



Notice of Permanent Rule Changes Related to Applying for Sports Wagering Pre-licensing Investigation.

This explanatory statement concerns the Washington State Gambling Commission's adoption of WAC 230-03-408- Applying for sports wagering pre-licensing investigation.

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 March 29, 2021.

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 or (360) 486-3473.

What are the agency's reasons for adopting these rules?

The Gambling Commission is considering adopting new and amending current rules to implement the new sports wagering law, House Bill 2638, passed by the Legislature during the 2020 session. A new state regulatory structure will need to be created to cover all aspects of sports wagering consistent with any new tribal-state sports wagering compact amendment. This rule will allow individuals and/or organizations to apply to begin the pre-licensing investigation process prior to the adoption of final sports wagering licensing rules. The intent of this rule is to save time and resources for both individuals and organizations who anticipate applying for a future license to provide equipment and/or services for sports wagering pursuant to a tribal-state compact as well as Gambling Commission staff.

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.

At our December 2020 Commission meeting, we announced plans to bring draft pre-licensing investigation rules to the Commissioners at their January public meeting. Staff sent the

proposed rule language to Tribal representatives and potential sports wagering stakeholders on December 30, 2020 asking for feedback. The agency informed stakeholders that it would receive public comment on the proposed rule until its final adoption on February 24, 2021. A summary of the comments and questions received related to the following topics:

Public Comment:

Who is a “substantial interest holder” and/or how will the agency address “substantial interest holders”?

Response: Substantial Interest Holder is already defined in [WAC 230-03-045](#), and the agency’s licensing staff regularly uses this rule in processing current gambling license applications. Agency staff believe this definition is sufficient in the context of sports wagering pre-license investigations and the level of scrutiny of the organization and individuals within the organization will be developed through the application process, including discussions with the applicant, as needed. In practice, we can, and do, modify our scope of our requests for information on substantial interest holders based on the information provided by an applicant in the pre-licensing application and then look to the stated level of actual or potential influence over the licensee and/or gambling activity.

What about “passive investors”?

Response: The agency currently addresses this type of investor in the definition of “regulated lending institution” in [WAC 230-03-212](#). In this definition, passive investors are an entity or a person who have no actual or potential influence over the operations of a licensee. We typically utilize an [Institutional Investor Certification Form](#) for an Investment Company registered with the SEC and:

- The Voting Securities held by the Investment Company were acquired and are held for investment purposes only, and were acquired and are held in the ordinary course of business as an institutional investor and not for the purposes of causing, directly or indirectly, the election or appointment of any director or management member of the Licensee. Nor are the Voting Securities held for the purpose of causing, directly or indirectly, any change in the chartering documents (including articles of incorporation, bylaws, and other documents), or other operating agreements, management, directorship, policies, or operations of the Licensee. Further, the Investment Company acquired the Voting Securities disclosed above solely for investment purposes, and the Investment Company has no involvement in the business activities of the Licensee, nor does the Investment Company have any intention of influencing or affecting, or participating in the affairs of the Licensee.
- If the Investment Company subsequently intends to influence or affect the affairs of the Licensee, they shall provide not less than 30 days written notice of such intent, and shall file with the Washington State Gambling Commission the

appropriate application for licensure/suitability before taking any action that may influence or affect the affairs of the Licensee; provided, however, that the Investment Company shall be permitted to vote on matters put to the vote of the outstanding security holders at any time without providing notice to the Washington State Gambling Commission.

- For purposes of this Certificate and the matters set forth herein, the Investment Company acknowledges that it is bound by and shall comply with all regulations enacted by the Washington State Gambling Commission and, to such extent, is subject to the jurisdiction of the courts of Washington and consents to Washington as the choice of forum in the event any dispute, question, or controversy arises regarding the application of these regulations.

An application will also ask for the identity and personal identifying information for persons/entities with >5% interest in the Investment Company. If the applicant lists one person as 100% owner, then we treat the Investment Company as an individual. We also use an [Institutional Lender Certification Form](#) for Lenders, for whom based on the amount or the terms of the loan are determined to be a substantial interest holder, who are not federally recognized lending institutions but an Investment Company registered with the SEC.

Who should consider applying under this rule?

Response: The goal of this rule is to authorize the agency to engage in its standard prelicensing investigation process before final licensing rules are agreed upon and become final. Our pre-licensing investigation process takes an average of 60-90 days, and this rule, if it becomes final, will allow organizations to get a head start on the pre-licensing process in anticipation of final licensing rules to be unveiled later this year once tribal compact negotiations are complete. Therefore, standards for full licensing requirements and license classes are still under negotiation between the State and Tribes who have requested to negotiate a sports wagering compact amendment. Consequently, there will be some ambiguity on sports wagering licenses because the agency cannot yet provide a list of possible license types or which types of organizations who provide sports wagering products or services may need to be licensed. Our pre-licensing application process will be required for any sports wagering license, regardless if it is done through pre-licensing investigation or through the final sports wagering licensing rules. We recommend that most companies licensed in other states where they provide sportsbook services and/or equipment consider entering this pre-license investigation process. You are encouraged to contact us if there is any question if this process is the right process for your organization and we will provide the best direction we can about the potential value of this process at this time.

Is this rule necessary?

Response: Yes. All agency licensing processes authorized by statute require our Commissioners to approve additional licensing rules. These rules authorize the same pre-licensing investigation process the agency has historically utilized for any gambling license application, including applications for manufacturers, distributors, service suppliers of gambling equipment and services for all of our gambling activities. However, sports wagering is not authorized through agency rules and it must be done through the agency rule-making process whether it is done at this time or in the final licensing rules. An alternative to this rule could be for the agency to wait to begin the pre-licensing investigation process until the final rules are approved. However, agency staff and Commissioners feel it is best to try to authorize, through these proposed rules, this pre-licensing investigation process now to give the agency and potential licensees an option to engage in the 60-90 day (average) pre-licensing process now while the final licensing standards are being negotiated and before we engage in the final licensing rule-making process. We believe there is value in getting a head start on this process and believe it will help smooth out any bumps in the pre-licensing investigation process as the agency and applicants become more familiar with each other.

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)).

Technical edits were made between the proposed language and the adopted language. These edits include using the term “pre-licensing investigation” instead of “pre-licensing qualification” and removing the term “letter” to allow the agency more flexibility in how it informs applicants about the final status of their pre-licensing investigation application. The final rule is not substantially different from the rule proposed in the notice of proposed rule adoption published on February 3, 2021.