



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Casino Control Commission
("Commission")

Rule Contact Name and Contact Information: Andromeda Morrison, 614-387-5616,
rulecomments@casinocontrol.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

2024 5YR Fantasy Contest Rule Changes

Rule Number(s): 3772-74-02(amendment), 3772-74-08(rescind), 3772-74-10.1(rescind), 3772-74-11(amendment), 3772-74-12(amendment), 3772-74-13(rescind), 3772-74-14(rescind), 3772-74-15(amendment), & 3772-74-17(amendment)

Date of Submission for CSI Review: 2/22/24

Public Comment Period End Date: 3/7/24

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/5rules (FYR? Yes)

Rescinded/4 rules (FYR? Yes)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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

CSIPublicComments@governor.ohio.gov

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

The rules presented here are being reviewed pursuant to the state's rule-review requirement in R.C. 106.03 and are those rules contained in Ohio Adm.Code Chapter 3772-74 (Fantasy Contests). Many of the revisions are meant to improve clarity or readability or to reduce redundancies in and between the Administrative and Revised Codes. In addition, certain regulatory restrictions were removed in order to comply with the restriction reduction requirements of S.B. 9 of the 134th General Assembly. Some changes made throughout remove references to the Fantasy Contest management company license and better specify what is required as a part of the yearly financial audit. Lastly, many changes have been made to update, streamline, and standardize rule language.

- **3772-74-02 (amendment)**, titled "Authority and purpose." This rule covers and its purpose is to provide the general authority of the Commission to adopt rules ensuring the integrity of fantasy contests. The rule also further specifies how such rules will be adopted and contains authority for the Commission to delegate responsibilities to the Executive Director and other employees in accordance with how the Commission does so under its other regulatory frameworks. The amendment to this rule removes the requirement that all notice, requests of, or correspondence to the Commission related to fantasy contest be made to the executive director. This change is made to reduce the

number of regulatory restrictions pursuant to S.B. 9 of the 134th General Assembly. The amendment also gives fantasy contest operators more options and flexibility in how they contact the Commission, while not compromising the integrity of fantasy contests.

- **3772-74-08 (rescind)**, titled “Management company licensure.” This rule governed the management company license process and largely mirrored the process and requirements for fantasy contest operators. In addition, the rule listed the fee amount for the management company license. This rule is being rescinded in order to reduce four regulatory restrictions towards S.B. 9 of the 134th General Assembly’s regulatory restriction reduction requirements. Moreover, the removal of the management company license will simplify the application process for operators as there will now only be one license application to consider, the Fantasy Contest Operator License. The fantasy contest management company license is not required to be offered by R.C. 3774 and the Commission has not received a management company application since this rule was first promulgated in 2019. The removal of this rule will streamline the Fantasy Contest rules.
- **3772-74-10.1 (rescind)**, titled “Initial internal procedures submissions.” This was a temporary rule in which the Commission drafted in additional time for first-time applicants in 2019 to provide internal procedures to the Commission. This rule was applicable to first time applicants who were already in operation in Ohio at the time the Fantasy Contest law was passed and comported with the statutory safe harbor created in Section 3 of House Bill 132 of the 132nd General Assembly. Due to this rule no longer being relevant or applicable, it is being rescinded.
- **3774-74-11(amendment)**, titled “Prohibited activities.” This rule states certain prohibitions under fantasy contest law, including operating or promoting a fantasy contest without a license, operating under names not provided to the Commission, extending credit to players, failing to provide requested information to the Commission, or making false statements to the Commission. This rule also prohibits certain conduct that would lead to fantasy contests not being based on the skill of fantasy contest players, as required by statute. The amendments to this rule clarify that the prohibition on auto draft functionality only applies to fantasy contest players for fantasy contests without input or control by a fantasy contest player. The purpose of this rule is to ensure that fantasy contests are only offered by those authorized to do so and that those who are authorized to offer fantasy contests do so in accordance with fantasy contest law and any guidance issued by the Commission.

- **3772-74-12 (amendment)**, titled, “Duties of fantasy contest operators.” This rule contains certain duties of fantasy contests operators. Generally speaking, the rule requires operators to provide patrons with the rules and terms of fantasy contests, to comply with those rules and terms, and to comply with their own internal controls. Additionally, operators are required to notify the executive director if they intend to cease doing business in Ohio and provide a description of how the operator will ensure fantasy contest player funds will be distributed to their rightful owners. The purpose of this law is to ensure that fantasy contest operators comply with fantasy contest law and facilitate the Commission in its goal to ensure the integrity of fantasy contests. The amendment to this rule removes several regulatory restrictions including, that operators must train their employees, that operators must provide documentation of patron fund protection every six months, and that operators must ensure the proper maintenance of records. In addition, this amendment removes language stating that operators must comply with notices and directives from the Commission, ensure prompt responses to the Commission, and notify the Commission of any violations of fantasy contest law. These changes are being made to reduce the regulatory restriction count pursuant to S.B. 9 of the 134th General Assembly. Additionally, the amendment streamlines and removes language redundancies that are already found in R.C. Chapter 3774.
- **3772-74-13 (rescind)**, titled “Duties of key employees.” This rule contained certain duties of key employees. These duties included serving as the representative of the operator, ensuring the operator timely meets all filing deadlines, ensuring the operator issues prompt responses to the Commission, notifying the Commission of any violations of fantasy contest law, and complying with all notices or directives from the Commission. This rule is being rescinded to reduce the number of regulatory restrictions pursuant to S.B. 9 of the 134th General Assembly. The removal of this rule will not hurt the integrity of fantasy contest because operators still have a duty to respond to all deadlines and inquiries.
- **3772-74-14 (rescind)**, titled “Duties of management company applicants or licensees.” This rule contained the duties of management company applicants or licensees. These duties included ensuring the fantasy contest operator associated with the management company is compliant with fantasy contest law, notifying the Commission of any violations of fantasy contests law, retaining all records required by law, promptly

responding to all inquiries from the Commission, and complying with all notices or directives from the Commission. This rule is being eliminated to reduce the number of regulatory restrictions pursuant to S.B. 9 of the 134th General Assembly. Additionally, this rule is no longer relevant or applicable because the management company license will no longer be offered due to rescinding Ohio Adm.Code 3772-74-08 (see above).

- **3772-74-15 (amendment)**, titled “Inspections and audits.” This rule details the process by which fantasy contest operators will obtain third-party audits to be conducted by approved, qualified certified public accountants. These audits are to be conducted and provided once every year for financial audits and once every three years (the license period) for compliance audits. The rule allows the Executive Director to waive any audit requirements under the rule, provided sufficient reason provided by the operator and allows the operator to have the Commission to instead conduct any audits, at cost. Finally, the rule provides that the Commission may require any production of documents or inspections needed from those participating in the conduct of fantasy contests and that those persons shall cooperate with such requirements. The purpose of this rule is to ensure that operators are complying with fantasy contest law through the use of audits and inspections. The amendments to this rule update and streamline language to remain consistent with other rules. The changes also clarify that the financial audit must be on a comparative basis for the current and prior fiscal years and must include both the operator’s operational and separate patron-fund entities. In addition, an operator that is publicly traded may submit its Form 10-K filed to the SEC to satisfy the requirement. Moreover, the amendment specifies that the financial report must be provided to the Commission within 120 days of the end of the fiscal year or upon receipt, whichever is earlier. The changes to this rule also removal the auditor approval requirement, instead allowing the Commission to terminate audit engagements if the requirements are not met or the auditor’s independence or qualifications come into question. The rule also removes a requirement that the audit come directly from the auditor, instead allowing the audit to be submitted by the operator.
- **3772-74-17 (amendment)**, titled “Hearings.” This rule governs any administrative action taken under fantasy contest law and provides that the provisions of R.C. Chapter 119 and Chapter 3772-21 of the Administrative Code will apply. These rules currently apply in any administrative action taken under the Commission’s other regulatory frameworks. The purpose of this rule is to ensure compliance with the due process of law as articulated in R.C. Chapter 119. The amendment to this rule removes the reference to Rule 3772-21-04 which no longer exists and is no longer applicable as of October 2021.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 3772.03, 3774.01, 3774.03, 3774.04, 3774.05, & 3774.07

4. **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

5. **If the regulation implements a federal requirement, but 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 rules because the federal government does not regulate fantasy contests in this state. Rather, fantasy contests are permitted and controlled by Ohio's Fantasy Contest Act (i.e., R.C. section 3772.03(L) and Chapter 3774).

6. **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)?**

R.C. section 3772.03(L) requires the Commission to ensure the integrity of fantasy contests and gives the Commission rulemaking authority to do so. Moreover, R.C. Chapter 3774, itself, contains several consumer protections, which delegate authority to the Commission, including requirements for the segregation of contest funds, encouraging responsible contest play, and providing for audit requirements, to name a few. This regulation is needed to effectuate the statutory mandate to ensure fantasy contest integrity and the needed consumer protections.

7. **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 this regulation in terms of whether they help to ensure the integrity of fantasy contests. 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.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

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

CSIPublicComments@governor.ohio.gov

9. 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.

In reviewing these rules, an email was sent on January 30, 2024, to stakeholders. (Exhibits 1 and 2). Stakeholders were asked to submit any written comments on the rules by 5:00 p.m. on February 9, 2024. (Exhibit 1). These stakeholders included employees or representatives from fantasy contest operators. Finally, stakeholders had the opportunity to comment during the Commission's public meeting on February 21, 2024.

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

The Commission received written comments from three stakeholders, enclosed as Exhibit 3. As a result of those comments, the commission better clarified in 3775-74-11 that fantasy contest operators shall not offer auto draft functionality for fantasy contest without continuing roster management after original athlete selection.

11. 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 rules because no scientific data was necessary to develop or measure their outcomes. Instead, Commission staff reviewed the Commission's statutory mandates and looked at how other jurisdictions approached the topics in these rules. Further, staff considered whether existing rules were the most efficient means by which to maintain the integrity of fantasy contest and whether any requests for amendments, waivers, or variances had been requested or 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 in other jurisdictions, with minor adaptations to remain in compliance with Ohio law.

12. 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?

Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

When first adopting these rules, Commission staff carefully reviewed and gave thorough consideration to the rules adopted in other jurisdictions. In reviewing these rules, staff considered past practices of the Commission, any comments on the rules, any waivers or variances to existing rules that had been requested and granted, and current trends in the regulatory environment. As such, these rules are a conglomeration of the rules used in other jurisdictions with adaptations made for Ohio law and current industry trends.

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

This question largely does not apply to these rules because no other regulations in these areas currently exist with respect to fantasy contest gaming. To the extent that this package amends existing administrative rules, many of those amendments are meant to ensure these rules are not duplicative of R.C. 3774 or other Administrative Code requirements adopted thereunder.

14. 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 rules in this package relate to fantasy contests, which are handled by the Commission's licensing and regulatory compliance staff and overseen by a director in the Commission's central office. Any issues that arise with a fantasy contest operator are funneled to the Commission's central office where the Executive Director and the division directors can coordinate a consistent response and conduct outreach to the regulated community. Finally, if necessary, any sanctions could only be approved by the Commission at a public meeting through a vote. As such, the regulated community can expect consistent and transparent compliance work from the Commission.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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.

3772-74-02 Authority and purpose (amendment)

The Commission does not anticipate a negative impact on business from this rule itself, as it is solely definitional. Any potential business impact would likely be triggered by other rules' substantive provisions.

3772-74-08 Management company licensure (rescind)

This rule is being rescinded as unnecessary because the Commission has not received any management company license applications and R.C. 3774 does not require it. Therefore,

there is little business impact from this rescission, although the streamlined rules will create a slight positive impact.

3772-74-10.1 Initial internal procedures submissions (rescind)

This rule is being rescinded because it is no longer applicable or relevant because the timeframe of its applicability has passed. Therefore, there is little business impact from this rescission, although the streamlined rules will create a slight positive impact.

3772-74-11 Prohibited activities (amendment)

The Commission anticipates a minimal impact on business from this rule related to payroll necessary to ensure compliance. This rule describes activities that fantasy contest operators may not engage in. All these activities are either explicitly or implicitly prohibited by statute or other states who regulate fantasy contests. Notably, the rule prohibits many activities that would have the effect of fantasy contests not being based on the skill of the player (e.g. players not controlling their roster selection).

3772-74-12 Duties of fantasy contest operators (amendment)

The Commission anticipates a minimal adverse business impact from this rule, including the employee time and payroll necessary for following the operator's internal documents. Many of these costs are mitigated in that the operator controls the details of how compliance will occur through their own internal documents, so long as they meet the minimum requirements set out in fantasy contest law.

The amendment to this rule removes several regulatory restrictions including, that operators must train their employees, that operators must provide documentation of patron fund protection every six months, and that operators must ensure the proper maintenance of records. Therefore, the adverse business impact is reduced by these changes.

3772-74-13 Duties of key employees (rescind)

This rule is being rescinded to reduce the number of regulatory restrictions and streamline the rules. Therefore, there is little business impact from this rescission, although the streamlined rules will create a slight positive impact.

3772-74-14 Duties of management company applicants or licensees (rescind)

This rule is being rescinded as unnecessary because the fantasy contest management company license is being removed. Therefore, there is little business impact from this rescission, although the streamlined rules will create a slight positive impact.

3772-74-15 Inspections and audits (amendment)

The Commission anticipates a minimal adverse business impact from this rule, including costs associated with financial audits by a third party—with financial audits done yearly and compliance audits done once a licensure period. The potential impact from these audits includes employee time and payroll as well as the charge assessed an operator by the third party. This cost will vary based upon the size and complexity of the operator, as well as the third party the operator chooses to conduct the audit. The amendments to this rule remove the requirement that third party auditors receive approval prior to submitting an audit on behalf of the operator. Additionally, the rule clarifies that publicly traded operators can use their Form 10-K to satisfy this rule requirement which should reduce costs for those operators.

3772-74-17 Hearings (amendment)

This rule describes the hearing process in place should the Commission need to take administrative action against a person subject to fantasy contest law. This process is consistent with R.C. Chapter 119 and is the same as the process used with respect to the Commission's other regulatory frameworks. The amendment to this rule removes the reference to Rule 3772-21-04 which no longer exists and is no longer applicable as of October 2021. As the hearing procedures afford the regulated community with consistent due process protections, the Commission does not anticipate an adverse business impact.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

3772-74-02 Authority and purpose (amendment)

The Amendment to this removes the requirement that all notice, requests of, or correspondence to the Commission related to fantasy contest be made to the executive director. This change is made to reduce the number of regulatory restrictions pursuant to S.B. 9 of the 134th General Assembly. The amendment gives fantasy contest operators more options and flexibility in how they contact the Commission, while not compromising the integrity of fantasy contests.

3772-74-08 Management company licensure (rescind)

This rule is being rescinded as unnecessary because the Commission has not received any management company license applications and R.C. 3774 does not require it. The removal of this rule will streamline the Fantasy Contest rules and will simplify the application process for operators as there will now only be one license application to consider, the Fantasy Contest Operator License.

3772-74-12 Duties of fantasy contest operators (amendment)

The amendment to this rule removes several regulatory restrictions on fantasy operators including, that operators must train their employees, that operators must provide documentation of patron fund protection every six months, and that operators must

ensure the proper maintenance of records. These changes should reduce the regulatory burden on fantasy contest operators.

3772-74-13 Duties of key employees (rescind)

This rule is being rescinded to reduce the number of regulatory restrictions of key employees including serving as the representative of the operator, ensuring the operator timely meets all filing deadlines, ensuring the operator issues prompt responses to the Commission, notifying the Commission of any violations of fantasy contest law, and complying with all notices or directives from the Commission.

3772-74-15 Inspections and audits (amendment)

The amendment to this rule reduces a regulatory burden on business by no longer requiring third party auditors to be approved by the Commission prior to providing audits on behalf of fantasy contest operators.

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

The regulatory intent justifies any adverse impact because R.C. Chapter 3772 requires the Commission to ensure the integrity of fantasy contests. The Fantasy Contest Act itself requires certain regulations, including licensure, recordkeeping, and prohibitions on topics such as scripts, contests based on amateur sporting events, and advertisement restrictions. The Act also contemplates several consumer protections to be adopted by the Commission including: prohibiting certain individuals from participating in fantasy contests, including employees, individuals under the age of eighteen, and individuals who voluntarily restrict themselves; ensuring player funds are protected from operational funds; onboarding procedures for beginning players; complying with privacy and online protection requirements; suspending players who violate contests rules or the law; providing responsible play information; establishing maximum entry amounts; and establishing licensure procedures.

These regulations consist of those statutory provisions combined with compliance activities many operators are already undertaking under other state regulations and have recommended to the Commission. While there will be an impact for those who choose to offer fantasy contests in the State of Ohio, much of this regulatory framework mirrors other states' rules or are the result of several stakeholder discussions and recommendations. Additionally, the Commission took care to tailor the rules to adapt to the varying types or sizes of businesses that may wish to operate in Ohio, as much as possible under the Fantasy Contest Act without sacrificing tools necessary to achieve its mission of ensuring the integrity of fantasy contests, and protecting Ohioans.

Regulatory Flexibility

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

Yes (indirectly). This regulation indirectly provides exemption or alternative means of compliance through Ohio Adm. Code 3774-1-05, which permits the Commission to grant waivers and variances from agency 3774 of the Administrative Code.

19. 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?

To the extent R.C. 119.14 would apply to a violation of the proposed rules, the Commission will provide verbal and written notifications 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.

20. 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, 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 and fantasycontests@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 3774-1-05, request waivers and variances from Commission regulations.

From: [Page, Aleah](#)
To: [Kerscher, Martin](#)
Subject: FW: Fantasy Contest Rules for Comment
Date: Wednesday, February 21, 2024 3:38:34 PM

From: Ohio Casino Control Commission <Communications@casinocontrol.ohio.gov>
Sent: Tuesday, January 30, 2024 5:38 PM
To: Page, Aleah <Aleah.Page@casinocontrol.ohio.gov>
Subject: Fantasy Contest Rules for Comment

[View this email in your browser](#)

Fantasy Contest Stakeholders,

As you may know, Ohio law generally requires rules to be reviewed and refiled at least once every five years. Pursuant to that requirement, the Commission is proposing amendments to nine Fantasy Contest rules: Ohio Adm. Code 3772-74-02, -08, -10.1, -11, -12, -13, -14, -15, and -17 for stakeholder comment. Some of the amendments in this package may seem familiar as they were previously released for stakeholder comment in 2023. The proposed versions of the amended rules can be found [here](#).

As always, please feel free to forward this communication to anyone else you think may be interested in these rules. If you would like to unsubscribe from this listserv, you may do so using the link located at the bottom of this email.

We understand that you may have questions or would like additional information before commenting, and if that is the case, we encourage you to reach out to your normal contacts at the Commission at your earliest convenience. If, in the end, you would like to provide formal written comments, please email them to rulecomments@casinocontrol.ohio.gov **by 5:00PM. February 9, 2024.**

While you will have some additional chances to comment on these rules, including when they are filed with the state's Common Sense Initiative Office, please note that it is much easier for the Commission and for stakeholders to work out any questions or comments directly before the rules start the formal rule filing process.



[Visit Us Online](#)

Copyright © 2024 Ohio Casino Control Commission, All rights reserved.

You are receiving this email because you expressed an interest in receiving updates on the regulation of fantasy contests by the Ohio Casino Control Commission.

Our mailing address is:

Ohio Casino Control Commission
100 East Broad Street
20th Floor
Columbus, OH 43215

[Add us to your address book](#)

[unsubscribe from this list](#) [update subscription preferences](#)



CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.

Email Address	First Name	Last Name
mw@weremblewski.com	Mike	Weremblewski
jessica.franks@casinocontrol.ohio.gov	Jessica	Franks
spdoyle240@gmail.com	Sean	Doyle
deldredge@hannah.com	Danny	Eldredge
bweishaar@fantiniresearch.com	Blake	Weishaar
satkins@fftoolbox.com	Scott	Atkins
duke@fultzrentals.com	Duke	Fultz
dave@boomfantasy.com	Dave	Behr
PSicuso@boselaw.com		
dan@draftboard.com	Dan	Quinn
brandon@underdogfantasy.com		
skoch@draftkings.com	Sarah	Koch
matt.schoch@catenamedia.com	Matt	Schoch
mforney@deleoneassociates.com	Matthew	Forney
gary@playboomsports.com		
Jonathan.Ahrens@RubinBrown.Com		
gfinan@draftkings.com	Griffin	Finan
Eileen.McManmon@RubinBrown.Com		
steve@playboomsports.com		
tmcauley@thedailynumber.com	Thomas	McAuley
jonathan.genovese@worldpay.com	Jon	Genovese
mfava@draftkings.com		
tom@tompappas.com	Tom	Pappas
jpelzer@cleveland.com	Jeremy	Pelzer
Tessa.Metzler@casinocontrol.ohio.gov	Tessa	Metzler
tlesiak@rlblp.com	Theodore	Lesiak
mike@myffpc.com	Michael	Petropoulos
steve@fantasydraft.com	Steve	Krombolz
jeremy@draft.com	Jeremy	Levine
motieno@draftkings.com		
steve@sbfsta.org	Steve	Brubaker
tim@rtsports.com		
mcheek@yahoosports.com		
jason@shgn.com		
marcedelman@aol.com		
mcheek@oath.com	Meredith	Yu
jtomdecker@gmail.com	john	decker
mmagnuson@eidebailly.com		
rwinden@beneschlaw.com	Rachel	Winder
hboyden@draftkings.com		
john@trimacadvisors.com	John	McClelland
jd.garner@tsevo.com		
jason@stathero.com		

ABartlett@boselaw.com	Gale	Kenny
emailgale@hotmail.com	John	Beese
masters@mastersfantasy leagues.com	Steve	Brubaker
Bpr.11.1997@gmail.com	Joe	Lombardo
joe32077@gmail.com	Alex	Kaganovsky
alex@myffpc.com	Nick	Jackson
zg.dfs.tracker@gmail.com	Thomas	Braun
thomas@starting11.io	Caty	Abbott
Caty.Abbott@casinocontrol.ohio.gov		
tyler@bid.ventures		
racheledelman@live.com		
jenaguiar@draftkings.com	Jennifer	Aguiar
dustin@underdogfantasy.com		
sphagan@velawoodlaw.com	SP	Hagan
cory.fox@fanduel.com	Cory	Fox
dfschat@gmail.com		
mark@rtsports.com	Mark	Hanna
danny.cross@playohio.com	Danny	Cross
peter@rotowire.com	Peter	Schoenke
walker.reiss@sportshubtech.com	Walker	Reiss
joes@superdraft.io		
JJumes@aafcpa.com		
rbitonte@zhfconsulting.com	Rich	Bitonte
lherf@bakerlaw.com	Lori	Herf
dave@myffpc.com	David	Gerczak
tparilla@draftkings.com		
tdent@draftkings.com		
chrissieroty@gamblingcompliance.com	Chris	Sieroty
Aleah.Page@casinocontrol.ohio.gov	Aleah	Page
jwg@josephgradlaw.com		
info@cheetahinteractive.com		
nick@stathero.com		
ckelly@aafcpa.com		
Dustin@DRAFT.com	Dustin	Cooper
alex@draft.com	Alex	Zelvin
dave@jockmkt.com		
tim@fantasydraft.com		
mmccarthy@fantasydraft.com	Matt	McCarthy
mguy@eidebailly.com		
martin.kerscher@casinocontrol.ohio.gov	Martin	Kerscher
ncrudele@saiber.com	Nicholas	Crudele
David.Paragas@btlaw.com		
msingh@verdictmma.com		
michael@honormountain.com		

dataforceff@gmail.com

Organization

Unknown

Ohio Casino Control Commission

The OG, The Original Golf Game

Hannah News Service

Fantini Research

Fulltime Fantasy

Boom Fantasy

Draftboard

DraftKings

Catena Media

DraftKings, Inc.

Daily Number, Inc.

Worldpay

DraftKings/FanDuel

Cleveland Plain Dealer

Ohio Casino Control Commission

Roderick Linton Belfance

Fantasy Football Players Championship

Fantasy Draft, LLC

DRAFT

Small Businesses of Fantasy Sports Trade Association

Yahoo Fantasy Sports LLC

multiple

Benesch Law

Trimac Advisors

Play DFS LLC
Masters Fantasy Football Leagues

FFPC
ZwillGen
Starting 11 LLC
Ohio Casino Control Commission

DraftKings Inc.

FanDuel

RealTime Fantasy Sports Inc.
PlayOhio
Fantasy Sports Trade Association

ZHF Consulting
Worldpay
Fantasy Football Players Championship (FFPC)

GamblingCompliance
OCCC

DRAFT
DRAFT

FantasyDraft.com

OCCC
Saiber



Alex Wolf
Senior Director of Compliance & Regulatory Counsel
Underdog Sports Holdings, Inc.
alex.wolf@underdogfantasy.com

February 9, 2024

Ohio Casino Control Commission
Attn: Executive Director Matthew Schuler
(via email to rulecomments@casinocontrol.ohio.gov)

Re: Underdog Comments on Proposed Fantasy Contest Rules

Dear Commissioners and Executive Director Schuler:

I am pleased to submit these comments on the proposed fantasy contest rules issued January 30, 2024 on behalf of Underdog Sports Holdings, Inc. and its wholly owned subsidiaries (collectively, “Underdog”).

Underdog is an emerging leader in sports entertainment, with product offerings in fantasy sports, sports entertainment content, and in the coming months, online sports wagering. Underdog holds fantasy sports licenses and registrations in 17 states, as well as sports wagering licenses in Ohio and Colorado. We have offered fantasy contests involving drafts and best ball tournaments in Ohio since 2020.

Underdog looks forward to continuing to work with the Ohio Casino Control Commission (the “Commission”) in both the fantasy sports and sports wagering industries. We are concerned, however, with how one of the proposed rules would unduly narrow the scope of fantasy sports, and in doing so, exceed the Commission’s authority contrary to the will of the General Assembly as expressed in the plain statutory text.

Proposed Rule 3772-74-11 Could Arbitrarily Limit Popular Types of Draft Fantasy Sports Contests

The proposed change to Rule 3772-74-11(B)(1), while ambiguous, may unintentionally prohibit “Best Ball”-style fantasy draft contests. These peer-to-peer contests stand alongside salary cap and snake draft contests as one of the most popular (if not the most popular) draft fantasy contests offered today. The proposed change does so by prohibiting contests that do not have “continuing roster management after original athlete selection.” Although Best Ball contests do *not* require active roster management, in Ohio, Underdog does require the participant to select athletes for the queue, immediately following the original athlete selection, in case the participant becomes disconnected from the draft. This allows our platform to decide which player to select on behalf of the participant to keep the draft moving and fill the roster with the

necessary position distribution. Thus, these contests satisfy Ohio’s definition of a fantasy sports contest as described in more detail below.

Here is a description of how a typical best ball contest works on the Underdog platform:

- Participants select players through a snake draft. In a snake draft, the pick order is reversed each round. In other words, the entrant with the first pick in round 1, will have the last pick in round 2 and the first pick in round 3.
- For each paid entry contest, the entry fees, the prize pool, roster size, number of entrants, number of entries per user, and scoring are described on the information page for that contest.
- Entrants draft a team of players who accumulate points throughout the duration of the contest period.
- The roster for the fantasy team is set upon completion of the draft.
- At the end of each sport's week, participants’ scores are determined by the aggregated fantasy points obtained by the top players on their rosters,
- At the end of each best ball contest, the entrant(s) with the highest scores are awarded prizes based on the prize pool allocation for that specific contest as noted on that contest's specific information page.

DraftKings and FanDuel offer materially similar Best Ball draft contests.

The Proposed Rule May Violate the Legislature’s Intent and Exceed the Commission’s Authority

The proposed rule change runs contrary to the legislature’s definition of “fantasy contest.” Ohio legalized fantasy sports contests in 2018, largely borrowing the definition of fantasy sports that Congress adopted in UIGEA, codified at 31 U.S.C. § 5361(1)(E)(ix). Under Ohio’s definition, a contest is fantasy sports if, among other requirements concerning entry fees and prize structure, the winning outcomes:

1. reflect the relative knowledge and skill of the participants, i.e., the game is one of skill;
2. are determined predominantly by the accumulated statistical performance of individual athletes;
3. involve individual athletes who are participating in multiple real-world sporting or other events; and
4. are *not* based on the score, point-spread, or performance of teams or “solely on any single performance of an individual athlete.”

Ohio Rev. Code § 3774.01(C). Importantly, nothing in this definition would prohibit Underdog’s Best Ball contests, which satisfy all prongs of the definition. The Ohio legislature drafted the definition for fantasy sports – along with several Prohibited Acts set forth in Section 3774.06 – quite broadly to allow myriad existing and future formats. The proposed change to Rule 3772-74-11(B)(1), however, would prohibit auto-draft functionality for “fantasy contests without continuing roster management after original athlete selection,” meaning Underdog – and other Ohio fantasy sports operators – would not be able to offer best ball contests. Thus, the proposed rule conflicts with the legislative intent of the statute under which it was proposed.

Underdog's Amendment to Proposed Rule 3772-74-11:

Underdog supports the amendment offered by DraftKings to Rule 3772-74-11(B)(1). Specifically, if the Commission seeks to amend Rule 3772-74-11(B)(1), it should only do so as follows:

(B) Fantasy contest operators shall not offer or allow any of the following:

- (1) Auto draft functionality to fantasy contest players for fantasy contests without *any input or control by a fantasy contest player* ~~continuing roster management after original athlete selection,~~ unless otherwise approved by the commission at a meeting held under section 3772.02 of the Revised Code;
- (2) Fantasy contest players to choose from pre-selected rosters of athletes;
- (3) Any *other* means of athlete selection or assembly that does not involve the input or control of a fantasy contest player; or
- (4) Proposition selection or fantasy contests that have the effect of mimicking proposition selection.

In sum, the proposed rule narrows the scope of “fantasy contests,” goes beyond what the statute allows, and may even exceed the Commission’s rulemaking authority. The Commission should therefore adopt the proposed language suggested above.

* * *

Thank you for the opportunity to comment on the proposed rules and for your consideration of these comments. Please do not hesitate to contact me with any further questions.

Sincerely,



Alex Wolf



February 9, 2024

Via E-Mail to rulecomments@casinocontrol.ohio.gov

Ohio Casino Control Commission
100 East Broad Street, 20th Floor
Columbus, OH 43215

RE: Proposed amendments to Fantasy Contest rules: Ohio Adm. Code 3772-74-02, -08, -10.1, -11, -12, -13, -14, -15, and -17

In response to the regulations for Fantasy Contests proposed by the Ohio Casino Control Commission (the “Commission”), DraftKings Inc. ("DraftKings") submits the following comment for consideration. As a leading fantasy sports operator in the United States, DraftKings has first-hand experience with regulatory frameworks that address fantasy sports and submits these comments based on its operational knowledge in multiple regulated jurisdictions.

Rule 3772-74-11 | Prohibited activities

Comment: DraftKings respectfully requests the Commission amend the language in provision 11 as outlined below. From an operational standpoint, the rule may create unintended implementation challenges for some of the industry’s fantasy products. Fantasy sports contests have multiple variations that are popular with players in different jurisdictions, and auto draft features can play a role in the selection of athletes to comprise a fantasy team. Relatedly, many jurisdictions (for example Missouri, Arkansas, Michigan and Tennessee), have focused on prohibiting auto draft functionality where a fantasy sports player does not have “input or control.” This also appears to align with subsection (B)(3) as currently drafted, which focuses on additional forms of selection or assembly that does not “involve input or control of a fantasy contest player.” We respectfully request the Commission consider adopting a similar standard to auto draft provisions from other states in order to allow fantasy contest operators to continue offering popular contest types to Ohioans, and also slightly modify subsection (B)(3) to clarify that apart from auto draft, other means of athlete selection or assembly are not prohibited unless they do not involve input or control of a fantasy contest player. We believe the below changes comport with the law and would allow popular contests, including contests that allow auto draft in certain scenarios such as a player submitting pre-rankings ahead of time, to remain operational in Ohio.

Commission proposed Language:

(A) No person required to obtain a license under fantasy contest law shall directly or indirectly operate or promote to Ohio consumers any fantasy contest without a valid license granted under fantasy contest law.



(B) Fantasy contest operators shall not offer or allow any of the following:

(1) Auto draft functionality to fantasy contest players for fantasy contests without continuing roster management after original athlete selection, unless otherwise approved by the commission at a meeting held under section 3772.02 of the Revised Code;

(2) Fantasy contest players to choose from pre-selected rosters of athletes;

(3) Any means of athlete selection or assembly that does not involve the input or control of a fantasy contest player; or

(4) Proposition selection or fantasy contests that have the effect of mimicking proposition selection.

(C) No licensee shall operate using a name that has not been provided in the application or a duty to update.

(D) No fantasy contest operator shall extend lines of credit to fantasy contest players.

(E) No person shall fail to timely submit any application, form, report, or information required under fantasy contest law or otherwise requested by the executive director.

(F) No person shall make any false statements or fail to disclose any facts requested in connection with an application or in any communication with the commission.

DraftKings-proposed Language:

(A) No person required to obtain a license under fantasy contest law shall directly or indirectly operate or promote to Ohio consumers any fantasy contest without a valid license granted under fantasy contest law.

(B) Fantasy contest operators shall not offer or allow any of the following:

(1) Auto draft functionality to fantasy contest players for fantasy contests without ~~any input or control by a fantasy contest player~~ continuing roster management after original athlete selection, unless otherwise approved by the commission at a meeting held under section 3772.02 of the Revised Code;

(2) Fantasy contest players to choose from pre-selected rosters of athletes;



(3) Any other means of athlete selection or assembly that does not involve the input or control of a fantasy contest player; or

(4) Proposition selection or fantasy contests that have the effect of mimicking proposition selection.

(C) No licensee shall operate using a name that has not been provided in the application or a duty to update.

(D) No fantasy contest operator shall extend lines of credit to fantasy contest players.

(E) No person shall fail to timely submit any application, form, report, or information required under fantasy contest law or otherwise requested by the executive director.

(F) No person shall make any false statements or fail to disclose any facts requested in connection with an application or in any communication with the commission.

* * * * *

Thank you for your consideration of DraftKings' comments regarding the Commission's proposed changes to Rule 3772-74-11. Please feel free to reach out should you or anyone else at the Commission have any questions about our submission or our experience in other regulated jurisdictions.

Sincerely,

DraftKings Inc.

From: [Robert McAdoo](#)
To: [Rule Comments](#); [Fleenor, Chris](#)
Cc: [James Luccarelli](#); [Mike Robbins](#); [Joseph Bunevith](#); [Steve May](#)
Subject: Comment in regards to the requirements for the posted Combined 2024 Fantasy Contest Rules for Stakeholder Comment document on the website.
Date: Friday, February 9, 2024 1:17:07 PM

To Whom It May Concern,

Gaming Laboratories International would like to submit the following comment in regards to the requirements for the posted Combined 2024 Fantasy Contest Rules for Stakeholder Comment document on the website.

Rule 3772-74-15 | Inspections and audits.

- (A) Each fantasy contest operator must have its annual financial statements audited by an independent registered certified public accounting firm. The audit must be on a comparative basis for the current and prior fiscal years, include the present financial position and results of operations, and include the fantasy contest operator's operations and separate patron fund entities, if applicable. The fantasy contest operator must file with the commission the audit in a format approved by the executive director within one hundred and twenty days following the end of the fiscal year or upon receipt, whichever is earlier. Any financial audits concerning a fantasy contest operator's current fiscal year or the immediately preceding fiscal year, at the time this rule becomes effective, may still be submitted in accordance with the timelines set in an operators internal procedures or, if not set by the operator, as set by the executive director.
- (B) Each fantasy contest operator must contract with an independent registered certified public accounting firm [or other professional service provider authorized by the commission](#) to perform an independent audit to ensure compliance with fantasy contest law. The audit must be performed and a copy of the report provided to the commission, upon receipt and in a manner prescribed by the executive director, at least once every licensure period.
- (C) The fantasy contest operator must report to the commission the name of the independent registered certified public accounting firm [or other professional service provider authorized by the commission](#) as well as the lead audit partner or other individual taking primary responsibility for the any audit engagement under this rule before the start of the engagement.

The laboratory appreciates the Commission's time and consideration on the proposed comment for the rule in question and is available to provide additional details upon request if needed. Thank You.

Robert Mc Adoo

Senior Technical Compliance Engineer

www.gaminglabs.com

o 303-277-1172 EXT 2122

d 303-215-5822

e R.McAdoo@gaminglabs.com



The information contained in this message may contain privileged, and confidential information, and be protected from disclosure. If you are not the intended recipient, or an employee, or agent responsible for delivering this message to the intended recipient, you are hereby notified that reading, using, copying, disseminating or, distributing this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by return e-mail or by calling 732-942-3999 and permanently delete the message and any attachments from your computer.

CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.