
Rules of
Department of Public Safety
Division 45—Missouri Gaming Commission
Chapter 13—Hearings

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**Title 11—DEPARTMENT OF
PUBLIC SAFETY
Division 45—Missouri Gaming
Commission
Chapter 13—Hearings**

11 CSR 45-13.010 All Types of Hearings

PURPOSE: This rule describes types of hearings.

(1) The rules contained in this chapter shall govern all hearings of the commission.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994.* *Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998.*

*Original authority: 313.004, RSMo 1993, amended 1994; 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; and 313.800 and 313.805, RSMo 1991, amended 1993, 1994.

11 CSR 45-13.020 Hearing Officer

PURPOSE: This rule describes appointment of hearing officers.

(1) The commission shall retain a hearing officer, as a full-time employee or on a contract basis, to conduct the hearings required by the statutes and regulations over which the commission has jurisdiction.

(2) The hearing officer shall be a member in good standing of the Missouri Bar.

(3) Following each hearing, the hearing officer shall recommend proposed findings of fact, conclusions of law and a final order to the commission.

(4) The commission shall review the recommendation of the hearing officer and issue findings of fact, conclusions of law and enter a final order.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994.* *Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective*

Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998.

*Original authority: 313.004, RSMo 1993, amended 1994; and 313.800 and 313.805, RSMo 1991, amended 1993.

11 CSR 45-13.030 Requests for Hearings

PURPOSE: This rule establishes the procedure for requesting a hearing.

(1) All requests for hearings must—

- (A) Be in writing;
- (B) State the name, current address and current telephone number of the petitioner;
- (C) State the number assigned to the matter by the commission;
- (D) State the particular section of the statutes or commission rule involved; and
- (E) State in detail the reasons and facts upon which the petitioner will rely to prove its case, such as to show that the petitioner's application for a license should have been granted, the license should have been renewed, the transfer of ownership should not have been placed on the exclusion list, including specific responses to any facts enumerated in the commission's notice of denial, notice of unsuitability, notice of nonrenewal, notice of exclusion or other document evidencing legal action.

(2) A request for hearing must be submitted within thirty (30) days after service by the commission of the decision or issue about which the petitioner requests a hearing.

(A) The petitioner may submit a request for hearing by—

- 1. Personal delivery;
- 2. Certified mail, postage prepaid; or
- 3. Overnight express mail, postage prepaid.

(B) All requests for hearings must be submitted in duplicate at the commission's office in Jefferson City.

(C) No documents or papers shall be considered filed until actually received by the commission.

(D) The hearing officer may deny a request for hearing if the statement of reasons and facts submitted by the petitioner do not establish a *prima facie* case.

(4) The petitioner shall be served with written notice of the time and place of hearing by—

- (A) Personal delivery;
- (B) Certified mail, postage prepaid; or

(C) Overnight express mail, postage prepaid.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994.* *Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998.*

*Original authority: 313.004, RSMo 1993, amended 1994; 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; and 313.800 and 313.805, RSMo 1991, amended 1993, 1994.

11 CSR 45-13.040 Appearances

PURPOSE: This rule establishes the procedures for attorneys filing appearances.

(1) A party may be represented by an attorney who is licensed in Missouri. All attorneys who appear in a representative capacity on behalf of a party must file written notice of appearance setting forth—

(A) The name, address, telephone number and Missouri Bar number of the attorney(s); and

(B) The name and address of the party represented.

(2) Upon motion, the hearing officer may permit a member in good standing of the bar of the highest court of any state or of any United States district court to argue or conduct a particular hearing in whole or in part.

(3) An attorney may only withdraw his/her appearance upon written notice to the hearing officer stating the reasons therefore and after permission from the hearing officer.

(4) Any individual may appear on his/her own behalf.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994.* *Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998.*

**Original authority: 313.004, RSMo 1993, amended 1994; 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; and 313.800 and 313.805, RSMo 1991, amended 1993, 1994.*

11 CSR 45-13.050 Disciplinary Action

PURPOSE: This rule establishes the procedures for disciplinary action.

(1) When notified of facts sufficient to support disciplinary action against a licensee under the applicable statutes or rules, the commission may propose disciplinary action against a licensee. If the commission proposes disciplinary action, it shall notify the licensee of the disciplinary action proposed. Notification shall be by certified mail. Included with the notification shall be a proposed order for disciplinary action.

(2) The proposed order shall include a statement of facts supporting the disciplinary action and the rule or statutory section with violation of which the licensee is being charged and penalty proposed. The proposed order shall be accompanied by a certificate of service demonstrating the date of service.

(3) Within thirty (30) days from the date of mailing of the proposed order, the licensee shall file his/her/its request for hearing by serving it on the director. If a request for hearing is not filed, the proposed order shall become a final order of the commission.

(4) Whenever the commission finds an applicant unsuitable for licensing, the commission shall send a written letter to the applicant outlining the reasons for the finding. This letter shall be sent certified mail, return receipt requested or by personal delivery. Within thirty (30) days from the date of the mailing, the licensee shall file his/her/its request for hearing by serving it on the director. If a request for hearing is not filed, the denial shall become a final order of the commission.

(5) The commission may authorize the director to investigate and make the initial finding of unsuitability or to issue a proposed order for disciplinary action with regard to any applicant for or holder of a license of the type that may be issued by the director and with regard to any bingo licensee. If the director takes such action, s/he shall notify the commission and provide to the commission a copy of the letter regarding unsuitability or the proposed order for disciplinary action.

(6) In all disciplinary actions and licensing hearings, the applicant or licensee shall be the petitioner.

*AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994. * Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed Dec. 7, 1995, effective June 30, 1996. Amended: Filed Aug. 30, 1996, effective April 30, 1997. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998. Amended: Filed March 1, 1999, effective Oct. 30, 1999.*

**Original authority: 313.004, RSMo 1993, amended 1994; 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; 313.800, RSMo 1991, amended 1992, 1993, 1994; and 313.805, RSMo 1991, amended 1993, 1994.*

11 CSR 45-13.055 Emergency Order Suspending License Privileges—Expedited Hearing

PURPOSE: This rule establishes a procedure for immediately suspending the privileges under a license where the public health, safety or welfare is endangered and preservation of the public interest requires such suspension of privileges.

(1) Upon a finding that sufficient facts exist to show that a licensee has violated a provision of section 313.004 to 313.090, RSMo, or sections 313.800 to 313.850, RSMo or any rule promulgated by the commission under 11 CSR 30, et seq. or 11 CSR 45, et seq. as may be amended from time-to-time and that such facts constitute an immediate threat to the public health, safety or welfare, the director may issue an emergency order immediately suspending the privileges under the license that allow the licensee to—

- (A) Conduct gambling games on an excursion gambling boat; or
- (B) Serve as an officer, director, trustee, proprietor, managing agent, or general manager of a licensee or key person of a licensee; or
- (C) Work on an excursion gambling boat or have access to restricted areas on an excursion gambling boat; or
- (D) Sell gambling supplies; or
- (E) Operate a bingo game; or
- (F) Sell or manufacture bingo supplies.

The director shall have notice of the emergency order personally served upon the

licensee or, if the licensee is not available personally, it may be served by certified mail or overnight express mail, postage prepaid.

(2) Upon receipt of notice of an emergency suspension of license privileges as set forth in section (1) of this rule, the licensee may request an immediate informal hearing before the director. A request for informal hearing must be in writing and delivered to the director at the commission's office in Jefferson City via facsimile, personal delivery or express mail, postage prepaid. The director or his/her designee shall hold the informal hearing within forty-eight (48) hours of receipt of the request for hearing. The procedure for the hearing shall be as follows:

(A) The director or his/her designee shall call the hearing to order and present a statement of facts summarizing the violations of statute and regulation committed by the licensee and the reason(s) why the licensee's conduct constitutes an immediate threat to the public health, safety or welfare such that it demands an emergency order;

(B) The licensee may respond by submitting evidence and/or witnesses supporting its position that the conduct does not constitute a violation of law or that it is not of such severity that it demands emergency action. The director or his/her designee may require that witnesses testify under oath. All relevant evidence is admissible. The director or his/her designee may question witnesses. At the conclusion of the licensee's presentation of evidence, the licensee may make a concluding argument as to why the emergency order should not stand; and

(C) Upon receiving all evidence presented by the licensee and hearing the licensee's final argument, the director or his/her designee shall render a decision as to whether or not the order will stand. If the director reaffirms the order, it shall be scheduled for a hearing before the full commission as provided in section (3) of this rule.

(3) Emergency orders issued pursuant to section (1) of this rule, except those that have been rescinded by the director after an informal hearing provided for in section (2), shall be presented to the commission at its next meeting where a hearing will be conducted to determine the validity of the issuance of the order. The hearing shall be commenced within seven (7) days of the service of notice of the emergency order upon the licensee unless sufficient cause can be shown as to why a hearing cannot be commenced within that time. Under no circumstance shall such hearing be commenced more than fourteen (14) days after service of notice of the emergency

order unless a delay is requested by the licensee. The commission shall preside over the hearing which shall be conducted in accordance with the procedures set forth in 11 CSR 45-13.060. The commission may designate a hearing officer to direct the hearing and rule on evidentiary matters. However, the hearing officer's rulings shall be advisory only and may be overruled by the commission. Upon conclusion of oral arguments and evidentiary presentations, the commission shall determine whether sufficient cause exists to uphold the proposed emergency order.

(4) If the commission finds there are facts sufficient to support a finding that the alleged conduct occurred, that it poses an immediate threat to the public health, safety or welfare and that the effective regulation of gaming demands the action, it shall adopt a resolution ratifying the emergency order. The commission may amend the language in the emergency order based upon the evidence presented at the hearing. The commission's resolution shall establish the length of term for the order by establishing an expiration date. The expiration date may be a specific date, dependent on the completion of specified remedial actions or dependent on the outcome of a proposed disciplinary action issued by the commission pursuant to 11 CSR 45-13.050. If the expiration date is dependent upon specific remedial actions, the commission shall provide a detailed description of the remedies in the resolution and shall establish procedures whereby the licensee can demonstrate that it has complied with the required remedies. Any resolution adopted to ratify the emergency order is a final decision of the commission for purposes of appeal.

(5) If the commission finds that there is insufficient cause to support the order, it shall adopt a resolution rescinding the emergency order and the licensee's privileges shall be reinstated.

(6) Resolutions ratifying or rescinding emergency orders adopted pursuant to the provisions of this rule shall not prohibit the commission from instituting a proposed disciplinary action using the procedures set forth in 11 CSR 45-13.050.

(7) Copies of the final commission order shall be served on the licensee by certified or overnight express mail, postage prepaid; or by personal delivery.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994.* *Emergency rule filed July 30, 1999,*

effective Aug. 9, 1999, expired Feb. 24, 2000. Original rule filed Dec. 17, 1999, effective July 30, 2000.

**Original authority: 313.004, RSMo 1993, amended 1994; 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; 313.800, RSMo 1991; amended 1992, 1993, 1994; 313.805, RSMo 1991, amended 1992, 1993, 1994.*

11 CSR 45-13.060 Proceedings

PURPOSE: This rule establishes procedures for conducting hearings.

(1) The commission may issue subpoenas and subpoena *duces tecum* for the production of books, records and other pertinent documents, or upon written request to appear and offer testimony.

(A) Upon written request served on a party, the requesting party shall be entitled to the name and address of any witness who may be called to testify on behalf of a party and all documents or other material in the possession or control of a party which the party reasonably expects will be introduced into evidence, the party shall be under a continuing duty to update this list.

(B) Upon the request of a party and for good cause shown the hearing officer may allow other discovery to be conducted.

(2) The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence including, but not limited to:

- (A) Why s/he should be licensed;
- (B) Why s/he should not be disciplined or excluded; and
- (C) Why s/he does not owe a tax or penalty.

(3) All testimony shall be given under oath or affirmation.

(4) Both parties may present an opening statement on the merits. Petitioner proceeds first.

(5) The petitioner shall then present its case-in-chief.

(6) Upon conclusion of the petitioner's case-in-chief, the respondent may move for a directed finding. The hearing officer may hear arguments on the motion or may grant, deny or reserve decision on the motion, without argument.

(7) If no motion for directed finding is made, or if the motion is denied or decision

reserved on the motion, the respondent may present its case.

(8) Each party may conduct cross-examination of adverse witnesses.

(9) Upon conclusion of the respondent's case, the petitioner may present evidence in rebuttal.

(10) Both parties may present closing argument. The petitioner proceeds first, then the respondent and after that the petitioner may present rebuttal argument.

(11) The parties may request, or the hearing officer may require, that the parties submit briefs.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994.* *Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998.*

**Original authority: 313.004, RSMo 1993, amended, 1994, 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; and 313.800 and 313.805, RSMo 1991, amended 1993.*

11 CSR 45-13.065 Settlements

PURPOSE: This rule establishes the procedures for settlements and settlement offers.

(1) The parties may propose settlement agreements to the hearing officer or to the commission at any stage of the proceedings, including prior to the entry of a final order or prior to the initiation of the proceedings.

(2) All settlement agreements shall be in writing, signed by the parties, and accurately reflect all the terms of the settlement, including the facts agreed to by the parties constituting the grounds for the action proposed in the settlement.

(3) The settlement agreement shall be presented to the commission for its approval or disapproval. If the commission approves the settlement offer it will become the final commission order. If the commission disapproves the settlement offer the parties shall be notified and the settlement agreement and any



documents solely relating to the offer shall not constitute part of the record.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 1994. Emergency rule filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Original rule filed Dec. 12, 1997, effective July 30, 1998.*

**Original authority: 313.004, RSMo 1993, amended 1994, 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; and 313.800 and 313.805, RSMo 1991, amended 1993.*

11 CSR 45-13.070 Transmittal of Record and Recommendation to the Commission

PURPOSE: This rule establishes the procedures for transmittal of the record and recommendations from the hearing officer.

- (1) The record shall consist of the following:
 - (A) The commission’s notice to petitioner, the Request for Hearing and all motions and rulings on the Request of Hearing;
 - (B) All evidence received;
 - (C) A statement of matters officially noticed;
 - (D) Offers of proof, objections and ruling on them; and
 - (E) The recommendations and any findings of fact and conclusions of law made by the hearing officer.

(2) Oral proceedings, or any part of them, shall be recorded stenographically or by other means which adequately insure the preservation of the testimony or oral proceedings and shall be transcribed on request of any party. The transcript shall be paid for by the requesting party.

(3) Upon conclusion of the hearing, the hearing officer shall issue to the commission written Findings of Fact and Conclusions of Law and his/her recommendations. Findings of Fact shall be based exclusively on the evidence and on matters officially noticed.

- (4) Final Commission Order.
 - (A) The commission shall review the entire record and shall render a written decision on the merits which shall contain findings of fact and conclusions of law, and after that will issue a final Commission Order. The commission may adopt the findings of fact and conclusions of law issued by the hearing officer.
 - (B) As part of the final Commission Order, the commission may assess hearing costs, not to exceed fifty dollars (\$50), against any

party who without good cause fails to appear at a hearing conducted pursuant to this chapter.

(C) Copies of the final Commission Order shall be served on a petitioner by certified or overnight express mail, postage prepaid, or by personal delivery.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998. Amended: Filed Dec. 7, 2001, effective June 30, 2002.*

**Original authority: 313.004, RSMo 1993, amended 1994; 313.052, RSMo 1994; 313.560, RSMo 1986, amended 1987; 313.800, RSMo 1991, amended 1993, 1994; and 313.805, RSMo 1991, amended 1993, 1994, 2000.*