

**OFFICE OF POLICY AND LEGAL ANALYSIS**

**Date:** February 8, 2021  
**To:** Veterans and Legal Affairs Committee  
**From:** Janet Stocco, Legislative Analyst  
**LD 139** **Resolve, Regarding Legislative Review of Chapters 33 to 43 Concerning the Regulation of Fantasy Gambling, Major Substantive Rules of the Department of Public Safety, Gambling Control Unit** *(Reported by Rep. Caiazzo for the Department)*

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**SUMMARY AND BACKGROUND**

This resolve provides for legislative review of new rules provisionally adopted on December 7, 2020, by the Director of the Gambling Control Unit within the Department of Public Safety. The rules allow for proper enforcement and administration of [Title 8, Chapter 33](#), which was enacted through [Public Law 2017, ch. 303, \*An Act To Regulate Fantasy Sports Contests\*](#). Through this public law, the Legislature authorized fantasy contests to be offered in the State by licensed fantasy contest operators.

As defined in [8 M.R.S.A. §1101\(4\)](#), a “fantasy contest” is “a simulated game or contest in which:

- A. One or more fantasy contestants pay an entry fee to participate;
- B. Fantasy contestants compete against each other by using their knowledge and understanding of sports events and persons engaged in those sports events to select and manage a simulated team roster whose performance directly corresponds with the actual performance of human competitors on sports teams and in sports events; and
- C. The outcome of the game or contest reflects the relative knowledge and skill of the contestants and does not depend on the performance of any one participant in a sports event or the outcome of any one sports event but is determined predominantly by accumulated statistical results of the performance of individual competitors on sports teams and in sports events.”

[Title 8, chapter 33](#) establishes the following **statutory framework** for the operation of fantasy contests.

**Annual license required.** A person may not offer a fantasy contest to individuals in the State without being licensed by the director of the Gambling Control Unit. An initial license applicant may operate fantasy contests while that application and criminal background check are pending, however, unless the director has reasonable cause to believe that the applicant may be violating the laws or rules governing fantasy contests. An initial and renewal license applicant must disclose: the types of fantasy contests it will operate in Maine; its gross fantasy contest revenues from contestants located in Maine over the past 12 months; the methods it will use to verify the geographic location of fantasy contestants; the methods it will use to protect each fantasy contestant’s personal and private information; and any other information required by the director by rule. Licenses must be renewed annually, but there is no license fee unless the fantasy contest operator had gross fantasy contest revenues from contestants located in Maine exceeding \$100,000 in the preceding 12 months, in which case the annual license fee is \$2,500.

**Statutory limitations on fantasy contest operation.** Licensed fantasy contest operators must abide by the following restrictions when operating fantasy contests in the State:

- *Types of contest:* Fantasy contests may not be based on the performances of participants in collegiate, high school or other sports events involving participants under 18 years of age. The winning outcome of a fantasy contest may not be based on the score, point spread or performance of a single sports team or performance of an athlete in a single event. Instead, operators must ensure winning outcomes are determined primarily by accumulated statistical results and reflect the relative knowledge and skill of the fantasy contest contestants.
- *Prohibited contestants:* The following individuals may not participate in fantasy contests: owners, officers, directors and employees of the fantasy contest operator and relatives in their households; athletes in a competition that is the subject of the contest; and sports agents and team or league employees, referees or officials in a sport that is the subject of the fantasy contest.
  - *Minors:* Operators must verify each fantasy contestant is  $\geq 18$  years of age. If not, they must immediately refund entry fees or deposits made by that contestant. Operators must also facilitate parental control procedures for excluding minors and may not target minors in advertisements.
  - *Individuals with gambling problems:* Operators must provide fantasy contestants with information on responsible play and assistance for compulsive behavior and provide a method for individuals to request that the operator restrict them from participating in fantasy contests. Operators also may not target individuals with gambling addiction in their advertisements.
- *Number of entries and contest rules.* Operators must disclose the number of entries each contestant may submit—consistent with [§1105\(1\)](#)'s specific requirements—and the maximum total entries for each fantasy contest. Operators must also explain the rules of each fantasy contest, must provide public notice of all prizes offered in advance of each fantasy contest, and may not make inaccurate or misleading statements regarding the likelihood of winning. Operators must also inform fantasy contestants of state and federal tax obligations on winnings.
- *Contestant experience:* Operators must identify highly experienced fantasy contestants (who have entered > 1,000 contests or won > 3 X \$1,000 prizes) within fantasy contests and must develop fantasy contests limited to beginner fantasy contestants (who have entered < 51 fantasy contests).
- *Prevention of cheating:* Operators must prohibit the use of 3rd-party scripts/scripting programs and must employ methods to deter, detect and prevent cheating and improper manipulation of fantasy contests to the greatest extent possible.

**Financial restrictions.** Fantasy contest operators must limit each fantasy contestant to one fantasy contestant account, must protect the privacy and security of that account, and may not extend credit to fantasy contestants. Fantasy contest operators must segregate fantasy contestants' funds from their operational funds and must maintain a reserve (via cash, bond, irrevocable letter of credit, etc.) that exceeds the amount of entry fees and other deposited contestant funds. Fantasy contest operators with annual gross fantasy contest revenues from individuals located in Maine exceeding \$100,000 in the past 12 months must also contract with a CPA to perform annual independent audits.

**Annual reports.** Fantasy contest operators must file annual reports with the Gambling Control Unit stating the number of all accounts held, including those held by highly experienced fantasy contestants; the number of all new or closed accounts in the preceding year; the total amount of entry fees received from individuals located in Maine; the number and value of prizes awarded to individuals located in Maine; the gross fantasy contest revenues received from individuals located in Maine; and the number of all fantasy contestants who have requested that they be restricted from participating in contests.

**Tax rate.** A fantasy contest operator with gross fantasy contest revenues from individuals located in Maine that exceed \$100,000 must pay 10% of those revenues to the State. By law, “gross fantasy contest revenues” = (total entry fees - cash prizes paid out to fantasy contestants) x % Maine contestants.

**Complaints and Violations.** Fantasy contest operators must allow fantasy contestants to submit complaints and must respond to each complaint within 48 hours. In addition, the director of the Gambling Control Unit may suspend, refuse to renew or revoke the license of a fantasy contest operator who violates the statute or rules adopted under the statute. Violations of the statute or rules may also result in fines of up to \$1,000 per violation or up to \$5,000 total for violations arising out of the same transaction or occurrence.

## COMPARISON OF PROVISIONAL RULE TO GOVERNING STATUTE

**1. Required Rules:** 8 M.R.S. §1106 requires the Director of the Gambling Control Unit to adopt rules that “must include but are not limited to” the following specific topics listed in §1106(2):

Prohibiting the operator from making statements that are not accurate or are misleading regarding the likelihood of winning;

- Rule Ch. 37, §3 prohibits such statements in all advertising and promotions.
- Rule Ch. 39, §1(15) prohibits any such statements by fantasy contest operators.

B. Requiring disclosure of the number of entries an individual fantasy contestant may submit to each fantasy contest and the maximum number of entries allowed by a fantasy contest operator for each contest;

- Rule Ch. 38, §10 requires these disclosures on the fantasy contest operator’s platform.
- Rule Ch. 35, §1(14)(C) also requires license applicants to disclose minimum internal controls for disclosure of the maximum entries each contestant may submit and for preventing contestants from submitting more than the allowable number.

C. Prohibiting advertisements or promotions that target minors and individuals with gambling addiction, including individuals who have requested to be restricted from play on a fantasy contest operator's platform;

Minors: Rule Ch. 37, §3 provides:

- Advertising and promotions may not target minors, depict minors engaged in fantasy contests or state or imply an endorsement by a minor.
- Advertising\* must state that minors may not participate in fantasy contests.

Individuals with gambling addiction: Rule Ch. 37, §3 provides:

- Advertising\* may not specifically target fantasy contestants with a gambling addiction or who have requested to be restricted from “play on a fantasy contest operator’s platform.”\*\*
- Advertising\* must include a link to a hotline for assistance with problem gambling.

*\* Should promotions be included in these provisions, as required by the statute?*

*\*\* How would a fantasy contest operator know a request was made of another operator?*

- Rule Ch. 35, §14 also requires license applicants to disclose minimum internal controls regarding assistance available for compulsive behavior and the implementation and enforcement of self-limitations and self-exclusions requested by fantasy contestants.

D. Requiring the fantasy contest operator to provide information on how to participate and compete in fantasy contests, including an explanation of fantasy contest play and how to identify a highly experienced fantasy contestant;

- Rule Ch. 38, §1(11) requires this information on the fantasy contest operator’s platform.
- Rule Ch. 35, §1(10)(A) & (B) also require license applicants to disclose minimum internal controls for beginner fantasy contestants, including requiring an explanation of contest play and the identification of highly experienced fantasy contestants.

E. Requiring a system that identifies a highly experienced fantasy contestant by means of a symbol or other identifier easily viewed by fantasy contestants engaged in the fantasy contest on the platform;

- Rule Ch. 38, §1(12) and Ch. 35, §1(10)(B) (as described above) impose this requirement.

F. Prohibiting the use of 3rd-party scripts or 3rd-party scripting programs for any fantasy contest and implementing methods to detect, deter and to the greatest extent possible prevent cheating and improper manipulation of the fantasy contest;

- Rule Ch. 34, §1(17) defines “script” as “a list of commands that a . . . computer program can execute and that are created by fantasy contestants, or by third parties for the use of fantasy contestants, to automate processes on a fantasy contest platform.”
- Rule Ch. 35, §1(9) requires license applicants to disclose “minimum internal controls related to account monitoring to prevent cheating, manipulation or misuse of accounts,” including controls related to preventing the use of unauthorized 3rd party scripts.\*
- Rule Ch. 38 includes the following:
  - §13 prohibits the use of 3rd-party scripts and scripting programs for any fantasy contest.
  - §14 requires operators to “implement methods to detect, deter and prevent cheating and improper manipulation of fantasy contests.”\*

*\* Should these rules include the “greatest extent possible” statutory language?*

G. Requiring the implementation of a system within the platform by which a fantasy contestant may submit a complaint against the fantasy contest operator and requiring the fantasy contest operator to respond to the complaint within 48 hours;

- Rule Ch. 43, §1(2) requires fantasy contest operators to implement systems within the platform for contestants to log complaints and disputes “on a 24/7 basis” and requires operators to respond to the complaint within 48 “hours of receipt of the initial complaint.”
- Rule Ch. 35, §1(8) also requires license applicants to disclose minimum internal controls for reporting and responding to complaints about the handling of a fantasy contestant’s account.

H. Requiring the maintenance of records of fantasy contestant accounts, which must be made available to the director upon request, for a period of up to 5 years;

- Rule Ch. 41, §1 imposes this requirement.
- Rule Ch. 41, §3 requires additional information *about fantasy contestants in Maine* to be made available to the director upon request for a period of 5 years, including: the number of fantasy contestants who request a deposit limit increase; the number of deposit limit increases granted; the number of accounts identified as opened by a minor and the action taken as a result; the number and amount of refunds given; and the number of fantasy contestants who requested limitations on their accounts and the action taken as a result.

- Rule Ch. 43, §1(3) also requires fantasy contest operators to maintain records of all complaint correspondence for a period of five years but doesn't specifically require the sharing of this information with the director upon request.

I. Requiring the development and offering of fantasy contests limited to beginner fantasy contestants;

- Rule Ch. 38, §1(15) imposes this requirement.
- Rule Ch. 35, §1(10) also requires license applicants to disclose minimal internal controls relating to fantasy contests for beginner fantasy contestants, including:
  - Recommending beginner-fantasy-contestant-only contests and low-cost private contests.
  - The percentage of contests open only to beginner fantasy contestants; preventing access by highly experienced fantasy contestants to such contests; and suspending the accounts of highly experienced fantasy contestants who enter such contests.

J. Requiring the fantasy contest operator to ensure that winning outcomes reflect the relative knowledge and skill of the fantasy contestant and that winning outcomes are determined primarily by accumulated statistical results of the performance of human competitors in sports events.

- Rule Ch. 38, §1(16) imposes this requirement.
- Rule Ch. 35, §1(12) also requires license applicants to disclose their minimal internal controls relating to ensuring this requirement is met.

**2. Optional rules.** [Section 1102\(1\)\(D\)](#) further authorizes the director to adopt any “rules the director determines necessary to administer” the fantasy contest statutes. This bill analysis does not summarize each item in the provisional rule that imposes requirements beyond those contained in current statute, but highlights instead the following:

- Rule Ch. 35 (“License application”) requires disclosure of the following additional information in fantasy contest operator license applications: the address of the applicant’s principal place of business and a designated contact person; a copy of an out-of-state entity’s certificate of authority to do business in Maine; audited financial statements for the past 3 years; and minimum internal control standards to prevent cheating and manipulation of accounts, including preventing the use of pre-selected teams. It also requires that any information that becomes outdated or inaccurate be updated by the applicant or licensee within 10 business days.
- Rule Ch. 36 (“License fee and renewal”), requires the submission of license-renewal applications no less than 60 days prior to the expiration of the prior license.
- Rule Ch. 37 (“Fantasy contest monitoring”) requires fantasy contest operators: to prevent contestants from using proxy servers to mask their identities or location; to detect instances where a single fantasy contestant account is being accessed from geographically inconsistent locations; and to disable an account if there is a likelihood of unauthorized or improper access.
- Rule Ch. 38 (“Fantasy contest account activity”) imposes logging requirements for financial activity in fantasy contestant accounts and requires that operators to publish in their “Terms and Conditions” how they will handle funds in inactive accounts (those not used for at least 3 years).
- Rule Ch. 39 (“Registration of fantasy contestants”) imposes detailed requirements for registration of fantasy contestants, which allow operators to verify the identify of individuals opening and accessing a fantasy contestant account. If the fantasy contestant’s identity when making a deposit or withdrawal cannot be verified, additional information must be sought. If the

identity still cannot be verified, the fantasy contest operator must suspend the account, refund the balance of account deposits but retain any winnings “attributable to” the fantasy contestant.

Rule Ch. 37 also directs that if a fantasy contestant attempts to open more than one account, the contestant may not retain winnings from the 2nd account. If a contestant subsequently attempts to open a 2nd account, he or she must be barred from opening a new account for 2 years.

Rule Ch. 37 additionally requires the prominent display of specific information on the fantasy contest operator’s website, including how entry fees will be handled when a fantasy contestant’s individual entry is cancelled or when the fantasy contest is voided.

- Rule Ch. 40 (“Fantasy contestant funds and required reserves”) imposes detailed requirements to related to the statutory mandate that fantasy contest operators maintain a reserve account that exceeds the amount of entry fees and any other fantasy contestant funds on deposit. While [§1104\(4\)\(B\)](#) states only that the reserve “may not be used for operational activities,” Rule Ch. 40 additionally requires that the reserve agreement “reasonably protect the reserve against claims of the fantasy contest operator’s creditors” and that the director be notified of any deficiency in the reserve amount within 24 hours. The director may require an increased reserve amount to correct any deficiency or “for good cause to protect authorized fantasy contestants.”
- Rule Ch. 41 (“License records, annual reporting and audits). Imposes statutory requirements.
- Rule Ch. 42 (“Collection of payments”) details how licensees must pay any fees, fines or taxes.
- Rule Ch. 43 (“Complaints and disciplinary actions”) in addition to detailing the process for investigation of complaints and imposition of administrative sanctions, consistent with the Maine Administrative Procedures Act, Ch. 43 requires fantasy contest operators to provide information about filing complaints and a link to the Gambling Control Unit’s website “readily accessible to fantasy contestants through the communication channel used to access the fantasy contest platform.”

**3. Future rule changes:** Pursuant to 8 M.R.S.A. §1106, these initial rules for the operation of fantasy contests are major-substantive rules subject to legislative review. Any future amendments or changes to these rules are routine technical rules, however, and not subject to legislative review.

#### **TECHNICAL ISSUES IN THE PROVISIONAL RULE**

In addition to the items noted on pages 3-4 in **red text**, the committee may want to consider addressing the following inconsistencies and technical issues in the provisional rule:

1. **“Fantasy contest account” vs. “Fantasy contestant account.”** The rules sometimes use the phrase “fantasy contest account” and sometimes the phrase “fantasy contestant account” to refer to the financial account each fantasy contestant has with a fantasy contest operator. It may make sense only to use the latter phrase, “fantasy contestant account,” which is used in Title 8.
2. **Chapter 38.** Rule Ch. 38, entitled “Fantasy contest *account* activity,” generally imposes requirements for the financial accounts fantasy contestants have with fantasy contest operators. Several sections of Chapter 38 impose quite different requirements relating to the operation of fantasy contests and not accounts however—§10 requires disclosure of the number of entries

allowed for each fantasy contest; § 11 requires disclosure of fantasy contest rules; §12 requires use of a symbol or other method to identify highly-experienced fantasy contestants; § 13 prohibits use of 3rd-party scripts or scripting programs; §14 requires operators to detect, deter and prevent cheating and manipulation of contests; §15 requires operators to offer fantasy contests limited to beginner fantasy contestants; and §§16-17 require operators to prohibit certain individuals from participating in fantasy contests. These provisions may be better located in a different chapter, perhaps Chapter 37, which has similar broad operational requirements.

3. **Cross-reference error?** Rule Ch. 39, §1(2) states a fantasy contestant may not be permitted to deposit or withdraw funds “until the individual has conducted the identify verification required by Subsection C.” It appears the cross reference should be to “Subsection 3,” which requires fantasy contest operators to use commercially and technologically reasonable means to verify the identity of contestants making a deposit or withdrawal.
4. **Sharing of fantasy contestant account activity with governmental officials.** As a condition of licensure, [§1104\(1\)\(M\)](#) requires fantasy contest operators to “protect the privacy and security of a fantasy contestant’s information and accounts maintained or accessed by the fantasy contest operator.” It is unclear whether the requirement in Rule Ch. 39, §1(17) that fantasy contest operators prominently display in their Terms and Conditions that each contestant acknowledges “that his or her account activity and winnings may be disclosed to the director and any other applicable state or federal entities” is considered consistent or inconsistent with the statute.
5. **Timing of director-required audits.** Pursuant to [§1104\(5\)](#), the director “is authorized to conduct a financial audit” of a fantasy contest operator “[u]pon submission of an [annual] report required” by statute. By contrast, pursuant to Rule Ch. 41, §4, “the director may conduct an audit . . . to ensure compliance with M.R.S. Title 8, Chapter 33 at any time.”
6. **Clarification of tax provisions.** [Section 1105\(2\)](#) of the statute requires payment of 10% of gross fantasy contest revenues by “a fantasy contest operator licensed under this chapter that has gross fantasy contest revenues of \$100,000 or greater.” Unlike other provisions of the law, this section does not state the time period over which gross fantasy contest revenues must total \$100,000. *Compare* §1103(6) (imposing license fee if gross fantasy contest revenues “during the 12 months preceding application” are at least \$100,000). Should the time period for calculating this \$100,000 figure be clarified in Rule Ch. 42, §2 (which is incorrectly listed as a second §1)?

## CRITERIA FOR REVIEW OF MAJOR SUBSTANTIVE RULES

The Maine Administrative Procedure Act (Title 5, chapter 375 or APA) provides for committee review of provisionally-adopted major substantive rules. In its review of the rules, [5 M.R.S. §8072\(4\)](#) directs the committee to consider the following factors (the language below paraphrases the statute):

- Has the agency exceeded the scope of its authority in approving the rule?
- Does the rule conform to the legislative intent of the statute it implements?
- Does the rule conflict with other rules or laws?
- Is the rule necessary to accomplish the objectives of the law?
- Is the rule reasonable?
- Could the rule be made less complex or easier to understand?

- Was the rule proposed in compliance with requirements of the APA and other law?
- If a rule significantly reduces property value, is the reduction necessary or appropriate and does the rule avoid an unconstitutional taking?

**VOTING OPTIONS - TIMELY FILED MAJOR SUBSTANTIVE RULES**

Because this rule was filed within the “legislative acceptance period” (before 5 p.m. on the 2nd Friday in January), the Gambling Control Unit may finally adopt the provisional rule as it is currently drafted unless the Legislature finally passes legislation prohibiting adoption of or requiring amendments to the provisional rule. Therefore, the committee has the following voting options:

Committee Recommendation:	The motion should be:
Legislature authorize final adoption of the rule:	<b>OTP</b>
Legislature authorize adoption of a specified part of the rule:	<b>OTP-A</b> ( <i>amendment describes what parts of the rule may not be adopted</i> )
Legislature authorize adoption of the rule with certain amendments:	<b>OTP-A</b> ( <i>amendment describes the changes that must be made to the rule</i> )
Legislature disapprove final adoption of the rule	<b>OTP-A</b> ( <i>amendment should specify that final adoption is not authorized</i> )

**FISCAL IMPACT**

Not Yet Determined.