

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

Agency Name: Casino Control Commission ("Commission")

Regulation/Package Title: MICS, Table Games, & Advertising

Rule Number(s): 3772-10-25; 3772-11-01 ; 3772-11-02; 3772-11-03; 3772-11-04; 3772-11-05; 3772-11-06; 3772-11-07; 3772-11-08; 3772-11-09; 3772-11-10; 3772-11-11; 3772-11-12; 3772-11-13; 3772-11-14; 3772-11-15; 3772-11-16; 3772-11-17; 3772-11-18; 3772-11-19; 3772-11-20; 3772-11-21; 3772-11-22; 3772-11-23; 3772-11-24; 3772-11-25; 3772-11-26; 3772-11-27; 3772-11-28; 3772-11-29; 3772-11-30; 3772-11-31; 3772-11-32; 3772-11-33; 3772-11-34; 3772-11-35; 3772-11-36; 3772-11-37; 3772-11-38; 3772-11-39; 3772-11-40; 3772-11-41; 3772-11-42; 3772-11-43; 3772-13-01; 3772-13-02; & 3772-13-03

Date: 1-31-2012

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☐ Rescinded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.

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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 proposed rules contained within the “MICS, Table Games, & Advertising” Rule Package relate directly to the minimum internal controls that casino operators must employ while conducting and promoting casino gaming. Stated differently, these rules require adherence to and implementation of minimum internal controls to protect the integrity of casino gaming, casino patrons, and the public as a whole.

Broadly described, the minimum internal controls pertain to unclaimed winnings held by the operators, table games manufactured by gaming-related vendors and operated by the operators, and advertising provided by the operators. Each rule or set of rules is discussed in turn.

3772-10-25 concerns a minimum internal control standard that is designed to ensure the integrity of casino gaming and to protect casino patrons. More specifically, this rule requires the operators to handle unclaimed winnings in compliance with Chapter 169. of the Revised Code.

3772-11-01 through 3772-11-43 provide the regulatory framework that vendors and operators must adhere to when creating, developing, manufacturing, distributing, and operating table games. In addition to establishing basic definitions (3772-11-01), the rules do the following: **1)** require the operators to create and submit to the Commission for approval internal controls and rules for the table games (3772-11-02 and 3772-11-03); **2)** prohibit table game play by operator employees and vendor employees (3772-11-04); **3)** require that table games and equipment only be purchased from authorized vendors (3772-11-05); **4)** establish a framework for shipment and receipt of table games and equipment (3772-11-06 and 3772-11-07); **5)** establish prohibited activities (3772-11-08); **6)** require publication of rules and payoff schedules for all permitted table games (3772-11-09); **7)** allow for the waiver of table game requirements (3772-11-10); **8)** establish chip specifications (3772-11-11); **9)** require submission of chips for review and approval by the Commission (3772-11-12); **10)** require operators to have primary, secondary, and reserve sets of gaming chips (3772-11-13); **11)** establish the framework for the exchange of value and non-value chips (3772-11-14); **12)** require the inventorying of chips (3772-11-15); **13)** establish the framework for the destruction of chips, for dealing with counterfeit chips, and handling chips (3772-11-16, 3772-11-17, and 3772-11-19); **14)** create the protocol for tournament chips and tournaments (3772-11-18); **15)** establish dice specifications (3772-11-20); **16)** create the protocol by which dice must be received, stored, inspected, and removed from use (3772-11-21); **17)** establish table game and poker card specifications (3772-11-22); **18)** create the protocol by which table game cards must be received, stored, inspected, and removed from use (3772-11-23); **19)** establish a mandatory table game count procedure (3772-11-24); **20)** create the protocol for handling cash at gaming tables (3772-11-25);

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21) require the inventorying of table games (3772-11-26); **22)** establish the framework by which gaming table games must be opened and closed (3772-11-27 and 3772-11-28); **23)** create the protocol for progressive table games (3772-11-29); **24)** establish the procedures for the manual and automated filling of chips (3772-11-30 and 3772-11-31); **25)** create the procedures for the manual and automated recording of table credits (3772-11-32 and 3772-11-33); **26)** establish the framework for table game layouts (3772-11-34); **27)** provide minimum staffing requirements for specific table games (3772-11-35); **28)** provide a framework for instructional table games offered to the public (3772-11-36); **29)** create the protocol for minimum and maximum table game wagers (3772-11-37); **30)** establish the procedure for dealer and boxperson hand clearing (3772-11-38); **31)** create the protocol for table game jackpots and for use of employee pocketbooks (3772-11-39); **32)** establish poker room requirements—generally, supervisory, and banks and other transactions (3772-11-40, 3772-11-41, and 3772-41-42); and **33)** establish procedures for monitoring and reviewing table game operations.

3772-13-01 through 3772-13-03 create the regulatory structure by which the Commission can regulate advertisements used by the operators. In addition to establishing basic definitions (3772-13-01), the rules also do the following: **1)** require that any advertising by the operators not be false, deceptive or misleading and establish responsible gaming parameters (3772-13-02); and **2)** require the operators to create and submit to the Commission for approval minimum internal controls pertaining to the operators' promotional activities (3772-13-03).

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

- 3772-10-25 → RC 3772.03, 169.01, & 169.02
- 3772-11-01 through 3772-11-43 → RC 3772.03 & 3772.033
- 3772-13-01 through 3772-13-03 → RC 3772.03

3. Does the regulation implement a federal requirement? NO. 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? NO. *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 proposed rules 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 controlled by Ohio's Casino Control Act (i.e., Chapter 3772. of the Revised Code).

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 Chapter 3772. of the Revised Code require the Commission to ensure the integrity of casino gaming. Part and parcel to this requirement is the protection of casino facility patrons and the public as a whole, which can be gleaned, in part, from the General Assembly's requirement that the Commission prescribe rules for how casino gaming should be conducted (i.e., minimum internal control standards); for how the gaming supplies, devices, and equipment should be designed; for tournament play in casino facilities; and establishing standards regarding the marketing materials used by licensed casino operators. These proposed rules are designed to effectuate this constitutional and statutory mandate by establishing minimum internal control standards for the handling of money and financial transactions occurring at the casino facilities, for the conducting of table games, and for the protection of patrons and members of the public who do not want to participate in or receive advertisements for casino gaming.

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 proposed rules in terms of whether they helped to ensure the integrity of casino gaming and protected both casino patrons and members of the public who do not want to participate in or receive marketing materials about casino gaming. This can be done in three main ways. First, through evaluating whether the administrative cost of implementing and enforcing the proposed rules outweighed their public benefit. Second, through analyzing the regulated community's comments about and requests for waivers or variances from these rules once they are implemented. Third, through analyzing the public's comments about certain activities at the casino facilities and the receipt of unwanted marketing materials.

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
- Rock Ohio Caesars – joint venture between Rock Gaming and Caesars Entertainment

Gaming-related Vendors

- Suzo-Happ
- Azure Gaming
- Multimedia Games
- Galaxy Gaming
- American Gaming Compliance
- IGT
- Konami Gaming
- Bally Technologies
- Spielo International
- Ainsworth
- Interblock Gaming Products
- Cadillac Jack, Inc.
- WMS Inc.
- MEI
- Shuffle Master
- Representatives of gaming-related vendors
 - Kegler, Brown, Hill & Ritter
 - Taft Stettinius & Hollister LLP
 - Melamed Communications

The above-listed stakeholders were initially contacted via email, with Word document attachments of the proposed rules, on January 12, 2012, at 4:34 P.M. (casino operators) and 6:02 P.M. (gaming-related vendors). Notably, the stakeholders were permitted to review and comment on the rules before submission to the members of the Commission for consideration.

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

Casino Operators

Both of the casino operators were afforded an opportunity to review drafts of these proposed rules before submission to the Commission and both provided comments and suggested edits. If the suggested changes complied with Ohio law and were otherwise well-taken, they were adopted; if not, they were noted, but not incorporated into the draft presented to the members of the Commission at the public meeting held on January 18, 2012. A copy of the correspondence between the Commission and the operators has been included with this analysis.

As can be gleaned from the included correspondence, the operators offered numerous comments and suggestions regarding these proposed rules. The operators also provided additional commentary on these rules at a meeting held to address any outstanding concerns they had with the rules before the rules were presented to the Commission at the January 18, 2012 public meeting. Consequently, the operators had a significant influence on the draft presented to the Commission, though not all of the operators' comments were well-taken.

- 3772-10-25

Both operators took issue with this rule because casino gaming does not lend itself well to the requirements of Revised Code Chapter 169.—Ohio's unclaimed funds statute. Absent a statutory change, however, the unclaimed funds statute mandates that the operators comply with the requirements of Revised Code Chapter 169. This rule informs the operators of their obligations and establishes the reporting framework by which they must comply.

- 3772-11-01 through 3772-11-43

Both operators offered numerous comments and suggestions with respect to the table game rules. All were considered by the Commission and its counsel from the Attorney General's Office, and the following substantive changes were made as a result:

- 3772-11-06 → The requirement that the person causing the shipment of table game equipment notify the executive director of such shipment at least fifteen days beforehand was reduced to seven days;
- 3772-11-11 → The rule now allows the operators to use twenty-five thousand dollar chips, which must be colored blue;

- 3772-11-21 → The rule no longer requires operators to retire dice at the end of the gaming day; instead, the operators can establish their own procedures for retiring dice;
 - 3772-11-26 → The rule now permits operators to accept coupons or markers, if applicable, from patrons at the gaming tables;
 - 3772-11-35 → The rule no longer imposes strict staffing requirements for the table games areas; now, the operators are given wider discretion for staffing those areas;
 - 3772-11-36 → The requirement that written notification be submitted for Commission approval of any instructional table games offered to the public at least fifteen days beforehand has been reduced to seven days; and
 - Two rules (originally numbered 3772-11-43 and 3772-11-44), which respectively concerned gaming table drop device characteristics and procedures for the collection and transportation of drop devices, have been eliminated from the regulatory framework.
- 3772-13-01 through 3772-13-03

While both operators provided comments on these rules, only Penn National offered substantive revisions, whereas Rock Ohio Caesars sought various clarifications. In response to these comments, the Commission did the following:

- 3772-13-02 → Expressly stated that the location of the casino need not be included on billboards within thirty miles of the casino facility;
- 3772-13-02 → Removed the prohibition of outdoor advertising within five hundred feet of any church, public playground, or public or non-public elementary or secondary school property;
- 3772-13-02 → Modified the process that operators must follow in response to receipt of a request to be removed from their direct advertisements;
- 3772-13-02 → Modified the Commission's approval process of advertisements by lessening the amount of days the Commission has to review the material as well as changing from an approval process to an objecting process—i.e., the operators may begin using advertisements properly submitted to the Commission if the Commission does not notify the operators of its objection thereto within five business days;

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- 3772-13-03 → Removing requirement that the requisite disclosure be pre-printed on all promotional materials; and
- 3772-13-03→ Removing the requirement that unused promotional coupons be kept and inventoried for at least two years and replacing it with a requirement that only an example of those promotional coupons must be maintained for that period of time.

Gaming-related Vendors

The gaming-related vendors were afforded an opportunity to review drafts of these proposed rules before submission to the Commission and two vendors (Interblock and Shuffle Master) provided comments and suggested edits. If the suggested changes complied with Ohio law and were otherwise well-taken, they were adopted; if not, they were noted, but not incorporated into the draft presented to the members of the Commission at the public meeting held on January 18, 2012. A copy of the correspondence between the Commission and the vendors has been included with this analysis.

- Interblock

Interblock requested clarification of the definition of “Table Game Mechanism” so that the term will allow for the use of electronic add-ons with games other than roulette. This suggestion was not well-taken because the definition already contemplates the use of such electronic add-ons without further clarification. It appears that the request resulted from the use of the phrase “including a roulette wheel and an electronic add-on for the placement of wagers.” Inclusion of that phrase, however, is not limiting language; rather, the phrase is used to specifically include those components as well as to illustrate the types of components that fall within the definition of “Table Game Mechanism.”

- Shuffle Master

Shuffle Master made three specific requests. First, the vendor requested the definition of “Burning cards” be amended to include those cards that are discarded during a round of play. This comment was well-taken and the definition was modified to include “and a process of a dealer discarding other cards as required by the game rules.” Second, Shuffle Master requested that 3772-11-03(C) be amended to include a specific time limitation for trial periods of table games. The vendor recommended a ninety day limitation. While the suggestion was well-taken and paragraph (C) was modified, the Commission decided not to set a specific time limitation, but rather to allow the Commission to condition any trial period with a durational limit, if it chooses to do so. Third, the vendor requested that the fifteen days advance notification of shipments contained within 3772-11-06(A) be reduced to seven days. This comment was well-taken and implemented into the revised version of the rule.

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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 proposed rules because no scientific data was necessary to develop them or to measure their outcomes. Instead, the Commission staff reviewed how other jurisdictions (e.g., Kansas, Indiana, Illinois, Missouri, and New Jersey) approached establishing the minimum internal control standards as well as table game and advertising regulations. In so doing, the Commission staff 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?

Because these proposed regulations are statutorily mandated, the Commission did not consider alternative regulations. Instead, as part of the drafting process, the Commission staff reviewed the rules adopted in several other jurisdictions—e.g., Kansas, Indiana, Illinois, Missouri, and New Jersey. These rules are a conglomeration of the rules used by the other jurisdictions and are the result of discussions between Commission staff, the Attorney General's Office, and the regulated community.

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.*

With these proposed rules, the Commission did consider performance-based regulations; and, in the end, some of the rules include a performance-based component wherein they set the floor for compliance, but do not completely dictate how the casino operators are supposed to achieve compliance. In addition, while proposed rule 3772-11-10 allows operators to request specific waivers from the table game requirements, rule 3772-1-04 allows the operators to seek waivers or variances from the minimum internal control standards and advertising rules generally, 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. The rules, however, are not entirely performance-based because they establish a protocol whereby the operators must submit their minimum internal control standards, table game rules and procedures, and marketing materials to the Commission for approval before implementation.

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 proposed rules because no regulations in these various areas currently exist with respect to casino gaming in this state.

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 regulated community here is small, as constitutionally and statutorily defined. With respect to these proposed rules, there are two casino operators, four casino facilities, and less than thirty gaming-related vendors that are affected. Further, at each of the casino facilities, there will be gaming agents and financial auditors observing, evaluating, and investigating the operations. In addition, any issues that arise at any point in the gaming process (i.e., from manufacturing through the actual conducting of gaming) 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.

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 gaming-related vendors who manufacture or distribute table game equipment are the impacted business community with respect to these proposed rules.

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

Casino Operators

The nature of the adverse impact is employer time for compliance (i.e., design, creation, training, and implementation regarding the operators’ minimum internal control standards and table game operations); inability to conduct casino gaming absent approval of their minimum internal control standards and table game rules and procedures; inability to use certain marketing materials if the Commission objects; administrative adjudications and civil actions; and administrative penalties (e.g., denial, suspension, revocation, non-renewal, and fines or other monetary penalties) and civil judgments for non-compliance.

Gaming-related Vendors

The nature of the adverse impact is employer time for compliance (i.e., design, manufacture, and distribution of table game equipment); inability to distribute non-compliant or unauthorized table game equipment; administrative adjudications and civil actions; and administrative penalties (e.g., denial, suspension, revocation, non-renewal, and fines or other monetary penalties) and civil judgments for non-compliance.

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.

While these proposed rules do have some impact on casino operators and gaming-related vendors, they are sound business practices and industry standards for casino operations. And, as discussed below, the rules impact the operators differently than the vendors.

Casino Operators

The operators’ costs for following these minimum processes come in three stages. First, there is staff time required in preparing the minimum internal control standards, establishing specific table game procedures and rules, and designing and selecting compliant advertisements that the operators must then implement. The amount of staff time required to develop and implement these standards, procedures and rules, and compliant advertisements depends on a number of factors, including whether the operators already have well-developed internal controls, table games procedures and rules, and marketing materials that can be modified for compliance with Ohio’s framework. For this, we must defer to the two operators for estimates on the staff time involved in creating their minimum internal controls, table games procedures and rules, and marketing materials.

Second, the operators incur costs as part of constructing their facilities, ordering their table games equipment, establishing their brand, and producing viable marketing materials. The operators are in the best position to evaluate these costs, which likely differ depending on the operator.

Third, certain minimum internal control standards require that processes be established and followed, and those processes impact staff time. Again, we must defer to the operators regarding how efficiently they can train on and follow their own minimum internal controls and table game procedures and rules.

It should be noted that the costs incurred by the operators as a result of these proposed rules are likely calculated as a part of the operators' operational budgets—i.e., the cost of doing business. This is so because the operators are sophisticated gaming companies that have affiliate casino operations in other jurisdictions and are used to these types of regulations, which are standard in the industry.

Gaming-related Vendors

Because these proposed rules only have an indirect impact on vendors as a result of their direct impact on the operators, it is difficult to quantify any adverse impact felt by the vendors, especially when it is likely that any additional costs would be shifted from the vendors to the casino operators. Notwithstanding this difficulty, some vendors may experience certain additional costs for Ohio specific designs or new games they hope to sell to Ohio casino operators. For the most part, Ohio specific designs and the implementation of new games will depend on business decisions between the operators and the vendors; however, there may be a tangential impact from these proposed rules because they implicate minimum internal controls for table games as well as table games procedures and rules, all of which must be submitted to the Commission for approval. Depending on the submittals and Commission approvals, this may cause certain vendors to produce products specifically tailored for the Ohio market.

In addition, as technology changes, traditional table games begin to include electronic gaming equipment (e.g., automatic shufflers). Any such gaming equipment would need to be tested and approved by an Ohio certified independent testing laboratory before it could be distributed to the Ohio market. Testing equipment has an inherent cost to it, which is usually initially borne by the vendor seeking approval; however, an analysis of such a cost must be deferred to the vendors themselves because the cost depends on the type of equipment being tested, the independent certified testing laboratory selected to test the equipment, and whether that cost is directly passed on to the operators.

Like with the operators, the costs incurred as a result of these rules (if any) are likely calculated as a part of the vendors' operational budgets—i.e., the cost of doing business. This is so because the vendors are sophisticated gaming companies that are licensed in other jurisdictions and are used to these types of regulations, which are standard in the industry.

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

The regulatory intent justifies the adverse impact because Article XV, Section 6(C) of the Ohio Constitution and Chapter 3772. of the Revised Code require the Commission to ensure the integrity of casino gaming. To do so, the Commission is charged with the responsibility of requiring the casino operators to establish and implement minimum internal control standards regarding how casino gaming should be conducted; how the gaming supplies, devices and equipment should be designed; tournament play; and marketing materials used by licensed casino operators. These proposed rules do just that.

Additionally, the regulatory intent justifies the adverse impact because casino gaming is a highly regulated industry in general. This is so for two main reasons. First, unregulated casino gaming can pose a threat to the public welfare. Second, for the most part, casino gaming involves numerous cash transactions that do not involve receipts, which raises the potential for fraud and abuse. To mitigate these potential threats, the Commission, like other gaming regulatory bodies, is using its regulatory authority to establish a “best practices” framework that backgrounded, licensed casino operators, gaming-related vendors, and casino gaming employees must follow.

Regulatory Flexibility

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

Yes (directly and indirectly), though it is unlikely this will be necessary since these proposed regulations only impact the casino operators and certain gaming-related vendors, none of which likely constitute a small business. The proposed table game rules provide a direct exemption through a specific rule allowing for waiver of any table game requirements if approved by the Commission. The other rules indirectly provide an exemption or alternative means of compliance through 3772-1-04, which permits the Commission, upon written request, to grant waivers and variances from the rules adopted under Chapter 3772. of the Revised Code, including these rules, if doing so is in the best interest of the public.

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 section 119.14 of the Revised Code will apply to these proposed rules because the rules only impact the casino operators and certain gaming-related vendors, none of which likely constitute a small business, the Commission will adhere to the statutory requirements thereunder, if applicable.

To the extent section 119.14 of the Revised Code would apply to a violation of these proposed rules, 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 establish casino gaming in this state and ensure the integrity of such gaming. As a result, the following resources are available:

- Commission's mailing address:
10 West 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
- Sign up for Commission email updates: <http://www.casinocontrol.ohio.gov/JoinUs.aspx>

Also, all members of the regulated community and the 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.

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