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## Notice of Permanent Rule Changes Related to Sports Wagering.

**This explanatory statement concerns the Washington State Gambling Commission’s Amendment of WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.**

The Administrative Procedure Act ([RCW 34.05.325\(6\)](#)) requires agencies to complete a concise explanatory statement before filing amended rules with the Office of the Code Reviser. This statement must be provided to anyone who provided comments regarding the proposed rule-making.

Once persons who provided comments during this rulemaking have had an opportunity to receive this document, the Washington State Gambling Commission will file the adopted rule with the Office of the Code Reviser. These changes will become effective on or after April 14, 2022.

The Washington State Gambling Commission appreciates your involvement in the rule-making process. If you have any questions, please contact Ashlie Laydon, Rules Coordinator, at [ashlie.laydon@wsgc.wa.gov](mailto:ashlie.laydon@wsgc.wa.gov) or (360) 486-3473.

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### What are the agency’s reasons for this rule change?

On March 25, 2020, Governor Jay Inslee signed House Bill 2638 authorizing sports wagering for Class III tribal facilities under terms negotiated in tribal-state compacts, and adding or amending several sections of the Gambling Act giving the Gambling Commission the authority to adopt and/or amend rules needed for the state’s regulation of sports wagering.

Rules were adopted, amended, and repealed in July 2021 to address licensing, regulation, and agency funding, consistent with the Gambling Act and recently negotiated tribal-state compact amendments.

An amendment to WAC 230-03-085, Denying, suspending, or revoking an application, license, or permit was made to include when an applicant, licensee, or anyone holding a substantial interest in the applicant’s or licensee’s business or organization has failed to comply with all applicable tribal laws or provisions of applicable tribal-state compacts and appendices related to sports wagering, that are in effect at the time of the violation, as grounds to deny, suspend, or revoke an application, license, or permit.

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**Summary of all public comments received on this rule proposal and consideration of the comments. If we responded to comments, add our response and how the final rule reflects consideration of the comments or why it fails to do so.**

Initial draft language was distributed to stakeholders, Tribal leaders, and representatives on May 27, 2021, originally as draft chapter 230-17 WAC. Draft language was filed with the Office of the Code Reviser on June 23, 2021 (WSR 21-13-165) as draft chapter 230-19 WAC however, based on feedback received, Commissioners directed staff to continue to work on chapter 230-19 WAC. Revised draft language was sent out to stakeholders, Tribal leaders, and representatives on September 3, 2021. Meetings were held with Tribal leaders and representatives on September 15, 2021, and with stakeholders on Septembers 22, 2021 to discuss revised draft language. Draft language was again filed with the Office of the Code Reviser on October 19, 2021 (WSR 21-21-094) incorporating feedback received from Tribal leaders, representatives, and stakeholders. Changes were again made to the language to clarify staff's intent that the rules were consistent with tribal-state sports wagering compact amendment. That draft language was filed with the Office of the Code Reviser on December 22, 2021 (WSR 22-01-213), however, based on feedback received from Tribal leaders and representatives, that language was withdrawn and a proposed amendment to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit was filed with the Office of the Code Reviser on January 19, 2022 (WSR 22-03-099). Final action was taken on the amendment to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit on March 10, 2022, with a nonsubstantive change described later in this document.

**Public Comment:**

**American Wagering, Inc. dba William Hill**

Comments received on July 7, 2021, referencing the following:

WAC 230-19-045- **Sports wagering system requirements.** Request a definition of “substantive modifications” be included in the rule. Request that the backup for cloud storage not be required to be located in Washington. Request to have sports wagering system reporting requirements replaced with GLI-33 list of minimum reports.

WAC 230-19-060- **Records retention for sports wagering vendors.** Request to place this retention requirement on the licensed data provider rather than the operators who use the data.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

**DraftKings Inc.**

Comments received on June 7, 2021, and July 27, 2021, referencing the following:

WAC 230-17-005- **Definitions.**

(12) “Sports wagering system.” Request this definition be amended to match the definition in other sports wagering jurisdictions, such as Michigan. Also request that “sports wagering kiosks” be removed from the definition as it is already defined in this section. By defining a kiosk as a sports wagering system, it could require that kiosks be tested and certified under two different requirements.

WAC 230-17-XXX- **Accounting records for sports wagering vendors.** Request the rule clarify that sports wagering vendors keep and maintain a complete set of records for their licensed activity specific to activities in Washington. Request the Gambling Commission narrow the scope of expenses that sports wagering vendors must document and that this be done annually instead of monthly.

WAC 230-17-XXX- **Sales invoices for sports wagering vendors.** Request the Commission narrow the requirement to document transactions and transfers of equipment or services to those that take place within the state in connection to sports wagering.

WAC 230-17-XXX- **Sales journals for sports wagering vendors.** Request the Commission narrow the requirement to keep monthly sales journals related to sales taking place related to their sports wagering operations in the state.

WAC 230-17-XXX- **Sports wagering integrity.** Request to amend the requirement to *immediately* notify the Gambling Commission upon violation or suspected violation, make *commercially reasonable* efforts to detect and prevent prohibited sports wagering participants from participating in sports wagering, requests that vendors only be required to report suspicious activity, and requests that the requirement that vendors provide the Gambling Commission access to its sports wagering system be amended to provide access in the form of reports and documentation related to sports wagering in the state.

WAC 230-17-XXX- **Integrity monitoring provider requirements.** Request to remove the requirement that integrity monitoring providers be capable of receiving daily sports wagering information to clarify the role of an integrity monitoring provider as that of receiving alerts deemed “unusual” by sports wagering operators and helping to determine if those alerts rise to the level of “suspicious.” Request the language be amended to match how integrity monitoring is being performed in other jurisdictions in terms of the notification process.

WAC 230-17-XXX- **Sports wagering system requirements.** Request to amend kiosk testing requirement. Request that the requirement that no substantive modifications be made without being previously certified by an independent testing lab be amended to clarify what substantive modifications rise to the level of needing subsequent certification. Request to define the term “primary server,” that cloud storage be authorized for more than duplicate or back up usage, and that cloud storage facilities not be required to be located in the state. Request for further clarification on reporting requirements. Request that patron-controlled wager and deposit limits are only guaranteed on mobile wagering systems as kiosks may not have this functionality.

WAC 230-17-XXX- **Sports wagering account requirements.** Request amendments to remove the requirement of verifying the sports wagering account in person and to allow players who have previously registered to and have been verified at a tribal gaming facility will not be required to

be subsequently registered and verified at that same tribal gaming facility thereafter. Also request that player identification be periodically reverified and requests clarification on interpretation that a licensee must hold player account funds at a federally regulated financial institution that is licensed to operate and thus do business in Washington but not be physically located in the state.

WAC 230-19-045- **Sports wagering system requirements.** Request modification to the types of reports that must be generated by the sports wagering system to match what is found in Section 5.3.9 of the Compact.

WAC 230-19-035- **Sports wagering integrity.** Request to remove the requirement for sports wagering vendors to notify the Gambling Commission of unusual wagering activity to align with Section 5.9.2.f and 7.22 of the Compact.

WAC 230-19-045- **Sports wagering system requirements.** Request language from Section 5.3.4 of Compact be included to provided clarification on what constitutes a “substantive modification” to a sports wagering system.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

## **BetMGM**

Comments received on June 7, 2021, referencing the following:

**Remote registration and tribal mobile.** Request clarification on whether verification on a mobile device at a tribal gaming facility would be permissible and the definition of tribal premises for purposes of geofencing.

**Temporal requirements.** Recommend notification windows.

WAC 230-17-XXX- **Authorized sports wagering menu.** Clarification on the process for operators to request additional events or wager types.

WAC 230-17-XXX- **Sports wagering integrity.** Recommend a 72-hour notification window.

WAC 230-17-XXX- **Integrity monitoring provider requirements.** Recommend a 72-hour notification window.

WAC 230-17-XXX- **Sports wagering system requirements.** Recommend that sports wagering kiosks be tested and certified by an independent testing lab but ultimately approved by the Tribal Gaming Agency. Also recommend allowing cloud storage facilities outside the state so long that it is accessible by the Commission. Seek clarification as to whether there will be any responsible gaming requirements specific to mobile applications. Seek clarification on how far in advance access to sports wagering systems, components, and kiosks is required to be provided.

WAC 230-17-XXX- **Geofence and geolocation requirements.** Seek clarification as to the meaning of “premises.”

WAC 230-17-XXX- **Sports wagering account requirements.** Recommend providing a temporal requirement, such as sports wagering account information must be provided within 10 days of a request. Seek clarification on the definition of “in-person” and questions whether verification of sports wagering account on a mobile device on or at a tribal gaming facility would suffice.

WAC 230-17-005- **Definitions.**

(13) “Sports wagering vendor.” Recommend specifically identifying each level of sports wagering license to clarify which vendors will require a major, mid-level, and ancillary license.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

**Cowlitz Tribal Gaming Authority**

Comments received on June 4, 2021, referencing the following:

Request that chapter 230-17 WAC be stricken from rule making.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

**FanDuel**

Comments received June 7, 2021, and September 15, 2021, referencing the following:

WAC 230-19-030- **Sports wagering integrity** & WAC 230-19-035- **Integrity monitoring provider requirements.** Inconsistent reporting requirements to notify the Gambling Commission of violations and unusual or suspicious activity.

WAC 230-17-XXX- **Accounting records for sports wagering vendors.** Request to strike this rule as these detailed recordkeeping requirements are not necessary to support license fee assessment and go beyond the requirements of other jurisdictions.

WAC 230-17-XXX- **Sports wagering integrity.** Recommend amending to require licensees to take “commercially reasonable” efforts to detect and prevent prohibited sports wagering participants from participating in sports wagering.

WAC 230-17-XXX- **Sports wagering system requirements.** Recommend amending to allow for sales to be conducted during the pendency of your application for a license if you’ve applied for licensure prior to December 31, 2021. Request that the primary server for the sports wagering system be located at a secure data center in the state rather than at the Class III tribal gaming facility and to remove the requirement that cloud storage facilities be located in the state.

Recommend amending language for responsible gaming requirements to include the option for displaying a URL and to have solutions for patron-controlled wager and deposit limits if applicable as kiosks may not have this functionality.

WAC 230-17-XXX- **Sports wagering account requirements.** Request to remove the requirement for patrons to register and verify their accounts in person at a tribal gaming facility prior to being able to access their accounts. Request to provide greater flexibility to licensees by allowing player account funds to be held at a state or federally regulated financial institution in the United States. Request clarification of use of a single wallet across multiple products and recommend amending language to prohibit transfer of funds from a patron account of one individual to another patron account of a different individual.

WAC 230-17-005- **Definitions.**

(6) “Minor league.” Request amendment to specify this does not include professional leagues where entire teams of players may be promoted or relegated between leagues based upon the performance of the entire team.

**WAC 230-17-XXX- Sports wagering integrity & WAC 230-17-XXX- Integrity monitoring provider requirements.** Request to change reporting standard from “immediately” to “promptly.”

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

### **Paula Scholz**

Comments received on December 6, 2021, referencing the following:

Allow online and/or phone app wagering available statewide, not just limited to tribal casinos.

Response: RCW 9.46.0364 authorizes tribes to conduct and operate sports wagering on Indian lands. RCW 9.46.0368 limits the transmission of gambling information over the internet for any sports wagering conducted and operated to the tribe’s gaming facility only while the customer is physically present on the premises of that tribe’s gaming facility.

### **Rush Street Interactive**

Comments received on June 7, 2021, referencing the following:

**WAC 230-17-XXX- Accounting records for sports wagering vendors.** Seek clarification on whether records need to be submitted to the Commission. Request that should the Commission need to review records, advance notice be given of such review and expectation.

**WAC 230-17-XXX- Authorized sports wagering menu.** Question how new event/sport approvals will be handled and whether there will be a licensee request process.

**WAC 230-17-XXX- Sport wagering integrity.** Recommend that system access is provided to regulators, not the integrity monitoring service.

**WAC 230-17-XXX- Sports wagering system requirements.** Recommend deleting “approved” as this is a redundant requirement of certification of sports wagering systems. Seek clarification that access to non-production environment sports wagering software will be sufficient to meet the requirement of this request.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

### **Sightline Payments**

Comments received on June 3, 2021, referencing the following:

Request that the regulation includes defined payment methods for sports bettors, along with the regulator flexibility to approve innovative payment solutions as the market evolves.

Provided recommended language to define payment methods that should be accepted consistent with other jurisdictions.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

### **Spokane Tribal Business Council**

Comments received on June 22, 2021, referencing the following:

Request chapter 230-17 WAC be struck in its entirety as it is largely a restatement of what is already in compact.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

### **Suquamish Tribe**

Comments received on June 7, 2021, referencing the following:

Recommend striking chapter 230-17 WAC in its entirety as it conflicts with Appendix S.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

### **Tulalip Tribes**

Comments received on June 18, 2021, referencing the following:

Request chapter 230-17 WAC be struck in its entirety as some sections are already addressed in Appendix S and other sections are inconsistent with Appendix S.

Response: This language has since been struck and instead an amendment made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit.

### **Washington Indian Gaming Association**

Comments received on June 18, 2021, October 27, 2021, and December 6, 2021, referencing the following:

Request that chapter 230-17 WAC be struck in its entirety.

WAC 230-19-005- **Definitions.**

(1) "Integrity monitoring provider." Definition says that integrity monitoring providers will "analyze data and reports" which deviates from tribal-state sports wagering compact amendment.

(8) "Suspicious wagering activity." Definition includes "money laundering" in the definition of suspicious wagering activity which deviates from tribal-state sports wagering compact amendment.

(9) "Unusual wagering activity." Definition does not include that this will be determined, in part, by the sports wagering operation.

WAC 230-19-025- **Sports wagering integrity.** Imposes the duty of integrity monitoring on all sports wagering vendors; however, this duty falls on the Tribes and the integrity monitoring providers. The rule also requires notice to the Gambling Commission for suspicious and unusual activity which deviates from tribal-state sports wagering compact amendment. Additionally, the rule requires sports wagering vendors to hand over tribal information when requested by the Gambling Commission.

WAC 230-19-030- **Integrity monitoring provider requirements.** Requires integrity monitoring providers to have systems to receive and analyze data to be able to monitor, identify, and report on unusual or suspicious wagering activity.

WAC 230-19-035- **Sports wagering system requirements.** Tribal-state sports wagering compact amendments allow for negotiated deviations from GLI-33 standards.

WAC 230-19-040- **Geofence and geolocation requirements.** This technology is approved through tribal-state sports wagering compact amendment.

**Proposed the addition of WAC 230-19-045- Inconsistency with tribal compacts.** To the extent any rule in this chapter conflicts with the compact of the tribe where the sports wagering is taking place, the sports wagering vendor must follow the compact and tribal regulations in furtherance thereof.

Compacts already give the Commission broad discretion to revoke, suspend, or deny a license of vendors for failure to comply with any provision or duty imposed by the compact.

Additionally, the Commission has this authority under WAC 230-03-085. If this does not satisfy the Commission, then the appropriate step would be to adopt a single rule reiterating that sports wagering vendors must comply with a tribal-state compact and applicable tribal laws.

Response: An amendment was made to WAC 230-03-085, Denying, suspending, or revoking an application, license or permit to allow the Commission to take action against a licensee for failing to comply with applicable tribal laws or provisions of the tribal-state compact and its appendices related to sports wagering.

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**If there are variances from the proposed rule and final adopted rule, state the reasons for the differences (RCW 34.05.325(6)(a)(ii)).**

Nonsubstantive change was made to remove a comma following “applicable tribal laws” to clarify the intent with the CR-101.