

# Chapter 230-17 WAC

## HEARING RULES

### WAC

#### ADJUDICATIVE PROCEEDINGS

230-17-001	Administrative charges and adjudicative proceedings.
230-17-005	Issuing notice of administrative charges.
230-17-010	Requesting and scheduling a hearing.
230-17-015	Settlements encouraged.
230-17-020	Prehearing conferences.
230-17-025	Appointment of administrative law judge or "presiding officer."
230-17-030	Methods of service in adjudicative proceedings.
230-17-035	When service of notices, orders, and documents is complete.
230-17-040	Filing documents for adjudicative proceedings.
230-17-045	Who can appear in a representative capacity at hearings.
230-17-050	Standards of ethical conduct.
230-17-055	Issuing, quashing, and responding to subpoenas.
230-17-060	Official notice.
230-17-065	Depositions and interrogatories.
230-17-070	Notice and length of depositions.
230-17-075	Protective orders.
230-17-080	Stipulations.
230-17-085	Initial orders.
230-17-090	Petitions for review and cross appeals of initial orders.
230-17-095	Admissibility criteria for evidence.
230-17-100	Tentative admission, exclusion, discontinuance, and objections to evidence.
230-17-105	Excerpts from documentary evidence.
230-17-110	Documentary evidence.
230-17-115	Expert witnesses.
230-17-120	Written sworn statements by expert witnesses.
230-17-125	Noncompliance with rules on expert witnesses or written statements.
230-17-130	Settlement conferences.
230-17-135	Continuances.
230-17-137	Guidelines for imposing penalties in disciplinary actions.
230-17-140	Petitions for reconsideration of a final order.
230-17-145	Stays of final orders.

#### BRIEF ADJUDICATIVE PROCEEDINGS (BAPs)

230-17-150	Use of brief adjudicative proceedings (BAPs).
230-17-155	Discovery limitations in brief adjudicative proceedings.

#### SEIZURE HEARINGS

230-17-160	Hearings when gambling devices are seized.
------------	--

#### SUMMARY SUSPENSION HEARINGS

230-17-165	Summary suspensions.
230-17-170	Petition and hearing for stay of the summary suspension.
230-17-175	Review of initial orders to stay a summary suspension.

#### PETITIONS FOR DECLARATORY ORDERS

230-17-180	Petitions for declaratory orders.
------------	-----------------------------------

#### RULE-MAKING PROCEDURES

230-17-185	Petitions for rule making.
230-17-190	Information required on a petition.
230-17-195	Locating petition for rule-making form.
230-17-200	Submitting a petition.

### ADJUDICATIVE PROCEEDINGS

**WAC 230-17-001 Administrative charges and adjudicative proceedings.** If we bring administrative charges against anyone, we give an opportunity for an adjudicative proceeding (hearing). We give the opportunity for a hearing to:

(1) Applicants to determine whether to deny the application; and

(2) Licensees to determine whether to suspend or revoke the license if they held a license at the time we issued charges against them; and

(3) Applicants for approval of pull-tab dispensers to determine whether to deny approval of the dispenser.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-001, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-005 Issuing notice of administrative charges.** The director or director's designee issues a notice of administrative charges. We serve the applicant, licensee, or permittee with the notice. The notice must include:

(1) A short and plain statement of the matters the agency asserts; and

(2) A request for hearing form; and

(3) A form to request an interpreter at the hearing for persons with limited English skills or hearing impairment; and

(4) The maximum penalty.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-005, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-010 Requesting and scheduling a hearing.** (1) Applicants, licensees, or permittees may request a hearing using the form we provide.

(2) We must receive the request from the applicant, licensee, or permittee at our administrative office within:

(a) Twenty-three days after we mail by regular mail the notice of administrative charges; or

(b) Twenty days after they receive by certified mail the notice of administrative charges; or

(c) Twenty days after we personally serve the notice of administrative charges.

(3) If applicants, licensees, or permittees do not file requests in the time required, then they waive their right to a hearing. They are in default, as defined in RCW 34.05.440, and the commissioners may take action against them up to the maximum penalty stated in the notice of administrative charges.

(4) The director, director's designee, or the presiding officer of the hearing must issue a notice of hearing which meets the requirements of RCW 34.05.434(2).

[Statutory Authority: RCW 9.46.070. WSR 08-23-077 (Order 636), § 230-17-010, filed 11/18/08, effective 1/1/09; WSR 07-21-156 (Order 615), § 230-17-010, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-015 Settlements encouraged.** After charges have been issued, we encourage parties' efforts to settle without the need for an adjudicative hearing.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-015, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-020 Prehearing conferences.** The presiding officer, on his or her own motion or on the motion of one of the parties, may direct the parties to appear at a specified time and place for a prehearing conference to consider:

- (1) Identifying and simplifying the issues; and
- (2) Amending pleadings, if necessary; and
- (3) Obtaining stipulations of facts and of documents; and
- (4) Limiting the number of witnesses; and
- (5) Setting discovery deadlines or resolving discovery disputes; and
- (6) Scheduling a settlement conference before an administrative law judge; and
- (7) Scheduling the hearing date; and
- (8) Resolving any other matter that may aid in the outcome of the proceeding.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-020, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-025 Appointment of administrative law judge or "presiding officer."** (1) The commissioners hereby appoint the office of administrative hearings to assign an administrative law judge (ALJ), called the "presiding officer," to preside at all hearings which result from administrative charges, unless:

- (a) The commissioners, by their own order, declare their intent to preside at a specific proceeding; or
- (b) The proceeding is an appeal of an initial order issued by an ALJ.

(2) All hearings must be conducted in compliance with Title 230 WAC and chapter 34.05 RCW.

(3) The presiding officer is authorized to modify an administrative penalty sought by commission staff against the applicant, licensee, or permittee.

[Statutory Authority: RCW 9.46.070. WSR 09-03-025 (Order 639), § 230-17-025, filed 1/9/09, effective 2/9/09; WSR 07-21-156 (Order 615), § 230-17-025, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-030 Methods of service in adjudicative proceedings.** Parties must serve all orders, notices, and other documents by:

- (1) Personal service; or
- (2) First class, registered, or certified mail; or
- (3) Telefacsimile (fax) to the commission's legal division, and same-day mailing of a copy of the faxed document; or
- (4) Commercial parcel delivery service.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-030, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-035 When service of notices, orders, and documents is complete.** Service of notices and other documents is complete when served by:

- (1) **Personal service** - which means actual, physical delivery to:
  - (a) The person; or
  - (b) The designated agent of the person; or
  - (c) Anyone over the age of eighteen residing at the residence of:
    - (i) The person; or
    - (ii) A corporate officer; or
    - (d) If represented, the attorney representing the person.

[Ch. 230-17 WAC p. 2]

(2) **Mail** - which means deposit in the United States mail with proper postage and properly addressed; service is complete on the third day after mailing, excluding the date of mailing; or

(3) **Telefacsimile (fax)** - which means faxing to the commission's legal division, with confirmation of the transmission, and the same day deposit of a copy of the faxed document in the United States mail, with proper postage and properly addressed; service is complete on the third day after mailing, excluding the date of mailing; or

(4) **Commercial parcel delivery service** - which means delivery to the parcel delivery service, when properly addressed and all charges are paid.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-035, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-040 Filing documents for adjudicative proceedings.** (1) We consider required documents "filed" on receipt of the documents at our administrative office accompanied by proof of service on all parties required to be served.

(2) Delivery to our administrative office when we are not present to receive the documents in person does not constitute lawful service of documents for any matter under our jurisdiction.

(3) When a party is filing a document with the commission, the attorney general's office must also be served.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-040, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-045 Who can appear in a representative capacity at hearings.** The following persons may appear in a representative capacity at hearings or other legal proceedings:

- (1) Individuals representing themselves or their business (*pro se*); and
- (2) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington; and
- (3) Attorneys entitled to practice before the highest court of record of any other state, if Washington attorneys are permitted to appear before administrative agencies of the other state, and if not otherwise prohibited by our state law; and
- (4) Interpreters for persons with a limited understanding of the English language or hearing impaired persons; and
- (5) Other persons the commissioners may allow, if a party shows a necessity or a hardship that would make it unduly burdensome to have one of the representatives set out above.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-045, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-050 Standards of ethical conduct.** (1) Anyone appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct the courts of Washington require of attorneys.

(2) If the person does not conform to these standards, the commission may decline to allow that person to appear before them.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-050, filed 10/24/07, effective 1/1/08.]

(4/11/14)

**WAC 230-17-055 Issuing, quashing, and responding to subpoenas.** (1) The commission and the attorney for a party may issue subpoenas according to the requirements of RCW 34.05.446. Unrepresented (*pro se*) parties may request the presiding officer to issue for them such subpoenas as are necessary to enable them to fairly present their case. Every subpoena must:

- (a) State the name of the commission; and
- (b) State the title of the adjudicative proceeding; and
- (c) Command the persons to whom they are addressed to attend and give testimony, produce books, records, documents, or things under their control at a specified time and place.

(2) All parties must serve their subpoenas on all other parties at least ten days before the specified time for appearance or document production.

(3) Any person eighteen years of age or older may serve subpoenas by showing and reading the subpoenas to witnesses, or by giving them a copy of the subpoena, or by leaving a copy at their residence.

(4) When anyone other than an officer authorized to serve process performs service, the server must make proof of service by affidavit or a declaration under penalty of perjury.

(5) If a party makes a motion at or before the time stated for compliance in the subpoena, the presiding officer may:

- (a) Quash or modify an unreasonable and oppressive subpoena; or

- (b) Order the person who issued the subpoena to pay the reasonable cost of producing the books, papers, documents, or tangible things.

(6) Parties may seek judicial enforcement of subpoenas under RCW 34.05.588.

(7) Witnesses must attend and provide requested testimony or documents at the specified time and place.

(8) During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the presiding officer may at his or her discretion continue the hearing and:

- (a) Set the hearing ahead to a certain date; and
- (b) Subpoena, or allow a party to subpoena, additional argument or evidence.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-055, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-060 Official notice.** The commission or the presiding officer may officially notice, on request made before or during a hearing or on its own motion, at least:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports, decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the federal register; and

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser; and

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general adminis-

(4/11/14)

tration of the government of the state of Washington, the United States, the several states and foreign nations; and

(4) **Agency organization.** The commission's administration, officers, personnel, official publications, and contents of licenses and certifications; and

(5) **Tribal compact.** A Washington tribe's compact with the state of Washington for Class III gaming and any appendices or amendments to it.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-060, filed 10/24/07, effective 1/1/08.]

#### **WAC 230-17-065 Depositions and interrogatories.**

(1) Parties may take testimony by deposition on oral examination (deposition) or written questions (interrogatories) for use as evidence in the administrative hearing.

(2) Parties must depose persons in the same manner, and before the same officers, authorized by the Washington civil rules for superior court, unless otherwise agreed in writing by the parties.

(3) Witnesses may be subpoenaed to attend a deposition or produce documents.

(4) Parties may only depose a commissioner, the director, deputy director, or an assistant director if they apply to the presiding officer and show good cause that circumstances prevent the statements or depositions of other staff members from revealing the information, evidence, or details needed.

(5) Unless otherwise ordered, the person being deposed may be examined about any matter to the same extent that the Washington civil rules for superior court allow.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-065, filed 10/24/07, effective 1/1/08.]

#### **WAC 230-17-070 Notice and length of depositions.**

(1) Parties wishing to depose someone must give notice of at least seven days in writing to all parties.

(2) The notice for the deposition must state:

- (a) Time and place of the deposition; and
- (b) The name and address of each person to be deposed, if known; or

- (c) If the name is not known, a general description sufficient to identify the person or the particular class or group to which he or she belongs (for example: "Records custodian").

(3) If a party makes a motion, the presiding officer may lengthen or shorten the time for notice of the deposition.

(4) If the parties agree in writing, depositions may be taken before any person, at any time or place, on any notice, and in any manner, and may be used as otherwise allowed by these rules.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-070, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-075 Protective orders.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that

[Ch. 230-17 WAC p. 3]

the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the commission, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the commission or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-075, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-080 Stipulations.** A "stipulation" means an agreement among parties intended to establish one or more operative facts in a proceeding.

(1) Parties may stipulate to all or any portion of the facts of the case.

(2) Parties may file the stipulation in writing or enter it orally into the record.

(3) A stipulation, if the presiding officer accepts it, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing.

(4) The presiding officer may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-080, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-085 Initial orders.** (1) Initial orders must be entered in accordance with RCW 34.05.461(3).

(2) An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090.

[Statutory Authority: RCW 9.46.070 and 34.05.353. WSR 08-22-093 (Order 634), § 230-17-085, filed 11/5/08, effective 1/1/09. Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-085, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-090 Petitions for review and cross appeals of initial orders.** (1) RCW 34.05.464 governs the review of initial orders.

(2) Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties

must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed.

(3) Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition.

(4) Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed.

(5) Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us.

(6) Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

(7) After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-090, filed 10/24/07, effective 1/1/08.]

#### **WAC 230-17-095 Admissibility criteria for evidence.**

(1) Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.

(2) If not allowing evidence to be admitted, the presiding officer must give consideration to, but is not bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury in the superior courts of the state of Washington.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-095, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-100 Tentative admission, exclusion, discontinuance, and objections to evidence.** (1) When an objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(2) The presiding officer may, in his or her discretion, with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued.

(3) Parties objecting to the introduction of evidence must state the precise grounds of such objection at the time such evidence is offered.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-100, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-105 Excerpts from documentary evidence.** (1) When parties rely only on portions of a document, the offering party must:

(a) Prepare the pertinent excerpts; and

(b) Adequately identify them; and

(c) Supply copies to the presiding officer and the other parties, with a statement indicating the purpose for which the excerpts will be offered.

(2) The offering party must make the whole original document available for examination and for use by all parties. However, only the excerpts must be received in the record.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-105, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-110 Documentary evidence.** (1) When requested for cause, the presiding officer may:

(a) Require that parties submit all documentary evidence to the other parties sufficiently in advance so that they may study and prepare cross-examination and rebuttal evidence.

(b) Reject documentary evidence not submitted in advance if the party offering it cannot show that there was good cause for failing to submit it sooner.

(2) Unless a party files a written objection before the hearing, the authenticity of all documents submitted in advance is accepted. Parties may later file a challenge of authenticity if they show good cause for failing to file a written objection.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-110, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-115 Expert witnesses.** (1) The presiding officer, where practicable, must encourage all parties to agree on the identity and number of witnesses who are to give expert testimony by:

(a) Selecting one or more to speak for all parties; or

(b) Limiting the number for each party.

(2) If the parties cannot agree, the presiding officer must require them to submit written statements to all parties with the names, addresses, and qualifications of their respective expert witnesses on a date determined by the presiding officer sufficiently in advance of the hearing to allow the other parties to investigate the witness' qualifications.

(3) The presiding officer must require parties to submit the underlying data for statements and exhibits they provide sufficiently in advance of the hearing to allow the other parties to cross examine the expert witness(es) at the hearing. However, the presiding officer must restrict to a minimum placing the data in the record.

(4) No former employees of our agency may appear, except with the director's or director's designee's permission, as expert witnesses on behalf of other parties in a proceeding involving a matter that was under consideration by the agency when the former employee was employed by the commission.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-115, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-120 Written sworn statements by expert witnesses.** The presiding officer must encourage all parties to agree that:

(1) For expert testimony, and all testimony based on economic or statistical data, all parties will submit written sworn statements in advance of the hearing by a date the presiding officer sets; and

(2) A party may object to the written statements on any grounds, except that the testimony is not presented orally; and

(3) A party may cross examine witnesses if the party makes a request sufficiently in advance of the hearing to allow the witness(es) to be present.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-120, filed 10/24/07, effective 1/1/08.]

(4/11/14)

**WAC 230-17-125 Noncompliance with rules on expert witnesses or written statements.** If expert witnesses or written statements on economic or statistical data do not meet the requirements of WAC 230-17-115 or 230-17-120, the presiding officer may receive them as evidence only if the party can clearly show good cause.

[Statutory Authority: RCW 9.46.070 and 34.05.353. WSR 08-11-037 (Order 626), § 230-17-125, filed 5/14/08, effective 7/1/08. Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-125, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-130 Settlement conferences.** (1) Any party to an adjudicative proceeding may request a settlement conference, with or without an administrative law judge (ALJ), to discuss a possible settlement of the case.

(2) If a settlement is reached, it must be a written order to be signed by all parties and the presiding officer.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-130, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-135 Continuances.** (1) "Continuance" means a postponement or an extension of time after a notice of hearing or commission review has been issued.

(2) Parties may agree to a continuance.

(3) If the parties do not agree to a continuance, the person requesting the continuance must:

(a) Notify the presiding officer and the other party why a continuance is needed; and

(b) Present this request as soon as the person:

(i) Receives the notice of the hearing or commission review; or

(ii) Knows the reasons requiring the continuance.

(4) The presiding officer will consider whether the request was made promptly and may grant a continuance for good cause shown, or on his or her own motion.

(5) During a hearing, if it appears consistent with the public interest or in the interests of justice that further testimony or argument should be considered, the presiding officer may continue the hearing and set the date to introduce additional argument or evidence. This oral ruling is final notice of a continued hearing.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-135, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-137 Guidelines for imposing penalties in disciplinary actions.** (1) Without in any manner limiting the authority granted to the commission under chapter 9.46 RCW or other applicable law to impose the level and type of discipline it may deem appropriate, at the request of any party, the presiding officer may consider the following factors, along with such others as he or she deems relevant, in determining the administrative penalty to be assessed for the violation of a statute or rule:

(a) The risk posed to the public health, safety, or welfare by the violation;

(b) Whether there are special policy implications relating to the violation, for example, those regarding underage gambling;

(c) Whether, and how, the violations impacted players, for example, failure to pay a player, and player-supported jackpot violations;

(d) Whether the applicant, licensee, or permittee:

(i) Knew, or reasonably should have known, the action complained of was a violation of any law, regulation, or condition of their license;

(ii) Previously received a verbal warning, written warning, notice of infraction, notice of violation and settlement (NOVAS), or administrative charges from the commission for similar violations;

(iii) Made, or attempted to make, a financial gain from the violation;

(iv) Had an existing compliance program related to the violation; or

(v) Has subsequently initiated remedial measures to prevent similar violations from reoccurring;

(e) Whether the violations were intentional, willful, or grossly negligent;

(f) Whether requiring the applicant, licensee or permittee to implement a written self-enforcement and compliance program would assist in ensuring future compliance with relevant laws, regulations, and license conditions;

(g) If the violation was caused by an officer or employee of the applicant, licensee, or permittee:

(i) Whether the individual who caused the violation acted within the scope of authority granted to him or her by the applicant, licensee or permittee; or

(ii) Whether the individual violated company policies, procedures, or other standards;

(h) The adequacy of any relevant training programs the applicant, licensee or permittee previously offered or made available to its employees;

(i) Whether and the extent to which the applicant, licensee or permittee cooperated with the commission during the investigation of the violation;

(j) The penalties imposed on other applicants, licensees or permittees for similar violations;

(k) Whether the applicant, licensee, or permittee reasonably relied upon professional advice from an accountant or other recognized professional, which was relevant to the conduct or action resulting in the violation; or

(l) Any other aggravating or mitigating circumstances the presiding officer deems relevant.

(2) A party intending to rely on any aggravating or mitigating factors must raise them at the initial hearing before the presiding officer in order to preserve them for any subsequent hearings before a reviewing officer.

(3) In the spring of 2011, staff will report to the commission on the impacts of this rule, if any.

[Statutory Authority: RCW 9.46.070. WSR 09-17-074 (Order 653), § 230-17-137, filed 8/14/09, effective 9/14/09; WSR 09-05-084 (Order 641), § 230-17-137, filed 2/17/09, effective 3/20/09.]

**WAC 230-17-140 Petitions for reconsideration of a final order.** (1) A party may file a petition for reconsideration of a final order. The presiding officer administers petitions for reconsideration according to RCW 34.05.470.

(2) A party may file a response to the petition for reconsideration. Parties must file responses with us within ten days of the date the petition was filed with us.

(3) If the petition is received at least fifteen business days before the next regularly scheduled commission meeting, we schedule the petition to be heard at that next meeting.

[Ch. 230-17 WAC p. 6]

(4) If the petition is received less than fifteen business days before that next meeting, we schedule the petition at the following regularly scheduled meeting.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-140, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-145 Stays of final orders.** (1) Any party may petition the commission for a stay of a final order in accordance with RCW 34.05.467.

(2) For purposes of this rule, the commission hereby delegates to the director the authority to deny a stay or issue a temporary stay until the reviewing court can rule on a permanent stay. The decision of the director denying a stay is not subject to judicial review.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-145, filed 10/24/07, effective 1/1/08.]

## BRIEF ADJUDICATIVE PROCEEDINGS (BAPs)

**WAC 230-17-150 Use of brief adjudicative proceedings (BAPs).** (1) Presiding officers must use brief adjudicative proceedings (BAPs) for:

(a) Stays of summary suspension; and

(b) Denying or revoking extended operating hours for:

(i) Card games; and

(ii) Bingo; and

(c) Charitable or nonprofit licensee appealing a denial of a request for waiver of significant progress requirements; and

(d) Failure to pay required gambling taxes, where that is the only alleged violation in the administrative charges; and

(e) When the penalty we are requesting is a suspension of seven days or less; and

(f) When the parties stipulate to using a BAP.

(2) If we conduct a BAP, we may conduct them telephonically and, therefore, the notice of hearing will not set a place of the hearing.

(3) Any party to the BAP may request to appear in person and, in those cases, a place will be set and all parties notified.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-150, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-155 Discovery limitations in brief adjudicative proceedings.** (1) In all brief adjudicative proceedings, discovery must be limited to requests for written reports and supporting documents relevant to the charges.

(2) Interrogatories and depositions are not allowed.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-155, filed 10/24/07, effective 1/1/08.]

## SEIZURE HEARINGS

**WAC 230-17-160 Hearings when gambling devices are seized.** (1) We follow the processes explained in RCW 9.46.231 when we seize gambling devices.

(2) The item seized is forfeited to the state unless a claimant is able to prove the device is:

(a) Not a gambling device; or

(b) An antique gambling device as defined by RCW 9.46.235.

(4/11/14)

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-160, filed 10/24/07, effective 1/1/08.]

### SUMMARY SUSPENSION HEARINGS

**WAC 230-17-165 Summary suspensions.** (1) "Summary suspension" means immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

(2) The commission delegates its authority to the director to issue an order to summarily suspend any license or permit if the director determines that a licensee or permittee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.

(3) The commission deems the following actions of a licensee or permittee constitute an immediate danger to the public safety and welfare:

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the commission; or

(b) Knowingly causing, aiding, abetting, or conspiring with another to cause any person to violate any of the laws of this state or the rules of the commission; or

(c) Obtaining a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake; or

(d) Being convicted of, or forfeiting of a bond on a charge of, or having pled guilty to:

(i) Forgery; or

(ii) Larceny; or

(iii) Extortion; or

(iv) Conspiracy to defraud; or

(v) Willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses; or

(vi) Bribing or otherwise unlawfully influencing a public official or employee of any state or the United States; or

(vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or

(e) Allowing any person who has been convicted of, or forfeited bond on, any of the offenses included under (d) of this subsection, to participate in the management or operation of any activity regulated by the commission without written approval ahead of time from the commission or its director; or

(f) Being subject to current prosecution or pending charges, or appealing a conviction, for any of the offenses included under (d) of this subsection; or

(g) Denying the commission or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted or failure to promptly produce for inspection or audit any book, record, document, or item required by law or commission rule; or

(h) Making a misrepresentation of, or failure to disclose, a material fact to the commission; or

(i) Having pursued or pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit cre-

ates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain; or

(j) Being a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of chapter 9.46 RCW or to the proper operation of the authorized gambling or related activities in this state. For the purposes of this section, career offender is defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel is defined as any group of persons who operate together as career offenders; or

(k) If a charitable or nonprofit organization, being deemed to be operating bingo primarily for gambling purposes and continuing to use program funds to subsidize the operation of gambling activities.

(4) An order of summary suspension takes effect immediately on service unless stated otherwise in the order of summary suspension.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-165, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-170 Petition and hearing for stay of the summary suspension.** (1) When the director summarily suspends a license or permit, the affected licensee or permittee may petition for a "stay of suspension" as explained in RCW 34.05.467 and 34.05.550(1).

(2) We must receive the petition in writing within fifteen days of service of the summary suspension.

(3) Within fourteen days of receipt of the petition, the presiding officer holds a hearing. If an administrative law judge is not available, the chairperson of the commission designates a commissioner to be the presiding officer. If the parties agree, they may have a continuance of the seven-day period.

(4) The stay hearing must use brief adjudicative proceedings as set out in WAC 230-17-150. At the hearing, the only issues are whether the presiding officer:

(a) Should grant a stay; or

(b) Modify the terms of the suspension.

(5) Our argument at the hearing consists of the information we used to issue the summary suspension and we may add any information we find after we order the suspension.

(6) At the hearing, the licensee or permittee has the burden of demonstrating by clear and convincing evidence all of the following:

(a) The licensee or permittee is likely to prevail upon the merits of the evidence at hearing; and

(b) Without relief, the licensee or permittee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities must not be deemed irreparable injury; and

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public safety or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(7) The initial stay of the summary suspension order whether given orally or in writing takes effect immediately unless stated otherwise.

[Statutory Authority: RCW 9.46.070. WSR 14-09-038 (Order 697), § 230-17-170, filed 4/11/14, effective 5/12/14; WSR 07-21-156 (Order 615), § 230-17-170, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-175 Review of initial orders to stay a summary suspension.** (1) Any party may petition the commissioners for review of an initial order to stay a summary suspension. The commissioners must receive the request for review in writing within twenty days of service of the order. If no party requests a hearing review within twenty days of service, the order becomes final for purposes of RCW 34.05.467.

(2) If we receive a timely petition for review, the commissioners will consider the petition at the next regularly scheduled meeting of the commission.

(a) The matters considered on review are limited to the record of the stay hearing; and

(b) A commissioner who acted as presiding officer is not disqualified from considering the petition for review, unless a party demonstrates grounds for disqualification under the conditions set out in RCW 34.05.425; and

(c) The commissioners' decision is effective immediately, unless otherwise stated, and is final as set out in RCW 34.05.467.

(3) The outcome of the petition for review does not affect any future administrative hearing about their license or permit.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-175, filed 10/24/07, effective 1/1/08.]

## PETITIONS FOR DECLARATORY ORDERS

### WAC 230-17-180 Petitions for declaratory orders.

(1) Any person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition must set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists; and

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory option; and

(c) That the uncertainty adversely affects the petitioner; and

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(2) Within fifteen days after receipt of a petition for a declaratory order, the commission must give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

[Ch. 230-17 WAC p. 8]

(3) Within thirty days after receipt of a petition for a declaratory order, the commission, in writing, must do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances; or

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition and give reasonable notification to the person(s) of the time and place for such hearing and of the issues involved; or

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(4) The time limits of subsection (3)(b) and (c) of this section may be extended by the commission for good cause.

(5) The commission may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(6) A declaratory order has the same status as any other order entered by the commission in an adjudicative proceeding. Each declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(7) Any person petitioning the commission for a declaratory order pursuant to RCW 34.05.240 must generally adhere to the following form for such purpose.

(a) At the top of the page must appear the wording "before the Washington state gambling commission." On the left side of the page below the foregoing, the following caption must be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption must appear the word "petition."

(b) The body of the petition must be set out in numbered paragraphs. The first paragraph must state the name and address of the petitioning party. The second paragraph must state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs must set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs must contain the prayer of the petitioner. The petition must be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(c) The original must be filed with the commission. Petitions must be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-180, filed 10/24/07, effective 1/1/08.]

## RULE-MAKING PROCEDURES

**WAC 230-17-185 Petitions for rule making.** (1) Any person may petition the commission to adopt, change, or repeal a rule in Title 230 WAC. The petition must contain enough information so the commissioners and the public can understand the proposal.

(4/11/14)



(2) All persons must follow the requirements explained in RCW 34.05.330 for petitions for rule making.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-185, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-190 Information required on a petition.**

(1) If not submitted on standard forms, petitions for rule making must follow the requirements of RCW 34.05.330(4) and include:

(a) Commission name; and

(b) The reasons for:

(i) Adopting a new rule; or

(ii) Amending an existing rule; or

(iii) Repealing an existing rule.

(2) When someone is:

(a) Proposing a new rule, the petition should include:

(i) The text of the proposed rule; and

(ii) A description of the new rule requirements; and

(iii) A description of the effects of the new rule.

(b) Amending a rule, the petition should include:

(i) Title and number of the rule, for example, "WAC 230-03-040 Signing the application"; and

(ii) The text of your proposed rule change; and

(iii) A description of the effects of changing the rule.

(c) Requesting repeal of a rule, your petition should include:

(i) Title and number of the rule; and

(ii) A description of the effects of repealing the rule.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-190, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-195 Locating petition for rule-making form.** Petitioners may get a "petition for rule-making form" from:

(1) The office of financial management; or

(2) Our administrative office during regular business hours; or

(3) Our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov).

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-195, filed 10/24/07, effective 1/1/08.]

**WAC 230-17-200 Submitting a petition.** (1) Petitioners must fax, email, or mail petitions for rule change to the rules coordinator at our administrative office.

(2) We consider a petition submitted when we receive it at our administrative office.

[Statutory Authority: RCW 9.46.070. WSR 07-21-156 (Order 615), § 230-17-200, filed 10/24/07, effective 1/1/08.]