

COMMENTS TO PROPOSED REGULATIONS

Regarding Regulations 940 C.M.R. 34.00 et seq. (Daily Fantasy Sports Contest Operators)
Proposed by the Office of the Attorney General
Commonwealth of Massachusetts

Section 34.03 Definitions

The definition of “Daily Fantasy Sports” states that it applies to the contests where the finishing position of “one or more individual participants” determines the outcome. As we conduct contests on the outcomes of horse racing events, which I would hope are not intended to be covered by the proposed regulations, I would request that the language be changed to “individual human participants”.

The definition of “Daily Fantasy Sports Operator” applies where the operator offers as few as 10 contest per month. As we use traditional daily fantasy sports as a marketing tool to attract fans to horse racing, I would request that the minimum number of contest be increased to 20 per day in order for the regulations to be applicable. Otherwise, an undue burden will be imposed on an operator whose primary business is an already heavily regulated activity.

In subsection 5 of the definition of “Daily Fantasy Sports Operator”, season long fantasy sports operators are carved out of the definition, and thus not subject to the proposed regulations, even though they are the largest operators of fantasy sports, offering their games to literally millions of customers. And small operators who conduct as few as 10 daily fantasy contests over a month are included within the definition, and therefor subjected to the proposed regulations. This is patently unfair. Even though there is more skill required in daily fantasy sports, the largest operators are excluded from the regulatory burden imposed on much smaller daily fantasy operators.

The definition of “minors”, who are precluded from playing daily fantasy sports games, is proposed to be 21. This is unfair and arbitrary when Massachusetts permits 18 year olds to buy lottery tickets, play bingo, and bet on horse racing. As well as go into the armed services for their country. It is unfair and arbitrary for the government operated games of lottery and keno to have their minimum age set at 18, while you must be 21 to play fantasy sports. You can enter the armed services at age 18, but you can’t play fantasy sports in Massachusetts until you’re 21?

The definition of “Highly-experienced Player” is assigned to those players who presumably have a high degree of skill and beginners should know when they are up against a highly skilled player. But the regulations don’t further that goal. The proposed definition of “Highly-experienced Player” includes someone who has entered more than 1,000 games, regardless of his winning percentage. So you could have a very poor player, who plays in more than 1,000 contests, and he gets identified in the same category as a player who wins 65% of the games he enters. That is arbitrary and without foundation.

Section 34.05 Limitation to One Account Per DFS Player

Subsection (5) of this section 34.05 prohibits DFSOs from allowing simultaneous sign-ons on a single account. This prohibition will unreasonably interfere with some player's enjoyment of fantasy games and serves no legitimate purpose. Some players enjoy keeping a window on their desktop active to make entries, while having the phone available to check on the status of other games. And a player might have one window open to make fantasy entries, while signing into their account in another window to watch a horse race.

Section 34.09 Promotional Offers

Subsection (3) of this section 34.09 unreasonably interferes with an Operators ability to run and market their business, with no offsetting protection to the consumer. Requiring all promotional offers to be credited to a consumer within 90 days, regardless of the consumer's behavior during such period, unfairly undermines a DFSOs ability to effectively market their product. For example, under the proposed regulation, a promotion which credits the consumer \$10 after he enters five fantasy contests would require a DFSO to credit the \$10 after 90 days even if the consumer only entered one contest. This requirement, and the resulting marketing limitation, serves no valid purpose. The goal of protecting the consumer is fulfilled so long as promotion terms and conditions are fully disclosed and made known to the consumer, without effectively mandating what type of promotion may be offered.

Section 34.10 Protections for Problem Gamers

Subsection (2) of this Section 34.10 is an undue burden on the DFSO. Since the DFSO will be required to provide a mechanism for self-exclusion under Section 34.10 (1), to which no objection is made, it is unduly burdensome on the DFSO to additionally be required create a mechanism which allows a consumer to create self-designed limits on the number of contests which the consumer can enter and another mechanism by which the consumer be allowed to establish a limit on the entry fees of contests which they may be allowed to enter. While this feature is certainly an option for a DFSO, the self-exclusion mechanism should protect the legitimate consumer protection interests without unduly burdening the DFSO.

Section 34.10 provides no mechanism for a consumer to be removed from self-exclusion. With the Massachusetts Gaming Commission regulations covering casinos, there is a mechanism to be removed. It is only fair and reasonable to provide such a mechanism for fantasy sports.

Subsection (6) of this Section 34.10 is objectionable for three reasons. First, it unduly interferes with the consumer's right to privacy. For many people, spending \$1,000 per month on their favorite pastime is not unusual. Whether it's boating, attending football games or skiing, we don't submit these participants to demonstrating their financial capability to engage in such pursuits. There should be no different standard applied to fantasy sports games. It would be arbitrary and unreasonable to subject the consumer to such a burden when his pastime happens to be fantasy sports. Secondly, the State of Massachusetts imposes no such requirement on its own government-operated gaming operations of lottery and keno. Not only doesn't the lottery track consumer purchases, they don't subject consumers to a financial review in order to buy a lottery ticket. To do otherwise with fantasy games is arbitrary and unreasonable on the consumer and on the DFSO. Third, requiring a financial review at the \$1,000 monthly deposit level would unduly interfere with conflicting requirements applicable to our licensed

and regulated horse racing offering. With the same consumer account used for both pari-mutuel wagering and fantasy sports, we currently operate under rules and requirements with regard to consumer accounts. As an alternative, perhaps this regulation could be limited to where the account is used exclusively for DFS contests to avoid the conflict.

Section 34.12 Fairness of DFS Contests

Subsection (1) of this Section 34.12 requires that DFSO employees not be allowed to play in any fantasy sports games with ANY DFSO. This limitation on individual freedom is unprecedented. While it is appropriate to prohibit employees with access to game play data not available to the general public, from playing on the DFS Platform with which they are associated, it is an unreasonable and unfair curtailment on individuals to preclude them from playing on any DFS Platform. Many employees of DFS operators love fantasy sports games. In many instances, it's why they work for such companies. And that's good for the industry. It's good to have passionate employees engaged in the business, who love the product that their company is offering. But to then say they can never play fantasy sports games again, is unfair, unreasonable and unnecessary.

We could find no similar requirement which the Massachusetts Gaming Commission imposes on casino employees, that they not be allowed to play at other casinos. To treat DFSOs differently is unreasonable.

Additionally, after saying that DFSO employees may not play on any DFS Platform, the proposed regulation confusingly goes on to say they MAY play in "private" contests so long as their affiliation is made known to participants. Since there is no definition of "private", it is difficult to determine what contests they may be permitted to play in under the proposed regulations. And wouldn't the disclosure be sufficient for all contests, instead of just "private" contests.

Subsection 9 of this Section 34.12 provides that no substitution of participants be allowed after a contest locks. I would ask that this be modified so as to make it clear that contests may be offered which are not locked. We currently operate horse racing contests in which consumers can change their selections in races which have not yet started, even though the contest has started. For example, a contest is offered on all the races at a particular race track on a particular day, and a consumer has selected his entry for all races. Some contests are offered where the consumer may not change his entries once the first race starts (a "handcuff" contest), while other contests allow changes to be made on races which have not yet started even though some of the races have already been run (a "live play" contest). Similar rules can apply to traditional fantasy sports games. I would request that this subsection be modified to make clear that contests can be run which are not lock down contests.

Subsection (11) limits the number of entries that any one consumer can enter in a contest, which varies based on the total number of entries. The protection sought to be advanced can be satisfied by a less restrictive measure. The protection can be achieved by requiring the DFSO to inform consumers on the number of entries which may be made by any one consumer. So long as the consumer knows how many entries are allowed by any one player, the consumer can make an informed decision on whether to enter the contest. There is no need to impose an artificial limit on the number of entries which can be made in any one contest. Does the Massachusetts lottery limit how many lottery tickets a consumer may purchase for any one lottery drawing?

Additional Comment

Given the number and complexity of the technical changes required of a DFSO by the proposed regulations, I would ask that twelve months be allowed in order to implement technically dependent requirements. While the two large DFSOs are large teams of developers, smaller DFSOs have more modest resources, and should not be discriminated against because they have more limited resources.

Respectfully Submitted,

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