

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: July 2019 Five Year Review

Rule Number(s): 3772-9-02 and appendix (amendment); 3772-10-18 (amendment); 3772-11-17 (no change)

Date: July 17, 2019

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |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.

The amendments contained within this rule package govern electronic gaming equipment and table games operations. One consistent change, a reflection of present practice, is codifying the Executive Director’s approval authority throughout the rules, given that role’s responsibility to administer casino gaming pursuant to R.C. 3772.06. This will allow for day-to-day casino operations to generally be more dynamic, without sacrificing regulatory oversight.

- **3772-9-02 and appendix (amendment)** – titled, “Approval for use in a casino facility.” This rule governs which electronic gaming equipment (“EGE”) may be used in a casino facility and includes an appendix of standards, which the EGE must be tested against and meet. Most of the changes are non-substantive, made for the sake of readability, or to reflect present practice. One change of note is the removal of the specific procedure for submission of EGE for approval because it does not reflect present practice and

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

CSIOhio@governor.ohio.gov

unnecessarily restricts the methods for submission and the Commission’s management of the process. With respect to the appendix, non-substantive edits were made for readability and language clarified that EGE must meet the standards, rather than the entities submitting the EGE for testing. Finally, updated versions of GLI Standards One, Seven, and Eleven replace older versions and a thirteenth standard, “Card Shufflers and Dealer Shoes” is proposed for adoption, as well.

- **3772-10-18 (amendment)** – titled “Table drop boxes and electronic gaming equipment bill validator canisters: physical requirements and transportation.” This rule governs the physical requirements and transportation procedures for both table game drop boxes and electronic gaming equipment bill validator canisters. Nearly all of the amendments are proposed to reflect present practice, including the use of the Executive Director’s authority to administer casino gaming, as discussed above. Casino operators will no longer need to include the specific times and procedures for transport of these items in their internal controls, which requires approval at a monthly public Commission meeting. Rather, their dynamic nature merits a more flexible approval procedure, resulting in the amendment for submission to the Executive Director. Finally, some non-substantive edits were made for readability. The purpose of this rule is to ensure adequate controls are in place for table game drop boxes and electronic gaming equipment bill validator canisters while allowing each casino operator to determine the appropriate methods for doing so at each casino facility.
- **3772-11-17 (no change)** – titled “Counterfeit chips.” No changes are proposed for this rule, which requires casino operators to immediately deliver a counterfeit chip to Commission gaming agents upon discovery. The purpose of this rule is to ensure that the Commission can commence an appropriate investigation of the use of counterfeit chips without unnecessary interruptions in the chain-of-custody.

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

R.C. 3772.03; 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 is not applicable to these amendments because the federal government does not regulate casino gaming in this state. Rather, casino gaming is permitted pursuant to Article

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

CSIOhio@governor.ohio.gov

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 by prescribing rules for how casino gaming shall be conducted, including rules governing EGE, internal control systems, and table games. To ensure the integrity of casino gaming, it is imperative to protect casino patrons and to maintain the integrity of gaming equipment. These amendments are designed to effectuate this constitutional and statutory mandate by establishing minimum internal control standards for activities occurring at the casino facilities, standards for EGE, and for the protection of the patrons and members of the public.

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 the amendments in terms of whether they help to ensure the integrity of casino gaming while recognizing the limited practical concerns casino operators face. This can be done in two ways: First, through evaluating whether the administrative cost of implementing and enforcing the proposed amendments outweighs their public benefit. Second, through analyzing the regulated community's comments about requests for waivers or variances from the rules once the amendments 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. ("Penn"): Hollywood Casinos Columbus and Toledo
- JACK Entertainment, LLC ("JACK"): JACK Cincinnati and Cleveland Casinos

Casino operators were provided an opportunity to comment on the amendments via e-mail on June 26, 2019. (Exhibit 1.) Comments were requested to be submitted, in writing, by 12:00 PM on July 3. Finally, stakeholders had the opportunity to comment during the Commission's public meeting on July 17, 2019.

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

The Commission received no feedback for the amendments.

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

CSIOhio@governor.ohio.gov

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.

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 how other jurisdictions approached rules regarding electronic gaming equipment and other internal controls. Further, Commission staff considered past practice under the rules as presently written, whether the existing rules were the most efficient means by which to maintain the integrity of casino gaming in this context, and whether any waivers or variances had been requested and granted to the regulated community.

All of the amendments, including those made to the appendix, which adopt EGE standards that are common throughout the casino gaming industry, are a conglomeration of adaptations from past and present practice, informed by what other jurisdictions do. 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.

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.*

To the extent that these rules cover the internal controls that each casino operator must implement, they do include a performance-based component, which largely sets the floor for compliance but does not completely dictate how the casino operators are supposed to achieve compliance. Those internal controls provide an opportunity for each casino operator to adopt and implement procedures most appropriate to each casino facility, in order to achieve compliance. Additionally, Ohio Adm. Code 3772-1-04 allows the casino operators 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. Other provisions, though, do not contain performance-based regulations.

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 these areas currently exist with respect to casino gaming in this state, over which the Commission has sole authority.

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 conduct regular audits, including table game and electronic gaming equipment audits, to ensure compliance with Ohio law. Any issues that arise will be funneled to the Commission’s central office in Columbus, Ohio, where the Executive Director and the division directors 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 and management companies (described above in response to Question 7) are the impacted business community with respect to these rules and 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 include fines for noncompliance, costs for employee time and payroll for, among other things, developing internal control procedures, training, and sending notifications and reports to the Commission, as well as the potential for other monetary costs to the casino operators, 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.

As noted above, one consistent change throughout the amendments, which is also a reflection of present practice, is codifying the Executive Director’s approval authority throughout the rules, given that role’s responsibility to administer casino gaming pursuant to R.C. 3772.06. The Commission anticipates this to have a positive impact on business because it will allow for day-to-day casino operations to generally be more dynamic, without sacrificing regulatory oversight.

- **3772-9-02 Approval for use in a casino facility.**

The changes in this rule are largely housekeeping that have developed as a result of Commission audits, in an effort to streamline and clarify the language. The amendments to the appendix also introduce updated versions of some technical standards, which simply reflect anticipated technological development. These are standards available to and common in the casino gaming industry. There are no anticipated additional or increased costs to have EGE tested against the updated standards, aside from the costs already incurred in the course of testing. In fact, the amendments are largely a reflection of present practice, and to bring the rule up to date, as most casinos are already operating in compliance with the updated versions of the standards.

One substantive change is the removal of the specific procedure for submission of EGE for approval because it does not reflect present practice and unnecessarily restricts the methods for submission and the Commission's management of the process. The Commission does not anticipate any negative economic impact or added cost of compliance to the regulated community because the amendments does not impose any new restrictions and casino operators are generally already accustomed to everything that the changes call for. Rather, they clarify existing language and more accurately reflect the Commission's present practice and updated technological standards.

- **3772-10-18 Table drop boxes and electronic gaming equipment bill validator canisters: physical requirements and transportation.**

The changes in this rule are largely made to reflect present practice, including the use of the Executive Director's authority to administer casino gaming, and to clarify the existing language. The only substantive change is the shift toward a more flexible approval procedure wherein casino operators will no longer need to include the specific times and procedures for transport of these items in their internal controls. Because no new regulatory requirement was imposed and because an existing requirement has been reduced, the Commission does not anticipate a negative economic impact or added cost of compliance for casino operators.

- **3772-11-17 Counterfeit chips.**

The purpose of this rule is to ensure that the Commission can commence an appropriate investigation of the use of counterfeit chips without unnecessary interruptions in the chain-of-custody. This rule is not being amended.

This rule requires casino operators to immediately deliver a counterfeit chip to Commission gaming agents upon discovery. Each of the casinos in the state already performs accordingly and, therefore, no casino operator is required to act in order to achieve compliance.

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

The amendments in this package are primarily to update and adjust the rules governing electronic gaming equipment and other related internal control systems. Most of the changes are non-substantive, made for the sake of readability, or to reflect present practice. Put simply, all the changes should clarify expectations, tailor regulatory responsibilities, and eliminate unnecessary burdens. 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 casino operators are met.

Moreover, 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 regulations only impact the casinos, none of which likely constitute a small business. Further, these rules and 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 rules and amendments because the rules only impact the casinos, 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 rules and amendments, the Commission will provide verbal and written notification to the small business 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:
100 E. Broad Street, 20th Floor
Columbus, OH 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 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.

EXHIBIT 1

Siba, Michelle

From: Siba, Michelle
Sent: Wednesday, June 26, 2019 1:09 PM
To: Lisa Powers; Robert Wamsley; Cynthia Hays; Samuel.Porter@icemiller.com; Mackin, Lynne; McGrady, Jessica
Cc: Fleenor, Chris; Donahue, Craig
Subject: 5 year review for Ohio Adm. Code 3772-9-02 and appendix, 3772-10-18, and 3772-11-17
Attachments: 3772-9-02 APPENDIX.pdf; 3772-9-02.pdf; 3772-10-18.pdf; 3772-11-17.pdf; CLEAN - 3772-9-02 APPENDIX.pdf; CLEAN - 3772-9-02.pdf; CLEAN - 3772-10-18.pdf

Good afternoon everyone,

Attached you will find 3 rules for which the Commission conducted its 5 year review: Ohio Adm. Code 3772-9-02 and appendix, 3772-10-18, and 3772-11-17. There are proposed amendments to 3772-9-02, its appendix, and 3772-10-18. There are no proposed changes to 3772-11-17. For your convenience, I've attached clean and redline versions of the proposed amendments. Please review the rules and, if you would like to discuss them, feel free to reach out to Craig Donahue (614-387-5687), Chris Fleenor (614-387-0314), or me. **If, however, you would like to provide written comments, please do so by 12:00 p.m. on July 3.** All 3 of these rules are tentatively scheduled for initial approval at the July 17 Commission meeting.

Thank you all.

Michelle



Michelle Siba

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

Michelle.Siba@casinocontrol.ohio.gov