

NOTICE OF PERMANENT RULEMAKING HEARING **OFFICE OF FANTASY CONTEST OPERATOR REGISTRATION AND LICENSURE**

The Permanent Rulemaking Hearing is for the Director to repeal:

all Director Rules for the Office of Fantasy Contest Operators Registration and Licensure pursuant to House Bill 20-1286, which transfers the regulation of Fantasy Contest Operators from the Department of Regulatory Agencies, Division of Professions and Occupations to the Department of Revenue, Division of Gaming, effective September 1, 2020.

PLEASE NOTE: This hearing will be held via WEBINAR ONLY, unless the gatherings larger than ten (10) people are permitted by the date of the meeting. Please visit the Division of Professions and Occupations' website for the latest information regarding public hearings. <https://dpo.colorado.gov/>

**Monday, August 31, 2020, at
1:00 P.M. (MDT)**

To attend the hearing via webcast, please register using the link below:

<https://attendee.gotowebinar.com/register/1739903892250140943>

What is this about?

The purpose of this Permanent Rulemaking Hearing is for the Director to repeal all Director Rules for the Office of Fantasy Contest Operators Registration and Licensure pursuant to House Bill 20-1286.

A copy of the proposed draft repeal of the rules in “redline” version are attached to this Notice.



How do I submit my comments and what is the deadline?

We will hold a Permanent Rulemaking Hearing on Monday, August 31, 2020, at 1:00 P.M. (MDT), via WEBINAR ONLY. Oral comments will be taken from participants who are attending virtually. If you wish to make written comments rather than speaking, you may email your comments to dora_dpo_rulemaking@state.co.us. We will accept public comments up until the date of the Hearing. However, to provide the Board with adequate time for review and consideration, we ask that you submit your comments as soon as possible, but no later than Wednesday, August 26, 2020.

Will my comments become part of the official record for rulemaking?

Your written and oral comments will be available to the Board as it considers rule revisions within the statutorily guided parameters listed above.

May I invite others?

YES! If you know of any person or persons who may be interested in providing input, please do not hesitate to forward this information.

What if I need additional Information?

If you have any questions or concerns about stakeholder input, please send them to dora_dpo_rulemaking@state.co.us.



DEPARTMENT OF REGULATORY AGENCIES

Office of Fantasy Contest Operator Licensing and Registration

RULES OF THE OFFICE OF FANTASY CONTEST OPERATOR LICENSING AND REGISTRATION

4 CCR 751-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

1.1 Authority

The licensing and regulation of fantasy contest operators is found in Title 12, Article 125 (“Fantasy Contests”) of the Colorado Revised Statutes. These Rules are promulgated pursuant to section 12-125-104(1), C.R.S.

1.2 Scope and Purpose

These Rules are promulgated in order to carry out the powers and duties of the Director of the Division of Professions and Occupations, Department of Regulatory Agencies (“Director”) pursuant to Article 125 of Title 12, C.R.S., for the purpose of licensure or registration of fantasy contest operators. These Rules shall be binding on every person authorized to operate as a fantasy contest operator or a small fantasy contest operator in Colorado. All persons licensed or registered under Article 125 of Title 12, C.R.S. are charged with having knowledge of the existence of these Rules and shall be deemed to be familiar with their provisions and to understand the Rules.

These Rules are severable. If one Rule or portion of a Rule is found to be invalid, all other Rules or portions of Rules that can be enforced without the invalid Rules shall be enforced and shall remain valid.

These Rules are not intended, and shall not be construed, to affect or limit in any way the jurisdiction or regulation of any individual or entity by any federal, state, or local government or subdivision thereof, including but not limited to the Colorado Department of Revenue and its Divisions.

1.3 Definitions

All terms defined in section 12-125-103, C.R.S. shall have the same meaning in these Rules. In addition, as used in Article 125 of Title 12, C.R.S. and these Rules:

- A. “Applicant” means any individual or entity that applies for an initial license or registration or a renewal license or registration to operate in Colorado as a fantasy contest operator or a small fantasy contest operator. The Applicant shall be the individual or entity that is responsible for the financial and contractual obligations of the fantasy contest operator.
- B. “Beginner player,” as used in section 12-125-107(1)(h), C.R.S., means any fantasy contest player who has entered fewer than fifty-one contests offered by a single fantasy contest operator and who does not meet the definition of highly experienced player by virtue of having won three fantasy contest prizes of \$1,000 or more.
- C. “Division” means the Division of Professions and Occupations in the Department of Regulatory Agencies.

- D. ~~“Highly experienced player,” as used in section 12-125-107(1)(h), C.R.S., means any fantasy contest player who has: (a) entered more than 1,000 contests offered by a single fantasy contest operator; or (b) has won more than three fantasy contest prizes valued at \$1,000 or more. Once a fantasy contest player is classified as highly experienced player, a player will remain classified as such.~~
- E. ~~“Prize,” as used in Article 125 of Title 12, C.R.S., means anything of monetary value, including but not limited to, money, contest credits, merchandise, or admission to another contest in which a prize may be awarded.~~
- F. ~~“Script,” as used in section 12-125-107(1)(i), C.R.S., means commands that a fantasy contest-related computer program can execute that are created by fantasy contest players (or by third parties for the use of fantasy contest players) to automate processes in a fantasy contest.~~

1.4 Application for Registration

A. Registrant Name

1. ~~Registrants shall not operate as a small fantasy contest operator using a name that has not been provided to the Director.~~
2. ~~If a registrant operates as a small fantasy contest operator under a trade name, such trade name must be filed with the Colorado Secretary of State pursuant to section 7-71-101, C.R.S.~~
3. ~~All names under which a registrant operates as a small fantasy contest operator (including business, assumed, or trade names) shall be provided to the Director.~~

B. A small fantasy contest operator must apply for registration with the Division. An applicant for registration must:

1. ~~Submit a completed application for registration on a form and in a manner approved by the Division.~~
2. ~~Submit with the application all fees established by the Director.~~
3. ~~Submit documentation validating the number of fantasy contest players in Colorado with active individual accounts who participate in fantasy contests with an entry fee. The number of said players shall not exceed 7,500, pursuant to section 12-125-103(6), C.R.S. The documentation shall comprise customer base data from the ninety days preceding the date of application submission. An account shall be considered “active” if (i) the player has an email address on file with the small fantasy contest operator and (ii) has paid an entry fee for a fantasy contest, agreed to pay an entry fee for a fantasy contest, or has made a monetary deposit to a player account.~~
4. ~~Submit additional information as may be requested by the Division to evaluate the applicant’s qualification for registration. An application submitted without the required fees and documentation will be considered incomplete.~~

C. If a registered small fantasy contest operator at any time exceeds the count of 7,500 fantasy contest players, the fantasy contest operator must apply for licensure. The applicant must notify the Division within twenty days of exceeding the count of 7,500 contest players, and shall have forty five days from notifying the Division to submit an application for licensure. If, after licensure, the fantasy contest operator drops below the number of 7,500 fantasy contest players, the applicant may submit an application for registration instead of renewing licensure.

1.5 Application for Licensure

A. Licensee Name

1. Licensees shall not operate as a fantasy contest operator using a name that has not been provided to the Director.
2. If a licensee operates as a fantasy contest operator under a trade name, such trade name must be filed with the Colorado Secretary of State pursuant to section 7-71-101, C.R.S.
3. All names under which a licensee operates as a fantasy contest operator (including business, assumed, or trade names) shall be provided to the Director.

B. A fantasy contest operator that is not a small fantasy contest operator, i.e., a fantasy contest operator that has more than 7,500 fantasy contest players in Colorado with active accounts, must apply for licensure with the Division. An account shall be considered "active" if the player (i) has an email address on file with the fantasy contest operator and (ii) has paid an entry fee for a fantasy contest, agreed to pay an entry fee for a fantasy contest, or has made a monetary deposit to a player account. An applicant for licensure must:

1. Submit a completed application for licensure on a form and in a manner approved by the Director;
2. Submit with the application all fees established by the Director;
3. Attest to the validity of the information listed on the application;
4. Submit a written oath or affirmation on the form and in the manner prescribed by the Director;
5. Submit the information required by section 12-125-106(2)(c), C.R.S., including, but not limited to, detailed information about the nature and type of fantasy contests to be conducted by the applicant, and the manner in which statistics are utilized, with examples of all information and materials to be provided to contestants.
6. Submit additional information as may be requested by the Director to evaluate the applicant's qualification for licensure. An application submitted without the required fees and documentation will be considered incomplete.

C. If a fantasy contest operator drops below the number of 7,500 active fantasy contest players in Colorado, the applicant may submit an application for registration as a small fantasy contest operator instead of renewing licensure.

1.6 Renewal and Reinstatement of Registration or Licensure

A. If a registrant or licensee fails to renew its license or registration pursuant to the schedule established by the Director, the license or registration shall expire.

B. In order to reinstate an expired registration or license, an applicant must:

1. Submit a completed application for license reinstatement on a form and in a manner approved by the Director; and
2. Submit with the application all fees established by the Director.

1.7 Rules of Conduct

A. A registrant or licensee shall not make any false statements or fail to disclose any facts requested in connection with an application or any communication with the Director.

1.8 Petitions for Declaratory Order

A. Any person may petition the Director for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any provision of Article 125 of Title 12, C.R.S., or of any rule or order of the Director.

B. The Director will determine, in his or her discretion and without notice to petitioner, whether to rule upon any such a petition. The Director shall promptly notify the petitioner of his or her action and state the reasons for such action.

C. In determining whether to rule upon a petition filed pursuant to this Rule, the Director will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties.
2. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more of the petitioners.
3. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.
4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado Rules of Civil Procedure, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.

D. Any petition filed pursuant to this Rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is registered pursuant to section 12-125-106, C.R.S.
2. The statute, rule, or order to which the petition relates.
3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

E. If the Director determines that he or she will rule on the petition, the following procedure shall apply:

1. The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a. Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.

- b. ~~The Director may order the petitioner to file a written brief, memorandum or statement of position.~~
 - c. ~~The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.~~
 - d. ~~The Director may dispose of the petition on the sole basis of the matters set forth in the petition.~~
 - e. ~~The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.~~
 - f. ~~The Director may take administrative notice of facts pursuant to the State Administrative Procedure Act and may utilize available experience, technical competence and specialized knowledge in the disposition of the petition.~~
 - g. ~~If the Director rules upon the petition without a hearing, the Director shall promptly notify the petitioner of the decision.~~
2. ~~The Director may, in his or her sole discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Director intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.~~
- F. ~~The parties to any proceeding pursuant to this Rule shall be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene shall set forth the same matters as required by Rule 1.8(D). Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the Director.~~
- G. ~~Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.~~

Editor's Notes

History

Rules 1-7, 13 eff. 07/01/2017.

[Rules 1-1 t-1.8 repealed, effective 9/1/2020 Emergency Rule and 10/30/2020 permanent rule.](#)