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940 C.M.R. 34.00: Daily Fantasy Sports Contest Operators in Massachusetts

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34.01 Purpose

940 CMR 34.00 is intended to protect Massachusetts consumers who play Daily Fantasy Sports contests for prizes from unfair and deceptive acts and practices that may arise in the gaming process. The regulation is also intended to protect the families of persons who play Daily Fantasy Sports to the extent that they may be affected by unfair and deceptive practices that lead to unaffordable losses.

34.02 Scope

940 CMR 34.00 defines unfair or deceptive acts or practices that violate G.L. c. 93A, § 2(a), but is not intended to define all Daily Fantasy Sports activities that violate the statute. Daily Fantasy Sports acts or practices not specifically proscribed in this regulation are not to be treated, by implication, as permitted under G.L. c. 93A or other applicable law. Nor shall this regulation be interpreted to limit claims available under G.L. c. 93A and other law prior to the effective date of this regulation.

940 CMR 34.00 applies to acts or practices of Daily Fantasy Sports Operators doing business in Massachusetts.

Nothing in this regulation may be interpreted as authorizing a wager, bet, or gambling activity that is prohibited by law.

34.03 Definitions

Daily Fantasy Sports or “DFS”: Any contest in which the offer or award of a Prize is connected to the statistical performance or finishing position of one or more persons participating in an underlying amateur or professional competition, but does not include offering or awarding a Prize to the winner of or participants in the underlying competition itself.

Daily Fantasy Sports Operator or “DFS Operator”: Any Enterprise that offers, by means of the Internet or smart phone application (or via other electronic or digital media or communication technologies), more than 10 Daily Fantasy Sports contests each month to persons who include residents of Massachusetts. An Enterprise is not a Daily Fantasy Sports Operator if it offers only Exempt Contests.

DFS Consumer: Any individual or corporate resident of the Commonwealth of Massachusetts with an account to enter contests on a DFS Contest Platform.

DFS Contest Platform: Any website, smart phone application or other portal providing access to a DFS contest.

DFS Operator Contractor: Any person or corporate entity who works pursuant to an independent contract with a DFS Operator and who has regular access to non-public portions of the DFS Operator’s office, to information on the DFS Operator’s computer network that is not publicly available, or to DFS Operator proprietary information that may affect gameplay.

DFS Promoter: Any person or corporate entity, who is not a DFS Operator Contractor as that term is defined herein, that regularly provides advice on gameplay to other DFS players pursuant to an agreement with a DFS Operator or pursuant to a DFS Operator’s sponsorship.

Beginner: Any DFS player who has entered fewer than 51 contests offered by a single DFSO who does not meet the definition of Highly-Experienced Player by virtue of having won three DFS contest Prizes of \$1,000 or more.

Enterprise: Any business organization including, without limitation, its subsidiaries and parent entities, its owners, officers, partners and employees as individuals, as well as other related entities that share common ownership, control or management.

Exempt Contests: A DFS contest is an Exempt Contest if it meets one or more of the following criteria:

1. No Prize is awarded other than game-based virtual currency that cannot be redeemed for cash, merchandise or something else that has value outside the context of gameplay;
2. The contest is free to all participants;
3. The Enterprise offering the contest receives no compensation in connection with the contest regardless of the outcome of the contest;
4. The Prize or Prizes offered are of no greater value than the lowest individual fee charged to a single participant for entering or participating in the contest; or
5. The contest encompasses an entire season of the activity in which the underlying competition is being conducted, consists of at least 150 underlying competitions, and the Prize or Prizes awarded, if any, are determined by agreement of the participants only in order to distribute fully the participants' contributions to a fund established to award a Prize or Prizes for the contest.

Highly-Experienced Player: Any DFS player who has 1) entered more than 1,000 contests offered by a single DFSO; or 2) has won more than three DFS contest Prizes valued at \$1,000 or more. Once a DFS player is classified as Highly-Experienced Player, a player will remain classified as such.

Minors: Persons under the age of 21.

Prize: Anything of monetary value, including but not limited to money, contest credits, merchandise, or admission to another contest in which a Prize may be awarded.

Prominently Publish: Material will be considered prominently published within the meaning of this regulation if it is placed, directly or via link, on one or more dashboards or on similar visualization tools that are properly labeled and clearly accessible from the home page of each of a DFSO's Contest Platforms.

Script: Commands that a DFS-related computer program can execute that are created by DFS players (or by third parties for the use of DFS players) to automate processes on a DFS Contest Platform.

Segregated Account: A financial account that segregates funds that are owned by DFS Consumers and that, by its terms, is restricted to funds owned by DFS players in the United States, such that the DFSO's operational funds may not be commingled.

AGO: The Commonwealth of Massachusetts Office of the Attorney General.

34.04 Gameplay by Minors; Prohibition of Games Based on Student Sporting Events

With respect to DFS Consumers and to any other person present in Massachusetts:

- (1) No Gameplay by Minors: A DFSO shall not allow a Minor to participate in any DFS contest, whether or not a Prize is offered in that contest.
- (2) Refunds of Deposits by Minors: A DFSO shall promptly refund any money held in a Minor's account, whether or not the Minor has engaged in or attempted to engage in gameplay. A DFSO may refuse to award a Prize to a Minor upon a good-faith determination, following reasonable investigation, that the Minor misrepresented his or her age in order to enter the DFS contest, provided, however, that such Prize must then be awarded to another participant in the contest who would have won the Prize had the Minor not participated.
- (3) No DFS Games Based on Amateur Sporting Events: DFSOs shall not permit entry in DFS contests that include amateur, college, high school or student sporting events.
- (4) Parental Controls: DFSOs shall make available, Prominently Publish and facilitate parental control procedures to allow parents or guardians to exclude Minors from access to any DFS Contest Platform.

34.05 Protection of Consumer Funds on Deposit and Compliance With Data Security Requirements

- (1) Data Security: DFSOs shall comply with all applicable state and federal requirements for data security.
- (2) Protections for DFS Accounts:
 - a. Funds in DFS Consumer accounts must either be held 1) in trust for the DFS Consumer in a Segregated Account or 2) in a special purpose Segregated Account that is maintained and controlled by a properly constituted corporate entity that is not the DFSO and whose governing board includes one or more corporate directors who are independent of the DFSO and of any corporation related to or controlled by the DFSO. Said corporate entity must require a unanimous vote of all corporate directors to file bankruptcy and must have articles of incorporation that prohibit

commingling of funds with those of the DFSO except as necessary to reconcile the accounts of DFS Consumers with sums owed by those Consumers to the DFSO. Said special purpose corporate entity must also be:

- i. Restricted from incurring debt other than to DFS players pursuant to the rules that govern their accounts as consumers of DFS contests;
 - ii. Restricted from taking on obligations of the DFSO other than obligations to DFS players pursuant to the rules that govern their accounts as consumers of DFS contests; and
 - iii. Prohibited from dissolving, merging or consolidating with another company (other than a special purpose corporate entity established by another DFSO that meets the requirements of this section) while there are unsatisfied obligations to DFS players including, without limitation, to DFS Consumers.
- b. DFSOs shall implement and Prominently Publish procedures that:
 - i. Prevent unauthorized withdrawals from DFS Consumer accounts by DFSOs or others;
 - ii. Make clear that the funds in the Segregated Account do not belong to the DFSO and are not available to creditors other than the DFS Consumer whose funds are being held;
 - iii. Prevent commingling of funds in the Segregated Account with other funds including, without limitation, funds of the DFSO;
 - iv. Establish a protocol, consistent with Section 34.16 of this regulation, for responding to and reporting on complaints by DFS Consumers that their accounts have been misallocated, compromised or otherwise mishandled; and
 - v. Establish a protocol by which DFS Consumers can withdraw funds maintained in their accounts, whether such accounts are open or closed. Such requests for withdrawals must be honored by the later of five business days of the request or ten business days of submission of any tax reporting paperwork required by law, unless the DFSO believes in good faith that the DFS Consumer engaged in either fraudulent conduct or other conduct that would put the DFSO in violation of this regulation, in which case the DFSO may decline to honor the request for withdrawal for a reasonable investigatory period until its investigation is resolved if it provides notice of the nature of the investigation to the DFS Consumer. For the purposes of this provision, a request for withdrawal will be considered honored if it is

processed by the DFSO but delayed by a payment processor, credit card issuer or by the custodian of a financial account.

- (3) Procedures for Closing Accounts at the Request of a DFS Consumer: DFSOs shall implement and Prominently Publish procedures that allow any DFS Consumer to permanently close an account at any time and for any reason. The procedures will allow for cancellation by any means including, without limitation, by a DFS Consumer on any DFS Platform used by that DFS Consumer to make deposits into a DFS account.
- (4) Payment of Prizes on Closed Accounts: If a Prize is awarded to a DFS Consumer with a closed account, that Prize, to the extent it consists of funds, shall be distributed by the DFSO within five business days, provided, however, if an account is closed based on the DFSO's good faith belief, after investigation, that the DFS Consumer has engaged in fraud or has attempted to engage in contest play that would put the DFSO in violation of this regulation, such Prize may be withheld, provided that the Prize is then awarded to another participant in the contest who would have won the Prize had that DFS Consumer not participated.
- (5) Unclaimed Funds in DFS Consumer Accounts:
 - a. Subject to the provisions of G.L. c. 200A, §§ 7 and 8A, and 960 C.M.R. § 4.00, if a DFSO Consumer account remains unclaimed for three years after the balances are payable or deliverable to the DFS Consumer, the DFSO shall presume the account to be abandoned.
 - b. The DFSO shall report and deliver all DFS Consumer accounts presumed abandoned to the Treasurer of the Commonwealth as provided for by G.L. c. 200A, §§ 7 and 8A, and 960 C.M.R. § 4.03.
 - c. Subject to G.L. c. 200A, 7A and 960 C.M.R. 4.03, at least sixty days prior to reporting any DFS Consumer accounts to the Treasurer, the DFSO shall provide notice to the Consumer's last known address and conduct due diligence to locate the DFS Consumer.
- (6) Publication of Terms, Conditions, and Rules: A DFSO shall Prominently Publish all contractual terms and conditions and rules of general applicability that affect a DFS Consumer's account. Presentation of such terms, conditions, and rules at the time of on-boarding a new DFS Consumer will not suffice.

34.06 Limitation to One Account per DFS Player

- (1) One Account per Player: DFSOs shall not allow a DFS player to establish more than one username or more than one account.

- (2) Identification of Players: DFSOs shall take commercially and technologically reasonable measures to verify DFS players' true identities and addresses and shall use such information, at a minimum, to enforce subsection 34.06(1).
- (3) Termination of Players that Establish More than One Account: DFSOs shall implement and Prominently Publish procedures to terminate all accounts of any DFS player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as proxy. Such procedures may allow a DFS player that establishes or seeks to establish more than one username or more than one account to retain one account provided that the DFSO investigates and makes a good-faith determination that the DFS player's conduct was not intended to obtain a competitive advantage.
- (4) No Proxy Servers: DFSOs shall not allow DFS players to use a proxy server for the purpose of misrepresenting their location in order to engage in DFS contest play.
- (5) No Proxy Players: DFSOs shall take commercially and technologically reasonable measures to prevent one DFS player from acting as a proxy for another. Such measures shall include, without limitation, use of geolocation technologies to prevent simultaneous logins to a single account from geographically inconsistent locations.

34.07 Requirements for Fair and Truthful Advertising

- (1) Compliance with Existing Advertising Regulations: DFSOs shall comply with the following regulations promulgated by the AGO to the extent they concern advertising and apply to the DFS business model: 940 CMR §§ 3.00 (General) and 6.00 (Retail Advertising).
- (2) No Depiction of Minors: DFSO advertisements shall not depict (i) Minors (other than professional athletes who may be Minors), (ii) students, (iii) schools or colleges, or (iv) school or college settings, provided, however, that incidental depiction of non-featured Minors (*e.g.*, as a face in a crowd) will not be a violation of this subsection.
- (3) No Endorsement by Minors, College Athletes, Colleges, or College Athletic Associations: DFSO advertisements shall not state or imply endorsement by (i) Minors (other than professional athletes who may be Minors), (ii) collegiate athletes, (iii) colleges, or (iv) college athletic associations.
- (4) Advertisements to Include Information to Promote Responsible Gaming: DFSO advertisements in published media (*e.g.*, print, television, radio, Internet and smartphone applications) shall include information concerning assistance available to problem gamblers or shall direct consumers to a reputable source for such information. If an advertisement is not of sufficient size or duration to reasonably permit inclusion of such information, that advertisement shall refer to a website or application that does prominently include such information.

- (5) **Limitation on Representations about Winnings:** Any representation concerning winnings shall be accurate, not misleading, and capable of substantiation at the time the representation is made. Under this regulation, a DFSO advertisement is misleading if it makes representations about average winnings without equally prominently representing the average net winnings of all players.

34.08 Restrictions on Advertising to Minors or at Schools or School Sporting Events

- (1) **No Advertisements Targeted to Minors:** DFSOs shall not advertise in publications or other media in Massachusetts that are aimed exclusively or primarily at Minors.
- (2) **No Promotional Activities at Schools or Colleges:** DFSOs shall not advertise or run promotional activities at elementary or secondary schools or on college campuses in Massachusetts.
- (3) **No Promotion in Massachusetts of DFS Contests that Include Amateur, College, High School or Student Sporting Events:** DFSOs shall not run promotional activities in Massachusetts for games based on amateur, college, high school or student sporting events.

34.09 Promotional Offers

- (1) **Compliance with Existing Law on Promotional Offers:** A DFSO's promotional offers shall comply with 940 CMR § 3.13(3) and § 6.08 excepting §§ 6.08(3)(b)-(c), (5)(b)-(c) & (6).
- (2) **Pre-disclosure of Terms of Promotional Offers:** DFSOs shall fully and accurately disclose the material terms of all promotional offers at the time such offers are advertised and provide full disclosures of the terms of and limitations on the offer before the DFS Consumer provides anything of value in exchange for the offer. If the material terms of a promotional offer cannot be fully and accurately disclosed within the constraints of a particular advertising medium (*e.g.*, on a billboard), the promotional offer may not be advertised in that medium.
- (3) **Limitation of Delay of Implementation of Promotional Offers Available to New Customers:** No promotional offer available to new DFS Consumers may contain terms that delay its full implementation by the DFSO for a period of longer than 90 days, regardless of the amount of gameplay in that period by the DFS Consumer.

34.10 Protections for Problem Gamers

- (1) Self-Exclusion: DFSOs shall honor requests from DFS Consumers to self-exclude from all contests, to set DFS Contest entry limits, to limit play to contests with contest fees below an established limit, or to set self-imposed deposit limits.
 - a. DFSOs shall implement and Prominently Publish procedures for DFS Consumers to implement such restrictions.
 - b. Such procedures must include, at a minimum, opportunities to self-exclude or to set limits on any DFS Platform used by that DFS Consumer to make deposits into a DFS account and must also include options to set pop-up warnings concerning excessive DFS Contest entries and options to implement DFSO enforced timeouts.
 - c. DFS Consumers shall have the option to adjust these limits to make them more restrictive of gameplay as often as they like, but shall not have the option to make limits less restrictive of gameplay within 90 days of setting such limits.
- (2) Restriction on Direct Marketing to Excluded DFS Consumers: DFSOs shall not market a contest by phone or email, or by knowingly directing any form of individually targeted advertisement or marketing material to a DFS Consumer if the player is self-excluded or otherwise barred from playing in that contest.
- (3) Publication of Sources of Assistance to Problem Gamers: DFSOs shall Prominently Publish a description of opportunities for problem gamers to receive assistance or which direct players to a reputable source, accessible in Massachusetts, for such information.
- (4) Employee Training on Problem Gaming: DFSOs shall train employees on problem gaming. Such training shall include training on DFSO policies and best practices for identifying and assisting customers who may be problem gamers.
- (5) Requests for Exclusion Made by Third Parties: DFSOs shall develop and Prominently Publish procedures for honoring requests made by third parties to exclude or set deposit or loss limits for DFS Consumers.
 - a. These procedures shall include provisions for honoring requests to exclude DFS Consumers for whom the requestor can provide documentary evidence of sole or joint financial responsibility for the source of any funds deposited with a DFSO for gameplay, including:
 - i. proof that the requestor is jointly obligated on the credit or debit card associated with the DFS Consumer's account;
 - ii. proof of legal dependency of the DFS Consumer on the requestor under state or federal law; and

- iii. proof of the existence of a court order that makes the requestor wholly or partially obligated for the debts of the person for whom exclusion is requested.
 - b. The procedures established under this subsection shall also provide for exclusion in situations in which the requestor can establish the existence of a court order requiring the DFS Consumer to pay unmet child support obligations.
- (6) Limitations on Consumer Deposits: A DFSO shall not allow a DFS Consumer to deposit more than \$1,000 in any calendar month, provided however that a DFSO may establish and Prominently Publish procedures for temporarily or permanently increasing a DFS Consumer's deposit limit, at the request of the DFS Consumer, above \$1,000 per calendar month.
- a. If established by a DFSO, such procedures shall include evaluation of information, including income or asset information, sufficient to establish that the player can afford losses that might result from gameplay at the deposit limit level requested.
 - b. When a temporary or permanent deposit level limit increase is approved, the DFSO's procedures shall provide for annual evaluation of information, including income or asset information, sufficient to establish a player's financial ability to afford losses at the deposit limit level in place. Absent such evaluation, the temporary or permanent deposit level increase shall not be extended.

34.11 Prohibition on Extensions of Credit

DFSOs shall not extend credit to DFS Consumers.

34.12 Fairness of DFS Contests

- (1) No Game Play by Employees and Others Affiliated with a DFSO: No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO Contractor may play on any DFS Contest Platform of any DFSO. Nor may such person play through another person as a proxy. However, such individuals may play in a private contest on a DFS Contest Platform in which the individual's relevant affiliation with a DFSO is fully disclosed to each player. DFSO employees may also use clearly marked test accounts for testing purposes including evaluating a DFS Contest Platform. DFSO employees using test accounts shall not be eligible to win Prizes, provided however, that if a DFSO employee wins a DFS contest, the Prize in that contest must be awarded to a participant in that contest who would have won the Prize if the DFSO employee had not participated. DFSOs shall make these restrictions known to all affected individuals and corporate entities.

- (2) Disclosures Required of DFSO Promoters: No DFSO Promoter may enter any DFS contest on any DFS Contest Platform unless such DFSO Promoter has disclosed the following in connection with any public recommendation concerning DFS gameplay to other DFS players:
- a. That the DFSO Promoter is also a DFS player;
 - b. The user name that the DFSO Promoter uses for gameplay on any DFS Contest Platform;
 - c. That the DFSO Promoter may play, in connection with a personal account, in the games on which recommendations are offered;
 - d. That the DFSO Promoter may engage in DFS gameplay, in connection with a personal account, using players or strategies different from the recommendations made by the DFSO Promoter; and
 - e. That the DFSO Promoter's recommendations do not necessarily reflect the view of the DFSO.
- (3) No Disclosure of Proprietary Information: No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO Contractor may disclose proprietary or non-public information that may affect DFS gameplay to any person permitted to engage in DFS gameplay. DFSOs shall make these restrictions known to all affected individuals and corporate entities.
- (4) No Gameplay by Athletes and Others Connected with DFS Contest Outcomes: No DFSO shall allow a professional or amateur athlete, or a sports agent, team employee, referee or a league official associated with any competition which is the subject of DFS contests, to enter DFS contests in the sport in which they participate. Nor may such athlete, sports agent, team official, team representative, referee or league official play through another person as a proxy. A DFSO will not be held liable for a violation of this subsection if:
- a. The DFSO makes commercially reasonable efforts to obtain lists of such persons for the purpose of implementing this provision by monitoring for and excluding accounts of such persons;
 - b. The DFSO makes these restrictions known to all affected individuals and corporate entities;
 - c. The governing body for the sport in which the athlete, sports agent, team official, team representative, referee or league official participates, maintains and enforces a policy that excludes such individuals from entering DFS contests in that sport; and

- d. The DFSO, upon learning of a violation of this rule, immediately bars the individual committing the violation from playing in any DFS contest by suspending such individual's account and banning such individual from further play, terminates any existing promotional agreements with such individual and refuses to make any new promotional agreements that compensate such individual.
- (5) Restriction on Sharing Non-Public Information that May Affect DFS Gameplay: No DFSO shall knowingly permit an athlete, sports agent, team employee, referee or league official to provide proprietary or non-public information to any DFS player, or to provide such information to a DFS player before such information is made public.
- a. A DFSO, upon learning of a violation of this rule, shall bar the individual(s) committing the violation as well as the person(s) receiving such information from playing in any DFS contest by suspending the affected account(s) and banning such individual(s) from further play. The DFSO shall also terminate any existing individual promotional agreements with any athlete, sports agent, team employee, referee or league official that violates this rule and shall refuse to make any new individual promotional agreements that compensate such individual.
 - b. DFSOs shall make these restrictions known to all affected individuals and corporate entities.
- (6) Beginner Games: All DFSOs shall develop games that are limited to Beginners and shall keep non-Beginner players from participating, either directly or through another person as a proxy, in those games. A DFSO shall suspend the account of any non-Beginner DFS player that enters a Beginner game directly or through another person as a proxy and shall ban such individual from further play. A DFSO may allow a non-Beginner who is not a Highly-Experienced Player to enter up to 10 Beginner contests in any sport in which that player has not already entered 20 DFS contests.
- (7) Games that Exclude Highly-Experienced Players: All DFSOs shall develop games in which Highly-Experienced Players cannot, either directly or through another person as a proxy, participate. A DFSO shall suspend the account of any Highly-Experienced Player who enters a game which excludes Highly-Experienced Players, directly or through another person as a proxy, and shall ban such individual from further play.
- (8) On-boarding Procedures for New Players: On-boarding procedures for new players shall explain opportunities to learn about contest play and how to identify Highly-Experienced Players, and shall recommend beginner contests and low-cost private contests with friends for their value as a learning experience.

(9) Prohibition of Scripts:

- a. A DFSO shall not permit unauthorized Scripts to be used on DFS Contest Platforms and shall use commercially reasonable efforts to monitor for and to prevent use of such Scripts.
- b. A DFSO shall bar any individual or corporation found to be using an unauthorized Script from playing in any DFS contest by terminating such individual or corporate account and by banning that individual or corporation from further play.
- c. A DFSO shall not authorize Scripts that provide a player with a competitive advantage over another player.
 - i. For the purpose of this subsection a Script will be treated as offering a competitive advantage for reasons including, but not limited to, its potential use to 1) facilitate entry of multiple contests with a single line-up; 2) facilitate changes in many line-ups at one time; 3) facilitate use of commercial products designed and distributed by third parties to identify advantageous game strategies; or 4) gather information about the performance of others for the purpose of identifying or entering contests against DFS players who are less likely to be successful.
- d. Authorized Scripts shall either be incorporated as a game feature or be Prominently Published and thereby made available to all DFS players.

(10) Rules on When DFS Contests Lock:

- a. As of the time a DFS contest locks, no further entries or substitution of participants shall be accepted in connection with that contest. Nor shall participants be allowed to make further alterations or substitutions in connection with their entry or entries.
- b. DFSOs shall Prominently Publish rules that govern when each DFS contest shall lock that may include rules for multiple lock times in situations in which underlying competitions begin at different times. No lock times may occur after the commencement of the competition to which that lock time applies.
- c. DFSOs shall prominently disclose contest-specific information about the time that each contest locks in connection with each contest offered.
- d. A DFSO shall strictly enforce all disclosed lock times.

(11) Identification of Highly-Experienced Players: DFSOs shall identify Highly-Experienced Players by a symbol attached to their username, or by other easily visible means, on all DFS Contest Platforms.

(12) Restrictions on Number of Entries by Contest:

- a. DFSOs shall not allow a DFS player to submit more than one entry in any DFS contest involving 12 entries or less.
- b. DFSOs shall not allow a DFS player to submit more than two entries in any DFS contest involving 13-36 entries.
- c. DFSOs shall not allow a DFS player to submit more than three entries in any DFS contest involving 37-100 entries.
- d. In any contest involving more than 100 entries, DFSOs shall not allow a DFS player to submit more than the lesser of:
 - i. 3% of all entries, or
 - ii. 150 entries.
- e. For all advertised DFS contests, the DFSO shall prominently include information about the maximum number of entries that may be submitted for that contest.
- f. DFSOs may establish DFS contests, representing less than 2% of the total number of contests it offers, in which there is no restriction on the number of entries, provided that (i) the DFSO clearly discloses that there are no limits on the number of entries by each player in such contest, and (ii) that the cost of participating in such contest is \$50 or more per entry.

(13) DFSOs shall promptly, accurately and regularly update the “fill rate” for any DFS contest it offers on each of its DFS Contest Platforms. For the purpose of this subsection, the term “fill rate” shall mean the number of entries that have been submitted for that DFS contest at a given time.

(14) DFSOs shall not offer free or discounted entries to fill a contest in the three hour period prior to the earliest lock time for that contest, unless such free or discounted entries are made available pursuant to a plan that does not unreasonably disadvantage the players that have already entered that contest. For the purposes of this provision, an entry shall be considered “free” or “discounted” if it is less than the full entry fee for the contest or if the full entry fee is collected subject to refund, account credit, offset or reimbursement on any basis.

34.13 DFSOs That Run Both DFS Contests and Season-Long Fantasy Sports Games

- (1) If a DFSO has run 1,000 or more Exempt Contests annually for a period of at least two years, this regulation shall apply only to its DFS contest business or businesses provided that:

- a. The Enterprise's DFS contests are segregated from its non-DFS contests and Exempt Contests;
- b. The Enterprise applies this regulation to all of its DFS contests on any game platform;
- c. Entry into the Enterprise's DFS contests and its Exempt Contests requires separate input of personal and financial information in the on-boarding process, separate age-verification routines and a separate login process to access the account, including separate passwords or separate account authentication processes; and
- d. The DFSO does not target individual promotional activities or individual advertising for its DFS contests to Minors who participate in its Exempt Contests.

34.14 Tax Laws and Disclosures

- (1) **Obligation to Comply with Applicable Tax Laws Including Disclosures:** DFSOs shall comply with all applicable tax laws and regulations including, without limitation, laws and regulations applicable to tax withholding and laws and regulations applicable to providing information about winnings and withholdings to taxing authorities and to DFS Consumers.
- (2) **Disclosure of Potential Tax Liabilities:** DFSOs shall disclose potential tax liabilities to DFS Consumers in the on-boarding process and again at the time of award of any prize in excess of \$600. Such disclosures will include a statement that the obligation to pay applicable taxes on winnings is the responsibility of the DFS Consumer and that failure to pay applicable tax liabilities may result in civil penalties or criminal liability.

34.15 Data Retention

- (1) **Consumer Account Information:** DFSOs shall retain information sufficient to trace the deposits into and out of a DFS Consumer's account for at least ten years from the date of deposit or withdrawal.
- (2) **Prize Information:** DFSOs shall retain data about the winner(s) of each DFS contest and the amount of any Prizes awarded to the winner(s) for at least ten years from the date of the DFS contest.
- (3) **Advertising:** DFSOs shall retain copies of all advertisements for at least four years from the date of the last use of that advertisement and shall retain records sufficient to identify where such advertisements were placed. To the extent that an advertisement cannot be maintained in its original form (*e.g.*, billboards), the advertising copy shall be retained.

34.16 Consumer Complaint Procedures

- (1) Opportunities for Consumer Complaints: DFSOs shall develop and Prominently Publish procedures by which a DFS Consumer may file a complaint with the DFSO by internet chat, in writing, or by other means, about any aspect of DFS operation.
- (2) Responses to Complaints: DFSOs shall respond to such complaints in writing within ten business days. If the relief requested in the complaint will not be granted, the response to the complaint shall state the reasons with specificity.
- (3) Complaints Requiring Additional Information: If the response to a complaint is that more information is needed, the form and nature of the necessary information shall be specifically stated. When additional information is received, further response shall be required within seven days.
- (4) Retention of Complaints: All complaints received by a DFSO from a DFS Consumer and the DFSO's responses to complaints shall be retained for at least four years and made available to the AGO within seven days of any request by the AGO.

34.17 Severability

If any provision of 940 CMR 34.00 or the application of such provision to any person, entity or circumstances is held to be invalid, the validity of the remainder of 940 CMR 34.00 and the applicability of such provision to other persons, entities or circumstances shall not be affected.

34.18 Implementation Period

DFSOs shall implement this regulation as soon as practicable, but in no event later than July 1, 2016. This implementation period will not affect the AGO's ability to enforce existing law.