

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

Agency Name: Casino Control Commission ("Commission")

Regulation/Package Title: Casino Operators, Electronic Gaming Equipment, & MICS

Rule Number(s): 3772-4-10; 3772-4-11; 3772-9-08; 3772-9-09; 3772-9-10; 3772-9-11; 3772-10-08; & 3772-10-23

Date: 2-3-2012

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☐ Rescinded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.

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 "Casino Operators, Electronic Gaming Equipment, & MICS" Rule Package relate directly to the minimum internal controls that casino operators (and to some extent certain gaming-related vendors) must employ while casino gaming is being conducted. In other words, 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.

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Broadly described, these rules pertain to the certification of contractors, computation of gross casino revenue for tax purposes, electronic gaming equipment, slot machine meter readings, and the extension of credit. Each rule or set of rules is discussed in turn.

3772-4-10 through 3772-4-11 place certain obligations on the operators to protect the integrity of casino gaming and to ensure all requisite taxes are collected. For example, the former requires operators to receive specific certifications from the contractors that they wish to do business with, unless a contractor meets a specified exception. The latter requires the operators to file their returns and pay their taxes within the statutory timeframe and to assist the tax commissioner, if requested to do so.

3772-9-08 through 3772-9-11 establish the framework by which the operators may tinker with machines after installation and approval for operation. More specifically, the rules pertain to **1)** the movement of electronic gaming equipment within a casino facility (3772-9-08); **2)** the removal of electronic gaming equipment from the casino facility's gaming floor (3772-9-09); **3)** electronic gaming equipment maintenance, repair, or other types of servicing (3772-9-10); and **4)** remote systems access by authorized gaming-related vendors (3772-9-11).

3772-10-08 and 3772-10-23 are two minimum internal controls designed to protect the integrity of casino gaming. While the former concerns slot machine meter readings and related statistical reports (which is important for auditing purposes), the latter concerns the extension of credit by the operators to patrons (which all operators plan to have available).

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

- 3772-4-10 through 3772-4-11 → R.C. 3772.03
- 3772-9-08 through 3772-9-11 → R.C. 3772.03
- 3772-10-08 and 3772-10-23 → R.C. 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 and standards regarding the decertification of contractors; the establishment of means to assist the tax commissioner in levying and collecting the gross casino revenue tax; the repair of casino gaming equipment; how casino gaming should be conducted (i.e., minimum internal control standards); and any other thing necessary and proper for successful and efficient regulation of casino gaming. These proposed rules are designed to effectuate this constitutional and statutory mandate by establishing decertification standards, means of assisting the tax commissioner, repair standards for electronic gaming equipment, and minimum internal control standards for slot machine meter readings and the extension of credit by the casino operators to patrons.

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 ensure the integrity of casino gaming, assisted the tax commissioner in levying and collecting the gross casino revenue tax, and protected casino patrons. This can be done in four main ways. First, through evaluating whether the rules provided the regulatory framework necessary to prohibit improper conduct. Second, through consideration of whether the administrative costs of implementing and enforcing the proposed rules outweighed their public benefit. Third, through analyzing the regulated community's comments about and requests for waivers or variances from these rules once they are implemented. Fourth, through analyzing the public's comments about activities occurring at the casino facilities.

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

The operators were initially contacted via email, with Word document attachments of the proposed rules, on January 27, 2012, at 10:50 A.M. Notably, the operators 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?

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 February 1, 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 February 1, 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.

3772-4-10 through 3772-4-11

- 3772-4-10

In addition to making some stylistic changes, the Commission made the following changes in response to the operators' comments:

- Changed the qualifying contractual amount for certification from \$10,000.00 to \$100,000.00; and

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- Created a list of exceptions to the certification requirement.

- 3772-4-11

No changes were made to this rule because the suggestions overreached the Commission's authority. Chapter 3772. of the Revised Code only requires the Commission to adopt a regulatory framework for assisting the tax commissioner with collecting the taxes levied under Chapter 5753. of the Revised Code. This rule does just that while still allowing the tax commissioner to exercise his authority under Chapter 5753. of the Revised Code.

3772-9-08 through 3772-9-11

- 3772-9-08

In response to the operators' concerns, the Commission clarified the intent of paragraph (A) by adding an exception for the movement of malfunctioning electronic gaming equipment. Under the new construct, the five day prior written notification requirement does not apply to the movement of malfunctioning electronic gaming equipment; instead, the operators need to immediately notify the Commission of the movement.

- 3772-9-10

As a result of the operators' comments, the Commission added in clarifying language explicitly stating that the gaming floors are secure locations approved by the Commission.

3772-10-08 and 3772-10-23

- 3772-10-08

To address a concern raised by the operators, paragraph (H) of this rule excepts out "[a] comparison of the theoretical hold with the actual hold, by machine, by denomination, and in total" from the significant variance requirement.

- 3772-10-23

Rock Ohio Caesars requested that paragraph (E) be changed from requiring the operator to not "extend credit to any patron who has not made a payment on the patron's outstanding credit within a period thirty days" to as "stated in the operator's internal control procedures." This suggestion was noted, but not incorporated since it can be dealt with through a waiver, if the Commission deems appropriate.

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, electronic gaming equipment standards, and contractor decertification standards. The staff also reviewed relevant Ohio materials in drafting the standards for contractor decertification and for assisting the tax commissioner with levying and collecting taxes under Chapter 5753. of the Revised Code. In so doing, the staff used, 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—as well as applicable Ohio materials. These rules are a conglomeration of the rules used by other gaming jurisdictions and standards used in Ohio by other regulatory agencies as well as 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 or gaming-related vendors are supposed to achieve compliance. In addition, rule 3772-1-04 allows the operators to seek waivers or variances from the contractor decertification standards, the electronic gaming equipment standards, and the minimum internal control standards, 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. Vendors (gaming and non-gaming) can similarly seek waivers from the Commission, when applicable and necessary. The rules, however, are not entirely performance-based because they establish a protocol whereby the operators must submit their contractor decertification standards, electronic gaming standards, and minimum internal control standards 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.

For the most part, the regulated community here is small, as constitutionally and statutorily defined—there are two casino operators, four casino facilities, and less than thirty gaming-related vendors that are affected—though certain non-gaming vendors may be affected by the standards for decertifying contractors. 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 process will be funneled to the Commission's central office in Columbus, Ohio, where the Executive Director and his division directors and 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;

For the most part, the casino operators and gaming-related vendors who manufacture or distribute electronic gaming equipment are the impacted business community with respect to these proposed rules, though some non-gaming vendors may be affected by the Commission's contractor decertification rule.

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 (e.g., design, creation, training, and implementation regarding the operators' minimum internal control standards and electronic gaming operations); inability to conduct casino gaming absent approval of their minimum internal control standards and electronic gaming standards; inability to use certain contractors who/that can meet the certification requirements; requirement to assist the tax commissioner in levying and collecting the relevant taxes; administrative adjudications and civil actions; and

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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, distribution of, and training on remote access systems); inability to remotely access the operators' electronic gaming systems due to non-compliance or lack of authorization; 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.

Non-gaming Vendors

The nature of the adverse impact is the inability to contract with or continuing to operate under an existing contract with the operators if the contractor cannot meet the certification requirements. Notably, the contractor decertification rule (i.e., 3772-4-10) is statutorily mandated for those contractors that/who cannot certify that they are compliant with state and federal laws.

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 impact the casino operators, gaming-related vendors, and non-gaming vendors, they are sound business practices and industry standards for casino operations. And, as discussed below, the rules impact each category differently.

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 electronic gaming equipment procedures, and designing or selecting compliant systems for remote access. The amount of staff time required to develop and implement these standards, procedures, and systems depends on a number of factors, including whether the operators already have well-developed internal controls, electronic gaming equipment procedures, and remote access systems 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 and implementing their minimum internal controls, electronic gaming procedures, and remote access systems.

Second, the operators incur costs as part of constructing their facilities; ordering, installing, moving, and maintaining their electronic gaming equipment; and producing or using viable remote access systems. 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, electronic gaming equipment procedures, and remote system access procedures.

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

Some vendors may experience certain additional costs for remote system access designs and updates that need to comply with Ohio's regulatory framework. The extent of this cost (if any) will vary on a case-by-case basis as different systems are configured differently. In addition, gaming vendors that use the remote access systems to access information from the operators' electronic gaming equipment will have to train their employees and monitor their employees' activities, both of which increase staff time and compliance costs.

In addition, as technology changes, so will the electronic gaming equipment and the remote systems used to access that equipment. Any such changes would need to be tested and approved by the Commission before it could be implemented in Ohio. Testing equipment, such as remote access systems, has an inherent cost to it, which is usually initially borne by the vendors seeking approval of the system (unless the operators establish their own remote access systems); however, an analysis of such a cost must be deferred to the vendors themselves because that cost depends on the type of system being tested 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.

Non-gaming Vendors

The adverse impact pertaining to non-gaming vendors is the inability to contract with the operators as a result of non-compliance with state or federal laws. The cost here is simply the value of the potential contract with the operators. As noted above, the contractor decertification rule (i.e., 3772-4-10) is statutorily mandated for those contractors that/who cannot certify that they are compliant with state and federal laws.

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 decertify certain contractors; pay all of their taxes in accordance with Chapter 5753. of the Revised Code and the rules adopted thereunder; and establish and implement electronic gaming equipment and minimum internal control standards. 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 (indirectly), though it is unlikely this will be necessary with respect to these rules (except 3772-4-10) since they only impact the casino operators and certain gaming-related vendors, none of which likely constitute a small business. Notwithstanding the foregoing, all of the rules are indirectly provided 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 (except for 3772-4-10) because they 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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