

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: 2016 Five Year Review Batch Four (Responsibilities of casino operators; Compulsive and problem gambling plan; Definitions; Advertising; promotion of responsible gaming; Promotional activities; Sanctions; Casino operator licensee or applicant's duties.)

Rule Number(s): 3772-12-04; 3772-12-06; 3772-13-01; 3772-13-02; 3772-13-03; 3772-22-01; 3772-23-06.

Date: September 8, 2016

Rule Type:

New

5-Year Review

Amended

Rescinded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 package is the fourth containing rules subject to five-year review for 2016. This batch includes rules relating to the Voluntary Exclusion Program, advertising, hearing procedures, disciplinary actions, and involuntary exclusion. Many of these amendments are small housekeeping changes to clarify rule language. In addition to the items specifically listed below, many 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 made to streamline these rules is the removal of the term “management company,” where appropriate. In Ohio Adm. Code 3772-1-01(B)(2), the term “casino operator”

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

CSIOhio@governor.ohio.gov

is defined to include “management company,” unless the context clearly indicates otherwise, allowing for this change.

- **3772-12-04 (amendment)**, titled “Responsibilities of casino operators.” This rule outlines the responsibilities of a casino facility in regards to the Voluntary Exclusion Program. This rule specifies that each casino operator must submit written internal controls to the Commission for compliance with the program. The rule amplifies many of the statutory requirements of casino operators found in R.C. 3772.03(D)(10). The purpose of this rule is to ensure that casino facilities implement sufficient procedures to combat compulsive and problem gambling. The amendment to this rule mainly consists of streamlining changes, including clarifying and removing superfluous language. The amendment specifies that a casino facility must notify the Commission in writing when an excluded individual is found on their premises and provides added flexibility in the submission of voluntary exclusion internal controls.
- **3772-12-06 (amendment)**, titled “Compulsive and problem gambling plan.” This rule specifies that a casino facility must submit a plan for approval detailing how they will oversee compulsive and problem gambling and outlines specific criteria all plans must include. Casino operators are further required to submit any amendments to, updates on, and summaries of this plan to the Commission within specified time frames. This rule ensures that casino facilities are aiding the Commission in productively combatting compulsive and problem gambling and allows the Commission carry out its duty under R.C. 3772.03(D)(10) to manage a problem gambling program in the State of Ohio. The amendment to this rule largely consists of small housekeeping changes, as well as clarifying that casino facilities need not submit their compulsive and problem gambling plan with each renewal application, so long as a current plan is approved by the Commission.
- **3772-13-01 (amendment)**, titled “Definitions.” These rules, which are required by R.C. 3772.03(D)(11), are intended to protect Ohio patrons from deceptive, false, or misleading advertisements, as well as to ensure the integrity of casino gaming. This rule defines what types of notices and communications are considered “advertisements” within the chapter and further specifies that a “direct advertisement” is a notice or communication directed towards a certain individual. The amendment is a small housekeeping change to streamline the rule’s language and to ensure that the definitions apply to all Commission rules and not just Ohio Adm. Code 3772-13.
- **3772-13-02 (amendment)**, titled “Advertising; promotion of responsible gaming.” Presently, this rule outlines the guidelines casino operators must follow when advertising. The rule details prohibited methods and types of advertising, requires all advertisements to showcase the state problem gambling hotline number, and mandates that every direct advertisement must contain an explanation of how a patron may remove themselves from being targeted. The purpose of this rule is to ensure that casino advertisements are truthful and that critical problem gambling resources are readily accessible to the general public. The amendment largely consists of the deletion of unnecessary language to

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

CSIOhio@governor.ohio.gov

streamline and clarify language. The rule also extends the time period for which a casino operator must retain records of all advertisements from two years to five years to mirror the general required retention period for casino operators.

- **3772-13-03 (amendment)**, 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 all any change or cancellation of a promotional coupon from two years to five years to mirror the general required retention period for casino operators.
- **3772-22-01 (no change)**, titled “Sanctions.” The rule is not being amended. The rule permits the Commission to discipline any licensee or applicant for specific actions. The rule further provides that the Commission may impose any discipline set forth in R.C. Chapter 3772 and lists the criteria that the Commission may take into effect in considering punishment. The purpose of the rule is to permit the Commission to effectively regulate the integrity of casino gaming by ensuring that those who violate R.C. Chapter 3772 or the rules adopted thereunder are held accountable.
- **3772-23-06 (amendment)**, titled “Casino operator duties.” This rule serves to establish the responsibilities of casino operators with regards to the involuntary exclusion list. The amendments specify that casino operators are to submit their internal control plans, on a schedule approved by the Commission, for the exclusion of individuals on the involuntary exclusion list. The amendments further clarify that the casino operator notify the Commission’s gaming agents in writing if an individual on the involuntary exclusion list attempts to enter or does enter a casino facility. The most frequent change is the removal of the terms “licensee or applicant” to streamline the rule language. The purpose of the rule is to ensure casino operators adhere to the involuntary exclusion list, ensuring the integrity of casino gaming.

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

R.C. 3772.03; 3772.031; 3772.033; 3772.04.

- 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 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/or 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 responsible gambling, advertising, sanctions, and exclusions. To ensure the integrity of casino gaming, it is imperative to protect casino patrons and to ensure that all casinos are promoting responsible gambling, advertising in accordance with the law, and being held accountable for noncompliance with Ohio laws and regulations. These rules and the proposed amendments are designed to continue to effectuate this constitutional and statutory mandate.

- 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. 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 once they are implemented.

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 and Toledo)
- JACK Entertainment, LLC (JACK Cincinnati and Cleveland Casinos)

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

CSIOhio@governor.ohio.gov

Stakeholders were provided an opportunity to comment on the amendments via e-mail on July, 25, 2016. A copy of the email is attached as Attachment A. Comments were requested to be submitted by 5:00 PM on July 27. Additionally, stakeholders had the opportunity to comment during the Commission's public meeting on August 17, 2016.

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

The Commission has received no feedback on these changes.

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 responsible gambling, advertising, sanctions, and exclusions. 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 within the industry, 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?

The Commission staff reviewed the rules adopted in other jurisdictions, including Kansas and New Jersey. Further, the Commission staff considered whether any waivers or variances to existing rules had been requested and granted. The rules and their amendments are modeled after the rules used in other jurisdictions with adaptations made for Ohio law.

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.*

These amendments are not performance-based because they govern responsible gambling, advertisements, sanctions, and exclusions. However, Ohio Adm. Code 3772-1-04 allows the casino operators and gaming-related vendors 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 the majority of these amendments because no other regulations, in these areas, currently exist with respect to casino gaming in this state, over

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

CSIOhio@governor.ohio.gov

which the Commission has sole authority. However, as this package amends existing administrative rules, several within the package bring clarity to requirements in R.C. Chapter 3772. and Ohio Adm. Code 3772 to avoid duplication or conflict.

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.

The amendments in this package largely relate to responsible gambling, advertisements, and exclusions. Many of these are handled by the Commission’s Problem Gambling Specialist and/or legal staff at Commission headquarters. Further, to ensure ongoing compliance with all amendments in this package, there are gaming agents and financial auditors observing, evaluating, and investigating casino operations on site. Any issues that arise at the facilities are funneled to the Commission’s central office in Columbus, Ohio, where the Problem Gambling Specialist and/or legal staff work with the Executive Director to 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;

Those engaged in the industry of casino gaming in the State of Ohio, specifically casino operators, management companies, and holding companies.

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

The nature and potential adverse impact from these amendments includes costs for employee time and payroll, as well as fines for noncompliance.

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.

- **3772-12-04 (amendment)**, titled “Responsibilities of casino operators.” This rule outlines the responsibilities of a casino facility in regards to the Voluntary Exclusion Program. The purpose of this rule is to ensure that casino facilities help combat compulsive and problem gambling. The amendment specifies that a casino facility must notify the Commission in writing when an excluded individual is found on their premises and provides added flexibility in the submission of voluntary exclusion internal controls.

The Commission does not anticipate a negative impact on business from this rule. The rule implements several statutory requirements regarding responsible gambling and the

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

CSIOhio@governor.ohio.gov

Voluntary Exclusion Program found in R.C. 3772.01, 3772.03, and 3772.18. The amendments to the rule are merely housekeeping and make no substantive changes. The one substantive change is intended to provide added flexibility to the casino operators by allowing each operator to submit their internal controls on a preapproved schedule, unique to each facility, instead of a rigid timeline.

- **3772-12-06 (amendment)**, titled “Compulsive and problem gambling plan.” This rule specifies that a casino facility must submit a plan for approval detailing how they will oversee compulsive and problem gambling and outlines specific criteria all plans must include. This rule ensures that casino facilities are aiding the Commission in productively combatting compulsive and problem gambling. The amendment to this rule largely consists of small housekeeping changes, as well as clarifying that casino facilities need not submit their compulsive and problem gambling plan with each renewal application, so long as a current plan is approved by the Commission.

The Commission does not anticipate an adverse impact on business from this rule. The rule simply allows the Commission carry out its duty under R.C. 3772.03(D)(10) to manage a problem gambling program in the State of Ohio. Further, the amendments to this rule are meant to provide added flexibility to the casinos and remove superfluous submissions to the Commission by each entity.

- **3772-13-01 (amendment)**, titled “Definitions.” This rule is intended to protect Ohio patrons from deceptive, false, or misleading advertisements, as well as to ensure the integrity of casino gaming. This rule defines what types of notices and communications are considered “advertisements” or “direct advertisements.” The amendment is intended to ensure that the definitions apply to all Commission rules and not just Ohio Adm. Code Chapter 3772-13.

The Commission does not anticipate an adverse impact on business from this rule, as it is required by R.C. 3772.03(D)(11) and the changes to the rule are solely meant to clarify that the rule applies to all of Ohio Adm. Code Chapter 3772, as is present practice.

- **3772-13-02 (amendment)**, titled “Advertising; promotion of responsible gaming.” Presently, this rule outlines the guidelines casino operators must follow when advertising. The purpose of this rule is to ensure that casino advertisements are truthful and that critical problem gambling resources are readily accessible to the general public. The amendment largely consists of the deletion of unnecessary language to streamline and clarify language. The rule also extends the time period for which a casino operator must retain records of all advertisements from two years to five years to mirror the general required retention period for casino operators.

The Commission anticipates minimal adverse impact on business from this rule, at best. The rule promotes general consumer protection practices in other casino gaming jurisdictions that the operators are accustomed to, including prohibiting false or misleading advertising and requiring disclosure of the problem gambling hotline. Further,

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

CSIOhio@governor.ohio.gov

casino operators have been operating according to this rule since the start of casino gaming in Ohio. The amendment to this rule will require casinos to keep advertising records for five years. However, the 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.

- **3772-13-03 (amendment)**, 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 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.

The Commission anticipates minimal adverse impact on business from this rule, at best. 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.

- **3772-22-01 (no change)**, titled “Sanctions.” The rule permits the Commission to discipline any licensee or applicant for specific actions. The purpose of the rule is to permit the Commission to effectively regulate the integrity of casino gaming by ensuring that those who violate R.C. Chapter 3772. or the rules adopted thereunder are held accountable.

While sanctions may, by their very definition, carry an adverse impact to a business; sanctions are required to ensure the integrity of casino gaming. The Commission uses its sanction power not simply as a punishment but as a tool to ensure future compliance. Further, those facing sanctions have all the due process guarantees that Ohio law affords to them prior to any sanction being imposed. Finally, only those who violate R.C. Chapter 3772. or the rules adopted thereunder face potential sanctions.

- **3772-23-06 (amendment)**, titled “Casino operator duties.” This rule serves to establish the responsibilities of casino operators with regards to the involuntary exclusion list. The purpose of the rule is to ensure casino operators enforce the involuntary exclusion list, ensuring the integrity of casino gaming. The amendments to this rule are largely streamlining and clarifying in nature, but also help provide additional flexibility in the submission of internal controls.

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

CSIOhio@governor.ohio.gov

The Commission does not anticipate an adverse impact on business from this rule. While the rule requires submission of certain documents and the training of employees, the cost is required by the statutory mandate in R.C. 3772.031 to have an involuntary exclusion list. The amendments to this rule should provide the operators with greater flexibility in the submission of documents and, therefore, should have a positive impact on business.

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

Each of the amendments to this package are needed to correct current issues, such as 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 licensing and ensuring certain other minimum standards for operators are met.

Moreover, the regulatory intent justifies any adverse impact because casino gaming is a highly regulated industry. Unregulated 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 casino operators.

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, few of which likely constitute a small business. 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, 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 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.

Cox, William

From: Siba, Michelle
Sent: Monday, July 25, 2016 4:22 PM
To: 'LisaPowers@jackentertainment.com'; 'RobertWamsley@jackentertainment.com'; 'Lynne.Mackin@pngaming.com'; 'Jessica.McGrady@pngaming.com'
Cc: Cox, William; Martin, Patrick; Donahue, Craig
Subject: 5 Year Review Rule Changes: 12, 13, and 23
Attachments: Combined Rules-Change Only.pdf

Good afternoon RCOs,

As you 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 with which you are all very familiar. The next batch of 5 Year Review rules are on the Commission's August meeting agenda for their initial approval. Although you all will have ample opportunity to provide feedback within the formal process, I am providing the draft language to you now. The rules contained in the attachment are:

- 3772-12-02 (including minor edits to the Voluntary Exclusion Program Application);
- 3772-12-03;
- 3772-12-04;
- 3772-12-06;
- 3772-13-02;
- 3772-23-01; and
- 3772-23-06.

You'll notice that most of the changes are not substantive in nature but rather some minor language changes to harmonize these rules with the rest of the Casino Control Law. **If you do have comments or suggestions that you would like to provide regarding the language, please send them to me via email by 5:00pm on Wednesday.** If you just have a question or need additional clarification, you may contact me at 614-387-0485 or Will Cox at 614-387-0482.

Respectfully,

Michelle



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

Michelle.Siba@casinocontrol.ohio.gov