



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: August 18, 2020

TIME: 2:12 PM

WSR 20-17-130

Agency: Department of Commerce

Original Notice

Supplemental Notice to WSR

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-15-090 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Updating Chapter 194-24 WAC to include standards, testing methods, listing requirements, and marking requirements for air compressors, portable air conditioners, and uninterruptable power supplies; to define distributor, distribute, and manufacturer; to provide for enforcement of violations, assessment of civil penalties, and review of penalty decisions for appliance standards; to modify marking and listing requirements for residential ventilating fans; and to modify the date of manufacture for electric storage water heater requirements.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 23, 2020	1:00		Remote testimony will be an option. Hearing information can be found on Commerce's appliance webpage: https://www.commerce.wa.gov/growing-the-economy/energy/appliances/

Date of intended adoption: September 30, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Sarah Vorpahl

Address: Washington State Department of Commerce, P.O. Box 42525, Olympia, WA 98504

Email: Appliances@commerce.wa.gov

Fax:

Other:

By (date) September 23

Assistance for persons with disabilities:

Contact Austin Scharff

Phone: 360.764.9632

Fax:

TTY:

Email: Austin.scharff@commerce.wa.gov

Other:

By (date) September 21

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal updates Chapter 194-24 WAC to include standards, testing methods, listing requirements, and marking requirements for three new products: air compressors, portable air conditioners, and uninterruptible power supplies. The effective dates of the standards are based on date of manufacture, not the date of sale. Products already in stores or warehouses may be installed after the new standards take effect. The standards apply to manufacturers, distributors, retailers, and installers, rather than to individual consumers.

This proposal also extends the date of manufacture of electric storage water heaters to July 1, 2021, to account for supply-chain disruptions caused by COVID-19. This extension should provide manufacturers time to bring compliant products to market, which is in the public interest by providing more options and competition.

Definitions of “distributor,” “distribute,” and “manufacturer” are being added to bring greater clarity to the persons and transactions begin regulated under Chapter 194-24 WAC.

Reasons supporting proposal: The proposed rules implement statutory changes to our existing state standards to maintain consistency with other comparable standards in other states. These standards represent a cost-effective strategy to protect consumers and businesses and strengthen the state’s economy. Efficient products save energy and water, reduce long-term operating costs, and cut greenhouse gas emissions. The extension in effective date of water heater requirements is provided to overcome supply-chain disruptions caused by COVID-19.

Statutory authority for adoption: RCW 19.260.070, RCW 19.260.040; RCW 19.260.080

Statute being implemented: Chapter 19.260 RCW

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Sarah Vorpahl	1011 Plum Street SE P.O. Box 42525 Olympia, WA 98504-2525	360 680-6000
Implementation:	Washington Department Commerce	1011 Plum Street SE P.O. Box 42525 Olympia, WA 98504-2525	360 407-6000
Enforcement:	Washington Department of Commerce	1011 Plum Street SE P.O. Box 42525 Olympia, WA 98504-2525	360 407-6000

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name:

Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: The Washington State Dept. of Commerce is not a listed agency under RCW 34.05.328(5)(a)(i)

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Signature:

Date: 8/18/20

Name: Dave Pringle

Title: Rules Coordinator

A handwritten signature in black ink that reads "Dave Pringle". The signature is written in a cursive style with a large, stylized 'D' and 'P'.

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-030 Definitions. The definitions in chapter 19.260 RCW apply throughout this chapter.

(1) The following terms have the same meaning as used in the California Rule:

- (a) Showerheads;
- (b) Tub spout diverters;
- (c) Showerhead tub spout diverter combinations;
- (d) Lavatory faucets and replacement aerators;
- (e) Kitchen faucets and replacement aerators;
- (f) Public lavatory faucets and replacement aerators;
- (g) Urinals;
- (h) Water closets; and
- (i) Computers and computer monitors.

(2) "California Rule" means Title 20, Article 4, California Code of Regulations, in effect on January 2019, revised September 2019.

(3) "MAEDbS" means the modernized appliance efficiency database system established pursuant to section 1606(c) of the California Rule and maintained by the California energy commission.

(4) "Distribute" means to import, consign, buy or sell for re-sale, offer for sale, sell, barter, exchange, install for compensation or otherwise supply a product subject to the standards in this chapter or chapter 19.260 RCW.

(5) "Distributor" means a person who distributes.

(6) "Manufacturer" has the same meaning as used in the California Rule.

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-070 (~~(Penalties for noncompliance.)~~) Violations, assessment of civil penalties, and review of penalty decisions. (~~In applying the penalty provision in RCW 19.260.070(6), the department may consider each unit of a noncompliant product to be a separate violation.~~)

(1) First violations (notice of violation): When the department has determined that a manufacturer or distributor has violated chapter 19.260 RCW or this chapter, the director or their designee will issue a warning in the form of a notice of violation (NOV) for the first violation. The NOV will specify the time by which the manufacturer or distributor must cure the violation. If compliance is not achieved by the date established in the NOV, the department may consider the manufacturer's or distributor's continued noncompliance to constitute a subsequent violation.

(2) Repeat violations (notice of repeat violation and intent to assess penalties): If the department determines that the person receiving the NOV has committed a subsequent violation of chapter 19.260 RCW, the director or their designee may issue a notice of repeat violation and intent to assess penalties (NOI). The NOI informs the manufacturer or distributor of the portions of chapter 19.260 RCW and this chapter that have been violated and will include a description of how penalties will be calculated. A manufacturer or distributor receiving

an NOI has twenty-five days from the date notice is given to request an administrative hearing by following the process specified on the NOI. If the request for hearing is not timely filed with the department, the manufacturer or distributor waives its right to a hearing and the director or their designee may issue a final order assessing penalties described in the NOI.

(3) Penalty assessment: Repeat violations are subject to a civil penalty of not more than two hundred fifty dollars a day, and the department may consider each unit of a noncompliant product to be a separate violation.

(4) Unpaid penalties: Interest will accrue on civil penalties pursuant to RCW 43.17.240 if and when the debt becomes past due. If a penalty has not been paid by the due date, the department may assign the debt to a collection agency as authorized by RCW 19.16.500 or take other action to pursue collection as authorized by law. If referred to a collection agency, the department may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.

(5) Administrative hearings: After receiving a timely request for an administrative hearing, the department may refer the matter to the office of administrative hearings (OAH). Administrative hearings will be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, the model rules of procedure, chapter 10-08 WAC, and the procedural rules adopted in this section. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this section, the procedural rules adopted in this section take precedence.

(6) Initial orders to become final orders. Initial orders issued by the presiding officer will become final without further agency action unless, within twenty days:

(a) The director determines that the initial order should be reviewed; or

(b) A party to the proceeding files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(7) Reply to a petition for review. If a timely petition for review of an initial order is filed, other parties to the proceeding may file a reply to the petition for review. The reply shall be filed with the office where the petition for review was filed within twenty days of the date of service of the petition and copies shall be served upon all other parties or their representatives at the time the reply is filed.

(8) Agency review of an initial order. If the director determines the initial order should be reviewed or a petition for administrative review has been timely filed, the director may do one or more of the following: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director or their designee shall issue a final order that can affirm, modify, or reverse the initial order. The final order will be served on all parties.

(9) Judicial review: A final order entered pursuant to this section is subject to judicial review pursuant to RCW 34.05.510 through 34.05.598.

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-150 Residential ventilating fans. (1) **Scope.** This rule applies to new residential ventilating fans manufactured on or after January 1, 2021.

(2) **Standard.** Residential ventilating fans must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

(3) **Testing.** Residential ventilating fans must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

(4) **Listing.** ~~((Each manufacturer must cause to be listed each residential ventilating fan, by model number, in the ENERGY STAR® product database.))~~ There is no listing requirement for this product.

(5) **Marking.** ~~((Every unit of every residential ventilating fan must have an ENERGY STAR® label.))~~ There is no marking requirement for this product.

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-180 Electric storage water heaters. (1) **Scope.** This rule applies to new electric storage water heaters manufactured on or after ~~((January))~~ July 1, 2021. The effective date of the rule is suspended until January 1, 2022, for electric storage water heaters other than heat pump type water heaters.

(2) **Standard.** Electric storage water heaters must have a modular demand response communications port compliant with:

(a) The March 2018 version of the ANSI/CTA-2045-A communication interface standard, or a standard determined by the department to be equivalent; and

(b) The March 2018 version of the ANSI/CTA-2045-A application layer requirements.

The interface standard and application layer requirements required in this subsection are the versions established in March 2018.

(3) Upon written request by a manufacturer, the department will determine whether an alternative communications port and communication interface standard are equivalent for the purposes of subsection (2) of this section.

(a) Any requested alternative must use a standard that is open and widely available and must provide the demand response functions provided using the standards identified in subsection (2) of this section.

(b) A request for designation of a standard must provide technical documentation demonstrating that the standard satisfies the requirements in (a) of this subsection and must describe any industry or stakeholder process used in developing the standard. The department will provide reasonable opportunity for input by utilities, manufacturers, technical experts and other interested stakeholders prior to determining whether the proposed standard is equivalent. The depart-

ment will make available on a publicly accessible website any standard that it determines to be equivalent.

(4) **Testing.** There is no test method required for this product.

(5) **Listing.** There is no listing requirement for this product.

(6) **Marking.** Every unit of every electric storage water heater must have a label or marking indicating compliance with the standard in this section. The format and content of the label or marking must be approved in advance by the department.

NEW SECTION

WAC 194-24-185 Air compressors. (1) **Scope.** This rule applies to new air compressors manufactured on or after January 1, 2022, through January 9, 2025.

(2) **Standard.** Air compressors that meet the twelve criteria listed on page 350 to 351 of the "energy conservation standards for air compressors" final rule issued by the United States Department of Energy on December 5, 2016, must meet the requirements in Table 1 on page 352 in accordance with the instructions on page 353.

(3) **Testing.** Air compressors must meet the test criteria as measured in accordance with the "uniform test method for certain air compressors" under 10 C.F.R. Part 431 (Appendix A to Subpart T) as in effect on July 3, 2017.

(4) **Listing.** Each manufacturer must cause to be listed each air compressor, by model number, in MAEDbS.

(5) **Marking.** Every unit of every air compressor must comply with the requirements of Section 1607 of the California Rule.

NEW SECTION

WAC 194-24-190 Portable air conditioners. (1) **Scope.** This rule applies to new portable air conditioners manufactured on or after February 1, 2022, through January 9, 2025.

(2) **Standard.** Portable air conditioners must have a combined energy efficiency ratio that is greater than or equal to:

$$1.04 \times \frac{SACC}{(3.7117 \times SACC^{0.6384})}$$

where "SACC" is seasonally adjusted cooling capacity in British thermal unit/hour (Btu/hr).

(3) **Testing.** Portable air conditioners must meet the testing criteria as measured in accordance with the test methods prescribed in 10 C.F.R. Section 430.23 (Appendix CC to Subpart B of Part 430) in effect as of January 3, 2017, as updated by the correction notice at 84 Fed. Reg. 5346 (February 21, 2019).

(4) **Listing.** Each manufacturer must cause to be listed each portable air conditioner, by model number, in MAEDbS.

(5) **Marking.** Every unit of every portable air conditioner must comply with the requirements of Section 1607 of the California Rule.

NEW SECTION

WAC 194-24-195 Uninterruptible power supplies. (1) **Scope.** This rule applies to new uninterruptible power supplies manufactured on or after January 1, 2021, through January 9, 2022.

(2) **Standard.** Uninterruptible power supplies that utilize a NEMA 1-15P or 5-15P input plug and have an AC output must have an average load adjusted efficiency that meets or exceeds the values shown on page 193 of the prepublication final rule "Energy Conservation Program: Energy Conservation Standards for Uninterruptible Power Supplies" issued by the United States Department of Energy on December 28, 2016.

(3) **Testing.** Uninterruptible power supplies must meet the testing criteria as measured in accordance with the test methods prescribed in Appendix Y to Subpart B of Part 430 of Title 10 of the Code of Federal Regulations "Uniform Test Method for Measuring the Energy Consumption of Battery Chargers" in effect as of January 11, 2017.

(4) **Listing.** There is no listing requirement for this product.

(5) **Marking.** There is no marking requirement for this product.