



Common Sense Initiative

Mike DeWine, Governor
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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):

OCCC No Change Fantasy Contest 5YR Adm.Code 3772-74

Rule Number(s): 3772-74-01, -03, -04, -05, -06, -07, -09, -10, -16, & -18

Date of Submission for CSI Review: 5/31/24

Public Comment Period End Date: 6/14/24

Rule Type/Number of Rules:

New/___ rules

No Change/ 10 rules (FYR? Yes)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

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.

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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 ten rules contained in Ohio Adm.Code Chapter 3772-74 (Fantasy Contests). The rules in this package are being submitted as "no change" rules and do not have any amendments. The summaries of the rules for consideration are detailed below.

Fantasy Contests Rule Summaries

- **3772-74-01 – titled “Definitions” (no change)** This rule contains and its purpose is to provide consistent definitions that will govern Agency 3774 of the Administrative Code. It incorporates all definitions in section 3774.01 of the Revised Code and further defines certain terms like “advertisement,” “applicant,” “licensee,” “conduct,” or “participate in conducting” in accordance with how those terms are defined in the Commission’s other regulatory frameworks. Moreover, the rule further defines certain important terms contained in the statute and regulations including “fantasy contest operator employee,” “fantasy contest player funds,” “proposition selection,” and “roster.” For these terms, the Commission either borrowed from proposed or currently existing regulations in other

states or worked with stakeholders to ensure the definitions met the standards in Chapter 3774. of the Revised Code, while taking into account present practice.

- **3772-74-03 – titled “Construction” (no change)** This rule states and its purpose is to provide the principles of construction that will govern Agency 3774 of the Administrative Code. These principles are in accordance with the Commission’s other regulatory frameworks.
- **3772-74-04 – titled “Access to records, examination under oath, and subpoena power” (no change)** This rule governs the Commission’s powers with respect to records, examinations, and subpoenas and is consistent with the Commission’s powers under its other regulatory frameworks. The purpose of this rule is to ensure the Commission has the tools in place to ensure the integrity of fantasy contest law.
- **3772-74-05 – titled “Waivers and variances” (no change)** This rule governs waivers and variances from Agency 3774 of the Administrative Code. The rule allows the Commission to waive any provision of these rules either on its own or upon a written request, if the waiver is in the best interest of the public. However, the rule makes clear that no person shall request to waive either the requirement to obtain a license or to pay a different fee amount than what is required for a license by rule. This rule also governs the form and process for all requests and waivers. Finally, the rule specifies that the Commission may condition any waivers that may be granted. The purpose of this rule is to give the Commission and the regulated community the flexibility to vary from requirements under Agency 3774 of the Administrative Code, while providing appropriate guardrails in so doing.
- **3772-74-06 – titled “General fantasy contest licensing requirements” (no change)** This rule contains the general fantasy contest licensing requirements, including the requirements for submitting an application and requirements to submit all information requested. The rule also defines the factors the Commission may consider in determining whether a person is eligible to obtain or maintain a license. These factors are consistent with the Commission’s other regulatory frameworks and with the factors considered in other state’s fantasy contest regulations and applications, including factors related to the operators’ financial, criminal, and administrative suitability as well as their compliance with requirements under fantasy contest law.

- **3772-74-07 – titled “Fantasy contest operator licensure” (no change)** This rule governs the process by which a person can seek to obtain or renew a fantasy contest operator license, including the fee that must be paid. This rule, consistent with the statute, allows fees to be paid in installments over the term of the license, while giving the Executive Director the ability to issue an emergency order should any operator fail to timely pay these installments. These fees are tiered to reflect the Commission’s cost of regulation. The purpose of this rule is to establish the fees and process for the Commission to issue fantasy contest operator licenses and to allow the Commission to cover regulatory costs while not establishing barriers to entry for smaller businesses.
- **3772-74-09 – titled “Duty to update information” (no change)** This rule requires applicants and licensees to update the Commission, in writing, of any information sought in the application from the submission of the application through any period of licensure granted. This rule is consistent with the Commission’s other regulatory frameworks and is a process that is utilized in other jurisdictions regulating fantasy contests. The purpose of this rule is to ensure that licensees stay suitable and eligible for licensure throughout their licensure period.
- **3772-74-10 – titled “Fantasy contest operator internal procedures” (no change)** This rule governs the procedural and substantive requirements for a fantasy contest operator’s internal procedures. These procedures are explicitly contained within Chapter 3774. of the Revised Code, are required in other jurisdictions, or otherwise ensure compliance with Ohio law. These procedures regard compliance with: state and federal privacy and online security requirements; providing players with information on playing responsibly; verifying player identity and prohibiting access to certain individuals; the segregation of player funds from operational funds; beginning player protections; and operating a voluntary restriction program; in addition to others. Finally, the rule states that these procedures must be provided with any application for a fantasy contest operator license and all updates to the internal procedures shall be made available to the Commission when made. The purpose of this rule is to ensure that fantasy contest operators comply with fantasy contest law while giving them the flexibility to do so in a way that comports with their internal structure and workings.
- **3772-74-16 – titled “Advertising” (no change)** This rule governs advertisements by fantasy contest operators. Operators must accurately depict certain representations made, must include information on playing responsibly, and must clearly and conspicuously state any material or limiting terms. Operators must not prominently depict anyone under the age of eighteen; an endorsement of any amateur sporting league, event, or athlete; or contests that are not compliant with the law. The purpose of this rule is to ensure that fantasy contest advertisements are not misleading, are compliant with fantasy contest law, and provide information to individuals in need of assistance.

- **3772-74-18 – titled “Sanctions” (no change)** This rule states the reasons for which a person may be sanctioned, including violating the law, engaging in fraud or misrepresentation, failing to cooperate with the Commission or certain terms or conditions imposed by the Commission, failing to comply with commission attempts to investigate, or engaging in other conduct that undermines the integrity of fantasy contest law. The rule also spells out certain sanctions that may be imposed, including actions against the person’s license or the person’s conduct, fines, or monetary civil penalties. The purpose of the rule is to permit the Commission to effectively regulate the integrity of fantasy contests by ensuring that those who violate fantasy contest law are held accountable.

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, 3774.06 & 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 these rules in terms of whether they help the Commission meet its statutory mission to ensure the integrity of fantasy contest. This can

be done in two ways: first, through evaluating whether the public benefit of implementing and enforcing these rules outweigh their administrative and business costs. And second, through analyzing the regulated community's comments about requests for amendments to the rules or for waivers or variances to or from the rules.

- 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

- 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 February 29, 2024, to stakeholders. (Exhibits 1 and 2). Stakeholders were asked to submit any written comments on the rules by 5:00 p.m. on March 14, 2024 (Exhibit 1). These stakeholders included employees or representatives from fantasy contest operators. No Comments were received.

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

The Commission did not receive comments from stakeholders.

- 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 its statutory mandates and looked at how other jurisdictions approached the rule topics in this package. Further, staff considered whether existing rules were the most efficient means by which to maintain the integrity of casino gaming and sports gaming 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.

Commission staff carefully reviewed and considered the statutes and rules adopted in other jurisdictions. In reviewing these statutes and rules, staff considered past practices of the Commission in its other regulatory frameworks, any stakeholder comments, and the current trends in the sports gaming 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 does not apply to these rules because no other regulations in these areas currently exist with respect to fantasy contests.

- 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**

The regulated business community consists of all persons who may conduct fantasy contests in Ohio, including operators and their employees.

- 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.

Fantasy Contest entities will have costs and employee time and payroll related to application submissions and adherence of the entities' duty to update the Commission of certain information pursuant to Fantasy Contest rules. A Fantasy Contest operator may have costs associated with a request for a waiver. Fantasy Contest entities may also face fines for noncompliance.

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*).

The rules contained in this package do not contain any amendments or proposed changes. Thus, there are no changes to any regulatory burden on the business community.

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 these rules, the Commission will provide verbal and written notification to the small business to correct the paperwork violation. Thereafter, the Commission would allow the small business a reasonable amount of 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 administrative 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 sports 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

Exhibit 1

From: [Ohio Casino Control Commission](#)
To: [Kerscher, Martin](#)
Subject: Fantasy Contest Rules for Comment
Date: Thursday, February 29, 2024 3:57:41 PM

[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 putting forward 10 no change rules: Ohio Adm. Code 3772-74-01, -03, -04, -05, -06, -07, -09, -10, -16, and -18 for stakeholder comment. The proposed versions of those 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. March 14, 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.



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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

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lherf@bakerlaw.com	Lori	Herf
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Organization

Unknown

Ohio Casino Control Commission

The OG, The Original Golf Game

Hannah News Service

Fantini Research

Fulltime Fantasy

Boom Fantasy

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
SportsHub Regulatory, 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
FanDuel

FantasyDraft.com
OCCC
Saiber