



You are receiving this notice because you commented on these proposed rule changes:

Notice of Permanent Rules for the Operation of Group 12 Amusement Games.

This explanatory statement concerns the Washington State Gambling Commission's adoption of:

Amended Sections:

WAC 230-13-080 Operating coin or token activated amusement games. (Effective May 16, 2016.)

WAC 230-13-005 Amusement games authorized. (Effective July 15, 2016)

WAC 230-13-130 Display and exchange of amusement game prizes. (Effective July 15, 2016)

Repeal Sections:

WAC 230-13-140 Price to play amusement games must be paid in cash or check. (Effective July 15, 2016)

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

Once persons who gave comment during this rule-making process have had an opportunity to receive this document, the Washington State Gambling Commission will file the amended and repealed rules with the Office of the Code Reviser.

The Washington State Gambling Commission appreciates your involvement in the rule-making process. If you have any questions, please contact Susan Newer, Rules Coordinator, at Susan.Newer@wsgc.wa.gov or at (360) 486-3466.

What are the agency's reasons for adopting this rule?

In July 2015, the Commissioners authorized Group 12 amusement games to be played by persons 21 and over. With implementation of this new activity, staff has identified additional rule changes necessary to ensure effective regulation.

These rule changes:

- Limit the number of Group 12 amusement games that a licensee can have to 20 for charitable, nonprofit and 10 for commercial organizations.
- Defines merchandise prizes to **only** include toys, novelties, food and beverage, and retail items sold as a normal part of the business; and

- Merchandise prizes do **not** include pull-tabs and other gambling activities, gift certificates or gift cards.
- Amusement games must not allow replays or tokens awarded to be replayed or any cash payment being awarded.
- Group 12 amusement games cannot be operated by a charitable, nonprofit organization without a license.
- Allows coin operated amusement games to be activated by and to dispense tokens won onto an electronic token card, which is defined as a card issued by the operator that stores purchased credits available to play the amusement game separate from the tokens awarded or dispensed as prizes from the play of an amusement game.

Summary of all public comments received on this rule proposal and consideration of the comments. The summaries below are from stakeholders who have commented either at Commission Meetings or emailed their comments/concerns to the Commission. Please note, the spelling of these names have not all been verified.

NOTE: There were multiple rules packages regarding the operation of Group 12 amusement games being considered at the same time as the rules package. A majority of the comments related to the proposed changes to WAC 230-13-005.

Ezra Eckmeyer, Lobbyist for Amusement Game Industry: Asked “What is public policy decision on replays?” Would like to see revisions made in a two stage process – Stage one limiting house gift cards to \$100 and allowing for ticket out, ticket in, playback which would further reduce the probability of any cash outs. Stage two would be to work on the broader and less urgent concerns. Provided some rule language allowing replays and gift cards and urged the Commissioner to pass this rule language as provided by the industry.

Donald Allen, Bowling Center Owner: Has 5 machines in play and have been wonderful revenue stream past month. Overall sales are up in business. Uses gift certificates for in-house purchases.

Anthony Fiory, owns two gambling businesses: He has 3 leased machines at each location. He has seen new people in his business he hasn’t seen before. All prizes are in-house.

Richard Illian, Renton location: Has two machines. Overall sales are up. In business 45 years, wants to make enough money to pay health insurance for employees. Is giving cash away; however, most goes back into the Group 12 games.

Gary Rouse, new licensee: Repeal would be costly to him. Option A would be difficult. Suggests a gift card, no cash over \$5 back. After seeing the machine, he applied for a license, which is up for approval today. Runs arcade for 21 and over. Darts, pool, juke box. Provides a tool for small businesses. Supports Option B.

Ric Newgard, Seattle Jr. Hockey: This room is full because industry is hungry for advancement.

Monty Harmon, Harmon Consulting & CEO for Evergreen Gaming: Has 4 card rooms and one of his locations has 6 machines. Appreciates the \$250 ID stamp cost to help fund agency. Asked for time to find the right wording to not allow cash payments by operators from gift cards issued from Group 12 amusement games.

Pat Tompkins, Sound Amusement: Encourages more work and looks forward to next meeting. The machines reveal if the next play will be a winner or not. These are not slot machines. They do not pay out cash prizes, only merchandise prizes. These devices will generate taxes and fees for both the local and state authorities. The commissioners were not misled during this approval process. Would like to see prize amounts of \$2,000 for top tier and \$7,500 for progressive games. Would like to see a limit of 20 machines per location. Would not want to see a limit on gift certificates to \$50 a day. Provided emails from 2006 and 2007 allowing gift certificates to be issued as an amusement game prize but not redeemable for cash or to participate in an amusement game. This has been allowed for last 10 years and the bar had discretion whether or not to issue cash back.

Kevin Morse, Banilla Games: Georgia has 22,000 skill based games. Merchandise prizes & in-store credit work great. Can replay credits. No cash back. His games payout 90%. Replays are a good thing-replays reduce overall points won. Provided draft rules for testing and approval of Group 12 Amusement Games.

Rich Lemieux: Replays needed. Customers don't want to cash out, they want to play longer. Keeping people in the business longer = more money spent on food/drink. He didn't think people would want these games; however, they do. People can choose how they spend the gift cards. Likes Option B, give consumer a choice. Would like to replay. He has 122 employees, 5 million revenue a year, works with 27 vendors, and pays over \$400K in gambling tax to city. Trying to survive, need new revenues. Not gambling machines, don't pay out cash. Gift certificate ok.

In Ohio the establishments are ordering items for the customers that want to redeem their tokens via Amazon.com. Buy merchandise through a laptop on site and balance of winnings is used for food and beverage. No cash is ever given to customer.

Marv Galante, ASI: Small businesses are struggling. Committed to making this work. Has one machine out and putting another out soon. Need to have the replay function to make the Group 12 amusement games sustainable.

MJ Durkin, Muckleshoot Tribe: These games are gambling. There will be a loss of funding to schools and school needs because monies spent on the Lottery will be spent on the Group 12 amusement games, which has only a 2% tax and a \$250 ID stamp fee. Asked the Commissioners to wait until the legislature has weighed in.

Jim Marsh, Heart Novelty: Serves on trade board. Meets with operators from other states. Washington has most comprehensive redemption rules in the nation. It also creates barriers to entry, which is good, it keeps unsavory business practices out of state. Supports limits on machines. Limiting rationale was to keep as commercial stimulant. Too many machines will change dynamics. He was in Georgia and there are a large number of machines. Over 21 crowd need less guidance on replay of credits.

WA state regulations are by far more comprehensive than other states. Would like to restrict the number of games in each location. Significant economic source through taxes and licensing fees being generated. Rulemaking needs to be a collaborative effort between stakeholders and staff.

Mike Barton, Triple H Amusement: Operating redemption machines since the '80's. Keep things the way they are. Controlling merchandise inventory is challenging. Establishments don't have room to display merchandise and secure items. Has one machine that's doing very well at the Road House, the operator has seen a 20% increase in pull-tab sales, crowd stayed longer. They are using gift certificates and cashing some out.

Richard Illian, Renton operator: Has a machine at his business. Business increased 8% in November and 17% in December 2015.

Josh Herschlip, GM of Buzz Inn: 13 locations. Prefers option B. However, doesn't like modifications to gift cards. Needs gift cards. Has not given out merchandise, has paid out about \$8,000 in winnings. Needs replay. Allows cashing out of gift cards, prefers money is spent. Gift card is the merchandise prize.

Marv Galante, Music Vend: A licensee since 1987. Locations looking for revenue. Prefers Option B w/modification. The cash payout issues will resolve themselves as enforcement policies are implemented and the rules on gift cards are resolved. Believes this is an over 21 device.

Gordon Rickky, Brother Don's Bremerton: He has a small business. Has had a game for 2 months. Has seen increase with pull-tab sales and food/drink. Keeps people in the business.

Ralph Carlson, Digital Music systems: Supports Option B

Len Libben, Evergreen Gaming: Industry needs help.

David Beck, Wizards: You can see prize on the machine every time.

Dallas Burnett, Assistant to Director, Muckleshoot Tribal Gaming Agency:

1. We should rescind two approval letters as they violate WAC. Violate RCW that requires strict regulatory control.

2. Violates 13-067 re: viewing prize. Player can only see value of single play.
3. No way to improve play over time. Violate WAC 230-13-100
Option B: Violates 9.46.0201 of merchandise and requires legislative action.
Does not return the same thing of value. 9.46.0241.
Asked the Commissioners to repeal Group 12 amusement games.

Gary Malcolm: Would like to ensure the ability to store the electronic tokens on something other than a card. Sonoma system storage is a possibility.

Jay Gerow, ZDI Gaming: Testified that there were three ways to replay winning: Load back on card and come in; ticket-in ticket-out; and play directly off of the machine. Asked the Commission to make no changes to the rules or to at least support the language as submitted by the stakeholders and himself, which allowed replays and gift cards in which operators could not provide cash back unless the balance was less than \$5.

Taek K. Kim, Meeker St. Bar & Grill and Carriage Square Sports Bar & Grill: Group 12 games are a positive development for small businesses. Would like to see the current rules remain the same and likes Option “B” in rules package 3.

Robert Carroll, System Amusement: Supports Group 12 games and would prefer to see the rules stay the same. If changed, would support option “B” in rules package 3. Has seen a small increase in food and beverage sales as customers are using their winnings and applying to their bill. These are a far cry from slot machines.

Tami Hiatt, owner, 48th St. Pub: Supports Group 12 games and would prefer to see the rules stay the same. If changed, would support option “B” in rules package 3. Has seen a small increase in food and beverage sales as customers are using their winnings and applying to their bill. These are a far cry from slot machines.

Tim Tweten and Lisa Daniels, South Sound Restaurants – Hob Knob, Burs Restaurant, Poodle Dog, Harvester, and Power House: Group 12 games are a positive development for small businesses. Would like to see the current rules remain the same and likes Option “B” in rules package 3.

Ludi’s Restaurant: Group 12 games are a positive development for small businesses. Would like to see the current rules remain the same and likes Option “B” in rules package 3.

C.A. Magnuson, C&L Games: Class 12 games will help save small businesses in WA State. Supports rule package 3 option B.

John Foley, Time Out Alehouse: Supports these machines as they are. The industry needs innovative ideas like these to survive.

Warren Oliver, Muckleshoot Tribal Gaming Agency: Believe these devices are gambling devices under state statute and they do not fall under any exemptions within the statute. Believe these devices were created to skirt existing rules and regulations in order to allow pseudo slot looking devices into commercial businesses.

Dan McCoy, McCoy's Distributing: has placed numerous machines in Eastern WA and the businesses have reported very favorable responses. Players are redeeming their winnings for food and drink as well as pull-tabs. Would like to see the rules remain the same.

Mary Magnuson, NAFTM: Supports a repeal of WAC 230-13-067. If this does not happen, we encourage adoption of strict controls, a limit on the number of devices per site, uniform licensing of manufacturers, and "hard merchandise" prizes with limited value.

Owner, Madison Pub: Group 12 games are a positive development for small businesses. Would like to see the current rules remain the same and likes Option "B" in rules package 3.

Don and Rachael Allen, Crosley Lanes Bowling Center: Have installed five machines are thrilled with the revenue being generated. We have had zero complaints in reference to these machines. People are spending more time in the facility because of these new machines.

William Peare, Rebecca Benavides, Deborah Hamilton, The Caboose: Group 12 games are a positive development for small businesses. Would like to see the current rules remain the same and likes Option "B" in rules package 3.

Bill Clark, Digital Music Systems: These are not slot machines. They do not pay out cash prizes, only merchandise prizes. These devices will generate taxes and fees for both the local and state authorities. The commissioners were not misled during this approval process.

Jesse Stiltner, Masters of Money LLC: Questioned the need to limit the wagering amount and prizes if these are just amusement games. Provided comments on the budget proviso language regarding the possible impact Group 12 amusement games will impact the State Lottery revenues, which support public education programs. He provided a chart that showed no negative effect on the Georgia Lottery revenue since 2013, who has similar types of amusement games.

Christopher Hurst, State Representative: Appreciates the Commission's struggles with these Group 12 games and how to regulate them. Asked the Commission to consider rescinding the authorization of Group 12 games and seek legislative approval prior to the expansion of, or additional licensing of these games.

Victoria Collins, Public: Originally from Kentucky and now lives in WA state and played the touch screen game. Thought it was cool! Like being able to use winnings to pay her bill. Would like to see more of these machines in North Seattle.

Carly Davis, Public: Played the game in Renton and was excited to see a new type of game available in WA state. Liked the idea of being able to pay her tab with the winnings.

BJ Garbe, Papa's Casino and Sports Lounge: In favor of Group 12 games.

Wendy Winsor, WOW Distributing: Opposes the new Group 12 machines.

Matthew Butkowski, Imperial Bingo Connection: Operator of a non-profit charity bingo. Would like to see the rules passed as they are.

Shelley Young, Otto Development LLC: Requested clarification on what is "hard merchandise."

Robert and Susan McEndoo, Gepetto's Italian Restaurant & Sports Bar: Would like to see these games approved for Washington State businesses. It will increase revenue for the businesses and state.

Lane Gormley, Arrow International: Played the game at a location and was told he could buy something with his winnings and cash out the remainder. Not sure this was the intention of the commission.

Chris Hawk, People Against Slot Machines: Opposes the approval of these devices.

Terry Glithero, Tabs Plus: Opposes these machines being able to award cash as prizes.

Geoff Tompkins, Brother Don's Restaurant and Bar: Supports Groups 12 amusement games and would like Option B within the rules package.

Joan Mell, attorney for the Amusement Distributors of Washington: Provided rule language allowing replays and gift card whereby the operators could not give cash back unless the gift card had less than a \$5 balance. Asked the Commissioners to take a compromise position and approve the rule language she provided or leave the rules as is.

Ed Fleisher, attorney for the Cowlitz Tribe: Believes Group 12 amusement games are gambling devices that should have strict testing standards of the software and hardware.

Maureen Greely, Evergreen Council for Problem Gambling: Expressed consumer protection concerns over wagering limits, underage play, self-set time and play capabilities, etc.

David Burnett, Cowlitz Tribe: Asked the Commission to repeal because this a new way of expanding gambling and a way around Initiative 892.

Steve Manning, Specialty Coin: Asked Commissioners to find a resolution that would work and a compromise. Liked Option A.1 but asked the Commissioners to consider the industry's proposal to allow cash back only when the gift card had less than a \$5 balance and replays.

Cameron Baker: Replays should be considered reportable gross receipts and taxable by the local jurisdictions, which would support the idea that replays are a cash equivalent.

Ed Murray, Seattle mayor: Requests repeal of Group 12 games until the Legislature has sufficient time to vet these games, determine if this expansion of gambling is warranted after learning the full regulatory, social, and economic impact these games will have on Washington's cities and counties.

WSGC Response:

On November 9, 2015, the Commission sent a "Notice of Rulemaking" to all Class B and above amusement game licensees to notify them of potential rule changes in the operation of Group 12 amusement games. Draft rules were discussed at the November Commission Meeting and the Study Session.

Draft rules for this rules package were developed based on stakeholders' suggestions and comments submitted at the November Commission Meeting.

On December 21, 2015, a "Notice of Rulemaking" with a link to the draft rules was sent to all non-profit and commercial amusement game licensees. This same information was available on the Gambling Commission's website and it was discussed at the informal study sessions and formal Commission Meetings in January, February, March, and April 2016. The Commissioners took public testimony at all four Commission Meetings, which is incorporated above.

There were multiple rules packages regarding the operation of Group 12 amusement games being considered at the same time as this rules package. Very few of the comments received, if any, related to limiting the number of Group 12 amusement games a licensee may operate.

Instead, most comments related to the operation of Group 12 amusement games. There were three rule Options the Commissioners considered regarding how the Group 12 amusement games were operated, Option A (which was adopted), Option B (which was withdrawn at the February meeting), and Option A.1 (which was requested by the Commissioner at the March meeting.) Primarily, industry stakeholders wanted the Commissioners to not change any of the rules impacting how the Group 12 amusement games were operated. If this could not be accomplished, the industry stakeholders wanted to continue to use gift cards/certificates as merchandise and allow tokens to be used for replays.

The Commissioners took into account all information through testimony and written comments received in making their decision to proceed with these rule changes.

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)).

- WAC 230-13-005: Minor grammatical changes were made to the rule. In addition, two Options were originally filed in January 2016: Option A, which did not allow replays or consider pull-tabs or participating in a gambling activity, gift cards or gift certificates to be a merchandise prize; and Option B, which allowed replays and awarding participation in gambling activities, gift cards and gift certificates to be awarded as a merchandise prize. The Commissioners withdrew Option B at the February Commission meeting. Option A was approved with an effective date of July 15, 2016, which is longer than the original effective date of 31 days from filing. The additional time before the effective date of the rule will allow licensees to make the changes to the software, submit for testing and approval, and install in the deployed Group 12 amusement games throughout the State by July 15, 2016.
- WAC 230-13-130: Language changed in subsection 4, removed the word “multiple.”