

WSR 08-02-061
EXPEDITED RULES
GAMBLING COMMISSION

[Filed December 28, 2007, 9:31 a.m.]

Title of Rule and Other Identifying Information: WAC 230-40-817 Destruction and disposal of gambling chips.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Susan Arland, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504, AND RECEIVED BY March 3, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal a rule that is duplicated in WAC 230-15-111.

Reasons Supporting Proposal: To correct an inadvertent duplication made on a previous filing.

Statutory Authority for Adoption: RCW 9.46.070.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

December 28, 2007

Susan Arland
 Rules Coordinator

WSR 08-02-077
EXPEDITED RULES
GROWTH MANAGEMENT
HEARINGS BOARDS

[Filed December 31, 2007, 9:44 a.m.]

Title of Rule and Other Identifying Information:

- Chapter 242-02 WAC, Practice and procedures: WAC 242-02-072, 242-02-074, 242-02-230, 242-02-240, 242-02-250, 242-02-320, 242-02-52001, 242-02-530, 242-02-570, 242-02-832.
- Chapter 242-04 WAC, Public records: WAC 242-04-050.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE

RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Julie Ainsworth-Taylor, Rules Coordinator, Joint Boards, Growth Management Hearings Boards, 800 Fifth Avenue, Suite 2356, Seattle, WA 98104, AND RECEIVED BY March 31, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of these amendments is to:

1. Update mailing and physical addresses for the Western and Central Puget Sound boards.
2. Update web site contact information for all three boards.
3. Update e-mail contact information for the eastern board.
4. Delete reference to a second monthly meeting for the western board.
5. Permit electronic mail filing of the petition for review and for filing of briefs, exhibits, and other types of documents.
6. Provide internal consistency with the use of the word "telefacsimile" as opposed to fax or facsimile.
7. Provide internal consistency with the use of the word "electronic mail" as opposed to e-mail.
8. Update the number of copies of required documents from three to four copies.

Reasons Supporting Proposal: Amendments are needed to update contact information, modify methods of filing to reflect current technology, update required number of copies, update meeting information, and provide internal consistency of verbiage. (Exempt from CR-101 requirement based on RCW 34.05.310 (4)(d), (g)(i)).

Statutory Authority for Adoption: RCW 36.70.270(7).

Statute Being Implemented: Chapter 36.70A RCW.

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

Name of Proponent: Growth management hearings boards (Eastern, Western, and Central Puget Sound), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Ainsworth-Taylor, 800 Fifth Avenue, Suite 2356, Seattle, WA 98104, (206) 389-2625.

December 31, 2007

James J. McNamara
 Chair, Rules Committee

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

WAC 242-02-072 Principal offices. The principal offices of each board are as follows:

- (1) Eastern Washington Growth Management Hearings Board
 15 West Yakima Avenue, Suite 102
 Yakima, Washington 98902
 509-574-6960

509-574-6964 fax
 e-mail: ((~~aandreas476@ew.gmhb.wa.gov~~))
AAndreas@EW.GMHB.WA.GOV
 web site: www.gmhb.wa.gov/eastern

- (2) Western Washington Growth Management Hearings Board
 ((~~905 24th Way S.W. Suite B-2~~))
319 - 7th Avenue S.E. (as of June 2008)
Olympia, WA 98501
 P.O. Box 40953
 Olympia, Washington 98504-0953
 (360) 664-8966
 (360) 664-8975 fax
 e-mail: western@ww.gmhb.wa.gov
 web site: www.gmhb.wa.gov/western
- (3) Central Puget Sound Growth Management Hearings Board
 ((~~900 Fourth Avenue, Suite 2470~~))
800 Fifth Avenue, Suite 2356
 Seattle, Washington ((~~98164~~)) 98104
 (206) 389-2625
 (206) 389-2588 fax
 e-mail: central@cps.gmhb.wa.gov
 web site: www.gmhb.wa.gov/central

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

WAC 242-02-074 Regular meetings. (1) Regular meetings of each board will be held at its principal office or designated location at the following times:

(a) Eastern Washington board - on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date.

(b) Western Washington board - on the second ((~~and fourth~~)) Wednesday((s)) of each month at 11:00 a.m. or following any scheduled hearing on that date.

(c) Central Puget Sound board - on the first Monday of each month at 10:00 a.m. or following any scheduled hearing on that date.

(2) The joint boards shall meet annually at a time and location to be announced.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

WAC 242-02-230 Petition for review—Service and filing. (1) The original and four copies of the petition for review shall be filed with a board personally, or by first class, certified, or registered mail. Filings may also be made with a board by electronic mail or telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be personally served upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, the

office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

WAC 242-02-240 Date of filing—Facsimile and electronic mail. (1) The date of filing shall be the date of actual receipt by a board at its office. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic mail or telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) An electronic mail or ((~~facsimile~~)) telefacsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's ((~~facsimile~~)) telefacsimile machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document and ((~~three~~)) four copies must be mailed and postmarked or otherwise transmitted to the board on or before the date of sending the ((~~facsimile~~)) telefacsimile transmission or electronic mail.

(c) Documents over fifteen pages in length may not be filed by ((~~fax~~)) telefacsimile without prior approval of the presiding officer.

(3) A ((~~fax~~)) telefacsimile or electronic mail copy shall constitute an original solely for the purpose of establishing the date a document was filed.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

WAC 242-02-250 Notice of appearance and answer. (1) The respondent shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed and contain the respondent's address, telephone and fax numbers, and e-mail address.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and ((~~three~~)) four copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

WAC 242-02-320 Method of service. Service of papers, specified in WAC 242-02-310(1), shall be made per-

sonally or by first class, registered or certified mail, or by ((~~facsimile~~) telefacsimile transmission. The board may be served by ((~~e-mail~~) electronic mail filings, provided that an original and ((~~three~~) four copies are deposited in the mail and postmarked no later than the same day. Exhibits shall not be served electronically but shall be deemed timely filed if included in the mailed copies.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

WAC 242-02-52001 Exhibits. (1) Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs and attached thereto. A copy of any document cited in a brief shall be served on the opposing party or parties by the time specified by the board or presiding officer and an original and ((~~three~~) four copies of the exhibits shall be filed with the board.

(2) Respondents may charge for the cost of copies of documents requested by other parties in accordance with RCW 42.17.300, as amended.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

WAC 242-02-530 Motions—Requirements. (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. An original and ((~~three~~) four copies of the motion shall be filed with a board and a copy served on each opposing party or that party's attorney or other authorized representative.

(2) All motions shall be properly captioned and signed by the moving party or that party's attorney or other authorized representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names and telephone numbers of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

(5) Motions to disqualify a hearing examiner acting as the presiding officer, or a board member, for bias, prejudice, interest or other cause, with supporting affidavit(s), may be filed with a board.

(6) Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. If such a motion is timely brought, the presiding officer or the board shall determine whether to decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-570 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

(2) The original and ((~~three~~) four copies of briefs and exhibits not previously filed with the board in the pending case and that are cited in the brief shall be filed with a board at least five business days prior to the hearing unless otherwise provided by a board or presiding officer. When briefs and exhibits are filed, a copy shall also be served on each party, unless otherwise directed by a board or presiding officer. A board or presiding officer may permit or require the filing of additional briefs.

(3) Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

AMENDATORY SECTION (Amending WSR 00-09-094, filed 4/19/00, effective 5/20/00)

WAC 242-02-832 Reconsideration. (1) After issuance of a final decision any party may file a motion for reconsideration with a board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. The original and ((~~three~~) four copies of the motion for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. A board may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or

(c) Clerical mistakes in the final decision and order.

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. A motion is deemed denied unless the board takes action within twenty days of filing the motion for reconsideration. A board order on a motion for reconsideration is not subject to a motion for reconsideration.

(4) A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be served by the board on each party or the party's attorney or other authorized representative of record.

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

WAC 242-04-050 Communications with each board or the joint boards. (1) All communications with a board, including but not limited to the submission of materials pertaining to its operations and/or administration or enforcement of chapter 42.17 RCW and these rules, requests for copies of each board's decisions and other matters, shall be addressed to the appropriate board's office as follows:

- (a) Eastern Washington Growth Management Hearings Board
15 West Yakima Avenue, Suite 102
Yakima, Washington 98902
509-574-6960
509-574-6964 fax
e-mail: (~~andreas476@ew.gmhb.wa.gov~~)
AAndreas@EW.GMHB.WA.GOV
web site: www.gmhb.wa.gov/eastern
- (b) Western Washington Growth Management Hearings Board
(~~905 24th Way S.W. Suite B-2~~)
319 - 7th Avenue S.E. (as of June 2008)
Olympia, WA 98501
P.O. Box 40953
Olympia, Washington 98504-0953
(360) 664-8966
(360) 664-8975 fax
e-mail: western@ww.gmhb.wa.gov
web site: www.gmhb.wa.gov/western
- (c) Central Puget Sound Growth Management Hearings Board
(~~900 Fourth Avenue, Suite 2470~~)
800 Fifth Avenue, Suite 2356
Seattle, Washington (~~98164~~) 98104
(206) 389-2625
(206) 389-2588 fax
e-mail: central@cps.gmhb.wa.gov
web site: www.gmhb.wa.gov/central

(2) All communications with the joint boards shall be addressed in care of the Western Washington board.

WSR 08-02-078
EXPEDITED RULES
GROWTH MANAGEMENT
HEARINGS BOARDS

[Filed December 31, 2007, 9:45 a.m.]

Title of Rule and Other Identifying Information: Chapter 242-02 WAC, Practice and procedures: WAC 242-02-910, 242-02-920, and 242-02-930.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS

ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Julie Ainsworth-Taylor, Rules Coordinator, Joint Boards, Growth Management Hearings Boards, 800 Fifth Avenue, Suite 2356, Seattle, WA 98104, AND RECEIVED BY March 31, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of these amendments is to repeal nonmandatory language pertaining to procedures for filing of a petition for declaratory ruling and its subsequent disposition.

Reasons Supporting Proposal: These sections of the WAC were adopted by the boards in 1992/1994. Pursuant to RCW 34.05.240(2) such rules are discretionary. The growth management hearings boards have determined that the rules promulgated in this regard are no longer necessary for the administration of chapter 36.70A RCW. These rules pertain solely to procedural requirements relating to hearings before this agency (exempt from CR-101 filing: RCW 34.05.310 (4)(g)(i)).

Statutory Authority for Adoption: RCW 36.70.270(7).

Statute Being Implemented: Chapter 36.70A RCW.

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

Name of Proponent: Growth management hearings boards (Eastern, Western, and Central Puget Sound), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Ainsworth-Taylor, 800 Fifth Avenue, Suite 2356, Seattle, WA 98104, (206) 389-2625.

December 31, 2007

James J. McNamara

Chair, Rules Committee

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|---|
| WAC 242-02-910 | Petitions for declaratory ruling. |
| WAC 242-02-920 | Declaratory ruling—Notice to other persons. |
| WAC 242-02-930 | Declaratory ruling—Disposition of petition. |

WSR 08-02-085
WITHDRAWAL OF
EXPEDITED RULE MAKING
DEPARTMENT OF
FISH AND WILDLIFE
(By the Code Reviser's Office)
[Filed January 2, 2008, 9:17 a.m.]

WAC 232-12-174, 232-12-177, 232-12-251, 232-13-160, 232-13-190 and 232-13-200, proposed by the department of fish and wildlife in WSR 07-13-101 appearing in issue 07-13 of the State Register, which was distributed on July 5, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register