

## Chapter 315-20 WAC

### PROCEDURAL RULES—CONTESTED CASES—PETITIONS FOR DECLARATORY RULING AND RULE MAKING

Last Update: 5/9/22

#### WAC

315-20-005	Adjudicative proceedings—Authority—Office of administrative hearings rules adopted.
315-20-010	Director may temporarily suspend license and remove terminal pending a hearing.
315-20-020	Appearance and practice before the director—Who may appear.
315-20-040	Standards of ethical conduct.
315-20-050	Appearance by former employee of commission or former member of attorney general's staff.
315-20-060	Waiver of hearing.
315-20-075	Adjudicative proceedings—Subpoenas—Discovery.
315-20-085	Adjudicative proceedings—Depositions and interrogatories—Right to take.
315-20-095	Adjudicative proceedings—Depositions and interrogatories—Notice.
315-20-105	Depositions and interrogatories in adjudicative proceedings—Protection of parties and deponents.
315-20-115	Production of documents and use at an adjudicative proceeding.
315-20-125	Brief adjudicative proceedings.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

315-20-070	Depositions in contested cases—Right to take. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-070, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-080	Official notice—Material facts. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-080, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-090	Form and content of decisions in contested cases and proposed orders. [Statutory Authority: RCW 67.70.040. WSR 88-06-031 (Order 108), § 315-20-090, filed 2/26/88; WSR 87-01-057 (Order 96), § 315-20-090, filed 12/16/86; WSR 83-13-081 (Resolution No. 24), § 315-20-090, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-100	Petitions for rule making, amendments or repeal—Who may petition. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-100, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-110	Petitions for rule making, amendments or repeal—Requisites. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-110, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-120	Petitions for rule making, amendments or repeal—Agency must consider. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-120, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-130	Petitions for rule making, amendments or repeal—Notice of disposition. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-130, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-140	Declaratory rulings. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-140, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.
315-20-150	Forms. [Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-150, filed 6/17/83.] Repealed by WSR 93-15-019, filed 7/9/93, effective 8/9/93. Statutory Authority: RCW 67.70.040.

**WAC 315-20-005 Adjudicative proceedings—Authority—Office of administrative hearings rules adopted.** (1) Washington state lottery adjudicative proceedings are conducted under the authority of chapter 34.05 RCW, the Washington Administrative Procedure Act, and chapter 67.70 RCW, the Washington State Lottery Act.

(2) Chapter 10-08 WAC as periodically amended, rules of the office of administrative hearings is hereby adopted for the administration of lottery adjudicative proceedings. The lottery commission may adopt additional rules, pursuant to applicable rule making procedures, pertaining to adjudicative proceedings.

[Statutory Authority: RCW 67.70.040. WSR 93-15-019, § 315-20-005, filed 7/9/93, effective 8/9/93.]

**WAC 315-20-010 Director may temporarily suspend license and remove terminal pending a hearing.** (1) After review and consideration, the director may temporarily suspend a license or addendum thereto issued pursuant to these rules pending a hearing upon suspension or revocation of the license, or issuance of a renewal thereof, when in the opinion of the director:

(a) The lottery retailer has obtained the license or addendum by fraud, trick, misrepresentation, concealment, or through inadvertence or mistake; or

(b) The lottery retailer has engaged in any act, practice or course of operation as would operate as a fraud or deceit on any person, or has employed any device, scheme or artifice to defraud any person; or

(c) The lottery retailer has violated, failed, or refused to comply with any of the provisions, requirements, limitations, or duties imposed by chapter 67.70 RCW and any amendments thereto or any rules adopted by the commission pursuant thereto; or

(d) Immediate cessation of the licensed activities by the lottery retailer is necessary for the protection or preservation of the welfare of the community within which these activities are being conducted.

(2) After review and consideration, if the director determines that a retailer's license shall be revoked or suspended, the lottery shall immediately remove all lottery terminals and material from the retailer's store(s), in order to prevent any financial loss or harm to the integrity of the lottery. The retailer shall have the right to appeal the decision of the director, and, if the retailer prevails in a final court action which is not appealed, the lottery shall bear the cost of reinstallation of the lottery terminal(s).

(3) Notice of such temporary suspension and/or terminal removal shall be served in accordance with WAC 10-08-110.

[Statutory Authority: RCW 67.70.040. WSR 02-08-001, § 315-20-010, filed 3/20/02, effective 4/20/02; WSR 86-01-060 (Order 83), § 315-20-010, filed 12/16/85; WSR 83-13-081 (Resolution No. 24), § 315-20-010, filed 6/17/83.]

**WAC 315-20-020 Appearance and practice before the director—Who may appear.** (1) No person may appear in a representative capacity before the commission or the director of his or her designated administrative law judge other than the following:

(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(b) Attorneys at law qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by Washington state law.

(c) A bona fide officer, authorized manager, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership or corporation.

(d) Such other persons as may be permitted by the commission or director upon a showing by a party to the hearing of such a necessity or such a hardship as would make it unduly burdensome upon him to have

a representative as set forth under subsections (a), (b) and (c) above.

(2) Nothing herein shall preclude an individual from appearing on his own behalf, pro se.

[Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-020, filed 6/17/83.]

**WAC 315-20-040 Standards of ethical conduct.** All persons appearing in proceedings before the commission or the director in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington. If any such person does not conform to such standards, the commission or the director may decline to permit such person to continue to appear in a representative capacity in that proceeding or in any other proceeding before the commission or the director.

[Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-040, filed 6/17/83.]

**WAC 315-20-050 Appearance by former employee of commission or former member of attorney general's staff.** Former director(s), commissioners, employees of the director and the assistant attorney general assigned to the director and/or the commission shall not appear in a representative capacity on behalf of any party in a formal proceeding before the director, his or her designated administrative law judge or the commission unless:

(1) The appearance is more than two years after he or she severed his or her relationship or employment and

(2) He or she did not take an active part on behalf of the director or commission in the matter being decided.

[Statutory Authority: RCW 67.70.040. WSR 83-13-081 (Resolution No. 24), § 315-20-050, filed 6/17/83.]

**WAC 315-20-060 Waiver of hearing.** In any case involving violations of the lottery laws, rules or regulations, where the director deems it appropriate, the director may afford the lottery retailer an opportunity to waive a formal hearing which he has timely requested. If the lottery retailer so elects to waive formal hearing, he or she may then state in writing any matter in explanation or mitigation of the violations which he or she desires the director to consider in making his or her decision. The lottery retailer at the time he or she submits the waiver, may also request to be present when the director meets to consider his or her decision in the matter. In the event the lottery retailer elects to waive formal hearing he or she shall thereafter be bound by such election and may not thereafter request formal hearing.

[Statutory Authority: RCW 67.70.040. WSR 86-01-060 (Order 83), § 315-20-060, filed 12/16/85; WSR 83-13-081 (Resolution No. 24), § 315-20-060, filed 6/17/83.]

**WAC 315-20-075 Adjudicative proceedings—Subpoenas—Discovery.**

(1) The presiding officer may issue subpoenas to persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and the presiding officer may issue protective orders all as a part of an adjudicative proceeding. The agency or its legal representative may issue subpoenas as may the attorney of the party against whom action is taken. All subpoenas must be filed with the presiding officer, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The presiding officer, upon motion or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

[Statutory Authority: RCW 67.70.040. WSR 93-15-019, § 315-20-075, filed 7/9/93, effective 8/9/93.]

**WAC 315-20-085 Adjudicative proceedings—Depositions and interrogatories—Right to take.** Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding. The deposition of a commissioner, the director, or the deputy director, may be taken only upon application to the presiding officer, for good cause shown and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

[Statutory Authority: RCW 67.70.040. WSR 93-15-019, § 315-20-085, filed 7/9/93, effective 8/9/93.]

**WAC 315-20-095 Adjudicative proceedings—Depositions and interrogatories—Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than seven days in writing to all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party on whom the notice is served, the presiding officer may, for good cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: RCW 67.70.040. WSR 93-15-019, § 315-20-095, filed 7/9/93, effective 8/9/93.]

**WAC 315-20-105 Depositions and interrogatories in adjudicative proceedings—Protection of parties and deponents.** (1) After notice is served for taking a deposition, upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the presiding 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 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 the presiding officer may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(2) At any time during the taking of the deposition, on motion of any party or 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 hearing officer may order the party conducting the examination to cease forthwith from taking the deposition as above provided.

(3) If the order made terminates the examination, it shall be resumed only upon the order of the presiding officer. 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 67.70.040. WSR 93-15-019, § 315-20-105, filed 7/9/93, effective 8/9/93.]

**WAC 315-20-115 Production of documents and use at an adjudicative proceeding.** (1) Upon request by any party to the adjudicative proceeding, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When exhibits of a documentary character are to be offered into evidence at the hearing, the party offering the exhibit shall provide a minimum of two copies, one for the opposing party and one for the presiding officer.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the hearing for the purpose of exchanging copies of exhibits to be introduced.

[Statutory Authority: RCW 67.70.040. WSR 93-15-019, § 315-20-115, filed 7/9/93, effective 8/9/93.]

**WAC 315-20-125 Brief adjudicative proceedings.** (1) Application of brief adjudicative proceedings.

(a) If an adjudicative proceeding is timely requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(i) Denial, conditional grant, suspension, or revocation of a license pursuant to chapter 315-04 WAC; or

(ii) Prize denials pursuant to WAC 315-06-120.

(b) If an adjudicative proceeding is requested in a matter not listed in (a) of this subsection, a brief adjudicative proceeding may be conducted in the sole discretion of the presiding officer when it appears that protection of the public interest does not require that the lottery provide notice and opportunity to participate to persons other than the parties and:

(i) Only legal issues exist; or

(ii) Both parties have agreed to a brief adjudicative proceeding.

(c) The presiding officer may, in their sole discretion, convert a brief adjudicative proceeding to a formal adjudicative proceeding whenever it appears that a brief adjudicative proceeding is insufficient to resolve the case.

(2) Conduct of brief adjudicative proceedings.

(a) Brief adjudicative proceedings shall be conducted by a presiding officer designated by the director. The presiding officer shall have agency expertise in the subject matter at hand but shall not have personally participated in the decision to issue the initiating document. For purposes of this section, "initiating document" means one or more documents that provide notice to the affected party of the lottery's action or decision.

(b) The parties may present written arguments, documentation, evidence, and declarations. The presiding officer shall designate the date(s) by which written materials must be submitted by the parties.

(c) The presiding officer may, in their sole discretion, entertain oral argument from the parties at a time and place designated by the presiding officer.

(d) No witnesses may testify.

(e) Depositions and interrogatories are not allowed.

(f) In addition to considering the preliminary record, the presiding officer may employ agency expertise as a basis for decision.

(g) The presiding officer shall issue a written initial order within 10 days of the date for final submission of written materials or oral argument, if any.

(3) Preliminary record. The presiding officer shall consider the preliminary record when issuing an initial order.

(a) The preliminary record with respect to decisions made under chapter 315-04 WAC shall consist of:

(i) The lottery licensing file including, but not limited to, the application and all associated materials, correspondence to or from the applicant or licensee, background check results, and any documents relied upon in proposing to deny, grant conditionally, suspend, or revoke the license;

(ii) The initiating document;

(iii) The request for an adjudicative proceeding;

(iv) Any written materials submitted to, or considered by, the presiding officer; and

(v) Transcripts or recordings of oral argument, if any.

(b) The preliminary record with respect to decisions made under WAC 315-06-120 shall consist of:

(i) The lottery prize claim file including, but not limited to, any investigation or reconstruction results, and correspondence to or from the claimant;

(ii) The ticket, or a legible copy of the ticket, that is in question;

(iii) The initiating document;

(iv) The request for an adjudicative proceeding;

(v) Any written materials submitted to, or considered by, the presiding officer; and

(vi) Transcripts or recordings of oral argument, if any.

(4) Effectiveness of orders on brief adjudicative proceedings. Initial orders on brief adjudicative proceedings become final 21 days after service of the initial order unless:

(a) Administrative review is requested pursuant to subsection (5) of this section; or

(b) On their own initiative, the director or designee determines to review the matter and, within 21 days of service of the initial order, provides notice to the parties of the date by which a determination will be made.

(5) Administrative review.

(a) Any party to a brief adjudicative proceeding may request review of the initial order by filing a written petition for review by the director or designee.

(b) The petition for review must be actually received by the director or designee within 21 days of service of the initial order. The petition for review must also be served on any other party to the case at the time it is filed with the director or designee.

(c) The petition for review must contain a concise statement of the issue(s) to be reviewed.

(d) Each party shall be provided an opportunity to provide their written statement on the matter.

(e) The director or designee shall consider the petition for review and response, if any, and issue a final order or convert the proceeding to a formal adjudicative hearing.

(f) The final order must be in writing, must include a brief statement of the reason(s) for the decision, and must be entered within 20 days after the date of the initial order or the request for review, whichever is later. The final order must contain a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(g) A request for administrative review is deemed to have been denied if the director or designee does not make a disposition within 20 days after the petition for review is submitted.

(6) Agency record of brief adjudicative proceedings. The agency record of a brief adjudicative proceeding shall consist of the preliminary record as set forth in subsection (3) of this section, and, if applicable, any materials considered during a review pursuant to subsection (5) of this section and the final order.

[Statutory Authority: RCW 67.70.040 (1) and (3). WSR 22-11-019, § 315-20-125, filed 5/9/22, effective 6/9/22.]