Proposed New Rule:
WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

January 2015 - Final Action; Attorney General Opinion Received
December 2014 - No Meeting
August through November 2014 – Study Session
July 2014 - Further Discussion; Placed on hold for Attorney General Opinion
June 2014 - Not on Agenda for Discussion
May 2014 - Further Discussion
April 2014 - File for Further Discussion
March 2014 - Study Session

ITEM 5: January 2015 Commission Meeting Agenda.
Who proposed the new rule?
John Lowmon, licensed distributor representative for Magic Distributing.
Proposed Change

In January 2014, we received a petition from a licensed distributor representative requesting the Commission adopt a new rule to require licensed manufacturers of bingo and pull-tab products and equipment to make their products and equipment available to all distributors.

On June 10, 2014, the petitioner submitted a revised rule that sets out the following:

- Manufacturers of bingo and pull-tab products and equipment must make their products and equipment available to all distributors; and
- In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis; and
- Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the Commission.

The distributor representative states in his petition that there are licensed distributors who are unable to purchase bingo and pull-tab products from manufacturers.

Bold = Addition made after the July 2014 Commission meeting.

At the July 2014 Commission meeting, the Commissioners voted (3:2) to delay final action and request an informal Attorney General Opinion on whether the Commission has statutory authority to adopt the petitioner's rule. Two questions were asked:

1. **Does the Commission have authority to adopt a rule requiring manufacturers to sell their product to all distributors?**
2. **Can the Commission adopt a rule requiring manufacturers of specific types of product to all distributors?**

On December 2, 2014, Commissioners received the opinion (attached) that the Commission has implied statutory authority to impose restrictions on licensees if those restrictions are essential to the legislative purpose of the Gambling Act, for example to "keep the criminal element out of gambling" (RCW 9.46.010). The Assistant Attorney General opined a court would likely find a rule requiring all manufacturers to sell their product to all distributors arbitrary and capricious. The Assistant Attorney General found on the available facts, it is unlikely that a court would conclude that such a rule is necessary to effectuate the Commission's express statutory authority to regulate gambling.

Over the years, staff have followed-up on several complaints regarding this issue and determined there were no violations of the Gambling Act. The Attorney General Office also reviewed several of the complaints and found no violations of state consumer protection or anti-trust laws.

Attachments:

- **Attorney General's Informal Opinion dated December 2, 2014.**
- **Commission's request for an Attorney General's Opinion dated August 22, 2014.**
- Original petition submitted by petitioner received January 31, 2014.
- E-mail from petitioner dated June 10, 2014, with revised petition.
- Small Business Economic Impact Statement.
- Minnesota regulations.
- List of the 12 bingo and pull-tab product manufacturers.
- Stakeholder letter dated March 27, 2014.
- Stakeholder letter dated April 16, 2014, sent to 12 bingo and pull-tab manufacturers, H & H Pull-Tab, and the National Association of Fundraising Ticket Manufacturers (NAFTM).
- Responses supporting, opposing and neutral to the petition (see below for details).
- Memo dated August 1, 2005, from Neal Nunamaker to the Commissioners.
- #1: 2005 - Original credit and pricing rules package, 3 rules repealed and 2 amended.
- #2: 2006 - The 2 credit rules that were amended in 2005 were repealed.
- #3: 2006 - Magic Distributing Petition summary and proposed WAC, and Commission denial letter.
- #4: 2007 - John Lowmon Petition summary and proposed WAC, and Commission denial letter.
- #5: 2008 - 4 remaining credit and pricing WACs overlooked during previous rules packages were repealed during the Rules Simplification Project.
- #6: 2011 - Bob Bearden Petition summary and proposed WAC, and Commission denial letter.
- Excerpts from Commission meeting minutes when this topic was previously discussed: June, August and September 2005; March, April, June and July 2006; January 2007; September 2009; July 2011.

History of Rule

In 1973, the first rule concerning manufacturers of gambling equipment, distributors and operators was filed. It was WAC 230-12-200 Prohibited practices-contracts-gifts-rebates, etc.

In 1977, this rule was amended to add the following sentences: Each licensed manufacturer or distributor of gambling devices, equipment or other gambling paraphernalia selling such items or related services in the state of Washington shall make such items or services available to all persons licensed to sell or operate such items or receive such services in Washington without discrimination and on the same prices and terms for all persons: Provided, that a manufacturer, by policy of the manufacturer, may choose to sell and provide services only to distributors.

In 1998, these two new rules were adopted:

- WAC 230-12-330 Availability of gambling equipment and related products and services – prices - contracts – discounts – restrictions – exceptions. This rule required manufacturers and distributors to make their products and services available to all licensees without discrimination for the same price and terms with some exceptions.
- WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related service - credit prohibited – exceptions. This rule prohibited manufacturers and distributors from offering credit to operators in the sale of gambling equipment, devices, supplies, and services, but did allow the use of trade accounts with certain conditions spelled out in rule.

The Commission has discussed rules about manufacturers being required to sell to all distributors numerous times since 2005. On October 10, 2005, WAC rules requiring licensed manufacturers to make their products and services available to all licensees without discrimination were repealed. The Commission repealed the discriminatory pricing restrictions in 2005 because, among other reasons, these restrictions did not have a direct impact on gambling. In 2009, staff reported that complaints about discriminatory pricing from licensees were ultimately unfounded.

Licensees have submitted three petitions (listed below) to reinstate the rules. Each time, the Commission denied the petitions.

- In 2006, Magic Distributing submitted a rule petition requesting that discriminatory pricing restrictions be reinstated.
- In 2007, John Lowmon, a distributor representative from Magic Distributing, submitted a rule petition that would require all manufacturers to sell their products to any licensed distributor without prejudice, to accept any cash purchase, and authorize the Commission to indefinitely revoke the license of any licensee who interfered with the rule.
- In 2011 Robert Bearden, representing various licensed and unlicensed, charitable and nonprofit organizations, submitted a rule petition that would require manufacturers to make their products and services available to all distributors without discrimination.

The three petitions were denied (not filed for discussion), in part, for the following reasons:

- Regulating business relationships between distributors and manufacturers is outside the Commission's authority and mission;
- There are other legal remedies the petitioner could pursue other than rely on Commission rules; and
- Before repealing the credit rules in 2005, the Commissioners carefully considered all arguments and had given them due consideration over the course of several Commission meetings.

Impact of the Revised Proposed Change

The petitioner's revised proposal would:

- Require manufacturers of bingo and pull-tab products to provide products to all distributors.
- In absence of credit, manufacturers would be required to make their products available on a cash basis.
- Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to the Commission.

A Small Business Economic Impact Statement was prepared and is attached.

Regulatory Concerns

In order for the Commission to fully regulate this area, staff would have to add back provisions for bingo and pull-tab manufacturers that are substantially similar to the credit/pricing rules that were repealed in 2005. For example, subsection (1) states the credit terms are between the manufacturer and distributor and will not be monitored by us. In addition, subsection (4) says if a manufacturer denies selling to a distributor that information must be provided in writing to the distributor with a copy to us, putting the Commission back into monitoring sales.

State by State Research:

Minnesota is currently the only state that has a regulation stating the following: No licensed manufacturer may refuse to sell gambling equipment to a licensed distributor unless the distributor is delinquent on any payment owed to the manufacturer (relevant portions of Minnesota's rules are attached).

Staff confirmed that the following states do not have any rules or regulations requiring manufacturers to sell to all distributors: Arizona, California, Colorado, Delaware, Georgia, Iowa, Kentucky, Michigan, Nevada, Ohio, Oklahoma, Oregon and Virginia.

In addition, manufacturers verified there were no other states besides Minnesota with rules requiring manufacturers to sell to all distributors.

Resource Impacts

Before the repeal of the pricing and credit restrictions in October 2005, staff spent an equivalent of .5 FTE enforcing these regulations.

Staff would need to create a new compliance program for manufacturers and distributors that is consistent with these rules.

In addition, when complaints are received, staff would be required to investigate them. Staff believes this will initially require .25 FTE until the program is established and evaluated.

Policy Considerations

- The Commission repealed discriminatory pricing restrictions in 2005 because these restrictions did not have a direct impact on the gambling activity (See September 2005 Commission meeting minutes, which are attached).
- Whether a problem exists that justifies rules that restrict a business' ability to set their own prices and make their own decisions as to credit, purchasing requirements, etc.
- There are other legal remedies that the petitioner could pursue other than rely on Commission rules.
- Before repealing the credit rules in 2005, the Commissioners carefully considered all arguments for three months, and had given them due consideration.

Statements Supporting the Proposed Rule Change

Letters and e-mails from:

- Lowell Haugen, CEO, Gasperetti's Distributing, licensed distributor (one letter and one e-mail).
- Steve Thompson, distributor representative for Magic Distributing.
- Ellie Coffey, Owner, Magic Distributing, licensed distributor.
- Walt Antoncich, Owner, Tri-Focus Enterprises, licensed distributor.
- 19 letters signed by operators submitted by the petitioner.

At the April 2014 Commission meeting, the following testified in support of the petition:

- John Lowmon, the petitioner.
- Ellie Coffey, Owner of Magic Distributing.
- Lowell Haugen, CEO Gasperetti's Distributing.
- Patrick Buck, distributor representative for Gasperetti's Distributing.
- Monty Harmon, licensed service supplier.

At the May 2014 Commission meeting, the following testified in support of the petition:

- John Lowmon, the petitioner;
- Walt Antoncich, Owner, Tri-Focus Enterprises, licensed distributor; and
- Don Harris, H & H Distributing, licensed distributor.

At the July 2014 Commission meeting, the following testified in support of the petition:

- John Lowmon, the petitioner;
- Ellie Coffey, Owner of Magic Distributing; and
- Lowell Haugen, CEO, Gasperetti's Distributing, licensed distributor.

Statements Opposing the Proposed Rule Change
Letters and e-mails from: • Wendy Winsor, CFO, WOW Distributing, licensed distributor. • Melanie Keser, President, ZDI Gaming, licensed manufacturer and distributor. • Fred Graf, Vice President, Arrow International, Inc., licensed manufacturer. • Mary Magnuson, National Association of Fundraising Ticket Manufacturers (two letters). • Dan McCoy, McCoy's Distributing, Inc., licensed distributor. • Scott Johnson, Spokane Pull-Tab and Bingo Supply, licensed distributor. At the April 2014 Commission meeting, the following testified against the petition: • Lane Gormly, Arrow International, manufacturer. • Jay Gerow, ZDI Gaming, manufacturer and distributor. At the May 2014 Commission meeting, Lane Gormly, Arrow Manufacturing, testified against the petition. At the July 2014 Commission meeting, Mary Magnuson, National Association of Fundraising Ticket Manufacturers testified against the petition.
Other Statements Regarding the Proposed Rule Change
• **Nicholas Scarpelli, attorney for TABS Plus, response to Gasperetti's letter.** • Mark Greenspan, President, Free State Products, licensed manufacturer, stating this change would not affect him.
Licensees Directly Impacted By the Change
Manufacturers, distributors and operators of pull-tab and bingo products and equipment.
Staff Recommendation
Not approve.
Proposed Effective Date for Rule Change
The petitioner requests the new rule become effective 31 days from filing.

Original version filed for discussion at the May 2014 Commission meeting.

New Section:

WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

(1) Manufacturers must make all bingo and pull-tab products and equipment available to all distributors for the same price and terms. Credit terms are between the manufacturer and distributor and are not to be monitored by us.

(2) In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis.

(3) Manufacturers must not dictate purchasing requirements to distributors, such as the quantity of items and product mix to be purchased.

(4) Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to us.

Revised version submitted by the petitioner for the July 2014 Commission meeting.

New Section:

WAC 230-16-003 Bingo and pull-tab manufacturers must make related products and equipment available to all distributors.

(1) Manufacturers must make all bingo and pull-tab products and equipment available to all distributors ((~~for the same price and terms~~)). Credit terms are between the manufacturer and distributor and are not to be monitored by us.

(2) In the absence of an established line of credit with terms, all bingo and pull-tab products and equipment must be made available on a cash basis.

~~(3) Manufacturers must not dictate purchasing requirements to distributors, such as the quantity of items and product mix to be purchased.~~

(3) Any denial by a manufacturer to sell to a distributor must be detailed and provided in writing to the distributor with a copy provided to us.

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

December 2, 2014

The Honorable Chris Stearns
Chair, Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504-2400

Dear Chair Stearns:

By letter previously acknowledged, your predecessor, Mr. Mike Amos, requested an opinion on the following questions, which I paraphrase for clarity:

1. **Does the Gambling Commission have authority to adopt an administrative rule requiring licensed manufacturers of gambling products to sell their products to all licensed distributors?**

2. **Can the Gambling Commission adopt an administrative rule requiring licensed manufactures of specific types of gambling products to sell its products to all licensed distributors?**

BRIEF ANSWER

The Gambling Commission has implied statutory authority to impose restrictions on licensed manufacturers and licensed distributors of gambling equipment and products if those restrictions are found to be essential to achieving the declared legislative purpose of the Gambling Act. However, based on the information you have provided, I see no evidence of a regulatory need for a blanket requirement that all licensed manufacturers must sell products to all licensed distributors. If there were evidence of a need for these rules related to the Commission's statutory authority, e.g., "to keep the criminal element out of gambling" (RCW 9.46.010) or achieve another of the Commission's statutory purposes, the result would likely be different. But absent such evidence, a rule would likely be found to be invalid if challenged. A court, applying the standards set out in the Administrative Procedure Act, RCW 34.05.570(2)(c), would likely find that such a blanket requirement—applying to all licensed manufactures of all gambling products—goes beyond the implied authority of the Commission to regulate gambling, or is arbitrary and capricious absent a showing that a rule is needed to accomplish the responsibilities of the Commission.

Limiting the rule to specific manufacturers of products, for example pull tab and bingo paper manufacturers, might improve the chances of a court upholding the administrative rule if

there was a specific factual basis demonstrating the regulatory need for such a rule. However, based on the available facts, it seems equally likely that a court would conclude that a more targeted rule is invalid.

BACKGROUND

The Gambling Commission in the past has imposed "price and terms" restrictions on licensed manufactures and distributors of gambling equipment and products. *See, e.g.*, former WAC 230-12-330 (Supp. 1998) (Rule 330). Former Rule 330 provided in relevant part that "[m]anufacturers and distributors shall make their products and services available to all licensees without discrimination" and that, subject to certain exceptions, manufacturers of gambling equipment or related products must offer those products for sale to any licensed distributor "for the same price and terms."

The Commission repealed former Rule 330 in 2005. The decision to repeal former Rule 330 was primarily a policy decision made after considering stakeholder testimony. *See* Excerpt from June 2005 Commission Meeting Minutes.[1]

Since former Rule 330 was repealed, the Commission has received and addressed several petitions from the public asking the Commission to adopt administrative rules reinstating price and terms restrictions on manufacturers of gambling related products. The Commission denied petitions filed in 2006, 2007, and 2011. The most recent petition was filed in January 2014 and asks the Commission to adopt a rule requiring licensed manufacturers of bingo and pull-tab products to make those products available to all distributors on an equal basis. The Commission has initiated a rule-making proceeding in response to that 2014 petition. Your predecessor asked these questions to help the Commission determine the scope of its authority to require licensed manufacturers of gambling products to sell to all licensed distributors, and whether that requirement can be limited to specific types of manufacturers of gambling products such as pull-tab and bingo paper.

ANALYSIS

1. Does the Gambling Commission have authority to adopt an administrative rule requiring licensed manufacturers of gambling products to sell their products to all licensed distributors?

The Gambling Commission, as an administrative agency, possesses only those powers expressly granted to it by the legislature or necessarily implied from statutory grants of

[1] This excerpt is available online as part of the Proposed Rules Changes on the Commission's July 2014 Meeting webpage. http://www.wsgc.wa.gov/agenda/july.aspx (follow "Proposed Rule Changes" to open large .pdf document, then GoTo page 140 titled "Excerpt from June 2005 Commission Meeting Minutes).

authority. *Washington Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 646, 62 P.3d 462 (2003); *Human Rights Comm'n v. Cheney Sch. Dist. 30*, 97 Wn.2d 118, 127, 641 P.2d 163 (1982). "Administrative agencies do not have the power to promulgate rules that would amend or change legislative enactment." *Washington Pub. Ports Ass'n*, 148 Wn.2d at 646. However, an agency may promulgate rules to "fill in the gaps" where necessary to effectuate the general statutory scheme. *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975); AGO 1978 No. 21. If an enabling statute does not authorize a particular agency rule, either expressly or by necessary implication, "that [rule] must be declared invalid." *Kabbae v. Dep't of Soc. & Health Servs.*, 144 Wn. App. 432, 440, 192 P.3d 903 (2008).

Judicial review of an agency rule is governed by the state Administrative Procedure Act. Agency rules are presumed valid; therefore, the burden of demonstrating the invalidity of an agency rule is on the party challenging the rule. RCW 34.05.570(1)(a). An administrative rule is invalid if it (1) violates constitutional provisions, (2) exceeds the express or necessarily implied statutory authority of the agency, (3) was adopted without complying with the statutory rule-making procedures, or (4) is arbitrary and capricious. RCW 34.05.570(2)(c). A rule is arbitrary and capricious "if it is willful and unreasoning and taken without regard to the attending facts and circumstances." *Washington Indep. Tel. Ass'n v. Utils. & Transp. Comm'n*, 148 Wn.2d 887, 905, 64 P.3d 606 (2003). To answer your questions, my primary focus is on the second and fourth requirements, statutory authority and the arbitrary and capricious standards.

The starting point for analyzing the Gambling Commission's rule-making authority is the statute creating and empowering the Commission. The Commission is authorized by statute to implement and enforce the gambling laws of this state. The Commission has express authority to issue and revoke various types of licenses, including licenses permitting the manufacture of gambling devices for use within this state. RCW 9.46.070(4). The Commission also has the express authority to "regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter" and to "perform all other matters and things necessary to carry out the purposes and provisions of this chapter." RCW 9.46.070(11), (22). To further its ability to enforce the state's gambling laws, the Commission may "adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions" of RCW 9.46. RCW 9.46.070(14).

The Gambling Act does not expressly authorize the Commission to require licensed manufacturers to sell to all licensed distributors on an equal basis. Nor is there any express prohibition against such a requirement. Consequently, the analysis shifts to whether the proposed regulation is within the Commission's necessarily implied statutory authority.

An administrative rule is within the implied statutory authority of an agency if it promotes "those powers that are essential to the declared purpose of the legislation" and is "not

simply convenient, but indispensable to carrying out the legislative purpose." *In re Impoundment of Chevrolet Truck*, 148 Wn.2d 145, 156 n.10, 60 P.3d 53 (2002) (internal quotation marks omitted).

RCW 9.46.010 sets forth the legislative declaration of policy with respect to gambling. That policy "is to limit the nature and scope of gambling activities" by "strictly regulating and controlling such activities." *Edmonds Shopping Ctr. Assocs. v. City of Edmonds*, 117 Wn. App. 344, 353, 71 P.3d 233 (2003). More specifically, the declared purposes of the Gambling Act include "to keep the criminal element out of gambling," "to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control," and to "avoid restricting participation by individuals in activities and social pastimes . . . [that] are more for amusement rather than for profit[.]" RCW 9.46.010. The legislature has specifically declared that "[a]ll factors incident to the activities authorized in [RCW 9.46] shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end." RCW 9.46.010.

As noted above, the Commission has implied statutory authority to adopt administrative rules that are "indispensable to carrying out" the purposes of the Gambling Act. However, in the absence of compelling facts and circumstances, I see no reason why a blanket requirement that all licensed manufactures must sell to all licensed distributors on an equal basis would be necessary to effectuate the general statutory scheme or to promote the legislative purpose of the Gambling Act. Of course, if the Commission became aware of evidence that such a rule was necessary to achieve some legislative purpose recognized in the Gambling Act, this result might change. But the letter submitted by Mr. Amos offers no such evidence.

Similarly, in the absence of any factual showing that a rule regulating market participants is necessary, it is likely that a court would conclude that the proposed rule is arbitrary and capricious. My conclusions, however, are narrow and limited by the absence of any factual record that would support the need for such a rule. Unlike the Commission—an agency with authority to make rules—the Attorney General's Office does not possess expertise in regulation of gambling and does not gather the type of factual information that might, hypothetically, demonstrate that there is a need for an industry-wide regulation described by your question. Accordingly, my opinion is limited to the basic facts provided in your predecessor's letter.

2. Can the Gambling Commission adopt an administrative rule requiring licensed manufactures of specific types of gambling products to sell its products to all licensed distributors?

The follow-up question asks whether the Gambling Commission has the authority to adopt targeted rules requiring manufacturers of specific types of products such as pull tab and bingo paper to sell to all licensed distributors. Again, this question depends on the existence of facts that demonstrate to the Commission, with its expertise over gambling, that such a rule is

STATE OF WASHINGTON
GAMBLING COMMISSION
"Protect the Public by Ensuring that Gambling is Legal and Honest"

August 22, 2014

The Honorable Robert W. Ferguson
Washington State Attorney General
1125 Washington Street SE
Post Office Box 40100
Olympia, Washington 98504-0100

RE: Request for Attorney General's Opinion

Dear Attorney General Ferguson:

The Gambling Commission is seeking an informal Attorney General's Opinion regarding the Commission's authority to promulgate rules requiring sales of gambling products and equipment to licensees.

By way of background, the Commission received a petition for a new rule from a licensed distributor representative that would require licensed manufacturers of bingo and pull-tab products and equipment to make their products and equipment available to all distributors. Under the petitioner's proposed new rule, manufacturers must sell bingo and pull-tab products and equipment to all distributors, and must sell on a cash basis, "in the absence of an established line of credit with terms." Pull-tab and bingo products and equipment are the only products addressed in the petitioner's proposal.

The Commission repealed credit/pricing rules regulating business relationships between all manufacturers and distributors in October 2005. Since 2005, the Commission has received four separate rule petitions requesting that some form of the rules that were repealed in 2005 be reinstated. The Commission denied filing three of the past petitions in 2006, 2007, and 2011 based, in part, on concerns with respect to the Commission's authority regarding this subject.

We are requesting an informal Attorney General's Opinion addressing:

1) Whether the Commission has the authority to pass rules requiring sales of gambling products between licensees?

2) If the answer to the above question is yes, can the Commission apply the requirement to specific types of licensees (e.g. manufacturers of pull-tab and bingo supplies), but not to all licensees?

P.O. Box 42400 Olympia, Washington 98504-2400 (360)486-3440 (800)345-2529 FAX (360) 486-3625

Clarification of the Commission's authority in this area will help the state use resources more efficiently as we continue to receive rule petitions on this same topic. Thank you for your assistance. If you have any questions, please contact me at (509) 307-3412 or Director David Trujillo at (360) 486-3512.

Sincerely,

Mike Amos

Mike Amos
Commission Chair

Proposed Amendments:
WAC 230-05-001 Prorating or refunding of fees.
WAC 230-05-010 Returned checks.
WAC 230-06-140 Partial refund of license fees if gambling receipts limit not met.

January 2015 - Up for Discussion and Possible Filing
December 2014 - No Meeting
November 2014 - Study Session

ITEM 6 (a-c): January 2015 Commission Meeting Agenda.	Statutory Authority 9.46.070

Who proposed the rule change?

Staff.

Proposed Change

The proposed changes allow us to retain our processing costs for the following refunds:

- Overpayments; and
- Duplicate payments; and
- Prior year refunds (refunding the difference between the fees the licensee paid the previous year and the fees for the license class level actually met.)

The proposed change also increases the processing costs we charge for collecting non-sufficient fund payments.

History of Rule

Refunds:
WAC 230-05-001(4): This rule allows us to retain a portion of the license fees to offset our costs for processing and investigating applications that are denied, voluntarily withdrawn, and administratively closed.

WAC 230-05-001(5) and WAC 230-06-140(2): When licensees operate at a license class lower than their license, they can request a refund of the difference between the license class they operated at and the fee they paid.

NSF Recovery:
WAC 230-05-010: In 1990, this rule allowed us to collect $15 to process a nonsufficient fund check as payment of fees. In July 2005, the rule was amended to increase the fee to $30, which is what the fee is currently.

Impact of the Proposed Change

Refunds:
We issue refunds for the following reasons: prorated license fees, license limits not met, applications withdrawn or administratively closed, overpayment or duplicate payment, and refunding fees placed on deposit to complete an investigation or review.

The number and amount of refunds issued each year for overpayments, duplicate payments and license limits not met the previous year is summarized below:

Year	Total Refunds Issued	Total Refunded
2010	367	$167,482
2011	275	$113,044
2012	193	$78,314
2013	206	$70,483
2014 (thru Nov. 30)	228	$82,585

It takes staff time to process each of these refunds. Currently, licensees do not pay our processing costs for issuing refunds when license limits are not met, for refunding overpayments or duplicate payments.

Nonsufficient Fund Recovery:
The number of nonsufficient fund payments is increasing. The following is a breakdown of the NSFs received in the last few years:

Licensee	2012	2013	2014 (thru Oct. 31)
Individuals	49	31	33
Organizations	10	14	21
Total	**59**	**44**	**54**

NSFs have increased because licensees are not entering their account and/or routing number correctly when paying online. Our online payment page includes a note about the importance of correctly inputting banking information and we also ask them to input banking information twice to catch any inputting errors.

This rule change will allow us to recoup our actual processing costs for all NSF payments without additional rule changes. This change would also allow us to recoup our processing costs for credit card and electronic check payments we may accept in the future. We will post our processing costs on our website and update the information as it changes.

A Small Business Economic Impact Statement is not required for each rule change because the rules impose less than minor costs based on staff's analysis.

Regulatory Concerns

None.

Resource Impacts

No additional work for staff will be required with this rules proposal. The agency will be able to recoup the costs for processing refunds and nonsufficient fund payments.

The amount recovered for the refunds and nonsufficient fund payments processed through November 30, 2014, would have been approximately $6,000.

Policy Consideration

None.

Statements Supporting the Proposed Rule Change
None.
Statements Opposing the Proposed Rule Change
None.
Licensees/Stakeholders Directly Impacted By the Change
All commercial, charitable and nonprofit, and individual licensees.
Staff Recommendation
File for further discussion.
Proposed Effective Date for Rule Change
Staff requests an effective date of 31 days from filing since we are not recouping our costs from processing overpayment, duplicate payment, and refunds for license limit not met the previous year or in processing the increasing number of nonsufficient fund payments.

Amended Sections:

WAC 230-05-001 Prorating or refunding of fees.

(1) We may prorate organization license fees when we adjust expiration dates to schedule our workload.

(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.

(3) We will not prorate or refund fees when:

(a) You discontinue your gambling activities; or

(b) You voluntarily surrender your license or permit; or

(c) We suspend or revoke your license.

(4) We keep a portion of your application or license fees ((~~whether we~~)) for processing costs when:

a) We deny or administratively close your application; or

b) You withdraw ((~~it~~)) your application; or

c) You overpaid us; or

d) We received duplicate license fees.

(5) If you are a commercial stimulant or a charitable or nonprofit licensee, you have one year from your license expiration to apply for a partial refund of your license fee if your annual gross gambling receipts are less than the minimum for your license class. After our approval, we refund you the difference between the fees you paid and the fees for the license class level you actually met less our processing costs.

WAC 230-05-010 ((~~Returned checks~~)) Nonsufficient fund payments.

(1) If your bank returns your ((~~check~~)) payment for license fees to us for any reason, you must:

(a) Pay us in full, by certified check, money order, or cash, within five days of notification; and

(b) ((~~Pay an additional~~)) Reimburse our processing ((~~charge of thirty dollars~~)) costs, which would include but not be limited to, time spent notifying you and seeking payment.

(2) If you fail to pay within five days of notification:

(a) We will administratively close your application; or

(b) Your license expires and all gambling activity must stop.

(3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

WAC 230-06-140 Partial refund of license fees if gambling receipts limit not met.

(1) Licensees may apply for a partial refund of their license fee when their annual gross gambling receipts are less than the minimum for the class of license we issued to them.

(2) Licensees may receive a refund for the difference between the fees actually paid and the fees that would normally apply to the level of gross gambling receipts actually received during the period less our processing costs.

(3) Licensees may make their request for refund after the end of any annual license period and before the end of the next annual license period.

Proposed New Rule:
WAC 230-06-124 Online filing and payments required with waivers available upon request for good cause.

Proposed Amendment:
WAC 230-06-125 Renew your license in a timely manner.

January 2015 - Up for Discussion and Possible Filing
December 2014 - No Meeting
November 2014 - Study Session

ITEM 7 (a-b): January 2015 Commission Meeting Agenda.	Statutory Authority 9.46.070

Who proposed the rule change?

Staff.

Proposed Change

The proposed changes would require all licensees to complete the following online:

- License renewals; and
- Activity reports.

Licensed organizations may request a waiver for good cause from online renewal and activity reporting. A waiver for good cause, would include:

- Not having access to the internet using their own computer or similar equipment; or
- Not having a bank account; or
- The licensee's bank is unable to send electronic fund transactions; or
- Some other circumstance or condition that prevents completing these transactions online.

Licensed individuals may request a waiver for good cause from online renewal. A waiver for good cause, would include:

- Not having access to the internet using their own computer or similar equipment; or
- Not having a bank account *or credit card*; or
- The licensee's bank is unable to send electronic fund transactions; or
- Some other circumstance or condition that prevents completing these transactions online.

The Department of Revenue (DOR) requires businesses that file monthly and quarterly reports to report online. They provide businesses that are not able to report online a waiver. Our proposed language is similar to the language DOR uses.

Attachments:

- Stakeholder notification letter and Frequently Asked Questions about My Account and Online Processes e-mailed and mailed to all commercial and nonprofit licensees on November 7, 2014.
- Responses from licenses – see attached.

History of Rule

License Renewals:
Licensees are required to submit their renewal application and fees to us 15 days prior to the expiration of the license. This allows us time to process the application and mail the license back to them before their license expires.

Activity Reporting:
We have approximately eleven rules in Title 230 WAC that require licensees to submit to us a summary of their gambling activity. The reporting period depends upon the gambling activity.

Most licensees must report semi-annually, but we do receive quarterly and annual reports as well. The activity reports are due no later than 30 days following the end of the reporting period.

Impact of the Proposed Change

License Renewals:

Type of Licensee	Total as of 10/31/2014	Percentage Renewing Online in 2014
Commercial	1,933	62%
Individual	5,593	60%
Nonprofit	1,464	Available 11/1/2014

Commercial licensees have been able to renew online through My Account since August 15, 2013, individual licensees since June 2010, and nonprofit licensees since November 1, 2014.

Online renewals would eliminate the printing, stuffing and mailing of over 7,600 renewal notices to licensees 45 days before their expiration date. This would be replaced with auto-generated email renewal notices and reminders. If 90% of all licensees renewed online, we estimate the annual cost savings to the agency would be over $50,000 in mailing, paper and labor costs.

In addition, we would no longer have to process each of these applications and checks received through the mail. We would significantly reduce staff time spent processing, data entering receipt of the funds and applications into our data base, filing and storing the application, and printing and mailing the license. The information from the renewal applications completed online would be automatically uploaded into our database. Licensees would print their own licenses.

Activity Reporting:
In January 2012, we began accepting activity reports online. As of September 25, 2014, about 82% of the required reports or 1,273 of the 1,652 reports due by July 30, 2014, were received online.

We estimate a savings of over $4,000 if 90% of licensees submitted their activity reports online. This cost savings would result from reduction of paper and mailing costs as well as labor costs. Currently, we email notices to those licensees that consistently submit online. We mail out reports to those that submitted on paper the previous reporting period.

When licensees file online, the data is automatically uploaded into our database, thereby eliminating the data entry, filing and storage of the paper reports.

A Small Business Economic Impact Statement was not prepared because the rule change does not impose additional costs to licensees. Licensees could get a waiver and would not have to comply with this rule.

Regulatory Concerns

None.

Resource Impacts

These two proposals will save the agency over $54,000 or about .54 FTE if 90% of the licensees participated.

We accept credit cards as a form of payment from individual licensees for their renewals, which are $167. We pay a 2.5% transaction fee. In calendar year 2013, we paid $4,127.94 for credit card transaction fees (38% of all individual renewals were paid with a credit card.) We have paid $2,445.78 through

November 2014 (35% of all individual renewals were paid with a credit card.) We would anticipate our costs to increase slightly if individuals were required to pay online. We expect to do a great deal of outreach to licensees to educate them about the changes of this rules package prior to implementation. The outreach would include having licensees seek waivers prior to implementation. Once implemented, new applicants would be notified during the application process so there would be no continued outreach needed after implementation.
Policy Consideration
None.
Statements Supporting the Proposed Rule Change
15 licensees support the rule change.
Statements Opposing the Proposed Rule Change
20 licensees oppose the rule change.
Licensees/Stakeholders Directly Impacted By the Change
All commercial, charitable and nonprofit, and individual licensees. Class III gaming employees will not be impacted.
Staff Recommendation
File for further discussion.
Proposed Effective Date for Rule Change
Staff requests an effective date of July 1, 2015. This will allow staff to educate all licensees of the changes and collect waivers period to the implementation.

New Section:

WAC 230-06-124 Online filing and payments required with waivers available upon request for good cause.

(1) All licensees must submit the following online:
   (a) Renewal application and fees, as referenced in this Title 230 WAC; and
   (b) Activity reports, as referenced in Title 230 WAC.

(2) We may waive these requirements if a licensed organization can show good cause. The reasons for good cause include:
   (a) You do not have access to the internet using your own computer or similar equipment; or
   (b) You do not have a bank account; or
   (c) Your bank is unable to send electronic fund transactions; or
   (d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(3) We may waive these requirements if a licensed individual can show good cause. The reasons for good cause include:
   (a) You do not have access to the internet using your own computer or similar equipment; or
   (b) You do not have a bank account or credit card; or
   (c) Your bank is unable to send electronic fund transactions; or
   (d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(4) You must request a waiver, in writing, no later than 60 days before your activity report due date or license expiration date. A waiver will cover both subsections (1)(a) and (b) above.

Amendatory Section:

WAC 230-06-125 Renew your license in a timely manner.

(1) You must renew online, unless you have received a waiver, as outlined in WAC 230-125 and allow for enough time to:

a) Print the license prior to midnight before the license expires; or

b) Have us print the license and mail it to you so you receive it before your license expires.

(2) If you have a waiver and are not renewing your license online, you ((~~Licensees~~)) must ensure a properly completed renewal application and all applicable fees are received at our administrative office in Lacey at least fifteen days before the expiration date on ((~~their~~)) the license.

((~~(2)~~)) (3) If licensees do not submit a properly completed application and all fees and their license expires, they must immediately stop the gambling activity covered by their license.

((~~(3)~~)) (4) If your license expires, you must submit an application and you must not operate any gambling activity until a new license is issued.

STATE OF WASHINGTON
GAMBLING COMMISSION
"Protect the Public by Ensuring that Gambling is Legal and Honest"

November 4, 2014

TO: All Licensees

FROM: Tina Griffin, Assistant Director Licensing Operations Division

SUBJECT: **Notice of Proposed Rule Changes Filing all Renewals, 2nd Half-Payments, and Activity Reports Online**

The Washington State Gambling Commission has entered into the initial stage of rule making for a few new and existing rules. These rules would:

- Require all licensees to renew their licenses and file their activity reports online unless they can show good cause why they should be granted a waiver from this requirement; and
- Require all participants in the two-part payment plan to renew online and pay their second payment online.

We currently have over 80% of our licensees reporting their gambling activity online. Enclosed is "Frequently Asked Questions about My Account and Online Processes", which you may find helpful.

The rules will be discussed at the Study Session at the November 14, 2014, commission meeting. The Study Session will begin at 9 a.m. The meeting will be held at the Comfort Inn Conference Center, 1620 74th Avenue S.W., Tumwater, Washington 98501.

We are interested in hearing from you. You can submit your comments **by December 15, 2014**, on these rule changes as follows:

Online at https://www.surveymonkey.com/s/WSGC-Org-Feedback

Mail:	E-mail:	FAX:
Tina Griffin Gambling Commission P.O. Box 42400 Olympia, WA 98504-2400	Tina.Griffin@wsgc.wa.gov	(360) 486-3629

For questions, please feel free to contact me at my e-mail address listed above or at (360) 486-3546.

Amended Sections:

WAC 230-05-015 Two-part payment plan for licenses ((~~fees~~)) – online filing required.

(1) If you are renewing an annual license or applying for an additional license, you may pay the license fee in two payments if:

(a) You elect to participate; and

(b) The license fee is at least eight hundred dollars; and

(c) You renew your annual license online and pay your second-half payment online;

(d) Within the last three license years:

(i) Your license has not lapsed pursuant to subsection (2)(b) below; and

(ii) You have not had a returned check or electronic fund transaction.

(e) You pay an administrative processing fee as set out in WAC 230-05-020 or 230-05-030, plus one-half of the annual license fee at the time of application or renewal.

(2) We issue licenses under the two-part payment plan with an expiration date of not more than one year and a second-half payment due date.

(a) If we receive your second-half payment on or before the due date, the license will remain in effect until the expiration date.

(b) If you do not submit the second-half payment on or before the due date, the license expires and gambling activities must stop. You must pay us the second-half payment regardless if you stop operating the gambling activity, close your business, surrender your license, or your license is revoked. If you do not pay the second-half payment, we may take action against other licenses you hold or refer the debt to collections, or both.

WAC 230-06-125 Renew your license in a timely manner.

(1) You must renew online, unless you have received a waiver, as outlined in WAC 230-XXX and allow for enough time to:

a) Print the license prior to midnight before the license expires; or

b) Have us print the license and mail it to you so you receive it before your license expires.

(2) If you have a waiver and are not renewing your license online, you ((~~Licensees~~)) must ensure a properly completed renewal application and all applicable fees are received at our administrative office in Lacey at least fifteen days before the expiration date on ((~~their~~)) the license.

((~~(2)~~)) (3) If licensees do not submit a properly completed application and all fees and their license expires, they must immediately stop the gambling activity covered by their license.

((~~(3)~~)) (4) If your license expires, you must submit an application and you must not operate any gambling activity until a new license is issued.

New Section:

WAC 230-06-XXX Online filing and payments required with waivers available upon request for good cause.

(1) All licensees must submit the following online:

(a) Renewal application and fees, as referenced in this Title 230 WAC and

(b) Activity reports, as referenced in Title 230 WAC.

(2) We may waive these requirements if you can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account or credit card; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(3) You need to request, in writing, a waiver no later than 60 days prior to your activity report due date or license expiration date. A waiver will cover both subsections (1)(a) and (b) of this section.

Frequently Asked Questions About My Account and Online Processes

1. ***How will I get my license renewal application?***

   We will send you reminders via email about 30 days before your license expires. You will need to update your email address in My Account to ensure you receive your notice. You can have multiple users for the same My Account. Each user can set up their own email address for notification. You could have multiple people for the same organization receiving renewal notices.

   The due date will also show on the calendar in My Account for your reference as well.

2. ***How can I pay online?***

   We accept electronic checks. You would go to My Account and fill out your renewal application. To submit the renewal application, you would input the routing number for your bank and account number along with your authorization for payment.

   Credit cards are only accepted for individual license renewals because of the processing costs for higher dollar transactions. We do not accept wire transfers.

   We are considering accepting bill pay transactions in the future. A bill pay transaction is when the payer initiates the payment of funds from their account and the funds are transferred immediately.

   If you are interested in having us pursue this method of payment, please contact Tina Griffin at Tina.Griffin@wsgc.wa.gov or at 360-486-3546.

3. ***What if I don't have a printer to print my own license once I renew online?***

   Part of renewing online is printing your own license at the completion of the transaction. If you don't have a printer, you will be able to have us print and mail your license. You will need to allow enough time prior to your expiration date for us to print and mail your license.

4. ***How will I be notified when my second-half payment is due?***

   We will send you an email reminding you to go to My Account and make your payment. The due date will also show on the calendar in My Account for your reference as well. You need to keep your email updated in My Account to ensure you receive notices.

5. ***What if my organization does not allow electronic check transactions?***

   We are considering making bill pay transactions available as an alternative. A bill pay transaction is when the payer initiates the payment of funds from their account and the

funds are transferred immediately. The difference is with an electronic check we pull the funds from your account once you initiate and approve the transaction through My Account.

If you are interested in having this type of payment option available, please contact Tina.Griffin@wsgc.wa.gov or at (360) 486-3546.

6. ***What if I want my accountant to file my activity report for me?***

With My Account, each organization can have multiple users with their own email addresses and log-ons. The licensee has to give each additional user access to set up their own log-on. If you need assistance, please contact us at (360) 486-3440 ext. 2331 and we will assist you.

7. ***What if I don't have my log-in information?***

You can renew you license, file your activity reports, and pay your second-half payment online right now in your My Account. If you are unable to locate your log-in information, or if you need assistance with your My Account, please contact us at (360) 486-3440 or (800) 345-2529.

Summary of Feedback from Notice of Rulemaking Regarding Renewing and Reporting Online

Name	Licensee	Contact Information	Comments	Position
Kathy Carr	Lucky Silver/Tacoma	253-472-0360	Not computer literate	
Linda	Town Pub and Deli	427-5859	No computer	Opposed
Carrie	Chinese Garden/Camas	360-835-8688	No computer	No position
Kenneth Payne	VFW/Bellingham	360-734-5520	No email	Opposed
Heather Denault	Lady of Lords	360-696-2301 ext 206		Support
Diane	Wishkah Valley PTA	360-532-3128 ext. 1050		Support
Gloria	Bar and Grill	253-297-2706		No position
David Tufts	Knights of Columbus/Bremerton	360-377-6156		Opposed
Diane		206-972-3815	Would still like to pay by check; files report online	Support
Vince Hong	Royal Beer Pub & Eatery		This would cut jobs. People need work. There is a threat of fraud by providing credit card information online.	Opposed
Ann O'Neal	Reggies/Port Angeles			Opposed
Don Harris	H&H Distributing		No computer	Opposed
Robert Hancock			Not comfortable paying online and is used to doing everything on paper	Support
Jan Martin	Tacoma Lanes	253-927-0611	No credit card and limited access to internet	Opposed
Nicole	Billygan's Roadhouse	360-573-2711	Already does everything online with us	Support
Dotty Tobin	Forest Grange	360-748-4712	No computer or printer	Opposed
Jane Manninem	Poker Pete's/Kalama	360-261-5496	No computer	Opposed
Rosie	Eagle Rock Resort		Good idea but not good for them – because of their location only has spotty satellite internet access	

Name	Licensee	Contact Information	Comments	Position
John Bailey	Pasco Lions Club	509-545-4868	Their Chair changes every year and a Chair may not have a computer or internet access.	Support as long as there are waivers
Ken Hodge	Gaslight/Issaquah			No comment
Shawn	South Tacoma Eagles	253-474-5637		No comment
Beth	Big Button Bar & Grill		No computer	Opposed
Theresa	Soos Creek PTA		State PTA does not allow for electronic fund transactions or credit cards	Opposed
Diane	Walk About Creek/Naches		No computer	Opposed
David Lustick	American Legion 91		No computer	Opposed
Julia Huselton	Entiat Senior Citizens Club		No computer	Opposed
Carl Diana, CPA	Completes activity reports for various licensees		No computer	Opposed
Helen Carrell	Prosser Senior Citizens' Club		No computer	Opposed
Barry Maylor	Bear's Amusement Centers		No internet access	Opposed
Sue Hoover	Ronald McDonald Charities		Would like to use a bill pay function	
Mary Lee Hill	Pastime Bar		Does not pay bills online; would prefer paying by mail	Opposed
Sandi Severtsen	Highland Terrace Elementary		Not renewing their license because their raffle qualifies for unlicensed raffle	
Diane Carroll	Submits activity reports on behalf of licensees		Having trouble getting into the various My Accounts to submit on behalf of her clients	
Donna Dunning	Issaquah Auxiliary #3054		Cannot pay online	
Shawn	FOE 2933			Opposed
Annie Jones	Cammegh Ltd		Inquiry regarding e-checks for out of country licensee	

Jeni Singer	Sunrise Elem PTA		No way to pay online	
RGA				Support
Kay Cunane	Maxwell House Rest./Spokane		No computer	Opposed
Wanda Myrof	Bowling Assoc./Pasco		Thought that they could do everything online	

View Summary

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PAGE: ORGANIZATIONS FEEDBACK

1. Requiring all licensees to renew their licenses and file their activity reports online through My Account unless they can show good cause why they should be granted a waiver from this requirement.

	Response Percent	Response Count
Support	**100.0%**	**8**
Oppose	0.0%	0
	answered question	**8**
	skipped question	**1**

PAGE: ORGANIZATIONS FEEDBACK

2. I would apply for a waiver from renewing my license or filing my activity report online for the following good cause reasons:

	Response Percent	Response Count
I do not have access to the internet using my own computer or similar equipment	0.0%	0
I do not have a bank account	0.0%	0
	0.0%	0
	answered question	**1**
	skipped question	**8**

2. I would apply for a waiver from renewing my license or filing my activity report online for the following good cause reasons:

My bank is unable to send electronic fund transactions		
Some other circumstance or condition exists that, in our judgment, prevents us from submitting online	**100.0%**	**1**
	answered question	**1**
	skipped question	**8**

PAGE: ORGANIZATIONS FEEDBACK

3. Describe the other circumstance or condition that would prevent you from submitting your renewals and activity reports online.

		Response Count
	Hide replies	2
1. No circumstances exist that would preclude Gpl from filing our license renewals online, we do this iwth other jurisidictions and it has worked well.	Mon, Nov 10, 2014 4:31 PM	Find...
2. This is just a recommendation: If you can still paper mail and email renewal notices. Sometimes, our computer crashes and mailing is the next option. We need a way to guarantee our compliance. Thanks.	Sat, Nov 8, 2014 7:46 AM	Find...
	answered question	**2**
	skipped question	**7**

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4. Licensees whose annual license fees are at least $800 can elect at renewal to pay their annual license fee in two payments. The full license fee is due regardless if the licensee at any time during the license year stops operating, surrenders their license, or has their license revoked. Requiring all participants in the two-part payment plan to renew online and pay their second payment online.

	Response Percent	Response Count
Support	**85.7%**	**6**
Oppose	14.3%	1
	answered question	**7**
	skipped question	**2**