

WSR 22-06-087

PROPOSED RULES

WASHINGTON STATE LOTTERY

[Filed March 1, 2022, 3:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-077.

Title of Rule and Other Identifying Information: Washington's lottery is proposing to amend chapter 315-20 WAC, Procedural rules—Contested cases—Petitions for declaratory ruling and rule making, in order to add a new section to allow the agency to hold brief adjudicative procedures (BAP) for certain administrative cases.

Hearing Location(s): On April 21, 2022, at 8:30 a.m., virtual. In response to the COVID-19 public health emergency, the commission will not provide a physical location in order to promote social distancing. See walottery.com or call or email Kristi Weeks for details on how to participate virtually.

Date of Intended Adoption: April 21, 2022.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300 [43000], Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, by April 20, 2021.

Assistance for Persons with Disabilities: Contact Debbie Robinson, phone 360-791-3045, fax 360-515-0416, TTY 360-586-0933, email DRobinson@walottery.com, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes to chapter 315-20 WAC would allow the agency to use the BAP process and to identify which categories of cases are appropriate for a BAP in accordance with the Administrative Procedure Act. This could allow the agency to resolve certain administrative cases faster and at less cost to the parties. The rule will also set forth the procedure used to conduct a BAP and the participants' opportunity for further review.

Reasons Supporting Proposal: The agency currently utilizes the full formal adjudicative process for all administrative cases, including very simple cases that could be resolved using a less complex process. As a result, cases are often not resolved for six to eight months. The BAP process will provide for resolution faster and at less cost to the parties. The proposed rule will contain all required procedural elements, thereby assisting unrepresented parties who will not have to research multiple rules and statutes in order to seek administrative relief.

Statutory Authority for Adoption: RCW 67.70.040 (1) and (3).

Statute Being Implemented: RCW 67.70.040 and 34.05.482.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881; Enforcement: Marcus Glasper, 814 4th Avenue East, Olympia, WA, 360-810-2866.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The lottery is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, the lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii) and to date

the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 1, 2022

Kristi Weeks

Director of Legal Services

OTS-3629.1

NEW SECTION

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 with-

in 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.

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