CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: **Ohio Casino Control Commission ("Commission")**

Regulation/Package Title: **Fantasy Contests.**

Rule Number(s): **3774-1-01; 3774-1-02; 3774-1-03; 3774-1-04; 3774-1-05; 3774-2-01; 3774-2-02; 3774-2-03; 3774-2-04; 3774-3-01; 3774-3-01.1; 3774-3-02; 3774-3-03; 3774-3-04; 3774-3-05; 3774-3-06; 3774-3-07; 3774-4-01; and 3774-4-02.**

Date: **March 20, 2019**

Rule Type:

X New | **□ 5-Year Review**

□ Amended | **□ Rescinded**

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

Agency 3774 of the Administrative Code will contain the regulations for ensuring the integrity of fantasy contests in accordance with Chapter 3774. and division 3772.03(L) of the Revised Code. This package contains all currently contemplated rules for fantasy contests, and thus represents a comprehensive look at the Commission's proposed regulatory framework. Chapter 3774-1 contains definitions and other rules of general applicability; Chapter 3774-2 contains rules related to licensure; Chapter 3774-3 contains rules related to compliance; and Chapter 3774-4 contains rules related to sanctions. These rules use the same general procedural framework the Commission is accustomed to with respect to its regulations, while substantively using regulations in place in the statute or other jurisdictions that the regulated community is accustomed to.

- **3774-1-01** – titled "Definitions." 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.

- **3774-1-02** – titled "Authority and purpose." This rule covers and its purpose is to provide the general authority of the Commission to adopt rules ensuring the integrity of fantasy contests. The rule also further specifies how such rules will be adopted and contains authority for the Commission to delegate responsibilities to the Executive Director and other employees in accordance with how the Commission does so under its other regulatory frameworks.

- **3774-1-03** – titled "Construction." 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.

- **3774-1-04** – titled "Access to records, examination under oath, and subpoena power." 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.

- **3774-1-05** – titled "Waivers and variances." 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.

- **3774-2-01** – titled "General fantasy contest licensing requirements." 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.

- **3774-2-02** – titled "Fantasy contest operator licensure." 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.

- **3774-2-03** – titled "Management company licensure." This rule governs the process by which a person may seek to obtain or renew a management company license, including the fee that must be paid. This rule largely mirrors the process and requirements for fantasy contest operators described above. However, the rule does contain an exception where management companies that are related through a joint venture, controlled by, or under the common control of a fantasy contest operator applicant will only need to pay one fee for the licensure of both applicants. The purpose of this rule is to establish the process and fees for the Commission to issue management company licenses.

- **3774-2-04** – titled "Duty to update information." 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.

- **3774-3-01** – titled "Fantasy contest operator internal procedures." 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.

- **3774-3-01.1** – titled "Initial internal procedures submissions." This rule is a temporary rule in which the Commission has been built in additional time for first-time applicants to provide internal procedures to the Commission. The purpose of this rule is to enable first-time applicants extra time in which to ensure their internal procedures comply with Ohio law while still comporting with the statutory safe harbor created in section 3 of House Bill 132 of the 132nd General Assembly.

- **3774-3-02** – titled "Prohibited activities." This rule states certain prohibitions under fantasy contest law, including operating or promoting a fantasy contest without a license, operating under names not provided to the Commission, extending credit to players, failing to provide requested information to the Commission, or making false statements to the Commission. This rule also prohibits certain conduct that would lead to fantasy contests not being based on the skill of fantasy contest players, as required by statute. The purpose of this rule is to ensure that fantasy contests are only offered by those authorized to do so and that those who are authorized to offer fantasy contests do so in accordance with fantasy contest law and any guidance issued by the Commission.

- **3774-3-03** – titled "Duties of fantasy contest operators." This rule contains certain duties of fantasy contests operators. Operators must provide patrons with the rules and terms of fantasy contests and comply with those rules and terms and also comply with their own internal procedures. Operators must also train their employees in such a manner that those employees will comply with all fantasy contest law related to each employee's function. Operators must also provide documentation of patron fund protection every six months, ensure the proper maintenance of records, and notify the Commission of any intent to cease doing business in the state, including how patron funds will be distributed to their rightful owners. Finally, operators must comply with notices and directives from the commission, ensure prompt responses to the Commission, and notify the Commission of any violations of fantasy contest law. The purpose of this law is to ensure that fantasy contest operators comply with fantasy contest law and facilitate the Commission in its goal to ensure the integrity of fantasy contests.

- **3774-3-04** – titled "Duties of key employees." This rule contains certain duties of key employees. These duties include serving as the representative of the operator, ensuring the operator timely meets all filing deadlines, ensuring the operator issues prompt response to the Commission, notifying the Commission of any violations of fantasy contests law, and complying with all notices or directives from the Commission. The purpose of this rule is to ensure that key employees comply with fantasy contest law and facilitate the Commission in its goal to ensure the integrity of fantasy contests.

- **3774-3-05** – titled "Duties of management company applicants or licensees." This rule contains certain duties of management company applicants or licensees. These duties include ensuring the fantasy contest operator associated with the management company is compliant with fantasy contest law, notifying the Commission of any violations of fantasy contest law, retaining all records required by law, promptly responding to all inquiries from the Commission, and complying with all notices or directives from the Commission. The purpose of this rule is to ensure that management company applicants or licensees comply with fantasy contest law and facilitate the Commission in its goal to ensure the integrity of casino fantasy contests.

- **3774-3-06** – titled "Inspection and audits." This rule details the process by which fantasy contest operators will obtain third-party audits to be conducted by approved, qualified certified public accountants in good standing. These audits are to be conducted and provided once every year for financial audits and once every licensure period for compliance audits. The audits are to be submitted directly to the Commission when they are made available to the operator. The rule allows the Executive Director to waive any audit requirements under the rule, provided sufficient reason provided by the operator and allows the operator to have the Commission to instead conduct any audits, at cost. Finally, the rule provides that the Commission may require any production of documents or inspections needed from those participating in the conduct of fantasy contests and that those persons shall cooperate with such requirements. The purpose of this rule is to ensure that operators are complying with fantasy contest law through the use of audits and inspections.

- **3774-3-07** – titled "Advertising." 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.

- **3774-4-01** – titled "Hearings." This rule governs any administrative action taken under fantasy contest law and provides that the provisions of R.C. Chapter 119 and Chapter 3772-21 of the Administrative Code will apply. These rules currently apply in any administrative action taken under the Commission's other regulatory frameworks. The purpose of this rule is to ensure compliance with the due process of law as articulated in R.C. Chapter 119.

- **3774-4-02** – titled "Sanctions." 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.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   Oversight of fantasy contests was granted to the Commission by the 132nd Ohio General Assembly with the passage of House Bill 132. This included: section 3772.03(L) and Chapter 3774 of the Revised Code, which grant the Commission the authority to adopt this regulatory framework.

3. **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.

4. **If the regulation 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).

5. **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.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   Overall, the Commission will measure the success of this regulation in terms of whether they help to ensure the integrity of fantasy contests. This can be done in two ways: First, through evaluating whether the administrative cost of implementing and enforcing the proposed rules outweighs their public benefit. Second, through analyzing the regulated community's comments about requests for waivers or variances from these rules once they are implemented.

Development of the Regulation

7. 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.

Since the enactment of the Fantasy Contest Act in March 2018, the Commission has taken several steps to engage the stakeholder community regarding the development of fantasy contest regulations. This included stakeholders presenting at a Commission meeting and staff engaging with stakeholders through several meetings, telephone calls, and emails.

Stakeholders were then provided an opportunity to comment on the initial draft via e-mail on January 2, 2019. A list of those stakeholders contacted is enclosed as Attachment A, and a copy of the email is enclosed as Attachment B. Comments were requested to be submitted by January 16, 2019.

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

As discussed in question seven above, the initial draft, itself, was a direct result of engagement with and input from the stakeholder community, and the initial draft included many thoughts, comments, and ideas provided by stakeholders. Additionally, the Commission received written comments from seven individuals or entities, enclosed as Exhibits C-I. As a result of those comments, the Commission made several changes to the draft rules, including:

- Better defining fantasy contest player funds to only apply to cash and cash equivalents, to not include operator-funded prizes, and to explicitly exclude funds that have already been withdrawn. Rule 3774-1-01(B)(6);
- Clarifying the types of changes in ownership that would require a licensee to seek a new license, including specifying that a name change, in and of itself, would not require a new license and that only "majority" changes in ownership, as opposed to "significant" changes in ownership, would require a new license. Rule 3774-2-01(H);
- Restricting the fantasy contest player count to fantasy contest players "in the state of Ohio" for purposes of determining the fee charged to fantasy contest operators. Rule 3774-2-02(A)(1)-(4);
- Lowering the fees in the fourth tier from five-thousand dollars over three years to three-thousand dollars over three years. Rule 3774-2-02(A)(4);
- Clarifying when a fantasy contest operator would need to have procedures in place to suspend players. Rule 3774-3-01(A)(2) and (8)(c);
- Clarifying that fantasy contest operators need only prohibit the use of material nonpublic information that was gained from the operator, not that information learned from other sources. Rule 3774-3-01(A)(6)(b) and (7);
- Clarifying that player funds could be protected through any means provided for in the statute. Rule 3774-3-01(A)(9) and -03(D);

- Adding a provision for fantasy contest operators to have internal procedures on refunding entry fees for cancelled contests. Rule 3774-3-01(A)(10);
- Adding a provision for fantasy contest operators to have internal procedures detailing how they will process unclaimed funds in accordance with Chapter 169. of the Revised Code. Rule 3774-3-01(A)(11);
- Allowing fantasy contest players to make any voluntary restriction they sign up for more restrictive as often as they like. Rule 3774-3-01(A)(15)(d);
- Creating an exception for auto draft functionality in the prohibited activities rule that may allow operators to allow or offer auto draft functionality if the operator can show how that function does not violate fantasy contest law. Rule 3774-3-02(B)(1);
- Clarifying that fantasy contest employees, for purposes of this regulation, need only be trained in fantasy contest law and the requirements thereunder relevant to each employee's individual function, as opposed to all law that may be relevant to the employee's function. Rule 3774-3-03(H);
- Moving the authority of approving the third-party auditor from the Commission level to the Executive Director level to allow for more timely approval. (Rule 3774-3-06(C);
- Allowing the Executive Director to waive audit requirements under rule 3774-3-06 based upon risk, audits the Commission is conducting or will conduct itself, or other good cause. Rule 3774-3-06(G);
- Changing the requirement on providing information on playing responsibly and seeking assistance for compulsive behavior to correspond to requirements in place in other states. Rule 3774-3-07(A)(2).

In addition to those listed changes, the Commission also conducted follow-up meetings, emails, or phone calls, as appropriate to better clarify certain provisions of the draft based on stakeholder comment. These include:

- Clarifying that the term "applicant" is simply a shortened term used in drafting to refer to those applying as either a management company or fantasy contest operator that the definitions of management company and fantasy contest operator are controlled by statute. Rule 3774-1-01(B)(2);
- Clarifying that the definition of "management company," and thus a management company that is managing "the day-to-day business operations of a fantasy contest operator" is controlled by statute. Rule 3774-2-03(A);
- Clarifying that the Commission recognizes the statutory safe harbor provided to operators in section 3 of the Fantasy Contest Act and that the Commission will not act contrary to it, including that the Commission will allow operators to continue to operate while their application pends before the Commission, assuming all requirements of the statute are met. Rule 3774-3-02(A);
- Clarifying that "audit engagement" does not mean that an operator cannot start negotiations with an auditor or have tentative agreements in place with that auditor. Instead, it would only prohibit the auditor from actually producing an audit for use in Ohio until that auditor has been approved. Rule 3774-3-06(C).

9. **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, the Commission reviewed how other jurisdictions approached fantasy contest regulation, including jurisdictions recommended to the Commission by fantasy contest operators themselves. In so doing, the Commission was able to use, as much as possible, rules to which the regulated community is accustomed, with minor adaptations to remain in compliance with Ohio law.

10. **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?**

    The Commission staff reviewed the statutes and rules adopted in almost every jurisdiction currently regulating fantasy contests, including Arkansas, Colorado, Connecticut, Delaware, Indiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Tennessee, Vermont, and Virginia. During this process, staff continued its engagement with stakeholders to determine what was working for both the regulators and the regulated in those states and what challenges other states have faced with their regulations up to this point. These rules are modeled after the rules that have been successful in those other jurisdictions with adaptations made for Ohio law.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

    Yes. These rules provide the operators and the Commission with the flexibility to craft guidelines not only based on the performance of a fantasy contest operator but also based on the size and risk of the operator. Most of the compliance-related requirements in these regulations take the form of internal procedures, wherein they largely set the floor for compliance but do not completely dictate how fantasy contest operators are supposed to achieve compliance. This allows the operator to meet compliance in a way that is tailored to their business model. These internal procedures are able to be modified at any time and will allow operators and the Commission the flexibility to modify internal processes and regulations, respectively, maintaining the opportunity for dynamic operations which are more favorable to the business. Moreover, rule 3774-1-05 and several more specific provisions throughout the proposed regulation allows persons to seek waivers and variances from these rules, which the Commission will evaluate on a case-by-case basis and may grant, as long as it determines that doing so is in the public's best interest. Past performance and compliance with any applicable laws or rules of the requestor may be considered in determining whether a waiver from any specific provisions of these rules could be granted.

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

    This question does not apply to the majority of these rules because no other regulations currently exist with respect to fantasy contests in this state, over which the Commission has

sole authority. However, these rules do recognize the interplay of other laws, including those in the areas of online privacy and security and unclaimed funds. Instead of creating new standards in those areas to which fantasy contest operators must comply, these rules merely require the fantasy contest operator to have written internal procedures by which they will comply with those already-existing standards.

13. 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 Commission provides notice to the stakeholder community through e-mail (including its fantasy contest listserv available at: https://casinocontrol.ohio.gov/FantasyContests.aspx), phone calls, and meetings regarding proposed and final-filed rules and will engage in outreach with stakeholders when rules are filed or become effective. Further, the Commission will be updating its fantasy contest webpage as the implementation of the rules moves closer to include information on applications, forms, FAQs, etc. To further ensure consistency and predictability once the rules are implemented, the Commission will have managers of licensing and compliance overseeing all issues that arise. From there, those managers will work with legal staff and the Executive Director to coordinate a consistent response and conduct outreach to the regulated community.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. **Identify the scope of the impacted business community;**

Those engaged in the industry of fantasy contests in the State of Ohio, specifically fantasy contest operators and management companies.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The nature and potential adverse impact from this regulation includes fees for licensure, costs for employee time and payroll, audit costs, and fines for noncompliance.

c. Quantify the expected adverse impact from the regulation.
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.

As described more thoroughly in the analyses of each of the rules below, many of the businesses that the Commission anticipates will apply for a license under this regulatory framework already operate and are subject to regulation and licensure in several other states. Additionally, since stakeholders substantially participated in the

drafting of both the Fantasy Contest Act and these proposed rules, most of what is contained herein should not be a surprise to them. Given these facts, although this regulatory framework is new to the State of Ohio, the general premise will not likely require significant changes to the business model of those operating in other states, which inherently reduces the potential adverse impact as a result of these rules.

- **Rule 3774-1-01 "Definitions."** Proposed rule 3774-1-01 establishes the definitions to be used throughout agency 3774 of the Administrative Code. As the rule only establishes definitions, the Commission does not anticipate any negative business impact as a result of proposed rule 3774-1-01.

- **Rule 3774-1-02 "Authority and Purpose."** This rule amplifies the language of R.C. 3772.03(L) and Chapter 3774 that authorized the Commission to promulgate administrative rules to ensure the integrity of fantasy contests. The rule outlines general powers of the Commission with agency 3774 of the Administrative Code, including the Commission's authority to adopt, amend, or repeal administrative rules. As the proposed rule describes the general authority of the Commission under the Fantasy Contest Act, the Commission does not anticipate any adverse impact on the regulated community.

- **Rule 3774-1-03 "Construction."** This rule states the principles of construction that will be used for agency 3774 of the Administrative Code, including those presently in effect for the Commission's other regulatory frameworks. The rule further states it does not limit or conflict with any provision of law. Therefore, the Commission does not anticipate any adverse impact.

- **Rule 3774-1-04 "Access to records, examination under oath, and subpoena power."** This rule merely restates the Commission's statutory authority with respect to access to records, conducting examinations under oath, and subpoena power. Therefore, the Commission does not anticipate any adverse impact.

- **Rule 3774-1-05 "Waivers and variances."** This rule allows the Commission to grant waivers and variances from Agency 3774 of the Administrative Code either on its own or by request. Overall this rule should have a positive business impact. It will allow businesses to request waivers from provisions of the Administrative Code that unduly burden business operations and are therefore not in the best interest of the public. While the rule may require employer time and payroll in filling out the waiver request with the standard information required by the Commission, the benefit will far outweigh that minimal cost.

- **3774-2-01 "General fantasy contest licensing requirements."** This rule provides the general requirements and process for obtaining a license as a fantasy contest operator or management company. This includes the base considerations under which an applicant and licensee's suitability will be judged to ensure the integrity

of fantasy contests. As this rule lays out the process for obtaining fantasy contest licenses, the potential impact on business includes the time and payroll necessary to submit the information in the manner required, which will vary based on several factors, including the size, complexity, and organization of a particular business.

- **3774-2-02 "Fantasy contest operator licensure."** This rule describes the requirement for fantasy contest operators to apply for licensure and the fee for doing so. The fee, as negotiated through the legislative process and with stakeholders, is tiered based upon the size of a fantasy contest operator. The Commission used the amount of fantasy contest players as the demarcation between large and small because it more accurately reflects the Commission's cost of regulation than something like revenue: companies with more Ohio customers will cost more to regulate regardless of how much revenue that company purportedly generates. Therefore, the potential impact on business includes the fee, and time and payroll necessary to apply for licensure, which will vary based upon the size; complexity; and criminal, financial, and administrative history of the business. However, the tier-based structure will put businesses of all sizes on more equal footing. Additionally, given that the Commission has modeled its application framework after that of other states' frameworks, which are already in place, expenditures of employee time and payroll should be minimalized, because much of the relevant information is likely gathered and prepared already.

- **3774-2-03 "Management company licensure."** This rule describes the requirement for management companies that manage the day-to-day operations of a fantasy contest operator to apply for licensure and the fee for doing so. The rule bases that fee off of the operator's fee described in rule 3774-2-02. However, the rule allows joint ventures and fantasy contest operators and management companies under common control to only be assessed one fee—allowing business more freedom in their overarching structure, while guaranteeing the Commission still has appropriate protections in place. Therefore, the potential impact on business includes the time and payroll necessary to apply for licensure, as well as the fee.

- **3774-2-04 "Duty to update information."** This rule relates the duty for and process by which applicants and licensees will update the Commission regarding information sought in the application that changes from the submission of the application throughout the course of the licensure period. The potential impact from this rule includes employee time and payroll for doing so, which will vary based upon the size; complexity; and criminal, financial, and administrative compliance of the business.

- **3774-3-01 "Fantasy contest internal procedures."** This rule includes the internal procedures that a fantasy contest operator must have and provide to the Commission. These internal procedures are the cornerstone of the consumer protections necessitated by statute and provided in the regulation and allow

businesses the freedom to comply in the way that makes the most sense for them, while still ensuring the integrity of fantasy contests. The potential impact on business from this rule includes employee time and payroll for creating the internal procedures, as well as the minimal time and payroll to provide the procedures to the Commission. However, as many other jurisdictions already require these procedures be in place, either through requiring the procedure or through more proscriptively having outright prohibitions, the Commission anticipates the costs for many operators will be blunted. Additionally, any cost for providing these procedures to the Commission at the time of their implementation is further blunted not only by the consumer benefits but also by the fact that at least one jurisdiction requires their prior approval before being implemented.

- **3774-3-01.1 "Initial internal procedure submissions."** This is a temporary rule that governs the initial internal procedure submissions of applicants who apply within thirty days of the effective date of the rule. This rule is intended to work in concert with section 3 of the Fantasy Contest Act, which creates a safe harbor for fantasy contest operators operating on the Act's effective date and who apply within thirty days of the application's availability. However, because the statute also requires the Commission to consider compliance with fantasy contest law in licensing applicants, along with the applicant's suitability, the Commission needs to evaluate the applicant's internal procedures when conducting its investigation. This rule provides applicants additional time to submit those procedures initially beyond the thirty days in the statutory safe harbor. Therefore, the Commission anticipates a positive business impact from this rule.

- **3774-3-02 "Prohibited Activities."** This rule describes activities that fantasy contest operators may not engage in. All of these activities are either explicitly or implicitly prohibited by statute or other states who regulate fantasy contests. Notably, the rule prohibits many activities that would have the effect of fantasy contests not being based on the skill of the player (e.g. players not controlling their roster selection). Given this, potential impact on business is nominal but will include any time and payroll necessary to ensure compliance.

- **3774-3-03 "Duties of fantasy contest operators."** This rule contains the affirmative duties of fantasy contest operators. These duties include ensuring statutory requirements are met, providing information to and following the direction of the Commission, as well as following the operators' own internal procedures and terms and conditions. The potential impact on business includes employee time and payroll for following the operator's internal documents, providing documentation and responses to the Commission, and training employees to follow relevant fantasy contest law. Many of these costs are mitigated in that the operator controls the details of how compliance will occur through their own internal documents, so long as they meet the minimum requirements set out in fantasy contest law. Additionally, as noted repeatedly herein, much of this framework is modeled after other states or a product of previous discussions with

stakeholders, so the Commission does not anticipate drastic adjustments to be made by businesses already operating in other states in order to achieve compliance in Ohio.

- **377-3-04 "Duties of key employees."** This rule describes the duties of key employees. These duties can be encompassed simply: ensure fantasy contest operators comply with the law and serve as the Commission's point of contact. The potential impact on business from this rule is therefore minimal as the rule merely requires key employees to be a "responsible party" for the operator. However, the impact will include that particular individual's time and payroll but, importantly, no additional license or license fee is required for this position.

- **3774-3-05 "Duties of management company applicants and licensees."** This rule contains the duties of management company applicants or licensees. Like the duties of key employees, the duties largely include simply ensuring the operator that the applicant or licensees serves as a management company for complies with the law and that the management company itself responds to and complies with inquiries and notices of the Commission. Therefore, the Commission anticipates this rule in itself will have a minimal impact but will include that businesses' employee time and payroll, as opposed to the operators'.

- **3774-3-06 "Inspection and audits."** This rule details the operator's audit requirements and the inspection powers of the Commission. The rule includes provisions for compliance and financial audits by a third party—with financial audits done yearly and compliance audits done once a licensure period. The potential impact from these audits includes employee time and payroll as well as the charge assessed an operator by the third party. This cost will vary based upon the size and complexity of the operator, as well as the third party the operator chooses to conduct the audit. The Commission has worked with all stakeholders to set an appropriate audit schedule that is not anticipated to be cost-prohibitive for smaller companies and has further refined these rules to allow for waivers or Commission-conducted audits at cost. This has resulted in a rule that gives the Commission the tools it needs to ensure compliance while minimizing business impact. The inspection portion of the rule further spells out the Commission's right to access and inspect certain documents and prevents individuals from hindering that right. Given this, the Commission anticipates a minimal impact on those provisions of this rule but acknowledges the employee time and payroll involved in allowing the Commission access to and providing the Commission with documents.

- **3774-3-07 "Advertising."** This rule contains the duties and prohibitions of fantasy contest operators with respect to advertisements. These are all either derived directly from the statute, are generally applicable to any advertisement, or are provisions required by other states in regulating these contests. Therefore, the Commission anticipates minimal business impact from this rule. However, the

impact may include employee time and payroll needed to ensure these provisions are met.

- **3774-4-01 "Hearings."** This rule describes the hearing process in place should the Commission need to take administrative action against a person subject to fantasy contest law. This process is consistent with R.C. Chapter 119 and is the same as the process used with respect to the Commission's other regulatory frameworks. As the hearing procedures afford the regulated community with consistent due process protections, the Commission does not anticipate an adverse business impact.

- **3774-4-02 "Sanctions."** This rule lays out the authority of the Commission to issue administrative sanctions against persons who violate Agency 3774 of the Administrative Code. This rule, in and of itself, has no impact on business. However, it does, by its nature, give the Commission the ability to ensure that violations of fantasy contest law can be corrected through administrative sanctions, if necessary. Therefore, the rule could, of course, result in fines, license restrictions, or conduct restrictions. The Commission, however, drives compliance through operators' compliance with their own internal procedures, not strict adherence to Commission-dictated processes. Therefore, the impact of this rule is minimized by the very nature of the regulatory framework.

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

While versions of fantasy contests have existed for decades, recently they have morphed to include contests that happen over the course of a week or a day versus a whole season. The rapid or instantaneous nature of some of these contests, combined with an alleged employee scandal, an advertising blitz, and additional media scrutiny led to attention from several states' attorneys general and state legislatures, including Ohio. This ultimately culminated in the Ohio legislature passing legislation affirmatively declaring that fantasy contests are not gambling, so long as they comply with the Fantasy Contest Act and the rules adopted thereunder and providing for consumer protections.

The 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 voluntary 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. Moreover, the Act contemplates that the Commission will adopt rules consistent with its authority to do the same over skill-based amusement machines.

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

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

Yes. These are described in the responses to Question 14(C) above and include the tiered fees in rules 3774-2-02 and 3774-2-03 and the ability for the Executive Director to waive audit requirements or to have the Commission conduct audit requirements at cost. Additionally, the structure of the regulation itself, which drives compliance through internal procedures, contains inherent flexibility and multiple means of compliance for businesses of all sizes. Finally, 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.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

To the extent R.C. 119.14 would apply to a violation of the proposed rules, the Commission will provide verbal and written notifications to the small business in an attempt to correct the paperwork violation. Thereafter, the Commission would allow the small business a reasonable time to correct the violation. The Commission and its staff would also offer any additional assistance necessary to aid in remediation of the violation. No further action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the Commission.

18. What resources are available to assist small businesses with compliance of the regulation?

The Commission and its staff are dedicated to working with members of the regulated community and the public to effectively and efficiently regulate casino gaming in this state. As a result, the following resources are available:

- Commission's mailing address:
  100 E. Broad Street, 20th Floor
  Columbus, Ohio 43215

- Commission's toll free telephone number: (855) 800-0058

- Commission's fax number: (614) 485-1007

- Commission's website: http://www.casinocontrol.ohio.gov/

- Commission's
  email: info@casinocontrol.ohio.gov and fantasycontests@casinocontrol.ohio.gov

Also, all members of the regulated community and public may, in accordance with rule 3772-2-04, request to address the Commission during a public meeting. Finally, all members of the regulated community may, pursuant to rule 3774-1-05, request waivers and variances from Commission regulations.

First Name	Last Name	Organization
Michael	Petropoulos	Fantasy Football Players Championship
Dustin	Cooper	DRAFT
Dan	Quinn	Draftboard
Tom	Pappas	DraftKings/FanDuel
Steve	Brubaker	Small Businesses of Fantasy Sports Trade Association
Mike	Weremblewski	Unknown
Jon	Genovese	Worldpay
Lori	Herf	Worldpay
John	Beese	Masters Fantasy Football Leagues
Cory	Fox	FanDuel
Alen	Cisija	Covington & Burling LLP
Alex	Zelvin	DRAFT
Jeremy	Levine	DRAFT
David	Gerczak	Fantasy Football Players Championship (FFPC)
Charie	Skinnell	
Peter	Schoenke	Fantasy Sports Trade Association
Nic	Sulsky	Fantasy Sports Shark
Griffin	Finan	DraftKings, Inc.
Alex	Kaganovsky	FFPC
John	McClelland	Trimac Advisors
Meredith	Yu	Yahoo Fantasy Sports LLC
Mark	Hanna	RealTime Fantasy Sports Inc.
Ryan	Endsley	Franklin Law Group
Rob	Smith	DraftWars LLC
Jennifer	Aguiar	DraftKings Inc.
Kristal	Rovira	GamblingCompliance, Inc.
Rachel	Winder	Benesch Law
Nick	Jackson	ZwillGen
Thomas	Braun	Starting 11 LLC
Dave	Behr	Boom Fantasy
Gale	Kenny	Play DFS LLC
Steve	Brubaker	
Matthew	Forney	
Thomas	McAuley	Daily Number, Inc.
Blake	Weishaar	Fantini Research
Matt	McCarthy	FantasyDraft.com
Steve	Krombolz	Fantasy Draft, LLC
Danny	Eldredge	Hannah News Service
john	decker	multiple
Nicholas	Crudele	Saiber
Sean	Doyle	The OG, The Original Golf Game

Cox, William

From: Ohio Casino Control Commission <fantasycontests@casinocontrol.ohio.gov>
Sent: Wednesday, January 02, 2019 11:37 AM
To: Cox, William
Subject: Initial Draft Rules for Fantasy Contests

View this email in your browser

OHIO CASINO CONTROL COMMISSION

Stakeholders,

As you are aware, the Ohio Casino Control Commission ("Commission") is currently developing administrative rules regarding the regulation of fantasy contests in Ohio. To make the rule-drafting process as open and transparent as possible, the Commission is seeking your input on initial draft language for the rules.

This initial draft can be found by clicking here. These draft rules have not been finalized, and Commission staff will review all comments submitted and may revise the rules based on your feedback. After this comment and revision process, you will have additional opportunities to provide comment. **All comments on the draft rules should be submitted no later than January 16.**

We look forward to hearing from you. In the meantime, any questions or concerns should be directed to Aleah Page, Manager of Licensing - Casino Gaming and Fantasy Contests at (614) 387-5617. All comments should be submitted to fantasycontests@casinocontrol.ohio.gov.

Thank you for your willingness to review these draft rules and provide feedback.

Find us on Facebook OCCC Website

Copyright © 2019 Ohio Casino Control Commission, All rights reserved.
You are receiving this email because you expressed an interest in receiving updates on the regulation of fantasy contests by the Ohio Casino Control Commission.

Our mailing address is:
Ohio Casino Control Commission
100 East Broad Street
20th Floor
Columbus, OH 43215

Add us to your address book

unsubscribe from this list update subscription preferences

Cox, William

From: Sarah Koch <skoch@draftkings.com>
Sent: Wednesday, January 16, 2019 8:55 PM
To: FantasyContests
Cc: Griffin Finan
Subject: DraftKings Comments to Proposed Fantasy Contest Rules
Attachments: Ohio DraftKings Comments 01.16.2019.pdf

Please find attached DraftKings' comments on the initial draft rules regarding the regulation of fantasy contests. Please let me know if I can provide any additional information.

Thank you very much.

Sincerely,

Sarah Koch

SARAH KOCH
Director, Government Affairs
DraftKings Inc.
(202) 643-3410

January 16, 2019

Via E-mail to fantasycontests@casinocontrol.ohio.gov
Ohio Casino Control Commission
100 East Broad Street
20th Floor
Columbus, OH 43215

Re: Draft Administrative Rules for the Regulation of Fantasy Sports

To Whom It May Concern:

DraftKings Inc. submits the following comments for the Ohio Casino Control Commission's (CCC) consideration regarding the draft daily fantasy sports regulations.

§ 3774-01-01. Definitions.

DraftKings respectfully suggests that the CCC revise certain defined terms to bring further clarity to the regulations.

§ 3774-01-01(6) Fantasy Contest Player Funds

DraftKings believes that it is of critical importance that the CCC reconsider the definition of "fantasy contest player funds" in § 3774-01-01(6). The law requires operators to segregate fantasy contest funds from operational funds or maintain a reserve in order to protect player funds from creditors. *See* § 3774.03(A)(3). However the proposed definition of player funds is overbroad to accomplish this purpose and could jeopardize operators' ability to do business in Ohio.

The definition of "fantasy contest player funds" includes "any cash or cash equivalent deposits made by fantasy contest players plus any prizes won by fantasy contest players..." As written this definition encompasses the cumulative total of each player's lifetime deposits and winnings without accounting for any reduction in the account balance due to entry fee payments or fund withdrawals. DraftKings recommends defining the term instead to include "the balance of funds to which players are entitled in their fantasy contest accounts."

DraftKings recommends striking both references to "prizes" in the definition of fantasy contest player funds since "prizes" is a defined term which includes non-monetary winnings and is therefore not applicable to segregation or reserve requirements.

The fantasy contest player funds definition presently also includes "any amounts listed as prizes in a fantasy contest's rules and terms for ongoing fantasy contests but does not include

entry fees paid to a fantasy contest operator not listed as prizes in the rules and terms of a fantasy contest." DraftKings respectfully suggests that this clause should be removed from the definition in its entirety. Funds to be awarded in ongoing fantasy contests do not yet belong to any particular customer and therefore it is inaccurate to describe them as "player funds." Striking this portion of the definition will still allow customers to be made whole in the event of an operator's insolvency, without unnecessarily requiring operators to set aside a reserve for prizes from its own operational funds.

§ 3774-01-01(8) Participate In Conducting

This definition for "participate in conducting" fantasy contests presently captures all manner of a fantasy operator's vendors. This is overbroad when read in conjunction with § 3774-3-06(E)(1), which allows the executive director to inspect and audit the documents of all persons that participate in conducting fantasy contests. DraftKings suggests removing this definition in its entirety, as well as the reference to the phrase in § 3774-3-06(E)(1). Any audits and inspections should be limited to the operator which is the entity accountable to customers and the only entity licensed pursuant to the law and regulations.

§ 3774-02-02. Fantasy contest operator licensure.

DraftKings suggests that § 3774-02-02(A) should be clarified to reflect that the listed fees are paid upon licensure rather than upon application. This interpretation comports with fantasy sports law Sec. 3774.02(B)(1), which states that each "contest operator shall pay to the commission a nonrefundable *license* fee." (Emphasis added.)

§ 3774-02-04. Duty to update information.

The provisions in § 3774-02-04(A) and (B) currently require applicants and licensees to notify the executive director of all changes to information contained in an application within 10 days. DraftKings suggests limiting the notification requirement to only "material" changes and allowing more time for notification, such as 30 days. This will reduce the burden on operators and the executive director which would result from an obligation to notify of even the most minor change.

§ 3774-03-01 Fantasy contest operator internal procedures.

Section § 3774-03-01(A)(6) requires operators to "ensure" that persons cannot misuse material nonpublic information in any private fantasy contests—a higher standard than is imposed in public games, for which the operator must only "prohibit" such conduct. DraftKings suggests the provision be reworded to state, "…and governing such persons' competition in private fantasy

contests to ~~ensure those persons cannot~~ *prohibit the* misuse material nonpublic information in any private fantasy contest entered."

In light of the fact that there may be non-material instances of non-compliance with internal procedures, DraftKings suggests adding a materiality element to Section § 3774-03-01(A)(15) regarding the reporting obligations of operators. Similarly DraftKings suggests including a materiality element in §3774-03-01(C) regarding operators' obligation to report amendments to internal procedures, and proposes that notice of material amendments be given within 10 days rather than "immediately."

§ 3774-03-03. Duties of fantasy contest operators.

DraftKings suggests that it would be appropriate to narrow the scope of the reporting obligation of § 3774-03-03(G) so that an operator must "Notify the executive director of all *material* violations of fantasy contest law ~~of which the fantasy contest operator has knowledge or should have knowledge~~ *conducted by the operator*." This proposed change would remove any obligation by the operator to police and report its competitors. DraftKings further proposes striking the similar obligation on key employees in § 3774-03-04(D).

The employee training requirement of § 3774-03-03(H) would be overbroad and extremely burdensome as written since it requires operators to train employees "in all laws, rules, policies, and internal procedures relevant to each employee's individual function…" Operators such as DraftKings are subject to laws across numerous states and countries and therefore educating employees on all laws and rules is not feasible. DraftKings suggests limiting the employee training requirement to relevant internal procedures only.

§ 3774-03-03(J) requires operators to provide ninety days' notice to the executive director if the operator intends to cease doing business in Ohio. Since an operator may not have that information ninety days in advance, DraftKings suggests that the period should be "90 days or as soon as practicable before ceasing business."

§ 3774-03-06 Inspections and Audits.

DraftKings suggests that the compliance audit requirement of § 3774-03-06(A) should provide more specifics as to the scope of the audit. DraftKings recommends revising this provision to address the consumer protection requirements of the law by saying, "Fantasy contest operators shall contract with a third party to perform an independent audit to ensure compliance with *Section 3774.03.(A) of the* fantasy contest law."

In the financial audit provisions of § 3774-03-06(B), DraftKings suggests specifying when the audits are due. DraftKings suggests setting a due date no earlier than July 1 each year

in order to allow sufficient time for an operator to have an audit completed by a reputable accounting firm.

DraftKings further suggests incorporating the terms of § 3774-03-06(C) into the above subsection (B) since the scope of both is limited to the financial audit, as distinct from the compliance audit addressed in subsection (A). DraftKings respectfully suggests that the CCC should strike the requirement that a third-party auditor must be approved by the commission prior to the audit engagement. Operators including DraftKings already have active engagements with third parties to perform audits and therefore cannot obtain prior approval. To the extent that approval is required to use a particular auditor, DraftKings suggests that it must be obtained prior to the date the audit is due to the commission rather than prior to engagement. DraftKings further suggests that the commission might consider maintaining a list of approved auditors so that each operator does not need to obtain separate approval for an auditing firm which the Board has already approved.

If the aforementioned audit proposals are adopted, DraftKings suggests striking § 3774-03-06(D) in its entirety in favor of relying on a uniform July 1 financial audit due date for all operators. DraftKings suggests that each operator should be responsible for submitting its own audit results to the executive director since it is ultimately accountable as the licensee and should not face being penalized if a third-party auditor fails to submit the audit to the executive director in a timely manner. Furthermore, a state-specific attestation should not be required for a financial audit which covers the finances of the company as a whole.

§3774-03-07. Advertising.

DraftKings suggests that the CCC should strike the obligation that operators must "Clearly and conspicuously provide information on playing responsibly and seeking assistance for compulsive behavior" in advertising. The law only requires that this information be made available to customers and therefore operators may satisfy the requirement by making the information available on their platforms. To require these disclosures in advertising is burdensome and unnecessary for a non-gambling product and is out of step with what is required by other states.

* * * * *

Thank you for your consideration of DraftKings' comments regarding the proposed regulations.

Sincerely,

DraftKings Inc.

Cox, William

From: Cory Fox <cory.fox@fanduel.com>
Sent: Wednesday, January 16, 2019 9:10 PM
To: FantasyContests
Cc: Tom Pappas
Subject: FanDuel Comments on Fantasy Contest Rules
Attachments: FanDuel Comments on Proposed OH DFS Rules_1.16.19.pdf

Hello:

Please see the attached comments on behalf of FanDuel, Inc. We look forward to working with you.

Best,

Cory

Cory Fox
cory.fox@fanduel.com

January 16, 2019

Via Email

Aleah Page
Manager of Licensing
Casino Gaming and Fantasy Contests
100 East Broad Street, 20th Floor
Columbus, OH 43215
(614) 387-5617
fantasycontests@casinocontrol.ohio.gov

Re: FanDuel Comments on Proposed Ohio Fantasy Contest Rules

Dear Ms. Page:

I write to provide comments on behalf of FanDuel, Inc. ("FanDuel") concerning the proposed initial draft rules regarding the regulation of fantasy contests in Ohio promulgated by the Casino Control Commission (the "Commission") on January 2, 2019. We appreciate the Commission's careful and thoughtful approach to drafting the rules. Still, based on our extensive experience as an operator in the fantasy sports industry and collaborator with regulators of fantasy contests in several other states in the development of their regulations, we offer constructive feedback on ways which the proposed rules can be improved for effectiveness and consistency with other state regulations.

While we offer a number of proposals intended to improve the rules, the definition of "fantasy contest player funds" is our most urgent concern. As currently written, the definition of contest player funds would require operators to maintain a cash reserve in an amount that far exceeds the player funds on deposit, going beyond the intent of the statute and making Ohio's rules on this point by far the most onerous in the country.

We urge the Casino Control Commission to consider amending the draft rules as follows:

- ***Operation While Application is Pending***: FanDuel has operated continuously in Ohio since 2009 but the draft rules as written would threaten its ability to continue offering contests to Ohio residents while it completes the licensing process. Rule 3774-3-02(A) seemingly prohibits existing operators, like FanDuel, from operating or advertising in Ohio while it waits for the license application to be made available and while its application is pending. The rule should be amended to clarify that operators may continue

operating and advertising in the State provided that they timely file an application for registration once the Commission makes the application available. As Section 3 of the HB 132 describes, operators should be permitted to operate without interruption until their license application is approved or denied, provided that they must submit their application within 30 days of the application's availability.

- ***Ongoing Update Requirement***: The draft rules would require licensees to notify the Commission of any changes to information provided in their application materials, including changes that are immaterial. Necessitating updates for *all* changes will require licensees to apprise the Commission of inconsequential developments, such as changes to stakeholders' addresses, and insignificant revisions to internal procedures that do not impact the integrity of the licensees' operations or compliance with the Ohio fantasy contest statute and rules. This requirement would unduly burden licensees as well as the Commission, which will likely be inundated with communications relaying immaterial updates. The licensees and Commission would be better served by limiting the update requirements in Rules 3774-2-04(A) and 3774-3-01(C) to material changes.

- ***Definition of "Fantasy Contest Player Funds":*** The rule defines "fantasy contest player funds" to include cash deposits by players, prizes won by players, and "any amounts listed as prizes in a fantasy contest's rules and terms for ongoing fantasy contests." This last provision would require operators to segregate (or maintain a reserve for) the amount of prizes offered in addition to the amount on deposit by Ohio fantasy contest players, which would make Ohio's regulations on this point the most onerous in the country and go beyond the scope of the statute. The fund segregation provision of HB 132 as passed by the Ohio General Assembly says that the Commission may promulgate regulations to "ensure fantasy contest operators segregate fantasy contest player funds or maintain a reserve that exceeds the amount of player funds on deposit." This does not include segregating an additional amount for the prize offerings. The intent of this provision is to ensure that Ohio players do not lose any funds that they own, either because they deposited them or have been distributed contest winnings. The intent is not to protect prize money to which no Ohio player yet has an ownership stake (and indeed, no Ohio player may ever gain an ownership stake if players from other states are to claim the prize). Numerous other laws, including the fantasy contest law and laws that prohibit anyone from engaging in unfair or deceptive trade practices, would provide both a fantasy contest player and the Commission adequate recourse if an operator were to fail to pay out a posted prize in accordance with their terms.

- ***Third-Party Sharing of Material Nonpublic Information***: Rule 3774-3-01(A)(6) requires fantasy contest operators to prohibit its employees, relatives living in the same

household as those employees, and athletes and referees in the underlying competitions from competing in public fantasy contests. FanDuel understands the important role this requirement plays in promoting contest integrity and has long been committed to prohibiting all such persons from entering public contests. However, the rule as written also appears to require operators to prohibit all such persons from sharing material nonpublic information with third parties. Although operators should be expected to institute internal procedures to prohibit *employees* from sharing material nonpublic information, they have no ability to prevent such disclosures from the other categories of persons listed. Similar regulations in other states appropriately reflect this distinction. The rule should be revised to clarify that although the first requirement applies to all such persons, the second requirement applies only to employees.[1]

- ***Prize Distribution and Fund Withdrawals***: FanDuel is committed to distributing prize winnings and facilitating the withdrawal of funds in a timely and efficient manner. However, there are instances in which operators must delay prize distribution or fulfillment of withdrawal requests in order to investigate fraud and ensure that prizes are awarded to the correct players. Several other states' corresponding regulations include a carve out for instances in which the operator believes in good faith that the player engaged in fraudulent conduct or other conduct that could put the operator in violation of the law. Similarly, an operator should not be held responsible for delays in fund withdrawal that occur for reasons it cannot control. Comparable regulations in several other states create a carve out for withdrawals that are processed by the operator but delayed by a payment processor, credit card issuer, or custodian of a financial account. Accordingly, Rule 3774-3-01(A)(9) should be amended to include exceptions for (i) the investigation of fraud and (ii) payment processing delays outside of its control.

- ***Voluntary Restriction Program***: FanDuel is committed to maintaining a responsible voluntary restriction program that gives players control over their experience. FanDuel appreciates the importance of offering players a range of mechanisms for self-restriction, from complete exclusion to limitations on their contest entries, entry fees, or deposits. Rule 3774-3-01(A)(11) is well-designed to give players control over their activity in most respects. But subsection (d) unnecessarily limits players' ability to exercise discretion. Players who have self-imposed contest entry, entry fee, and deposit limits should only be restrained in their ability to make those limits less restrictive for a short period of time following the selection (and should be permitted to make them *more* restrictive at any

[1] FanDuel recognizes that Section 3774.03(A)(1) of the Fantasy Contest law itself holds the problematic formulation. However, because the statute is permissive with respect to the Commission adopting regulations on this topic ("the Commission may adopt"), we believe it is within the Commission's discretion to clarify this point.

time). The rule should be amended to impose the ninety-day minimum period only if the player selects complete exclusion. This change would facilitate better user control and represent an approach more consistent with that of regulators in other states.

- ***Fund Segregation and Financial Reserve***: Section 3774.03(A)(3) of the Ohio fantasy contest statute provides operators with two options for protecting players' financial accounts: (1) segregating player funds from operational funds *or* (2) maintaining a reserve that exceeds player funds on deposit. These rules should be revised to make clear that operators are permitted to either segregate funds or maintain a reserve. Rules 3774-3-01(A)(8) and 3774-3-03(D), both of which reference Section 3774.03(A)(3), fail to account for the optionality provided to operators in the statute. Rule 3774-3-01(A)(8) references only fund segregation, potentially implying that operators cannot choose to implement a financial reserve instead. Similarly, Rule 3774-3-03(D), as written, may suggest that operators must institute a financial reserve.

- ***Suspending and Banning Accounts***: Rule 3774-3-01(A)(2) requires fantasy contest operators to establish procedures for suspending or banning "players who violate fantasy contest law." However, it is unclear how players would violate the Ohio fantasy contest statute or rules, which are not directed to them. The rules should be clarified, making clear that an operator's internal procedures must account for suspending and banning players where it determines the player has violated the operator's procedures that are required by fantasy contest law. This clarification would be more in line with the existing language in Rule 3774-3-01(A)(7)(c).

- ***Submission of Audits:*** Rule 3774-3-06(D) requires third parties to "submit the audit results in the manner prescribed by the executive director no later than such results have been made available to the fantasy contest operator." As a financial audit of a large company is a time-intensive and expensive process, and Fanduel's investors also require an annual financial audit, FanDuel has in all other states provided this audit to the appropriate regulators. FanDuel requests that Rule 3774-3-06(D) be amended to allow FanDuel to submit the financial audit that is conducted in its normal course of business to the Commission within 30 days of receiving it from the approved third-party auditor.

****

We appreciate your time and consideration of our comments and would be happy to discuss at your convenience. While we have highlighted here some of our most significant

concerns, we are also available to provide more in-depth comments on all aspects of the proposed regulations.

Sincerely,

Cory Fox
Counsel, Policy and Government Affairs

Cox, William

From: mike@myffpc.com
Sent: Monday, January 14, 2019 4:19 PM
To: FantasyContests
Cc: Alex Kaganovsky
Subject: Ohio rules regarding Fantasy Contests
Attachments: Comments for Ohio Rules.docx

Hello,

My name is Michael Petropoulos, I am the compliance officer for season-long fantasy contest operator, Fantasy Football Players Championship (FFPC).

The FFPC would like to thank the Commission for seeking our input during the fantasy contests rule making process.

Attached is a document with comments and suggestions on behalf of the FFPC for the initial draft of fantasy sports rules in Ohio.

Thank you,

Michael Petropoulos
FFPC Compliance Officer

FFPC: Fantasy Football Players Championship
JDAD, LLC
1133 Broadway New York, NY 10010
(212) 929-3372

January 14, 2019

To the Ohio Casino Control Commission,

Listed below are comments on behalf of small business fantasy contest operator, FFPC, on the initial draft language for fantasy contest rules.

Comments listed in red and underlined are our proposed language amendments:

1.

3774-2-02 Fantasy contest operator licensure.

(A) A person seeking to obtain or renew a fantasy contest operator license shall apply for licensure, designate at least one key employee, comply with all instructions, and pay a nonrefundable fee in the applicable amount:

(1) Thirty-thousand dollars for a fantasy contest operator who has at least fifteen-thousand fantasy contest players in the state of Ohio who paid at least one entry fee in the twelve months prior to the current application for licensure;

(2) Fifteen-thousand dollars for a fantasy contest operator who has less than fifteen-thousand but at least ten-thousand fantasy contest players in the state of Ohio who paid at least one entry fee in the twelve months prior to the current application for licensure;

(3) Ten-thousand dollars for a fantasy contest operator who has less than ten-thousand but at least five-thousand fantasy contest players in the state of Ohio who paid at least one entry fee in the twelve months prior to the current application for licensure; or

(4) Five-thousand dollars for a fantasy contest operator who has less than five-thousand fantasy contest players in the state of Ohio who paid at least one entry fee in the twelve months prior to the current application for licensure.

The FFPC assumes that the intent of the Commission was to establish a licensing operating fee based on fantasy contest players in the State of Ohio. We have added such language as a simple clarification.

2.

3774-3-02 Prohibited activities.

(B) Fantasy contest operators shall not offer or allow any of the following:
(1) Auto draft functionality to fantasy contest players; Excluding season-long fantasy contest operators;

In the FFPC's communications with gaming commissions of states in which we are licensed, the intent of the term "Auto draft" has always been initially misconstrued and later recognized that it does not apply to season-long fantasy contests.

Auto draft functionality in daily fantasy contests can lead to the fantasy contest software randomly selecting a team without any user input at all.

However, auto draft functionality in Season-long fantasy contests allow users to set personal player rankings and player queues for the fantasy contest software to select exactly the player the user wants to select when it is their turn in the draft.

The FFPC thanks the Commission for accepting our input on the proposed rules for fantasy operators.

Thank you,

Michael Petropoulos
FFPC Compliance Officer
Mike@myffpc.com

Cox, William

From: Peter Wolff <p.wolff@gaminglabs.com>
Sent: Wednesday, January 16, 2019 7:09 PM
To: FantasyContests
Subject: Feedback on Proposed Fantasy Contest Rules for the State of Ohio
Attachments: Ohio DFS Feedback.pdf

To Whom it Concerns,

Thank you for giving GLI the opportunity to provide comments on the proposed fantasy contest rules. Attached please find a document which includes suggestions which further refine the proposed rules as well as provides recommendations on additional to be made. Please feel free to contact us at any time should you have any questions or want to discuss the document in greater detail. Thanks again.

Peter Wolff
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www.gaminglabs.com

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GLI®

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January 16, 2019

RE: Comments on Ohio Casino Control Commission Proposed Rules for Fantasy Contests

To Whom It May Concern:

As related to your request for comment on proposed rules regarding the regulation of fantasy contests, please find responses compiled by **Gaming Laboratories International, LLC (GLI)**. The GLI team appreciates the opportunity to comment on the proposed rules regarding the regulation of fantasy contests and looks forward to assisting the Ohio Casino Control Commission (OCCC) in further refining the details of these rules as well as provide recommendations on additional rules as seen fit. We hope the below feedback is useful and we are immediately available to clarify or further discuss any of the items presented below.

The GLI team agrees completely with principal objectives for fantasy contests as stated by the OCCC – avoid overly-prescriptive rules, do not create a barrier to entry, ensure the integrity of fantasy contests conducted in the state of Ohio, and ensure player fairness.

The proposed rules were compared to existing fantasy contest rules and regulations for Tennessee, Missouri, and Indiana. The below comments sections were collected in effort to identify areas within the proposed rules that may warrant either additional clarification and or consideration.

Worldwide Locations

World Headquarters
Lakewood, New Jersey

U.S. Regional Offices
Colorado
Nevada

International Offices
GLI Africa
GLI Asia
GLI Australia Pty Ltd
GLI Austria GmbH
GLI Europe BV
GLI Italy
GLI South America

Recommended Updates

GLI suggests the minimum requirements for the operator's internal control procedures for handling wins, withdrawal requests, and player account closures can be more aligned with the rest of the industry. Most notably, there needs to be coverage for withdrawal requests where the operator might believe the player engaged in either fraudulent conduct or other conduct which violates the fantasy contest law. Having said that, a player account should not be closed until any investigations are completed and, if applicable, their funds are withdrawn. Therefore, GLI proposes the following updates to subparagraph (A)(9) of rule 3774-3-01, indicated in bold text:

3774-3-01 Fantasy contest operator internal procedures.

(A) Fantasy contest operators shall draft written internal procedures, which shall, at a minimum, include procedures for ensuring compliance with all the following:

(9) Ensuring that fantasy contest operators complete all the following:

(a) ***Deposit*** *prizes won from fantasy contests into a fantasy contest player's account* ***within forty-eight hours of winning the prize****;*

(b) Fund withdrawal requests from a fantasy contest player's account ***within five business days of the request being made, unless the operator believes in good faith that the fantasy contest player engaged in either fraudulent conduct or other conduct that would put the operator in violation the fantasy contest law, in which case the operator 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 fantasy contest player. For the purposes of this provision, a request for withdrawal will be considered honored if it is processed by the operator but delayed by a payment processor, credit card issuer or by the custodian of a financial account;*** *and*

(c) ***Process*** *requests to close a fantasy contest player's account* ***at any time for any reason***

GLI understands the importance of having sufficient responsible player regulations in place to help protect problematic players. While it is believed that the intent of subparagraph (A)(11)(d) was meant to meet this objective through setting limitations on how frequently self-restrictions could be lessened by a player, greater clarity could be provided to the requirement such that a player may also implement more stringent restrictions without having to wait for the full ninety days. Therefore, GLI proposes the following update, indicated in bold text:

3774-3-01 Fantasy contest operator internal procedures.

(A) Fantasy contest operators shall draft written internal procedures, which shall, at a minimum, include procedures for ensuring compliance with all the following:

(11) Operating a voluntary restriction program for those individuals who seek to restrict themselves from entering fantasy contests. This program shall include all the following:

(d) How fantasy contest players may request to ***adjust or remove*** *the player's selected notification or restriction.* ***Fantasy contest players shall have the option to adjust the notification or restriction to make it more restrictive as often as they like, but shall not have the option to remove it or make it less restrictive*** *within ninety days of the player's selection of the notification or restriction at issue;*

GLI agrees a fantasy contest player should be able to read the rules before paying an entry fee to that contest. Much like the other items in these rules which mention being displayed in a clear and conspicuous manner, the same should be applied to the rules in general. Additionally, the objective of defining the minimum contents of the rules is important. Therefore, GLI proposes the following updates to paragraph (B) of rule 3774-3-03, indicated in bold text:

3774-3-03 Duties of fantasy contest operators.

In addition to all other requirements under fantasy contest law, each fantasy contest operator shall:

(B) Publish all rules or terms of each fantasy contest in a ***clear and conspicuous*** *manner that enables a fantasy contest player to read the rules and terms before paying an entry fee to that contest****, including, but not limited to****;*

(1) Rules of participation, including all fantasy contest eligibility, entry fees, contest rules, prizes, and scoring criteria;

(2) Payout information, including possible winning positions, rankings, and achievements, along with their corresponding payouts, for any available entry option;

(3) Information on all available contests types, including by specific sports, entry fees required, number of entries allowed, and prize structure for the contest;

(4) Any prizes that are offered in the form of merchandise, annuities, lump sum payments, or payment plans instead of cash payouts for each fantasy contest that is offering such a prize;

(5) The rules regarding when a fantasy contest locks, thus allowing no further entries, changes to lineups, or substitution of players; and

(6) How a winner is determined and the handling of an award in any case where a tie is possible

It is important that all fantasy contest operations are evaluated and periodically audited. GLI recommends an initial compliance audit as well as an annual compliance audit. Additionally, GLI recommends including these rules within the scope of the annual audit. Lastly, to align with the industry, GLI recommends specifying independent testing laboratories to be the third party for compliance audits. Therefore, GLI proposes the following updates to rule 3774-3-06, indicated in bold text:

3774-3-06 Inspection and audits.

(A) ***Fantasy contest operators shall obtain an initial compliance audit and recommendation for approval from a testing laboratory approved by the commission. That written recommendation shall certify that the operator is in compliance with fantasy contest law and these rules.***

(B) *Fantasy contest operators shall contract with a third party* ***testing laboratory*** *to perform an independent audit to ensure compliance with fantasy contest law* ***and these rules****. The audit shall be performed at least once every* ***twelve-****month period unless otherwise instructed by the executive director.*

(C) *Fantasy contest operators shall contract with a third party* ***certified public accountant*** *to perform an independent financial audit. The audit shall be performed at least once every twelve-month period unless otherwise instructed by the executive director.*

(D) *Any third party contracted to perform an audit under this rule shall be approved by the commission at a meeting held under section 3772.02 of the Revised Code prior to the audit engagement. The commission may deny, restrict, or condition any request for approval of any third party and may require documentation regarding the qualifications and independence of the third party, as well as any other documentation needed to process the request for approval, from the fantasy contest operator or the third party.*

Recommended Additions

Ohio requires fantasy contests to be determined predominantly by accumulated statistical results of the performance of managing rosters of athletes whose performance directly corresponds with the actual performance of athletes in professional sports competitions. With that in mind, to ensure the integrity of fantasy contests it is imperative to have some requirements in place pertaining to the statistical results. Therefore, GLI proposes addition of the following rule:

3774-3-08 Statistical Results.

(A) Statistical results that are made available to the fantasy contest player pertaining to the event must use a source approved by the commission and shall be reasonably accurate and updated.

(B) Where the point calculations depend on statistical results, information on the way in which the points are calculated and the number of decimal places to be used shall be clearly and conspicuously disclosed to the fantasy contest player, (for example, if fantasy contest players receive a tenth of a point for each yard gained by a running back, or a fraction of a point for each reception). In addition, the cases where statistical results, like a pitcher's ERA are rounded or truncated at a certain decimal place must be also be clearly and conspicuously disclosed.

(C) Controls must be implemented to review the accuracy and timeliness of any services which provide statistical results.

The usage of KYC (Know Your Customer) is vital for any online service, especially one which has restrictions on who can participate, such as fantasy contests. The fantasy contest operator needs to be sure that the individuals participating are who they say they are. Additionally, conditions on the terms of use and privacy should be made clear to the fantasy contest player, in addition to having secure access to their account. Further, the financial transactions conducted with fantasy contest player will need to be tracked for auditability. Therefore, GLI proposes addition of the following rule:

3774-3-09 Account Management.

(A) The fantasy contest platform shall require the use of a fantasy contest player's account to participate in a fantasy contest. A fantasy contest player must only be permitted to have one active account at a time unless specifically authorized by the commission.

(B) The fantasy contest operator must employ a method to collect fantasy contest player information prior to the registration of a fantasy contest player's account.

(1) The fantasy contest operator must deny registration to any person that submits a birth date that indicates they are under eighteen years of age.

(2) Identity verification must be undertaken before a fantasy contest player can participate.

(3) Identity verification must authenticate the legal name, physical address, and age of the person at a minimum as required by the commission.

(4) Identity verification must also confirm that the fantasy contest player is not on any exclusion lists held by the fantasy contest operator or the commission or prohibited from establishing or maintaining an account for any other reason.

(5) Details of identity verification must be kept in a secure manner.

(6) Third-party service providers may be used to for identity verification as allowed by the commission.

(7) The fantasy contest operator must have a documented public policy for the handling of fantasy contest players discovered to be using an account in a fraudulent manner, including but not limited to:

(a) The maintenance of information about any fantasy contest player's activity, such that if fraudulent activity is detected, the commission has all of the necessary information to take appropriate action;

(b) The suspension of any fantasy contest player's account discovered to be providing access to fraudulent fantasy contest players; and

(c) The treatment of deposits, entries, and wins associated with a fraudulent fantasy contest player's account.

(8) Once age and identity verification are successfully completed, the fantasy contest player is determined to not be on any exclusion lists or prohibited from establishing or maintaining an account for any other reason, and the fantasy contest fantasy contest player has acknowledged the necessary privacy policies and terms and conditions, then the fantasy contest player's account registration is complete, and the fantasy contest player's account can become active.

(C) A set of terms and conditions must be readily accessible to the fantasy contest player. During the registration process and when any terms and conditions are updated, the fantasy contest player must agree to the terms and conditions. The terms and conditions must:

(1) Advise the fantasy contest player to keep their account credentials (e.g., password and username) secure;

(2) Disclose all processes for dealing with lost usernames or passwords, forced password changes, password strength and other related items;

(3) Specify the handling of entry fees where the entry of a fantasy contest player is canceled;

(4) Specify the handling of entry fees for paid fantasy contests that are voided or abandoned;

(5) Specify the conditions under which an account is declared inactive and explain what actions will be undertaken on the account once this declaration is made; and

(6) Disclose rules by which any unrecoverable malfunctions of hardware/software are addressed including if this process results in the voiding of any entries.

(D) A privacy policy must be readily accessible to the fantasy contest player. During the registration process and when the privacy policy is updated, the fantasy contest player must agree to the privacy policy.

(1) The privacy policy must state the information that is required to be collected, the purpose for information collection, the period in which the information is stored, the conditions under which information may be disclosed and an affirmation that measures are in place to prevent the unauthorized or unnecessary disclosure of the information.

(2) Any information obtained in respect to the fantasy contest player's account must be done in compliance with the privacy policy and local privacy regulations and standards observed by the commission.

(3) *Any information about fantasy contest player's accounts which is not subject to disclosure pursuant to the privacy policy must be kept confidential, except where the release of that information is required by law.*

(4) *All fantasy contest player information must be securely erased (i.e., not just deleted) from hard disks, magnetic tapes, solid state memory and other storage devices before the device is decommissioned. If erasure is not possible, the storage device must be destroyed.*

(E) *A fantasy contest player accesses their account using a username (or similar) and a password or a secure alternative means for the fantasy contest player to perform authentication to log in to the fantasy contest platform. Authentication methods are subject to the discretion of the commission as necessary. The requirement does not prohibit the option for more than one method of authentication being available for a fantasy contest player to access their account.*

(1) *Where a fantasy contest player has forgotten their username and/or password, a multi-factor authentication process must be employed for the retrieval of the username/resetting of the password.*

(2) *The fantasy contest platform must allow the fantasy contest player to change their passwords, registration information and account used for financial transactions.*

(3) *The fantasy contest platform must support a mechanism that allows for an account to be locked if suspicious activity is detected (e.g., too many failed attempts for login).*

(F) *The following rules apply to the maintenance of fantasy contest player funds:*

(1) *All deposit, withdrawal, transfer or adjustment transactions are to be maintained in an audit log.*

(2) *The fantasy contest operator must have in place security or authorization procedures to ensure that only authorized adjustments can be made to fantasy contest players' accounts, and these changes are auditable.*

(3) *It shall not be possible to transfer funds between two fantasy contest players' accounts.*

(4) *The fantasy contest operator must be able must be able to provide a transaction log or account statement history to a fantasy contest player upon request. The information provided must include sufficient information to allow the fantasy contest player to reconcile the statement or log against their own financial records.*

(G) *A fantasy contest player's account is considered to be inactive under the conditions as specified in the terms and conditions. Procedures must be in place to:*

(1) *Suspend or terminate a fantasy contest player's account once the account is declared inactive;*

(2) *Protect inactive accounts that contain funds from unauthorized access, changes or removal; and*

(3) *Deal with unclaimed funds from inactive accounts including returning any remaining funds to the fantasy contest player where possible.*

(H) The fantasy contest operator must provide a method for a fantasy contest player to make a complaint or dispute, and to enable the fantasy contest player to notify the commission if such complaint or dispute has not been or cannot be addressed by the fantasy contest operator, or under other circumstances as specified by the law of the commission.

(1) Contact information for complaint and dispute resolution must be readily accessible to the fantasy contest player

(2) Records of all correspondence relating to a complaint and dispute shall be maintained for a period of five years.

(3) A documented process must exist between the fantasy contest operator and the commission on the complaint and dispute reporting and resolution process.

Maintaining integrity of a fantasy contest player's account is important, especially pertaining to the location of the player while they're purchasing entries for a fantasy contest. As Ohio is surrounded by five states, and with visitors coming to and from Ohio, it is important from a revenue standpoint to be sure of the player's location at the time of purchase. Additionally, it is imperative the fantasy contest player's account is not being accessed from inconsistent geographical locations as the fantasy contest player should be the only individual accessing their account at any time. Therefore, GLI proposes addition of the following rule:

<u>3774-3-10 Account Monitoring to Prevent Misuse.</u>

(A) The fantasy contest operators shall not allow fantasy contest players to use proxy servers for misrepresenting their identity or location to engage in fantasy contests.

(B) To prevent the unauthorized use of a fantasy contest player's account, a fantasy contest operator must use technologically and commercially reasonable measures to reasonably detect the physical location of a fantasy contest player attempting to access their account and to monitor for simultaneous logins to a single account from geographically inconsistent locations. A fantasy contest operator may use a third party to provide these location services.

(1) The geolocation service or application must be able to perform as follows:

(a) Detect location notwithstanding the use of a proxy server;

(b) Detect location when routing through a Virtual Private Network (VPN);

(c) Use GPS data when the fantasy contest player seeks access from a mobile device or network, where available;

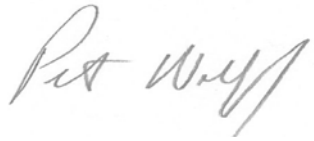
(d) Check location prior to completing the first entry purchase and prior to completing entry purchases after a period of 30 minutes since the previous location check;

(e) Utilize a mechanism to alert the fantasy contest operator if an account is being accessed from geographically inconsistent locations. For example, technology that alerts the fantasy contest operator that login locations were identified that would be impossible to travel between in the time reported.

(2) The fantasy contest operator should implement procedures to disable account access if the fantasy contest operator receives information that an account is being accessed from a location that indicates that there is a likelihood of unauthorized or improper access.

Thank you for the opportunity to share our thoughts with the commission. Please let us know if we may be of any further assistance on this or any other matter.

Sincerely,
GAMING LABORATORIES INTERNATIONAL, LLC



Peter Wolff
Technical Compliance Manager

Cox, William

From: Ian Kieffer <iankieffer18@gmail.com>
Sent: Thursday, January 03, 2019 10:15 AM
To: FantasyContests
Subject: Fantasy Rules Recommendation

To whom it may concern,

I was just reading the rules regarding what is and is not allowed for those operating a fantasy contest under the Ohio Casino Control Commission's rule proposal, and I wanted to give a recommendation. I played in a no-money league with some of my friends and since some of the participants knew more about the players than others, we decided to use the auto-draft feature for our league. I found the feature to be extremely helpful and would love if my league and others like it could continue using it in the future. If the rules as they stand were implemented, I can see a drop in participation if the auto-draft, and other similar features, were outlawed from fantasy contests.

Thank you for your time,

Best regards,

Ian S. Kieffer
Ashland University '18
Legislative Service Commission Fellow 2019

Cox, William

From: masters@mastersfantasyleagues.com
Sent: Tuesday, January 15, 2019 1:27 PM
To: FantasyContests
Subject: Comments on proposed rules regarding regulation of fantasy contests in Ohio
Attachments: Ohio Casino Control Commission Letter.docx

Dear Sirs -

Please find attached our thoughts/comments on the proposed rules regarding the regulation of fantasy contests in Ohio.

If you have any issues opening the attached Word document, just reply back and let us know.

And please feel free to contact us via email with any follow-up questions OR to schedule a time for a phone call if that would be more convenient/beneficial.

Sincerely,

John Beese - Partner

MastersFantasyFootballLeagues.com

3465 Arlington Rd E#159

Akron, Ohio 44312

330-316-5115

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

Dear Sirs,

We greatly appreciate being given the opportunity to comment on the proposed rules regarding the regulation of fantast contests in Ohio. As a season-long fantasy contest operator based in Ohio since 2008, we recognize that you are attempting to separate the small season-long companies (like us) from the large daily fantasy contest operators … thus giving us a chance to survive (unlike some other states).

Since we are a small company with 271 Ohio customers, we would love to see a 5th license bracket for companies with less than 1,000 contest players.

I believe within the initial guidelines, you have established a way which will allow us to operate within our home state - by use of a waiver or variance under "3774-1-05 Waivers and variances." This is critical to us to be able to operate within Ohio.

There are 2 areas which are almost impossible for us to comply with and we would like the opportunity for a waiver or variance.

1: Annual independent Audit. This Audit is extremely expensive and does not really apply to us. The reason it does not apply is we do not ever hold a customer's money, meaning a customer cannot put money on deposit with us and then pay for leagues as they go along. All of our customers pay for their leagues one league at a time. Therefore, they always have a zero balance in their account. After the season is over our customers who win do not have an option to leave money on account with us and pay for new leagues with that money. Rather we immediately send them their winners check. So again, their account balance is always at zero.

Ideally, we would also like to request that a letter from our CPA confirming we follow all accounting standards would be sufficient for a season-long company like Masters. An annual audit that costs $12,000+ yearly would price us out of being able to take customers from our home state.

2: "Fantasy contest operators shall contract with a third party to perform an independent audit to ensure compliance with fantasy contest law." I am not positive, but I believe what you are asking is to have a company make sure that stats etc. are being reported correctly and that the correct teams are being posted as winners. In a daily contest that often has hundreds, if not thousands of owners in the same contest and the same player may be listed in thousands or hundreds of thousands of lineups in the same league, I can see where having an independent auditor may be helpful. This is not the case in season long leagues. There are exactly 12 owners in each league and each owner's roster is completely unique because there is no duplication of players. Meaning, Baker Mayfield, for example, can appear on only 1 roster. Owners are operating their team from the beginning of the season to the end and they are heavily involved in the actual operation of their team making trades, setting lineups doing waivers all year long. Some leagues even have their initial draft in February. If there is ever a discrepancy in points, it would be pointed out immediately and it would be fixed.

We operated in the state of Tennessee from 2008 to 2016 without ever having an issue. Once Tennessee instituted this audit rule, we had to leave the state as it is completely impossible for a season long company to comply with. Every single season long operator left Tennessee and the only fantasy sports left are the dailies. Please give us a way to comply with this rule. Here is a link to one of our leagues and you can easily see that it is nothing at all like a daily contest.

http://www78.myfantasyleague.com/2018/home/30343#0

As a small, Ohio based company with 6 employees (3 full-time and 3 part-time) that runs season-long contests, we don't see how a third-party compliance audit really applies to us. For example, in the state of Colorado, small season-long companies like Masters simply have to register with the state. We don't have to do anything else.

Most daily fantasy players treat the hobby like gambling. They are simply looking to make money. Most season-long players treat the hobby like a hobby. They do it for fun and camaraderie. For the experience of drafting and managing their own team over the course of an entire football season. Season long leagues allow owners to trade players, make free agent roster moves, etc. Teams play head-to-head matches over the course of an entire season. Then winners are determined via a playoff format.

In closing, we would like to thank you again for the opportunity to weigh in on the proposed legislation. While we are a small company, we love our Ohio roots and we would be devastated if we are legislated out of being able to accept customers from our home state. Feel free to email back with any specific questions OR we would be happy to speak via phone if you would prefer.

Sincerely,

John

John Beese – Partner
MastersFantasyFootballLeagues.com
3465 Arlington Rd E#159
Akron, Ohio 44312
330-316-5115

Cox, William

From: Meredith Yu <mcheek@yahoosports.com>
Sent: Wednesday, January 16, 2019 7:29 PM
To: FantasyContests
Subject: Yahoo Fantasy Sports - Comments on Draft Rules for Fantasy Contests
Attachments: Comments to OH Casino Control Commission on Proposed Rules_Jan 2019.pdf

Dear Mr. Schuler:

Yahoo Fantasy Sports submits the attached comments in response to the Casino Control Commission's Notice of Draft Rules for Fantasy Contests. Please let me know if there are any issues opening the attachment.

Sincerely,
Meredith Yu

Meredith C. Yu
Director, Product Compliance
Yahoo Fantasy Sports
m: 310.741.9578

January 16, 2019

VIA E-MAIL

Ohio Casino Control Commission
100 East Broad Street, 20th Floor
Columbus, OH 43215
fantasycontests@casinocontrol.ohio.gov

Subject: Yahoo's Comments on the Casino Control Commission's Draft Rules for Fantasy Contests

Dear Director Schuler:

On behalf of Yahoo Fantasy Sports LLC, thank you for the opportunity to submit comments on the Casino Control Commission's Draft Rules for Fantasy Comments ("Proposed Rules"). Yahoo has proudly delivered fantasy sports games to users for over 20 years. We now have millions of loyal users playing both season-long fantasy sports leagues and daily fantasy contests on Yahoo. Yahoo prides itself on ensuring that players are treated fairly while making contests more transparent and fun for all users. Ohio is an important market for our fantasy sports offerings, and Yahoo is committed to offering daily fantasy sports contests to Ohio residents.

In the spirit of cooperation and the desire to be able to continue to operate fantasy sports contests in the State of Ohio, we would like to share our comments on the Proposed Rules. Our comments derive from our long-standing experience in the fantasy sports industry and operation throughout the U.S.

(1) 3774-1-01(B)(2) - We request additional clarification on the definition of "Applicant" to ensure the Commission's authority to access records, conduct examinations and other discovery is limited to the license applicant and not the parent companies. Yahoo Fantasy Sports LLC is the division within Verizon Media (formerly Oath), that operates the fantasy sports business. Verizon Media is a relatively large company but only very few employees focus on fantasy sports, as the fantasy sports business is a small fraction of Verizon Media's overall business. We think it is helpful for both the regulators and the operators to focus on the aspects of an applicant's business that

offers the product that falls within the regulations, rather disclosing information pertaining to all of Verizon Media, which may be voluminous and unhelpful.

(2) 3774-2-01(H) - Current rules limit the transferability of licenses. We request the ability to transfer licenses and the obligation to submit new applications and fees only when there are significant changes to the organization. Given our complex corporate structure, there have been instances where we have had to make name changes to the entity responsible for day-to-day responsibilities over Fantasy Sports and would ask that these types of changes not require the administrative and financial burden that the submission of a new application or applicable fees involve.

(3) 3774-2-02(A) - The Proposed Rules establish licensing fees based on number of players within the State. This artificially places a cap on growth, even if there's no revenue increase. Instead, we recommend scaling applicable fees to structure them based on adjusted gross revenue and not number of players within the state. We support fee structures that grow as the operator's revenue grows and do not act as a barrier to entry for future innovation.

(4) 3774-2-03 - Considering the administrative and financial requirements the Proposed Rules place on a "Management Company," we would request that the term be more clearly defined in 374-1-01(B) along with the definition of "Applicant," as noted above. As written, the definition in 3774-2-03 is vague, leaving open the question of when a parent company is considered to be managing "the day-to-day operations of a fantasy contest operator," and provides the executive director with great discretion in determining what qualifies as a Management Company.

(5) 3774-3-01(A)(6) - Yahoo employees are restricted from playing public contests with prizes on Yahoo's fantasy sports site and any games on other daily fantasy sites, and Verizon Media's Code of Ethics has long prohibited employees from using internal information for personal gain. In addition, our Terms of Service for Daily Fantasy Sports prohibits athletes, team owners, and others who could influence gameplay in the real world game from playing relevant paid daily fantasy games. We ask that the Proposed Rules be modified to ensure compliance requirements to restrict prohibited players are technologically feasible and commercially reasonable.

(6) 3774-3-2(B) - Proposed Rules prohibit auto-draft functionality. This rule is problematic because it creates limitations on different contests types, some of which are

organized around leagues of contestants. While daily contests rely on a “salary cap” model, other contest formats with different drafting dynamics (e.g. snake drafts) may be restricted based on the Proposed Rules. Contest types utilizing round-by-round snake drafts are done communally, in cooperation with follow contestants. Auto-drafting option is needed to ensure drafts occur in a timely manner and the entire league would not be impacted by one participant experiencing technical difficulties or sudden inability to draft at the scheduled time. We suggest that the Proposed Rules be amended to allow for use of an auto-draft option in snake draft contests.

(7) 3774-3-06(G) - We are more than willing to provide information and data specific to our Fantasy Sports business, but ask that the language mandating “the disclosure to the commission of non-privileged confidential records, including tax records, held by any federal, state, or local agency, credit bureau, or financial institution and to provide handwriting exemplars, photographs, fingerprints, and **any other information requested**” (emphasis added) be more narrowly tailored to meet the commission’s objectives of compliance with business licensing and relevant fantasy sports regulations. To that end, we would request that a clause be added to the end of this regulation which states, “related to compliance with these regulations.”

In conclusion, Yahoo Fantasy Sports very much appreciates the opportunity to provide comments on the Proposed Rules and respectfully requests that the above requested changes be adopted to maintain a consistent, fair playing field for fantasy sports operators and players throughout the State of Ohio and the entire United States. Once again, we thank you for your consideration of our comments, and please let me know if you have any questions.

Sincerely,

Meredith Yu
Head of Compliance, Yahoo Fantasy Sports