



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 19, 2020

TIME: 4:39 PM

WSR 20-21-083

Agency: Washington State Department of Commerce

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Updating Chapter 194-24 WAC to include standards, testing methods, listing requirements, and marking requirements for air compressors, portable air conditions, and uninterruptable power supplies; to define distribute, and manufacturer; to provide for enforcement of violations, assessment of civil penalties, and review of penalty decisions for appliance standards; and to modify marking and listing requirements for residential ventilating fans.

Citation of rules affected by this order:

New: WAC 194-24-185, -190, and -195
 Repealed:
 Amended: WAC 194-24-030, -070,-150
 Suspended:

Statutory authority for adoption: RCW 19.260.070, RCW 19.260.040

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-17-130 on August 18, 2020 (date).
 Describe any changes other than editing from proposed to adopted version: Commerce is withdrawing the proposed amendment to WAC 194-24-180.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>3</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted on the agency's own initiative:

New	<u>0</u>	Amended	<u>2</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted using:

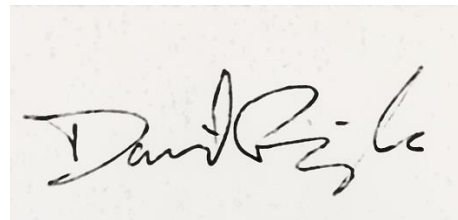
Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: October 2, 2020

Name: Dave Pringle

Title: Policy Advisor

Signature:



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.

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.

Concise Explanatory Statement – Appliances Rulemaking

WAC 194-24

Agency Response to Stakeholder Comments on Proposed Rules

October 19, 2020

Reason for Rule Adoption

The proposed rules implement statutory changes to our existing state standards to maintain consistency with comparable standards in other states and to provide a process for the implementation and enforcement of the chapter. The 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.

Difference between the Proposed and Adopted Rule

The adopted rule contains no changes from the proposed rule sections WACs 194-24-030, -070, -150, -185, -190, and -195.

Commerce is withdrawing the proposed amendment to WAC 194-24-180. Commerce concluded that the extension provided for by the proposed amendment was neither prudent nor imminently necessary for manufacturers to bring compliant products to the market and was therefore unlikely to provide more options to benefit Washington consumers. Therefore, Commerce believes it is not in the public interest to adopt the extension.

Comments Received Regarding the Proposed Rule – Summary and Response

We greatly appreciate the written and oral feedback we received from stakeholders during our public hearing and throughout this rulemaking. We look forward to continued progress in implementing this legislation.

Rule or Topic	Comment	Agency Response
Ventilating fans	We agree with Commerce on removing the ENERGY STAR listing and marking requirements for residential ventilating fans.	Thank you for your comment.
Ventilating fans	Confer with the Home Ventilating Institute (HVI) about the possible use of the Certified Product Directory.	No language change requested. Commerce is currently working with HVI to understand how we might use their database in the future for listing requirements under WAC 194-24-150.

Rule or Topic	Comment	Agency Response
Electric storage water heater	Retain compliance date in the existing rule.	<p>Commerce is withdrawing the proposed amendment to WAC 194-24-180, thereby retaining the compliance date in the existing rule.</p> <p>One manufacturer, Bradford White Corporation, requested the extension of the effective date in July 2020 due to continued concerns about the potential for future COVID-19 related delays. Two other manufacturers, Rheem and A.O. Smith, testified against the proposed extension, saying it would disrupt plans to bring the product to market, which would lead to costly inventory imbalances, re-marketing, forgone professional training opportunities, and customer disruptions. The NW Energy Coalition stated support for the package of rules as a whole, but also expressed a desire to see the electric storage water heaters come to market as soon as possible and ensure that the rules did not prevent adoption of new programs. The Northwest Energy Efficiency Alliance initially expressed support for the extension but then clarified their position as being against the extension after hearing from Rheem and A.O. Smith.</p>
Electric storage water heater	Extend compliance date as proposed.	<p>After considering all comments on this issue, Commerce believes that extending the compliance date is not in the public interest and has chosen to withdraw the proposed rule amendment that would extend the compliance date.”</p>
Uninterruptible power supplies	This appliance is preempted.	<p>Washington adopted the state standard prior to US Department of Energy (DOE) publication of a final rule in the Federal Register and therefore, state standards for the</p>

Rule or Topic	Comment	Agency Response
		product are not preempted until the DOE's standard takes effect.