



James B. Butler
Assistant Deputy Director/Chief of Staff
Maryland Lottery and Gaming
1800 Washington Blvd., Suite 330
Baltimore, MD 21230

Via email: jbutler@maryland.gov

Assistant Deputy Director Butler,

On behalf of Bally's Corporation, I would like to submit public comment regarding proposed changes to Online Fantasy Competition Definitions in 36.09.01.02. In short, we are concerned that the new definition would ban single player online fantasy competitions (also known as fantasy house games) in Maryland, making Maryland's daily fantasy sports market an outlier in North America.

Bally's Corporation owns Monkey Knife Fight, a daily fantasy sports operator currently operating legally in 37 states as well as Canada (excluding Quebec). Monkey Knife Fight's operational status in various states can be found at this link: <https://hq.monkeyknifefight.com/post/where-is-monkey-knife-fight-legal>

We do not believe that a ban on single player fantasy games is required under the definition of "fantasy competitions" set forth in Maryland statute Section 9-1D-01, which states:

(a) In this section, "fantasy competition" includes any online fantasy or simulated game or contest such as fantasy sports, in which:

- (1) participants own, manage, or coach imaginary teams;
- (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest;
- (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals (players or teams in the case of a professional sport); and
- (4) no winning outcome is based:

- (i) solely on the performance of an individual athlete; or
- (ii) on the score, point spread, or any performances of any single real-world team or any combination of real-world teams.

The statutory definition of fantasy competition does not require participants compete directly with one another and does not explicitly state that the operator cannot participate in the contest with a participant. While the draft rules would ban the fantasy contest operator from being considered a player for purposes of fulfilling a multi-player requirement, there is no such reference in the statutory definition to disallow the operator from being considered a participant. The statute also does not state a minimum number of players required for a game to meet the requirement in the statute. As such, there does not appear to be any statutory requirement for multiple players playing in direct competition with one another to meet the legal requirements in Maryland.

Furthermore, the requirement that “the winning outcome of the game or contest reflects the relative skill of the participants” is fulfilled by the skill of any one participant against all participants playing any one game on any one day. The statutory language does not require that the participants be engaged in a direct competition scenario to be within the bounds of the law.

Finally, as stated briefly above, banning single player fantasy games would make Maryland’s fantasy sports market an outlier in North America. Monkey Knife Fight has been operating legally across North America and would welcome the opportunity to continue operating in Maryland.

Thank you for the opportunity to submit this public comment. If you have any questions regarding these comments, please do not hesitate to contact me.

Very truly yours,

Elizabeth Suever

Elizabeth Suever
Vice President, Government Relations
Bally’s Corporation



February 28, 2022

Via E-Mail to jbutler@maryland.gov

Attn: James B. Butler, Assistant Deputy Director/Chief of Staff
Maryland Lottery and Gaming Control Agency
1800 Washington Boulevard, Suite 330
Baltimore, Maryland 21230

Re: Notice of Proposed Action - Voluntary Exclusion, Responsible Gaming and Fantasy Competition

Dear Mr. Butler,

In response to the voluntary exclusion, responsible gaming and daily fantasy sports competition rules proposed by the Maryland Lottery and Gaming Control Commission (“Commission”), DraftKings Inc. (“DraftKings”) submits the following comments and questions for consideration. As a leading sports wagering operator and fantasy competition operator in the United States, DraftKings has first-hand experience with sports wagering and fantasy competition regulatory frameworks, and submits these comments based on its operational knowledge in multiple regulated markets.

36.01.03.04 Voluntary Surrender.

Rule Reference: 36.09.01.02(C)(2)

Rationale: DraftKings respectfully requests clarification regarding what happens to an individual’s fantasy competition winnings should they apply to be placed on the Commission’s Voluntary Exclusion List immediately after the commencement of a fantasy competition but before the outcome of that competition is settled. In other jurisdictions, when it is determined that an ineligible or prohibited player has won a fantasy competition, fantasy competition operators redistribute the winnings to the actual winner of the competition, who would be the runner-up immediately following the ineligible or prohibited individual. This process is distinct from sports wagering in that in a fantasy competition, individuals are competing with each other, while in sports wagering individuals are competing against the operator and the redistribution of winnings upon a finding of ineligibility does not disadvantage another player. To deprive an actual winner of their winnings in a fantasy competition does not reflect the industry standard of recognizing fantasy contest results. For this reason, DraftKings respectfully requests the following amendment to this provision.



Existing Rule Language/Proposed Rule Language:

C. An individual who applies to be placed on the Commission's Voluntary Exclusion List contractually agrees to:

- (1) Redeem or liquidate an unredeemed item with monetary value that the individual has received since being placed on the Commission's Voluntary Exclusion List; and*
- (2) Designate that the proceeds of the redeemed item be contributed to the Problem Gambling Fund established under State Government Article, §9-1A-33(b), Annotated Code of Maryland, **with the exception of fantasy competitions in which the proceeds of the redeemed item will be redistributed to the next eligible winner of the fantasy competition.***

36.09.01.02 Definitions.

Rule Reference: 36.09.01.02(B)(12)

Rationale: DraftKings respectfully requests the “*Private fantasy sports competition*” definition be expanded to included “*friends*” of employees of a fantasy competition operator. DraftKings has stringent internal guidelines in place that prohibit employees from participating in public daily fantasy competitions. The DraftKings internal policy allows for employees to participate in private fantasy competitions with other employees, family members, and also friends of fantasy competition operator employees, depending on the state the employee is playing in. DraftKings employees must also only participate in authorized fantasy competitions under a username clearly indicating they are an employee of DraftKings, for example an employee named John Doe’s username would be “dk-jdoe.” Given that DraftKings employees are regulated internally and externally for the policy concerns this requirement addresses, it would be helpful to both DraftKings and other fantasy competition operators to provide consistency that allows for friends of employees of a fantasy competition operator to be included within this definition. For this reason, DraftKings respectfully requests the following amendment to this provision.

Existing Rule Language/Proposed Rule Language:

(12) “Private fantasy sports competition” means a fantasy sports competition that is only open to:

- (a) Employees of a fantasy competition operator; ~~and~~ **or***



(b) Immediate family members and friends of an employee of a fantasy competition operator.

36.09.01.02 Definitions.

Rule Reference: 36.09.01.02(B)(13)

Rationale: DraftKings respectfully requests that the list of enumerated mediums that constitute a “prize” be expanded to include “cash equivalents.” As the fantasy competition space expands there will be opportunities for fantasy competition operators to award prizes that may fall outside the proposed enumerated list of what currently constitutes a “prize,” for example, gift cards, cryptocurrencies, and non-fungible tokens, among others. To provide future flexibility to fantasy contest operators and to help ensure proper compliance, DraftKings respectfully requests the addition of “cash equivalents” as an enumerated medium within the definition of “prize” coupled with the condition that any new “cash equivalents” be expressly approved by the Commission.

Existing Rule Language/Proposed Rule Language:

(13) “Prize” means anything of monetary value, including:

(a) Money;

(b) Competition credits;

(c) Merchandise; ~~or~~

(d) Cash equivalents, subject to the approval of the Commission; or

(~~de~~) Admission to another competition in which a prize may be awarded.

36.09.03.01 Prohibition on Fantasy Competition Play

Rule Reference: 36.09.03.01(B)

Rationale: DraftKings respectfully requests clarification as to whether the Commission intends to supply fantasy competition operators with a list of Commission and Agency staff and housemates to ensure proper compliance with this provision. While it would be difficult for fantasy contest operators to identify whether, for example, an individual who may participate in a fantasy competition lives in the same principal residence as a Commission member or an officer or employee of the Agency, both the Commission and the Agency would be equipped to compile this information that can then be supplied to fantasy competition operators. Regulator supplied



prohibition lists are generally regarded as industry standard and would ensure the policy behind this particular provision is best achieved. For this reason, DraftKings respectfully requests the following amendment to this provision.

Existing Rule Language/Proposed Rule Language:

For the purposes of compliance with this section, the Commission will furnish lists of prohibited participants under subsection B-E to fantasy competition operators.

Participation in a fantasy competition for which there is an entry fee is prohibited for:

- A. A minor, who is an individual under the age of 18;*
- B. A Commission member;*
- C. An officer or an employee of the Agency;*
- D. An individual who lives in the same principal residence as a Commission member or an officer or employee of the Agency and is the member's, officer's, or employee's:
 - (1) Spouse or domestic partner;*
 - (2) Child;*
 - (3) Sibling; or*
 - (4) Parent or parent-in-law; or**
- E. An individual who has asked to be excluded under COMAR 36.09.05.*

36.09.03.03 Restrictions on Fantasy Competition Play by Individuals Associated with Operators

Rule Reference: 36.09.03.03(B)(2)(b)(ii)

Rationale: Similar to our comment with respect to 36.09.01.02(B)(12), DraftKings respectfully requests this provision be expanded to include “friends” of employees of a fantasy competition operator. DraftKings has stringent internal guidelines in place that prohibit employees from participating in public daily fantasy competitions. The DraftKings internal policy allows for employees to participate in private fantasy competitions with other employees, family members, and also friends of fantasy competition operator employees, depending on the state the employee is playing in. DraftKings employees must also only participate in authorized fantasy competitions under a username clearly indicating they are an employee of DraftKings, for example an employee named John Doe’s username would be “dk-jdoe.” Given that DraftKings employees are regulated internally and externally for the policy concerns this requirement addresses, it would be helpful to both DraftKings and other fantasy competition operators to provide consistency that allows for



friends of employees of a fantasy competition operator to be included within this definition. For this reason, DraftKings respectfully requests the following amendment to this provision.

Existing Rule Language/Proposed Rule Language:

- (2) *The fantasy competition is a private fantasy competition that is:*
- (a) *Clearly marked as a private fantasy competition; and*
 - (b) *Limited by the fantasy competition operator to:*
 - (i) *Employees of the fantasy competition operator; ~~and~~or*
 - (ii) *Immediate family members and friends of an employee of the fantasy competition operator.*

36.09.03.05 Ensuring Fair Outcomes in Fantasy Competitions.

Rule Reference: 36.09.03.05(F)

Rationale: DraftKings respectfully requests the requirement that fantasy competition operators “conspicuously” disclose the source of data utilized in determining results be amended to only require that fantasy competition operators disclose the source of the data utilized in determining results. DraftKings discloses the source of the data utilized in determining results within the rules of the contest (<https://www.draftkings.com/help/rules/overview>), but it is unclear whether that alone meets the Commission’s expectation of “conspicuously.” Given that “conspicuously” can be interpreted to mean different things to different people, it would be far less burdensome for fantasy competition operators to comply with this requirement if the Commission did not qualify the manner in which the source of data is presented to players. For this reason, DraftKings respectfully requests the following amendment to this provision.

Existing Rule Language/Proposed Rule Language:

F. Data. Fantasy competition operators shall ~~conspicuously~~ disclose the source of the data utilized in determining results.

36.09.04.04 Financial Auditing.

Rule Reference: 36.09.04.04(D)(1)(b)



Reason for Change: DraftKings respectfully requests the provision that requires a fantasy contest operator change audit partners every three years to be amended to only require changing audit partners every five years. DraftKings currently operates in accordance with [U.S. Securities and Exchange Commission guidelines](#) which require an audit partner to rotate off every five years. To require fantasy competition operators to rotate audit partners more frequently than what is required by the SEC would be overly burdensome and interrupt rotation cycles currently in place in other jurisdictions. For this reason, DraftKings respectfully requests the following amendment to this provision.

Existing Rule Language/Proposed Rule Language:

D. Auditor Exception.

(1) The same certified public accountant may not perform more than ~~three~~five consecutive financial audits for a fantasy competition operator unless:

(a) The fantasy competition operator requests and obtains preapproval of the Commission; and

(b) A different audit partner manages the audit after ~~3~~5 years.

* * * * *

Thank you for your consideration of DraftKings' comments regarding the Commission's proposed voluntary exclusion, responsible gaming and daily fantasy sports competition rules. Please feel free to reach out should you or anyone else at the Commission have any questions about our submission or our experience in other regulated jurisdictions.

Sincerely,

DraftKings Inc.

The Maryland Center of Excellence on Problem Gambling (the Center) is pleased to submit these comments to the Maryland Lottery and Gaming Control Agency (the Agency) on the proposed sports wagering regulations. The Center is a program of the University of Maryland School of Medicine with the mission to promote healthy and informed choices regarding gambling and problem gambling. Data from the 2017 Prevalence Study showed that 1% of Maryland adults were problem gamblers, approximately 46,688 people. Preliminary data from the current Study suggests that the percentage of Maryland adults experiencing probable pathological gambling or problem gambling has increased since 2017. The burden of gambling problems is not limited to the gambler. A gambling problem can be very harmful to an individual and the ones they love. It can cause financial problems, as well as physical and mental health issues, often placing a burden on the gambler's family, social networks, and the communities they live in. For every problem gambler, it is estimated that six or more other individuals are affected financially, socially, and psychologically. Problem gambling is a public health concern, increasing instances of incarceration, bankruptcies, crime, homelessness, domestic violence, child maltreatment, and more. As an organization focused on public health and problem gambling, we value the problem gambling protections that have been included in the regulations and are providing the following comments as ways to further enhance these protections.

COMAR 36.01.03.02(D)(1) states that one of the requirements of an application for placement on the Commission's Voluntary Exclusion List includes a signature, which includes an approved and secure electronic version. This requirement is stated at COMAR 36.01.03.02(D)(1)(i) as well as restated at COMAR 36.01.03.02(D)(1)(j) as unchanged language. Thus COMAR 36.01.03.02(D)(1)(j) should be removed to avoid repetition or redundancy.

COMAR 36.01.03.02(D)(2) and COMAR 36.01.03.06(A) require that with an application for placement on the Commission's Voluntary Exclusion List, an individual must request their time on the list to either be at least 2 years or for life. Currently, it is common practice to allow individuals to get off the Commission's Voluntary Exclusion List even after opting into life exclusion. Thus the Center recommends that the language be changed to not include life exclusion or add additional options like 5 year and 15 years. If the lifetime period remains an option for individuals wanting to be placed the Commission's Voluntary Exclusion List and is going to be enforceable, it is recommended that the application clearly states that the lifetime period is irreversible once the individual is on the list.

COMAR 36.01.03.02(F)(1)(b) and COMAR 36.01.03.02(F)(3)(c) note that individuals who enter a video lottery facility may be subject to criminal charges. The use of the phrase "criminal charges" is concerning and we would request that the language not be changed

because it is too broad and vague to demonstrate what charges, if any, the individual may encounter. Additionally, having an individual subject to a larger spectrum of charges go against the public's interest. First, the broad nature of this regulation would subject individuals to more and possibly harsher criminal charges when the standard for a violation would be the establishments pressing trespass charges, if any charges at all. Second, the regulation as written would increase the likelihood of individuals ending up in the already overcrowded criminal justice system since there are more options for charges that can be brought against them. Lastly, the regulation would subject already vulnerable individuals to a higher probability of punishment or even harsher punishment when the individuals have taken initiative to better themselves by being on the Commission's Voluntary Exclusion List.

COMAR 36.01.03.05 requires that the Commission must report the Commission's Voluntary Exclusion List to a number of organizations. An additional section that includes "any other necessary organization," for example, the Maryland Center of Excellence on Problem Gambling, would provide flexibility for the Commission to legally provide the information to groups that can show legitimate need for such information.

COMAR 36.01.03.05(F) notes that The Commission should provide the Commission's Voluntary Exclusion List to sports wagering facility licensees and mobile sports wagering licensees in order to "to assist the them in identifying excluded individuals." For grammatical accuracy, the regulation should read "to assist them in identifying excluded individuals."

The Center appreciates the opportunity to comment on these proposed regulations and looks forward to continued coordination with the Maryland Lottery and Gaming Control Agency. Should the Agency have any questions, please feel free to contact Mary Drexler at mdrexler@som.umaryland.edu or 667-214-2121.