

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 40—Fantasy Sports Contests**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under (MGC) section 313.955, RSMo Supp. 2016, the commission adopts a rule as follows:

11 CSR 45-40.060 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 3, 2016 (41 MoReg 1320–1322). Changes have been made to the text of the proposed rule, so it is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed rule on November 2, 2016. Two people commented on this proposed rule at the public hearing and also submitted their comments in writing. The MGC staff commented on this rule.

COMMENT #1: Derek Hein, on behalf of DraftKings, stated that in subparagraph (2)(B)3.A. “the special purpose entity contemplated by the regulations, which DraftKings currently hold player funds in, does not hold player funds in trust.” DraftKings suggested the following language: “The segregated account is established and player funds are held securely for the benefit and protection of authorized players.”

RESPONSE AND EXPLANATION OF CHANGE: This subsection was revised by deleting “in trust.”

Due to the similarity of the following two (2) comments, they are addressed with one (1) response.

COMMENT#2: Mr. Hein expressed concern that reporting on players’ deposit accounts and the licensee’s cash reserves on a monthly basis as currently required in section (5) would be overly burdensome, especially given the other requirements in this section. DraftKings suggests that the requirements in this section be changed from monthly to quarterly.

COMMENT #3: Sean Ostrow, on behalf of FanDuel, stated, “We appreciate these well-reasoned and comprehensive rules, in particular the flexibility permitted in allowing fantasy sports operators various methods to comply with the requirement that player funds be protected at all times. Our only concern is that subsection (5) requires an FSCO to report balance sheets on a monthly basis, which we believe will be difficult and extremely laborious to comply with. Given the requirements of auditing and the other requirements of this section, we believe that this additional reporting requirement is unnecessary and should be removed. In the alternative, we would like to see the frequency of these reports decreased to every three (3) or six (6) months.”

RESPONSE: Section 313.915.3(4), RSMo requires Fantasy Sports Contest Operators to “maintain a reserve in the form of cash or cash equivalents in the amount of the deposits made to the accounts of fantasy sports contest players for the benefit and protection of the funds held in such accounts.” Information received from the industry indicated that they routinely perform monthly reconciliations of the player accounts. Inability of the commission to receive this

information on a monthly basis would hamper its ability to ensure statutory compliance. No changes were made as a result of this comment.

COMMENT #4: The MGC noted that the Revisor of the *Missouri Revised Statutes* renumbered the sections of the statute created by HB 1941, the Missouri Fantasy Sports Consumer Protection Act (The Act).

RESPONSE AND EXPLANATION OF CHANGE: The Commission revised sections (2) and (3) and the authority section of this rule to reference the renumbered sections of The Act.

11 CSR 45-40.060 Cash Reserve and Segregated Account Requirements

(2) Funds held in player accounts of Missouri residents shall be protected as set forth herein. A fantasy sports operator shall maintain a reserve in the form of cash, cash equivalents, or a combination thereof to protect player funds in one of the following ways:

(B) Special purpose segregated account with a separate corporate entity.

1. A fantasy sports contest operator may establish a special purpose segregated account that is maintained and controlled by a properly constituted corporate entity that is not the fantasy sports contest operator and whose governing board includes one or more corporate directors who are independent of the fantasy sports contest operator and of any corporation related to or controlled by the fantasy sports contest operator.

2. The special purpose segregated account with a separate corporate entity must hold, at a minimum, the sum of all authorized player funds held in player accounts of Missouri residents for use in fantasy sports contests.

3. The special purpose segregated account must reasonably protect the funds against claims of the operator's creditors other than the authorized players for whose benefit and protection the special purpose segregated fund is established, and must provide that:

A. The segregated account is established and held for the benefit and protection of authorized players;

B. The fantasy sports contest operator may receive income accruing on the segregated account. However, the fantasy sports contest operator has no interest in or title to the segregated account; and

C. The funds in the segregated account held for the benefit of Missouri residents may only be distributed for the following:

(I) For payment to players upon completion of fantasy sports contests or otherwise for the reconciliation of player accounts;

(II) For income earned on the account, to the fantasy sports contest operator;

(III) To the Missouri Gaming Commission in the event that the fantasy sports operator's license expires, is surrendered, or is otherwise revoked. The Missouri Gaming Commission may interplead the funds in the Cole County Circuit Court for distribution to the authorized players for whose protection and benefit the account was established and to other such persons as the court determines are entitled thereto, or shall take such other steps as necessary to effect the proper distribution of the funds, or may do both; or

(IV) As authorized in writing in advance by any agreement approved by the Missouri Gaming Commission.

4. The corporate entity must require a unanimous vote of all corporate directors to file bankruptcy.

5. The corporate entity must obtain permission from the Missouri Gaming Commission prior to filing bankruptcy or entering into receivership.

6. The corporate entity must have articles of incorporation that prohibit commingling of funds with that of the fantasy sports contest operator except as necessary to reconcile the accounts of players with sums owed by those players to the fantasy sports contest operator.

7. The corporate entity must be restricted from incurring debt other than to fantasy sports players pursuant to the rules that govern their accounts for contests.

8. The corporate entity must be restricted from taking on obligations of the fantasy sports contest operator other than obligations to players pursuant to the rules that govern their accounts for contests.

9. The corporate entity must be prohibited from dissolving, merging or consolidating with another company without the written approval of the Missouri Gaming Commission while there are unsatisfied obligations to fantasy sports contest players.

(3) If, at any time, the licensed operator's total available cash and cash equivalent reserve is less than the amount required by section 313.915, RSMo, the licensee shall notify the commission of this deficiency within forty-eight (48) hours.

AUTHORITY: sections 313.915, 313.950 and 313.955, RSMo 2016. Emergency rule filed August 29, 2016, effective Sept. 8, 2016, expires March 6, 2017. Original rule filed Aug. 29, 2016.