica.McGrady@pngaming.com
Cc: Barron, John; Martin, Patrick; Donahue, Craig
Subject: RE: Proposed amendments to Chapter 11 and Chapter 20
Attachments: 3772-13-03_9-28-16 resend.pdf

RCOs,

In addition to the proposed amendments to rules in Chapter 11 (table games) and Chapter 20 (security) just sent out, please find attached the proposed amendment to Adm. Rule 3772-13-03. You saw this rule in the Batch Four filing, however, we needed to make some small changes to the rule. Those changes have been highlighted in this version and comport with the change that had been previously made. Please share this with your teams and **provide any comments to me, in writing, by 5:00 PM on Monday, October 3.**

If you have any questions, please do not hesitate to call me.

Respectfully,



William J. Cox

Assistant General Counsel
Ohio Casino Control Commission
(614) 387-0482

William.Cox@casinocontrol.ohio.gov

From: Siba, Michelle
Sent: Wednesday, September 28, 2016 2:01 PM
To: Lisa Powers <LisaPowers@jackentertainment.com>; Robert Wamsley <RobertWamsley@jackentertainment.com>; Samuel Porter <Samuel.Porter@pngaming.com>; Lynne.Mackin@pngaming.com; Jessica.McGrady@pngaming.com
Cc: Barron, John <John.Barron@casinocontrol.ohio.gov>; Cox, William <William.Cox@casinocontrol.ohio.gov>; Martin, Patrick <Patrick.Martin@casinocontrol.ohio.gov>; Donahue, Craig <Craig.Donahue@casinocontrol.ohio.gov>
Subject: Proposed amendments to Chapter 11 and Chapter 20

Good afternoon RCOs,

Attached, please find proposed amendments to rules in Chapter 11 (table games) and Chapter 20 (security). This is the latest batch of rules the Commission will consider in its statutory five year review. Please share them with your teams and **provide any comments to me, in writing, by 5:00 PM on Monday, October 3.** The Commission will consider these rules for initial approval, including any changes made as a result of comments received from you, at the October 12 public meeting. Please note that there were no changes made to 3772-11-04, 3772-11-11, 3772-11-12, and 3772-11-24.

If you have any questions, please do not hesitate to call me.

Respectfully,



Michelle Siba

Deputy General Counsel
Ohio Casino Control Commission
(614) 387-0485

Michelle.Siba@casinocontrol.ohio.gov

From: Lisa Powers <LisaPowers@jackentertainment.com>
Sent: Tuesday, September 13, 2016 5:46 PM
To: Martin, Patrick; Siba, Michelle
Cc: Cox, William; Donahue, Craig; Fleenor, Chris
Subject: RE: 5YR Batch 5: Chapters 9 and 15

Good Afternoon Patrick and Michelle,

To clarify, this means hardware and other equipment will not require approval to ship? I hope I'm not re-stating the obvious here, but I appreciate the clarification.

Thank you,
Lisa

LISA POWERS
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From: Patrick.Martin@casinocontrol.ohio.gov [mailto:Patrick.Martin@casinocontrol.ohio.gov]
Sent: Friday, September 09, 2016 10:24 AM
To: Michelle.Siba@casinocontrol.ohio.gov; Lisa Powers <LisaPowers@jackentertainment.com>; Robert Wamsley <RobertWamsley@jackentertainment.com>; Lynne Mackin <Lynne.Mackin@pngaming.com>; Jessica.McGrady@pngaming.com; Samuel Porter <Samuel.Porter@pngaming.com>
Cc: William.Cox@casinocontrol.ohio.gov; Craig.Donahue@casinocontrol.ohio.gov; chris.fleenor@casinocontrol.ohio.gov
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Sent: Friday, September 9, 2016 10:10 AM

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Thanks and have a great weekend,

Michelle



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