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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 designed 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

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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 individual participants 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 engages in the business of offering, by means of the Internet or smart phone application (or via other similar electronic or digital media or communication technologies), multiple Daily Fantasy Sports contests to persons who include residents of Massachusetts. For the purpose of this regulation, Daily Fantasy Sports Operators includes any Enterprise that offers more than 10 DFS contests by means of the Internet or smart phone application each month. However, an Enterprise is not a Daily Fantasy Sports Operator if it offers only DFS contests that meet one of the following criteria:

1. No Prize is awarded;
2. No entry fee is collected;
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 entry fee charged to a single participant for entering 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 200 underlying competitions, and the Prize or Prizes awarded are determined by agreement of the participants in order to distribute the participants’ contributions to a fund established to award a Prize or Prizes for the contest.

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.

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.

Prize: Anything of value, including money, contest credits, merchandise, or admission to another contest.

Minors: Persons under the age of 21.

Script: A list of 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.

Beginner: Any DFS player who has entered fewer than 51 contests offered by a single DFSO.

Highly-experienced Player: Any DFS player who has 1) entered more than 1,000 contests offered by a single DFSO; or 2) entered more than 250 contests offered by a single DFSO and has prevailed in more than 65% of the total number of such contests; or 3) has won more than three DFS contest Prizes valued at \$1,000 or more. Once a DFS player is classified as a Highly-experienced Player, a player will remain classified as such.

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

DFS Contractor: Any person or corporate entity who works pursuant to an independent contract with a DFSO and who has access to non-public portions of the DFSO's office, the DFSO's computer network, or to DFSO proprietary information that may affect gameplay.

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

34.04 Gameplay by Minors; Restriction on Games Based on Student Sporting Events

- (1) **No Gameplay by Minors:** No DFSO will allow a Minor to participate in any contest, whether or not a Prize is offered in that contest.
- (2) **Refunds of Deposits by Minors:** A DFSO will promptly refund any deposit received on a Minor's account, whether or not the Minor has engaged in or attempted to engage in gameplay, provided, however, that any refund may be offset by Prizes already awarded.

(3) **No DFS Games Based on Student Sporting Events:** DFSOs shall not offer DFS contests that include college, high school or student sporting events.

(4) **Parental Controls:** DFSOs will 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 will comply with all applicable state and federal requirements for data security.

(2) **Protections for DFS Accounts:** Funds in DFS Consumer accounts will be held in trust by the DFSO for the DFS Consumer that establishes the account. DFSOs will implement and Prominently Publish procedures that:

- a. prevent unauthorized withdrawals from DFS Consumer accounts by DFSOs or others;
- b. prevent commingling of funds in a DFS Consumer account with other funds including, without limitation, funds of the DFSO; and
- c. establish procedures for responding to and reporting on complaints by DFS Consumers that their accounts have been misallocated, compromised or otherwise mishandled.

(3) **Procedures for Closing Accounts at the Request of a Customer:** DFSOs will 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) **Prompt Refunds on Closed Accounts:** When a DFS Consumer account is closed, the DFSO will refund all funds in the account no later than the close of business on the next full business day.

(5) **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, will be distributed by the DFSO within five business days.

(6) **Account Closures Due to Inactivity; Unclaimed Funds in DFS Consumer Accounts:**

- a. A DFSO will close any DFS Consumer account that is inactive for two years and notify the account holder that the account has been closed by email and by mail to the account holder's last known address.
 - b. When a DFS Consumer account is closed due to inactivity, the DFSO will refund all funds in the DFS Consumer account within thirty days.
 - c. In the event that funds in a closed DFS Consumer account cannot be refunded and remain unclaimed, the DFSO will provide annual notice of the existence of funds to the DFS Consumer no less often than semi-annually for three years. Such notice will be provided by email and by mail to the account holder's last known address and will provide a process for claiming the funds.
 - d. In the event that funds in a closed DFS Consumer Account cannot be refunded and remain unclaimed by the DFS Consumer after three years, such funds will be paid by the DFSO to the Commonwealth of Massachusetts Unclaimed Property Fund in the Office of the State Treasurer unless the DFS Consumer has established a last-known address in another state.
- (7) Publication of Terms, Conditions and Rules: A DFSO will 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 will not allow a DFS player to establish more than one username or more than one account.
- (2) Identification of Players by DFSOs: DFSOs will take commercially and technologically reasonable measures to verify DFS players' true identities and addresses to the greatest extent possible and will use such information, at a minimum, to enforce subsection 34.06(1).
- (3) No Proxy Servers: DFSOs will not allow any DFS player to use a proxy server to enter any DFS Contest Platform.
- (4) Termination of Players that Establish More than One Account: DFSOs will implement procedures designed 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.
- (5) Simultaneous Log-ins: DFSOs will not allow simultaneous log-ins on a single account.

34.07 Truthful Advertising; Limitations on Advertising Content

- (1) Compliance with Existing Advertising Regulations: DFSOs will comply with the following regulations promulgated by the Attorney General 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 will not depict Minors, students or school or college settings.
- (3) No Endorsement by Minors, College Athletes, Colleges, or College Athletic Associations: DFSO advertisements will not state or imply endorsement by Minors, collegiate athletes, colleges or college athletic associations.
- (4) Advertisements to Include Information to Assist Problem Gamers: DFSO advertisements in published media (*e.g.*, print, television, Internet and smartphone applications) will include information concerning assistance available to problem gamblers or will direct consumers to a reputable source for 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. DFSO advertisements may make no representations about average winnings that do not equally prominently represent 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 will not advertise in publications or other media that are aimed exclusively or primarily at Minors.
- (2) No Promotional Activities at Schools or Colleges: DFSOs will not advertise or run promotional activities at schools or on college campuses.
- (3) No Advertising at Amateur or Student Sporting Venues: DFSOs will not advertise or run promotional activities at amateur, school or college sporting events unless such sporting event is conducted in a venue that is not primarily used for amateur, school or college events.
- (4) Limitations on Advertising at Amateur or Student Sporting Events Held in Other Venues: At an amateur, school or college sporting event conducted in a venue that is not primarily used for such events, DFSOs will neither conduct promotional activities nor run electronic advertisements by means, for example, of the game scoreboard or advertising tickers. Nor will it place an advertisement in any format other than those that are typically present at that venue for all events.

34.09 Promotional Offers

- (1) Compliance with Existing Law On Promotional Offers: A DFSO's promotional offers will comply with 940 CMR § 3.13(3) and § 6.08 with the exception of 6.08(3)(b)-(c), (5)(b)-(c) & (6).
- (2) Predisclosure of Terms of Promotional Offers: DFSOs will fully and accurately disclose the terms of all promotional offers at the time such offers are advertised and provide full disclosures of limitations on the offer before the DFS Consumer provides anything of value in exchange for the offer. If 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 will honor requests from DFS Consumers to self-exclude from all contests on any DFS Contest Platform or to set self-imposed deposit limits or to set self-imposed loss limits. DFSOs will implement and Prominently Publish procedures for DFS Consumers to do so. Such procedures must include, at a minimum, opportunities to self-exclude or to set deposit limits on any DFS Platform used by that DFS Consumer to make deposits into a DFS account.
- (2) Self-Limitation: DFSOs will provide options to DFS Consumers that allow them to limit the number of contests they enter per week, and/or that they only be allowed to play in contests with contest fees below a limit that they establish. DFSOs will implement and Prominently Publish procedures for DFS Consumers to do so. Such procedures must include, at a minimum, opportunities to set contest limits on any DFS Platform used by that DFS Consumer to make deposits into a DFS account.
- (3) Restriction On Direct Marketing to Excluded DFS Consumers: DFSOs will not market a contest to DFS Consumers by phone, email or in any form of individually targeted advertisement or marketing material if the player is self-excluded or otherwise barred from playing in that contest.
- (4) Publication of Sources of Assistance to Problem Gamers: DFSOs will Prominently Publish a description of opportunities for problem gamers to receive assistance or which direct DFS Consumers to a reputable source, accessible in Massachusetts, for such information.

(5) Requests for Exclusion Made by Third Parties: DFSOs will develop and Prominently Publish procedures for honoring requests of third parties to exclude DFS Consumers (or to set deposit or loss limits).

- a. These procedures will 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. other situations in which the requestor may be legally obligated for the debts of the person for whom exclusion is requested.
- b. The procedures established under this subsection will 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: DFS Consumer deposits will be limited to no 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 will include evaluation of information, including income or asset information, sufficient to establish that the DFS Consumer 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 will provide for annual evaluation of a player's financial ability to afford losses.

34.11 Prohibition on Extensions of Credit

DFSOs shall not issue 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. DFSOs will make these restrictions known to all affected individuals and corporate entities.
- (2) 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 will make these restrictions known to all affected individuals and corporate entities.
- (3) No Gameplay by Athletes and Others Connected with DFS Contest Outcomes: No DFSO will allow a professional or amateur athlete whose individual statistics or performance may be used to determine any part of the outcome of any DFS contest, 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. DFSOs will make commercially reasonable efforts to obtain lists of such persons for the purpose of implementing this provision.
 - b. DFSOs, upon learning of a violation of this rule, will bar the individual committing the violation from playing in any DFS contest by suspending such individual's account and banning such individual from further play, will terminate any existing promotional agreements with such individual and will refuse to make any new promotional agreements that compensate such individual.
 - c. DFSOs will make these restrictions known to all affected individuals and corporate entities.
- (4) Restriction on Sharing Non-Public Information that May Affect DFS Gameplay: No DFSO will 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. DFSOs, upon learning of a violation of this rule, will 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 will also terminate any existing individual promotional agreements with any athlete, sports agent, team employee,

referee or league official that violates this rule and will refuse to make any new individual promotional agreements that compensate such individual.

- b. DFSOs will make these restrictions known to all affected individuals and corporate entities.
- (5) Beginner Games: All DFSOs will develop games that are limited to Beginners and will keep non-Beginner players from participating in those games either directly or through another person as a proxy. A DFSO will suspend the account of any non-Beginner DFS player that attempts to enter a Beginner game directly or through another person as a proxy and will ban such individual from further play.
 - (6) Games that Exclude Highly-Experienced Players: All DFSOs will develop games in which Highly-experienced Players cannot participate either directly or through another person as a proxy. A DFSO will suspend the account of any Highly-Experienced Player who attempts to enter a game that excludes Highly-Experienced Players directly or through another person as a proxy and will ban such individual from further play.
 - (7) On-boarding Procedures for New Players: On-boarding procedures for new players will explain opportunities to learn about contest play, to identify Highly-experienced Players, and will recommend beginner contests and low-cost private contests with friends for their value as a learning experience.
 - (8) Prohibition of Scripts: No Scripts will be allowed. Existing scripts will be removed. A DFSO will 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 DFS Contest Platforms.
 - (9) Rules on When DFS Contests Lock:
 - a. As of the time a DFS contest locks, no further entries or substitution of participants will be accepted in connection with that contest. Nor will participants be allowed to make further alterations or substitutions in connection with their entry or entries.
 - b. DFSOs will have Prominently Published rules that govern when each DFS contest will lock. Each DFSO contest will also prominently disclose contest-specific information about the time that contest locks in connection with each contest offered.
 - c. A DFSO will strictly enforce all disclosed lock times.
 - (10) Identification of Highly Experienced Players: DFSOs will identify Highly-experienced Players by a symbol attached to their username, or by other easily visible means, on all DFSO Contest Platforms.

- (11) Restrictions on Number of Entries by Contest:
- a. DFSOs will not allow DFS players to submit more than one entry in any DFS contest involving 12 entries or less.
 - b. DFSOs will not allow DFS players to submit more than two entries in any DFS contest involving 13-36 entries.
 - c. DFSOs will not allow DFS players to submit more than three entries in any DFS contest involving 37-100 entries.
 - d. DFSOs will not allow DFS players to submit more than 3% of all entries in any contest involving more than 100 entries.
 - e. For all advertised DFS contests, the DFSO will prominently include information about the maximum number of entries that may be submitted for that contest.

34.13 Tax Laws and Disclosures

- (1) Obligation to Comply with Applicable Tax Laws Including Disclosures: DFSOs will 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 will 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 warning 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.

34.14 Data Retention

- (1) Consumer Account Information: DFSOs will 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 will 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 will retain copies of all advertisements for at least four years from the date of the last use of that advertisement and will 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 will be retained.

34.15 Investigating and Resolving Complaints by DFS Consumers; Self-Reporting of Violations

(1) Consumer Complaint Procedures:

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

34.16 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.