

NO. 36751-3

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

WASHINGTON STATE GAMBLING COMMISSION,

Appellant,

v.

ZDI GAMING, INC.,

Respondent.

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ASSIGNMENTS OF ERROR2

III. ISSUES ON REVIEW4

IV. FACTS AND PROCEDURAL HISTORY.....6

 A. The Regulatory Framework Governing Pull-Tabs6

 B. The VIP Machine.....7

 C. The Administrative Proceedings.....8

 D. Petition For Judicial Review Proceedings10

 E. The Commission Affirms And Codifies Its Prior Rulings
 Regarding Electronic Video Pull-tab Dispensers.11

V. STANDARDS OF REVIEW12

VI. ARGUMENT14

 A. The Superior Court’s Ruling Must Be Reversed Because
 Neither The Pierce County Superior Court Nor The
 Thurston County Superior Court Had Subject Matter
 Over ZDI’s Petition For Judicial Review.14

 1. RCW 9.46.095 grants Thurston County Superior
 Court exclusive subject matter jurisdiction over all
 non-licensing actions against the Commission.....14

 2. ZDI would have been unable to perfect jurisdiction
 in Thurston County Superior Court had the Pierce
 County Superior Court not issued its erroneous
 change of venue order.16

3.	RCW 9.46.095’s grant of jurisdiction to Thurston County Superior Court does not conflict with the APA.....	18
B.	Alternatively, The Superior Court’s Interpretations Of Commission Regulations Constitute Judicial Exercise Of Agency Authority That Must Be Reversed.....	20
1.	The Commission has statutory authority to closely regulate, limit and control all state-sanctioned gambling activities and gambling equipment, including pull-tabs and pull-tab dispensing machines, like the VIP machine.	20
2.	The Commission’s determination that “cash” means currency or a universally accepted currency equivalent is entitled to substantial deference because it is within the Commission’s area of expertise, is consistent with the plain meaning of the term “cash,” and advances the purposes and policies of the Gambling Act.	25
3.	The superior court’s interpretation of the meaning of “merchandise” must be reversed because it is both procedurally and substantively flawed.	29
a.	The superior court’s definition of “merchandise” is inconsistent with the Commission’s use of the term elsewhere in its regulations.	30
b.	ZDI’s contention that cash card technology constitutes “merchandise” is barred from review because ZDI failed to exhaust its administrative remedies, as required under RCW 34.05.534.	33
c.	Alternatively, if ZDI properly raised the meaning of “merchandise” before the Commission, the appropriate remedy should have been a remand which would allow the Commission to correct its error.....	36

C. The Commission’s Final Declaratory Order Was Not Arbitrary And Capricious.	37
1. The Commission’s reasoning was adequately set forth in the Final Declaratory Order which fully complied with the APA, RCW 34.05.464(8).	39
2. The superior court’s Findings of Fact and Conclusions of Law expressly repudiate its Letter Opinion’s conclusion regarding use of cash card technology in tribal lottery systems.....	41
3. Unlike other retail businesses, the gambling industry involves a disfavored vice that the Legislature requires to be strictly limited and closely controlled and regulated.	41
D. ZDI Is Not Entitled To Recover Attorneys Fees And Costs Under The Equal Access To Justice Act (EAJA), RCW 4.84.350.	44
VII. CONCLUSION	46

TABLE OF AUTHORITIES

Cases

<i>Alpine Lakes Protection Soc'ty v. Dep't of Natural Resources</i> , 102 Wn. App. 1, 979 P.2d 929 (1999).....	26, 27, 44
<i>ASARCO, Inc. v. Puget Sound Air Pollution Control Agency</i> , 112 Wn.2d 314, 771 P.2d 335 (1989)	21
<i>Boeing Co. v. Gelman</i> , 102 Wn. App. 862, 10 P.3d 475 (2000), <i>review denied</i> , 142 Wn.2d 1021 (2001).....	31, 36
<i>Bullseye Distrib. V. Gambling Comm'n</i> , 127 Wn. App. 231, 110 P.3d 1162, <i>review denied</i> , 155 Wn.2d 1027 (2005)	7, 21
<i>Citizens for Mount Vernon v. City of Mount Vernon</i> , 133 Wn.2d 861, 947 P.2d 1208 (1997).....	34
<i>Davidson v. Veneman</i> , 317 F.3d 503 (5th Cir. 2003)	45
<i>Dougherty v. Dep't of Labor & Indus.</i> , 150 Wn.2d 310, 76 P.3d 1183 (2003).....	19
<i>Greenen v. Board of Accountancy</i> , 126 Wn. App. 824, 110 P.3d 224 (2005).....	13
<i>Harrington v. Spokane County</i> , 128 Wn. App. 202, 114 P.3d 1233 (2005).....	34, 35
<i>Inland Foundry Co. v. Spokane County Air Pollution Control Auth.</i> , 98 Wn. App. 121 (1999), <i>review denied</i> , 141 Wn.2d 1007 (2000)	14
<i>Mader v. Health Care Auth.</i> , 149 Wn.2d 458, 70 P.3d 931 (2003).....	26
<i>Muckleshoot Indian Tribe v. Washington Dep't of Ecology</i> , 112 Wn. App. 712, 50 P.3d 668 (2002).....	16

<i>Pacific Wire Works, Inc. v. Dep't Lab. & Indus.</i> , 49 Wn. App. 229, 742 P.2d 168 (1987).....	29
<i>Pierce Cy. Sheriff v. Civil Service Comm'n of Pierce Cy.</i> , 98 Wn.2d at 695, 658 P.2d 648 (1983).....	38
<i>Pitts v. Dep't of Soc. & Health Servs.</i> , 129 Wn. App. 513, 119 P.3d 896 (2005).....	26
<i>Plum Creek Timber Co. v. Forest Practices Appeals Board</i> , 99 Wn. App. 579, 993 P.2d 287 (2000).....	45
<i>Port of Seattle v. Pollution Control Hrgs. Bd.</i> , 151 Wn.2d 568, 90 P.3d 659 (2004).....	38, 43
<i>Preserve Our Islands v. The Shorelines Hrgs. Bd.</i> , 133 Wn. App. 503, 137 P.3d 31 (2006).....	13
<i>Spokane Research & Defense Fund v. Spokane</i> , 155 Wn.2d 89, 117 P.3d 1117 (2005).....	25
<i>State v. Danforth</i> , 97 Wn.2d 255, 643 P.2d 882 (1982).....	19
<i>State ex rel. Rosenberg v. Grand Coulee Dam School Dist. No. 301</i> , 85 Wn.2d 556, 536 P.2d 614 (1975).....	13
<i>Tapper v. Employment Sec. Dep't</i> , 122 Wn.2d 397, 858 P.2d 494 (1993).....	12, 13
<i>Tuerk v. Department of Licensing</i> , 123 Wn.2d 120, 864 P.2d 1382 (1994).....	21
<i>Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n</i> , 149 Wn.2d 17, 65 P.3d 319 (2003).....	13, 38
<i>Westport Ins. Corp. v. Bayer</i> , 284 F.3d 489, (3d Cir. 2002)	35
<i>Williams v. Young</i> , 6 Wn. App. 494, 494 P.2d 508 (1972).....	38

Statutes

RCW 4.84.350	4, 11, 44
RCW 4.84.350(1).....	44
RCW 9.46	1, 18, 20
RCW 9.46.010	passim
RCW 9.46.0217	22
RCW 9.46.0241	9, 10
RCW 9.46.0253	24
RCW 9.46.0273	1, 21, 23
RCW 9.46.0325	22, 23
RCW 9.46.040	21
RCW 9.46.070	1, 21
RCW 9.46.070(11).....	1, 21, 42
RCW 9.46.070(20).....	21
RCW 9.46.070(4).....	41
RCW 9.46.075(11).....	24, 27
RCW 9.46.095	passim
RCW 9.46.140(5).....	18
RCW 9.46.215	42
RCW 9.46.340	5
RCW 19.240	23

RCW 19.240.005	23
RCW 19.240.010(4).....	23
RCW 34.05.240	35
RCW 34.05.464(8).....	39
RCW 34.05.514(1).....	18
RCW 34.05.534	33, 34
RCW 34.05.542(2).....	2, 5, 16, 17
RCW 34.05.542(3).....	20
RCW 34.05.570(1)(a)	12
RCW 34.05.570(3).....	12
RCW 34.05.574(1).....	36

Other Authorities

<i>1981 Final Legislative Report, SSB 3307</i>	18
--	----

Regulations and Rules

Former WAC 230-02-260 (2005)	6
Former WAC 230-02-350 (2005)	22, 23
Former WAC 230-02-455 (2005)	22, 23
Former WAC 230-04 (2005)	15
WAC 230-06-003 (effective February 11, 2008)	25, 29
Former WAC 230-08-130(4)(c) (2005)	32
Former WAC 230-12-050 (2005)	3

Former WAC 230-12-050(2) (2005)	passim
Former WAC 230-12-050(2) (2006)	3, 29
Former WAC 230-12-316 (2005)	7, 15
Former WAC 230-12-316(5) (2005)	9
WAC 230-14-047 (effective February 11, 2008)	25, 29
Former WAC 230-30-070 (2005)	3, 4
Former WAC 230-30-070 (2006)	3, 4, 9, 10
Former WAC 230-30-070(1) (2005)	passim
Former WAC 230-30-070(1) (2006)	29
Former WAC 230-30-070(5)(a) (2005)	31
Former WAC 230-30-070(6) (2005)	6, 32
Former WAC 230-30-070(8) (2005)	32
Former WAC 230-30-080(1)(a) (2005)	32
Former WAC 230-30-090 (2005)	7
Former WAC 230-30-106(4) (2005)	6
Former WAC 230-40-552 (2005)	27, 45
Former WAC 230-50-850 (2005)	35

Court Rules

RAP 18.1	44
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Washington State Register

Wash. State Reg. 07-24-017 12

Wash. State Reg. 08-03-052 12

I. INTRODUCTION

The Gambling Act, RCW 9.46, grants the Washington State Gambling Commission (Commission) statutory authority to promulgate any and all regulations necessary to effectuate the Act's policies and directives. *See, generally*, RCW 9.46.010 and .070. These plenary powers include the power to "regulate and establish the type and scope of and manner of conducting the gambling activities authorized by the [Gambling Act], including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities[.]" RCW 9.46.070(11). The game of pull-tabs is an authorized gambling activity in the State of Washington over which the Commission has regulatory authority. RCW 9.46.0273 (providing the Commission regulatory authority to define what constitutes the game of pull-tabs).

It is uncontested that ZDI Gaming, Inc.'s (ZDI's) pull-tab dispenser and reader (the VIP Machine), which incorporates cash card technology, changes the manner in which pull-tabs are played by speeding up the rate of play and by removing an element of human interaction from the game of pull-tabs. Accordingly, the Commission properly determined that the VIP Machine did not comply with State gambling regulations. The superior court's ruling to the contrary conflicts with the broad

regulatory powers the Legislature granted to the Commission, and, therefore, must be reversed.

Alternatively, the superior court's ruling should be reversed based on lack of jurisdiction. RCW 9.46.095 provides Thurston County Superior Court with exclusive jurisdiction over all non-licensing actions brought against the Commission. ZDI filed its Petition for Judicial Review in Pierce County Superior Court. Accordingly, the Pierce County Superior Court should have granted the Commission's Motion to Dismiss for Lack of Jurisdiction rather than transferring the case to Thurston County.

Had the Pierce County Superior Court not erred, attempts by ZDI to re-file in Thurston County Superior Court would have been time barred. *See* RCW 34.05.542(2) (Petition for Judicial Review must be filed within 30 days after service of Final Order). The Thurston County Superior Court's ruling must be vacated for lack of jurisdiction and the Commission's Final Declaratory Order reinstated.

II. ASSIGNMENTS OF ERROR

1. The Pierce County Superior Court erred when it denied the Commission's Motion to Dismiss for lack of jurisdiction. CP 4-5.
2. The Thurston County Superior Court (superior court) erred when it found that the Gambling Commission's final order "did not provide any

rationale to deny approval of cash card technology to ZDI.” *See* Findings of Fact and Conclusions of Law at Finding of Fact (FF) ¶ 23, CP 1059.¹

3. The superior court erred when it made its own independent findings of fact based on its review of the Administrative Record. *See* FF ¶¶ 23-26, CP 1059-60.

4. The superior court erred when it concluded that “[t]he ZDI VIP equipment with cash card technology complies with the Washington Administrative Code.” *See* Findings of Fact and Conclusions of Law at Conclusion of Law (CL) ¶ 4, CP 1061.

5. The superior court erred when it concluded that “[t]he ZDI VIP equipment with cash card technology complies with WAC 230-12-050 [(2005)] in its original form and as amended.”² *See* CL ¶ 5, CP 1061.

6. The superior court erred when it rejected the Commission’s determination that “cash,” as used in WAC 230-12-050 and WAC 230-30-070, means currency or a universally accepted cash equivalent, and concluded that ZDI’s cash card technology, which is not universally accepted, met the regulatory definition of “cash.” *See id.*

7. The superior court erred when it concluded that ZDI’s cash card technology satisfied the definition of “merchandise” as that term is used in

¹ The following abbreviations will be used to denote the various components of the record on appeal: “AR” refers to the Administrative Record that documents the proceedings before the Administrative Law Judge (ALJ) and the Commission. “CP” refers to the Clerk’s Papers generated during the superior court proceedings. “12/1/06 RP” refers to the December 1, 2006 Verbatim Report of Proceedings before the Pierce County Superior Court. “5/1/07 RP” refers to the May 1, 2007 Verbatim Report of Proceedings before the Thurston County Superior Court. “8/17/07 RP” refers to the August 17, 2007 Verbatim Report of Proceedings before the Thurston County Superior Court.

² Former WAC 230-12-050(2) (2005) provided that consideration for gambling activities must be paid in “cash, check, or electronic point-of-sale bank transfers.” Effective August 14, 2006, the Commission amended this list to include “gift cards” and “gift certificates.” Former WAC 230-12-050(2) (2006) (*repealed* January 1, 2008). All future references to “WAC 230-12-050(2),” unless otherwise noted, will be to the 2005 version which was in effect at the time of December 1, 2005 administrative hearing. *See* AR 669.

Copies of all relevant regulations in effect at the time of the administrative hearing are attached as Appendix A to this brief. A copy of former WAC 230-12-050(2) (2006) is attached as Appendix B.

WAC 230-30-070, when this issue was never raised or presented in ZDI's Petition for a Declaratory Order. *See* CL ¶ 6, CP 1061-62.

8. The superior court erred when it concluded that an electronic credit placed on a cash card met the regulatory definition of "merchandise" as that term is used in WAC 230-30-070(1). *See id.*

9. The superior court erred when it held that the Commission acted outside its scope of authority. *See* CL ¶ 7, CP 1062.

10. The superior court erred when it concluded that the Commission "should have approved cash card technology on ZDI's pull-tab equipment." *See id.*

11. The superior court erred when it concluded that the Commission's Final Order was arbitrary and capricious. *See* CL ¶ 8, CP 1063.

12. The superior court erred when it concluded that "[c]ash card technology is not an 'expansion of gambling.'" *See* CL ¶ 9, CP 1064.

13. Given the reversible errors described above, the superior court erred when it awarded ZDI attorney's fees and costs pursuant to the Equal Access to Justice Act (EAJA), RCW 4.84.350. *See* Findings of Fact and Conclusions of Law Regarding Attorneys Fees and Costs, CP 1069-72.

14. Alternatively, the superior court erred when it awarded ZDI attorney's fees and costs pursuant to the EAJA because the Commission's actions were "substantially justified." *See* CP 1072, ¶ 7.

III. ISSUES ON REVIEW

1. Should the superior court's ruling be vacated for lack of subject matter jurisdiction?

a. Given that RCW 9.46.095 provides Thurston County Superior Court with exclusive jurisdiction over all non-licensing cases filed against the Commission, did the Pierce County Superior Court lack jurisdiction to transfer the case to Thurston County Superior Court?

b. Is ZDI's Petition for Judicial Review time barred because it was not filed in Thurston County Superior Court within thirty days

after the Commission served its Final Order, as required by RCW 9.46.095 and RCW 34.05.542(2)?

2. Does the Commission's statutory authority extend to regulating the manner in which state-sanctioned gambling activities, like pull-tabs, are conducted, including promulgation and interpretation of regulations that govern the types of consideration that can be paid to purchase pull-tabs and the types of prizes that can be awarded?

3. Given the Commission's special expertise in the area of gambling regulation and enforcement, is the Commission's definition of "cash" as used in its own regulations entitled to substantial deference by the reviewing court?

4. Should the superior court's interpretation of the term "merchandise" be vacated.

a. Is the superior court's conclusion that the definition of "merchandise" includes an electronic credit placed on a cash card consistent with the Commission's overall regulatory scheme, which requires that "merchandise" be an objectively identifiable good that can be displayed, wrapped or photographed, and that has a wholesale and retail value?

b. Alternatively, is judicial review of the regulatory definition of "merchandise" barred by ZDI's failure to exhaust its administrative remedies, given that ZDI never raised this issue in its Petition for a Declaratory Order or at any time during the administrative proceedings before the ALJ?

5. Was the Commission's determination that ZDI's VIP Machine did not comply with state laws and regulations reasonable?

6. Should the superior court's award of attorney's fees and costs under the EAJA, RCW 9.46.340, be reversed?

IV. FACTS AND PROCEDURAL HISTORY

A. The Regulatory Framework Governing Pull-Tabs

Pull-tabs are a series of paper tickets that each contain a “window,” or a series of windows, concealing a series of numbers or symbols. WAC 230-02-260 (definition of “pull-tabs”). Certain combinations of these numbers or symbols entitle the player to collect a prize. *Id.*; AR 410, ¶ 2. Each pull-tab series has a predetermined number of winning tickets. *Id.* All prizes in excess of \$20 in value are designated on a sheet of paper called a “flare” that is posted next to the pull-tab game. WAC 230-30-106(4); AR 410, ¶ 3. When a prize with a value over \$20 is won, the operator must cross the prize off the flare, thereby informing players what prizes are still available to be won in any particular pull-tab series. WAC 230-30-070(6).

Commission regulations strictly limit the types of prizes that can be awarded in a pull-tab game and narrowly circumscribe the consideration used to purchase pull-tabs. Pull tabs must be purchased with “cash, check, or electronic point-of-sale transfer.” WAC 230-12-050(2). Pull-tab prizes must be paid “in cash or in merchandise.” WAC 230-30-070(1).

In an effort to attract more pull-tab players and increase gambling revenues, gambling equipment manufacturers have developed machines

that dispense and read pull-tabs, while mimicking the sounds and displays of electronic slot machines. AR 411, ¶¶ 6, 8. Before a pull-tab dispenser can be placed into play in Washington, State law requires it be reviewed and approved by the Commission to ensure compliance with all applicable gambling laws and regulations. WAC 230-12-316, WAC 230-30-090.

B. The VIP Machine

ZDI's VIP Machine is a pull-tab dispenser and reader with integrated cash card technology, which emits "attractor sounds" and includes a video display that intentionally emulates a video slot machine. AR 412, ¶ 10; 7.³ With the exception of the integrated cash card technology, the VIP Machine is largely identical to an earlier ZDI pull-tab dispensing and reading device that the Commission approved for use in the State of Washington in 2002. AR 412, ¶¶ 9-10; 702. The cash card technology is the critical difference between the two machines.

The earlier version of the machine required a player to purchase the pull-tab with currency and required that all winning pull-tabs be redeemed with a cashier. AR 412, ¶ 9; *see* AR 126. The VIP Machine disposed of these steps by allowing a player to purchase pull-tabs with a prepaid cash card, and by allowing pull-tab winnings of \$20 or less to be

³ Neither party has challenged the ALJ's Findings of Fact, which are incorporated into the Final Declaratory Order by reference, and, therefore, they are verities on appeal. *Bullseye Distrib. v. Gambling Comm'n*, 127 Wn. App. 231, 237, 110 P.3d 1162, *review denied*, 155 Wn.2d 1027 (2005).

automatically credited to the cash card without interacting with a cashier.⁴ AR 412, ¶¶ 10, 11. In doing so, the VIP Machine changes the manner in which pull-tabs are played by speeding up the rate of play and by removing human interaction with the cashier from the process of redeeming winning pull-tabs. AR 155-56; 206 p. 43, Ins. 3-22; 412 ¶¶ 9-11; 422, ¶ 23; 714-715; *see* AR 126.

C. The Administrative Proceedings

On March 29, 2005, ZDI submitted an application to the Commission Staff seeking permission to distribute the VIP Machine within the State of Washington. AR 11-17. On August 15, 2005, the Commission Staff issued a letter denying ZDI's application, based on, among other things, its determination that the VIP Machine's cash card technology did not comply with the term "cash" as used in

⁴ A player purchases a pull-tab from the VIP Machine by either inserting cash or a previously loaded cash card into the machine. AR 412, ¶¶ 10-11. When playing with a cash card, the player initiates play by pressing a button. This causes the machine to deduct an electronic credit equal to the value of one pull-tab from the cash card and dispense a paper pull-tab. *Id.* The player then has the option of utilizing the pull-tab reader to read the pull-tab, manually reading the pull-tab him- or herself, or taking the pull-tab to an employee for verification and payment. AR 412, ¶ 9. If the patron uses the machine's pull-tab reader and wins \$20 or less, the VIP Machine retains the winning pull-tab and electronically credits the prize to the patron's cash card. AR 412-13, ¶ 11. If a pull-tab entitles the patron to winnings of over \$20, the machine returns the pull-tab to the patron, who must then redeem it with a cashier. *Id.*

WAC 230-12-050(2) and WAC 230-30-070(1).⁵ AR 21-23.

On September 21, 2005, ZDI, pursuant to WAC 230-12-316(5), filed a Petition for Declaratory Relief with the Commission. AR 1-7.

In its Petition for Declaratory Relief, ZDI challenged the Commission Staff's interpretation of the Commission's regulatory language, asserting that the VIP Machine's cash card technology was "a cash equivalent" that satisfied the regulatory definition of "cash." AR 3, ¶ 2.2. This was the only issue ZDI raised in the Petition, and ZDI consistently adhered to this position throughout the administrative hearing proceedings. AR 1-7; 356-61; 376; 378; 904-906; 913-15.

The administrative hearing was held on December 1, 2005 before an ALJ. AR 669. On May 1, 2006, the ALJ issued an Initial Declaratory Order in which he held that the term "cash," as used in the Commission's regulations, meant currency or a universally accepted currency substitute. AR 420, ¶ 16. Because the VIP Machine's cash card technology was not universally accepted, *i.e.*, its use was limited to a single establishment, the ALJ concluded that it did not meet the regulatory definition of "cash." AR 420, ¶ 17. The ALJ then upheld the Commission's Staff's actions,

⁵ The Commission Staff also initially denied approval based on its conclusion that the VIP Machine was an illegal "gambling device." *See* RCW 9.46.0241 (defining "gambling device"). Although this issue was addressed in the ALJ's Initial Order, the Commission's Final Order "vacated and specifically disavowed" the ALJ's ruling in this regard. *See* AR 846-66. Neither party appealed this issue to the superior court.

concluding that the VIP Machine violated both WAC 230-12-050(2) and WAC 230-30-070(1). AR 421-23, ¶¶ 21, 23.

Both parties filed petitions for review with the Commission. AR 428-33, 573-80. On August 10, 2006, the Commission issued a Final Declaratory Order, upholding the ALJ's conclusions regarding the definition of "cash." AR 961-63. The Commission's Final Declaratory Order, which incorporated portions of the ALJ's Initial Declaratory Order by reference, also vacated and specifically disavowed the ALJ's conclusions regarding whether the VIP Machine constituted an illegal gambling device under RCW 9.46.0241. *Id.*

D. Petition For Judicial Review Proceedings

ZDI was served with the Commission's Final Order on or about August 31, 2006. AR 964-65. On September 11, 2006, ZDI filed a Petition for Judicial Review with the Pierce County Superior Court. CP 348-59. On September 20, 2006, the Commission notified ZDI that RCW 9.46.095 granted Thurston County Superior Court exclusive jurisdiction over the matter, and suggested that ZDI dismiss its Pierce County action and re-file in Thurston County. CP 9. ZDI did not accept this suggestion. CP 6-7.

On October 19, 2006, the Commission filed a Motion to Dismiss for Lack of Jurisdiction. CP 327-42. On December 1, 2006, the Pierce

County Superior Court denied the Motion to Dismiss, holding that RCW 9.46.095 controlled venue, rather than jurisdiction, and issued an order changing venue to Thurston County Superior Court. CP 4-5; 12/1/06 RP 14-15.

The Thurston County Superior Court heard argument on the Petition for Judicial Review on May 1, 2007. CP 721-22. On June 27, 2007, the superior court issued a Letter Opinion overruling the Commission's Final Order. CP 1069-72. On August 17, 2007, the court denied the Commission's Motion for Reconsideration and entered Findings of Fact and Conclusions of Law and a Declaratory Judgment Order remanding the case to the Commission for actions conforming with the superior court's ruling. CP 1024-37; 8/17/07 RP 28-29. The Court also awarded ZDI reasonable attorney's fees and costs subject to RCW 4.84.350. CP 1038-44. On September 14, 2007, the Commission filed a timely Notice of Appeal. CP 1048-80. ZDI filed a Notice of Cross Appeal on September 17, 2007. CP 1050-52.

E. The Commission Affirms And Codifies Its Prior Rulings Regarding Electronic Video Pull-tab Dispensers.

Subsequent to filing its Notice of Appeal, the Commission, in response to the superior court's ruling, affirmed and clarified its previously adopted positions regarding pull-tab dispensers, like ZDI's VIP Machine. In doing so, it adopted the following definition of "cash."

“Cash,” when used as a noun in [Title 230 WAC], means currency in the form of coins or bills issued by the government of the United States or Canada only and does not include electronic, digital or other representations of money or other methods of payment.

Wash. State Reg. 08-03-052 (effective February 11, 2008) (Attached Appendix C). Additionally, the Commission promulgated standards applicable to “electronic video pull-tab dispensers,” which authorize the use of “gift certificates and gift cards” to purchase pull-tabs. At the same time, the Commission rejected an industry rule proposal that would have allowed pull-tab winnings to be electronically credited back to gift cards. *Compare id.* and Wash. State Reg. 07-24-017 (un-adopted proposed rule authorizing pull-tab dispensers to electronically credit prizes of twenty dollars or less on to cash cards) (Attached Appendix D).

V. STANDARDS OF REVIEW

When reviewing an agency’s decision, an appellate court sits in the same position as the superior court and applies the standards of review in RCW 34.05.570(3) directly to the agency record. *Tapper v. Employment Sec. Dep’t*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). “The burden of demonstrating the invalidity of agency action is on the party asserting invalidity[.]” RCW 34.05.570(1)(a).

The error of law standard applies to issues relating to whether (1) an agency has statutory authority or jurisdiction to act; (2) the agency

engaged in an unlawful decision-making process or has failed to follow a prescribed procedure; and (3) the agency erroneously interpreted or applied the law, and these issues are reviewed *de novo*. *Preserve Our Islands v. The Shorelines Hrgs. Bd.*, 133 Wn. App. 503, 515, 137 P.3d 31 (2006). Notwithstanding the *de novo* standard of review, courts grant substantial weight to an agency's interpretation of its own regulations. *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993).

The arbitrary and capricious standard is very narrow, as with other challenges to agency action, the party asserting it carries a heavy burden. *Greenen v. Board of Accountancy*, 126 Wn. App. 824, 830, 110 P.3d 224 (2005). Agency action is arbitrary and capricious only if it "is willful and unreasoning and taken without regard to the attending facts or circumstances." *Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n*, 149 Wn.2d 17, 26, 65 P.3d 319 (2003). A court should not substitute its judgment for that of the agency and "will upset [an agency's] determination only if the evidence establishes it was arrived at by unlawful, arbitrary or capricious action." *State ex rel. Rosenberg v. Grand Coulee Dam School Dist. No. 301*, 85 Wn.2d 556, 563, 536 P.2d 614 (1975).

VI. ARGUMENT

A. **The Superior Court's Ruling Must Be Reversed Because Neither The Pierce County Superior Court Nor The Thurston County Superior Court Had Subject Matter Over ZDI's Petition For Judicial Review.**

1. **RCW 9.46.095 grants Thurston County Superior Court exclusive subject matter jurisdiction over all non-licensing actions against the Commission.**

RCW 9.46.095 clearly and unequivocally grants Thurston County Superior Court exclusive jurisdiction over all non-licensing actions filed against the Commission, including administrative declaratory judgment actions like the one at issue here. Because the Pierce County Superior Court lacked subject matter jurisdiction over this case, it erred when it denied the Commission's Motion to Dismiss and ordered a change of venue to Thurston County Superior Court instead.

When a court lacks subject matter jurisdiction, dismissal is the only permissible action it may take. *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn. App. 121, 123-24 (1999), *review denied*, 141 Wn.2d 1007 (2000). Adopted in 1981, RCW 9.46.095, provides that

No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the [Gambling] commission or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under [the Gambling Act, RCW 9.46].

While RCW 9.46.095 includes an exception for “adjudicative proceedings involving a final decision of the commission to deny, suspend, or revoke a license,” the Legislature clearly intended the Thurston County Superior Court to have exclusive subject matter jurisdiction over all other non-licensing actions filed against the Commission.⁶

Fourteen days after the Commission issued its Final Declaratory Order, ZDI erroneously filed its Petition for Judicial Review in Pierce County Superior Court. CP 248-59; AR 965. Within a week, the Commission gave ZDI notice that Pierce County Superior Court had no jurisdiction to hear the case and offered it the opportunity to timely re-file in Thurston County. CP 6-7, 9. Despite having received fair and timely notice of the jurisdictional defect, ZDI’s case remained lodged in Pierce County.

As Pierce County Superior Court lacked subject matter jurisdiction, it had no authority, when responding to the Commission’s Motion to Dismiss, to take any action other than dismissing the case. Because Pierce County lacked jurisdiction, its order changing venue to

⁶ The Commission’s Final Declaratory Order arises from administrative proceedings commenced pursuant WAC 230-12-316, which sets forth the procedures for seeking Commission approval of gambling equipment. The Commission does not license gambling equipment. *Compare* WAC 230-12-316 (Commission procedures for reviewing gambling equipment) and Chapter 230-04 (Commission licensing requirements). Because no gambling license is in jeopardy, RCW 9.46.095’s exception for licensing cases does not apply.

Thurston County Superior Court must be rescinded and an order of dismissal issued in its stead.

2. ZDI would have been unable to perfect jurisdiction in Thurston County Superior Court had the Pierce County Superior Court not issued its erroneous change of venue order.

Because ZDI's Petition for Judicial Review was erroneously transferred to Thurston County Superior Court in December 2006, rather than dismissed, ZDI avoided the necessity of re-filing its Petition for Judicial Review in Thurston County, and never had to confront the fact the thirty-day deadline for filing a Petition for Judicial Review had expired two months earlier. Accordingly, if this Court concludes that the Pierce County Superior Court should have dismissed the case because it lacked jurisdiction over this matter, it must also hold that Thurston County Superior Court was barred from hearing the case because, under the circumstances, ZDI could not satisfy RCW 34.05.542(2)'s jurisdictional requirement that a party file a petition for judicial review within thirty days of the agency action.

To invoke the superior court's appellate jurisdiction under Washington's Administrative Procedure Act (APA), a party must follow all of the APA's procedural requirements or face dismissal based on lack of subject matter jurisdiction. *Muckleshoot Indian Tribe v. Washington Dep't of Ecology*, 112 Wn. App. 712, 724, 50 P.3d 668 (2002).

RCW 34.05.542(2) requires that parties challenging an agency action file a petition for judicial review within thirty days after the final order issues. Accordingly, failure to timely file a petition for judicial review with the superior court is grounds for dismissal for lack of subject matter jurisdiction.

Had the Pierce County Superior Court dismissed ZDI's petition for review at its December 1, 2006 motion hearing, any attempt by ZDI to re-file its Petition for Judicial Review in Thurston County Superior Court would have been time barred. Pursuant to RCW 34.05.542(2), the thirty-day deadline for filing the Petition for Judicial Review began running on or about August 31, 2006, when the Commission served the Final Declaratory Order on ZDI, and terminated on or about September 31, 2006. Accordingly, had it not erred by transferring the case, the Pierce County Superior Court would have dismissed the case no earlier than December 1, 2006, and any attempts by ZDI to re-file would be time barred, as the deadline for appeal had expired two months earlier.⁷

In short, neither the Pierce County nor the Thurston County Superior Courts ever established subject matter jurisdiction over this

⁷ Had ZDI either dismissed the case or sought an emergency order changing venue at the time the Commission first notified it about the jurisdictional defect, ZDI would have timely established jurisdiction with the Thurston County Superior Court. This is not an instance where opposing counsel lay in the weeds hoping to take advantage of an uninformed litigant.

matter. Accordingly, the superior court's declaratory order and award of attorney's fees and costs must be vacated for lack of subject matter jurisdiction.

3. RCW 9.46.095's grant of jurisdiction to Thurston County Superior Court does not conflict with the APA.

With passage of RCW 9.46.095, the Legislature concluded that all litigation against the Commission, not involving the denial, suspension or revocation of a gambling license, should be conducted in a single forum—Thurston County Superior Court. In fact, the Legislature adopted this provision in 1981, eight years after the 1973 Gambling Act was enacted, noting that it had not previously limited trial court jurisdiction over actions brought against the Commission. *1981 Final Legislative Report*, SSB 3307, p. 150, CP 342. Adding this provision years later, rather than as part of the original enactment of the Gambling Act, indicates that the Commission and Legislature carefully considered the provision prior to its becoming law.

The Commission anticipates that ZDI will point to provisions in the APA that generally specify where petitions for judicial review are to be heard. *See* RCW 34.05.514(1). RCW 9.46.140(5), however, provides that administrative proceedings under RCW 9.46 are governed by the APA “*unless otherwise provided in this chapter.*” (Emphasis added). In this case, RCW 9.46.095 specifically provides otherwise, mandating that

Thurston County Superior court has exclusive jurisdiction over non-licensing cases. Accordingly, APA provisions to the contrary are inapplicable.

Not only is such a result consistent with the plain meaning of the statutes, but also with basic legal principles that dictate that when two statutes appear to cover concurrent issues, the specific statute prevails over the general statute. *State v. Danforth*, 97 Wn.2d 255, 257, 643 P.2d 882 (1982). In this case, RCW 9.46.095, which relates specifically to actions against the Commission, necessarily prevails over the APA's generalized directives.⁸

Based on the foregoing analysis, the Pierce County Superior Court lacked jurisdiction over ZDI's Petition for Judicial Review and should have granted the Commission's Motion to Dismiss. This would necessarily result in the termination of the proceedings because, once Pierce County dismissed the lawsuit, attempts to file in Thurston County

⁸ Nor is this a case where the Legislature's intent is unclear regarding whether the statute controls venue, as opposed to jurisdiction. RCW 9.46.095 clearly and unequivocally states that no court other than Thurston County Superior Court shall have "jurisdiction" over non-licensing matters. Although the legislature's intent is clear, ZDI argued below that the Washington State Supreme Court's ruling in *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 76 P.3d 1183 (2003) controls. The analysis in *Dougherty*, however, only applies to situations where the Legislature's intent is ambiguous. While *Dougherty* favors resolution of such ambiguities in favor of venue, this analysis is not applicable when the statute unambiguously states that it is jurisdictional. *Dougherty*, 150 Wn.2d at 317 ("**Unless mandated by the clear language of the statute**, we generally decline to interpret a statute's procedural requirements regarding location of filing as jurisdictional") (emphasis added). RCW 9.46.095's plain language unequivocally states that it controls jurisdiction. Accordingly, any reliance on *Dougherty* should be rejected.

Superior Court would be time barred under RCW 34.05.542(3). Accordingly, the Commission respectfully requests that this Court vacate the Thurston County Superior Court's ruling.

B. Alternatively, The Superior Court's Interpretations Of Commission Regulations Constitute Judicial Exercise Of Agency Authority That Must Be Reversed.

- 1. The Commission has statutory authority to closely regulate, limit and control all state-sanctioned gambling activities and gambling equipment, including pull-tabs and pull-tab dispensing machines, like the VIP machine.**

The Legislature adopted the Gambling Act, RCW 9.46, in 1973 to advance the following public policies:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people **by limiting the nature and scope of gambling activities and by strict regulation and control.**

RCW 9.46.010 (Emphasis added). Reinforcing the importance of controlling and limiting state-sanctioned gambling, RCW 9.46.010 further directs that:

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provision of this chapter shall be liberally construed to achieve such end.

To enable the Commission to accomplish its mission, the Gambling Act grants the Commission broad statutory authority and power to fully regulate and control all state sanctioned gambling activities, including the game of pull-tabs and pull-tab dispensing machines.

See RCW 9.46.0273, .040, and .070. RCW 9.46.0273 directs that the term “pull-tab” be given its “usual and ordinary meaning as of July 16, 1973” and further provides that “such definition may be revised by the [C]ommission pursuant to rules and regulations promulgated pursuant to [the Gambling Act].” More generally, RCW 9.46.070(11) authorizes the Commission:

To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of the wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities.

Any doubt as to the plenary scope of the Legislature’s grant of authority is resolved by RCW 9.46.070(20), which authorizes the Commission “[t]o perform all other matters and things necessary to carry out the purposes and provisions of [the Gambling Act].”⁹ See also *Bullseye Distrib. V. Gambling Comm’n*, 127 Wn. App. 231, 237, 110 P.3d 1162, review denied, 155 Wn.2d 1027 (2005) (“The [Gambling] Commission is charged with administration and enforcement of Washington’s gambling laws.”)

In addition to authorizing the Commission to define the game of pull-tabs, the Legislature has specified that pull-tabs must function as a

⁹ “Administrative agencies have those powers expressly granted to them and those necessarily implied from their statutory delegation of authority” *Tuerk v. Department of Licensing*, 123 Wn.2d 120, 124-25, 864 P.2d 1382 (1994). Agencies may use regulations to fill gaps in the statutory framework when it is necessary to effectuate the general statutory scheme. *ASARCO, Inc. v. Puget Sound Air Pollution Control Agency*, 112 Wn.2d 314, 322, 771 P.2d 335 (1989).

“commercial stimulant” and a “social pastime.” RCW 9.46.010, .0217 and .0325. As a “commercial stimulant,” pull-tabs can only be sold in conjunction with the sale of food and drink “with the purpose of increasing the volume of food and/or drink sales for ‘on-premises’ consumption.” RCW 9.46.0325; WAC 230-02-350. *See* AR 410, ¶ 2. As a “social pastime,” pull-tabs must be played “more for amusement rather than for profit.” RCW 9.46.010; WAC 230-02-455.

If approved, the VIP Machine will impact the manner in which the game of pull-tabs is played in two ways: (1) it will speed up the rate of play, and (2) it will remove an element of human interaction from the game. Currently, pull-tab patrons must redeem winning pull-tabs of all denominations with a cashier, regardless of whether they are dispensed over the counter or by a machine. AR 412, ¶ 9; 413 ¶ 15; 414, ¶ 16; 422, ¶ 23. Thus, by necessity, a patron must periodically interrupt play in order to redeem his or her winnings. AR 422, ¶ 23. While requiring patrons to interrupt their play in order to redeem winning pull-tabs with a cashier may be, as the ALJ observed, “tedious,” it has the salutary effect of moderating the speed of play and provides the patron with a moment to reflect upon his or her winnings (or losses) and how they might be spent. AR 422, ¶ 23. Requiring the player to redeem winnings with a cashier also provides the gambling establishment an opportunity to merchandise

food and drink, which is consistent with the requirement that pull-tabs serve as a “commercial stimulant” and “social pastime.” *See* RCW 9.46.010, .0273, .0325; WAC 230-02-350, -455.

The Commission’s plenary authority necessarily includes the regulation and control of pull-tab dispensing machines and any form of payment system incorporated therein, including the cash card technology incorporated into ZDI’s VIP machine. For this reason, the trial court’s ruling that the Commission exceeded its authority when it concluded that the cash card technology integrated into the VIP Machine did not comply with agency regulations must be overturned.

The Commission anticipates that ZDI will argue that the Commission’s authority to regulate cash card technology incorporated into a piece of gambling equipment, like the VIP Machine, somehow conflicts with RCW 19.240, which governs the use of gift certificates and gift cards¹⁰ in Washington State. *See* CP 469. The stated purpose of RCW 19.240, however, is “to relieve businesses from the obligation of reporting gift certificates [and gift cards] as unclaimed property.” RCW 19.240.005. Nothing within RCW 19.240 even remotely supports the notion that the Legislature intended this law to usurp, or otherwise

¹⁰ As used in RCW 19.240, “gift cards” refers to “electronic storage cards” or “cash cards” that are the subject of this lawsuit. RCW 19.240.010(4). Indeed, during the course of the proceedings, the terms “gift card” and “cash card” were used interchangeably. *See, e.g.*, AR 171, p. 32, lns. 11-18; 573-74; 599, p. 72, lns. 9-10.

limit, the Gambling Commission's authority to regulate the use of cash card technology within the gambling industry.

The Commission further anticipates that ZDI will argue that the Commission has no authority to regulate cash card technology because this technology does not constitute a "gambling activity." *See* CP 469. This argument, however, ignores RCW 9.46.075(11) which authorizes the Commission to control the manner in which gambling is conducted, including but not limited to, **the extent of wager, money, or other thing of value which may be wagered or contributed or won** by a player in any such activities[.]” (Emphasis added). Exercising this authority, the Commission concluded that an electronic credit applied to a cash card is not “cash” or “merchandise,” and, therefore, may not be “won” while playing pull-tabs. The superior court erred when it held otherwise.

Pull-tabs are an authorized gambling activity in the State of Washington. RCW 9.46.0253. Pull-tab dispensers and readers, like the VIP Machine, are one manner by which pull-tabs are played. The game of pull-tabs requires the player to redeem winning pull-tabs from a live cashier. VIP Machine's cash card technology, which allows players to purchase pull-tabs with cash cards and allows pull-tab winnings to be electronically credited to a cash card, fundamentally changes this process by removing the human element from the transaction and speeding up the

rate of play. See AR 206, p. 43, Ins. 3-22; 412 ¶¶ 9-11; 422, ¶ 23; 714-715. Given the Commission's plenary power to strictly regulate and control all authorized gambling activities, the Commission's determination that the VIP Machine did not comply with gambling laws and regulations was well within its statutory authority. The superior court's ruling must be reversed.

2. The Commission's determination that "cash" means currency or a universally accepted currency equivalent is entitled to substantial deference because it is within the Commission's area of expertise, is consistent with the plain meaning of the term "cash," and advances the purposes and policies of the Gambling Act.

The Commission's Final Declaratory Order properly held that "cash," as that term was used in former WAC 230-12-050(2) and WAC 230-30-070(1), means legal currency or a currency equivalent that is "accepted everywhere."¹¹ AR 447 ¶ 16. The Commission further concluded that, given that the cash cards used in the VIP Machine were valid at only one location, they were not universally accepted and, therefore, did not satisfy this definition. AR 427-28 ¶ 17.

¹¹ But for arguments related to the superior court's award of attorney's fees, if this Court concludes that the Commission has authority to regulate the VIP Machine, the remaining issues regarding interpretation of former WAC 230-12-050(2) (2005) and WAC 230-30-070(1) (2005) are moot, as the Commission recently adopted WAC 230-06-003 and WAC 230-14-047 (effective dates February 11, 2008) (Appendix C), which define the term "cash" as "United States or Canadian currency or coin," and which codify previously developed standards applicable to electronic video pull-tab machines, like the VIP Machine. See *Spokane Research & Defense Fund v. Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005) (observing that resolution of remaining issues would be moot, but for issue of attorney's fees and costs).

Inexplicably, the superior court summarily rejected the Commission's narrow interpretation of "cash," concluding that the plain meaning of this regulatory term had to be based upon an expansive interpretation of the dictionary definition. The superior court's ruling does not even mention, let alone distinguish, well-established law requiring courts to (1) defer to agency decisions made within the agency's area of expertise and (2) grant substantial weight to an agency's interpretation of its own regulatory language. Because the trial court failed to apply the proper rules of regulatory construction, its overly-broad definition of "cash" must be reversed.

Reviewing courts grant great weight and deference to an agency's interpretation of the statutes and regulations that it administers when the agency is acting in its area of expertise. *Pitts v. Dep't of Soc. & Health Servs.*, 129 Wn. App. 513, 523, 119 P.3d 896 (2005); *Alpine Lakes Protection Soc'ty v. Dep't of Natural Resources*, 102 Wn. App. 1, 14, 979 P.2d 929 (1999). When faced with an unambiguous regulation, the court may not speculate as to the intent of the regulation or add words to the regulation, although it may discern intent from the underlying statutory authority. *Mader v. Health Care Auth.*, 149 Wn.2d 458, 473, 70 P.3d 931 (2003). An agency's interpretation of ambiguous regulatory language will be upheld as long as the agency's interpretation is plausible

and is consistent with the legislative intent. *Alpine Lakes*, 102 Wn. App. at 14. As discussed above, the Commission is authorized to prescribe the “manner” in which an authorized gambling activity is played. *See* RCW 9.46.075(11).

The Commission’s conclusion that “cash” means legal currency or a universally accepted currency equivalent is reasonable and consistent with the common usage of the term “cash” and the policies and intent underlying the Gambling Act. *See* AR 420, ¶¶ 16, 17. In its Final Declaratory Order, the Commission adopted the ALJ’s determination that various dictionary definitions of “cash” consistently shared the following elements: the object at issue must have value and must be universally accepted. *Id.* Because use of ZDI’s cash card would be limited to a single establishment and, therefore, would not be universally accepted, the Commission concluded that it did not meet the definition of “cash” and did not comply with WAC 230-12-050(2) and WAC 230-30-070(1).¹² AR 421-22, ¶¶ 21, 23.

¹² The Commission’s definition of “cash” is also consistent with Commission regulations defining the term “cash equivalent.” WAC 230-40-552 provides that “[c]ash equivalent is a treasury check, personal check, traveler’s check, wire transfer of funds, money order, certified check, cashier’s check, a check drawn on the licensee’s account payable to the patron or to the licensee, or a voucher recording cash drawn against a credit card or debit card.” Like the Commission’s definition of “cash,” the Commission definition of “cash equivalent” is limited to generally accepted forms of payment whose use is not restricted to a single enterprise or establishment. Notably absent from WAC 230-40-552’s definition of “cash equivalent” is any reference to a cash card or gift card or any other instrumentality whose use is limited to a single location.

The Commission's narrow definition of "cash" is also consistent with the stated policies and intent underlying the Gambling Act, namely to effect "close control" of all state sanctioned gambling activity. RCW 9.46.010. A narrow interpretation of "cash" accomplishes this goal and ensures that the introduction of new technology does not transform or distort the manner in which a particular gambling activity is commonly played.

Here, the record shows that introduction of cash card technology will speed up the rate of play for pull-tabs and streamline the payment of prizes in a fashion that encourages players to wager, rather than retain, their winnings. *See* AR 412 ¶¶ 9-11; 422, ¶ 23; 714-715. The Commission's narrow interpretation of "cash" is consistent with the Legislature's policy favoring close control of gambling, and the facts presented at hearing establish that the introduction of cash card technology will change the manner in which the game of pull-tabs is played. Because the Commission's definition is reasonable and consistent with the Act's legislative intent, the Commission did not err when it concluded that cash card technology does not comply with the term "cash" as that term is used in WAC 230-12-050(2) and WAC 230-30-070(1).

Finally, the Commission's subsequent amendments to WAC 230-12-050(2), which authorize the purchase of pull-tabs using cash

cards, demonstrate the Commission understood, recognized, and intended that cash card technology be treated as a separate and distinct type of payment from “cash.” Compare former WAC 230-12-050(2) (2006) and former WAC 230-30-070(1) (2006). Had the Commission intended “cash” and “cash card technology” to be synonymous, amending WAC 230-120-050(2) to include “gift card” would be an unnecessary redundancy.¹³ See *Pacific Wire Works, Inc. v. Dep’t Lab. & Indus.*, 49 Wn. App. 229, 235, 742 P.2d 168 (1987) (regulations should be interpreted so that no portion is superfluous, void or insignificant). For all the reasons set forth above, the superior court’s ruling overturning the Commission’s interpretation of “cash” must be reversed.

3. The superior court’s interpretation of the meaning of “merchandise” must be reversed because it is both procedurally and substantively flawed.

The superior court’s conclusion that ZDI’s cash card technology satisfies the term “merchandise” as that term is used in WAC 230-30-070(1) is both procedurally and substantively flawed. Substantively, the superior court’s conclusion that an electronic credit applied to a cash card constitutes “merchandise” is inconsistent with the

¹³ If the Commission’s failed to make the distinction between “cash” and “cash cards” clear with its 2006 amendments to WAC 230-12-050(2), it left no doubt regarding its position with its recent adoption of WAC 230-06-003 and WAC 230-14-047 (effective dates February 11, 2008), which provide a regulatory definition for the term “cash,” and specify when and how cash card technology may be used with pull-tab dispensers. See Appendix C.

broader regulatory scheme, which contemplates that “merchandise” be a type of good that can be displayed, photographed and handled. Alternatively, the superior court should have declined to review this issue because ZDI never sought declaratory relief from the Commission regarding the meaning of this term, and, therefore, has failed to exhaust its administrative remedies. Finally, even if ZDI had properly raised the issue below, the superior court’s remedy – imposing its own interpretation upon the Commission’s regulatory language – should be reversed because it fails to grant appropriate deference to the Commission’s expertise and regulatory authority.

a. The superior court’s definition of “merchandise” is inconsistent with the Commission’s use of the term elsewhere in its regulations.

WAC 230-030-070(1) requires that awards for pull-tabs be made in “cash or in merchandise.” Within this same chapter, the Commission’s regulations also describe how “merchandise” prizes must be displayed and discuss how to value “merchandise” for purposes of reporting financial information to the Commission. Read as a whole, these regulations demonstrate that the Commission intended the term “merchandise” to mean some type of physical good capable of having a wholesale and retail value. Because the electronic credits stored on ZDI’s cash cards are not a good and do not have a wholesale and retail value, the superior court’s

determination that they somehow satisfy the regulatory definition of “merchandise” should be rejected.

“Rules and regulations are construed as a whole, giving effect to all the language and harmonizing all provisions, to avoid unlikely, absurd, or strained results.” *Boeing Co. v. Gelman*, 102 Wn. App. 862, 869, 10 P.3d 475 (2000), *review denied*, 142 Wn.2d 1021 (2001). In this case, WAC 230-30-070(1) specifies that pull-tab winnings must be awarded in “cash or in merchandise.” Continuing, WAC 230-30-070(5)(a) provides that merchandise prizes must be displayed in “plain view” in the “immediate vicinity” of the pull-tab series, that surprise “merchandise prizes” may be “wrapped,” and that prizes may be stored in other locations or be photographically represented if there are “size or space constraints.” This section establishes an intent that “merchandise” be some type of physical good, capable of being displayed, wrapped, or photographed. The electronic credits the VIP Machine awards onto a cash card as pull-tab winnings do not fit this description.

Commission regulations requiring pull-tab operators to submit quarterly financial reports also include language consistent with the notion that “merchandise” is some type of physical good with a wholesale and retail value, as opposed to the electronic credits awarded by the VIP Machine. WAC 230-08-130(4)(c) requires that all pull-tab operators

report the “cost to the licensee of all merchandise prizes paid out for . . . pull-tabs.” Similarly, WAC 230-30-070(6) provides that a merchandise prize must be deleted from the flair whenever a “merchandise prize with a **retail value** over twenty dollars” is awarded. (Emphasis added). WAC 230-30-070(8) contains an identical reference to the “retail value” of a merchandise prize. *See also* WAC 230-30-080(1)(a) (total value of merchandise prizes is “computed at the amount actually paid by the licensed operator plus fifth percent of that actual cost”). Electronic credits awarded to a cash card do not have a retail or wholesale value. Accordingly, an interpretation of “merchandise” to include these electronic credits for purposes of these regulations is nonsensical and should be rejected.

When read as a whole, the Commission’s regulations governing “merchandise prizes” contemplate that “merchandise” means a physical good that can be displayed, wrapped or pictured, and that has a wholesale and retail value. The electronic credits awarded to pull-tab winners by the VIP Machine’s cash card technology do not fit within this definition and the superior court’s ruling otherwise leads a strained and unlikely interpretation that this Court should reject.

b. ZDI’s contention that cash card technology constitutes “merchandise” is barred from review because ZDI failed to exhaust its administrative remedies, as required under RCW 34.05.534.

Throughout the administrative proceedings before the ALJ, ZDI claimed it was entitled to relief because a “cash card” was a “currency equivalent.” *See* AR 001-5 (Petition for Declaratory Judgment); AR 3-5 ¶¶ 2.1–2.6. It never asserted that it constituted “merchandise” in its Petition for Declaratory Judgment or during the administrative proceedings. *Id.* Indeed, ZDI’s sole basis for relief in the Petition for Declaratory Judgment centered on the definition of “cash.”¹⁴ AR 3-5. Because ZDI has not sought declaratory relief regarding the meaning of “merchandise,” any consideration of this issue by the superior court is

¹⁴ ZDI’s Petition for Declaratory Order set forth the following contentions:

2.2 The term “cash” is not defined in statute. . . . Cash cards are not credit. Cash cards are a cash equivalent.

2.3 The decision in this matter on the basis provided creates uncertainty in the industry, which currently relies upon the use of cash cards as a cash equivalent . . .

2.4. Actual Controversy

This matter creates an actual controversy regarding the meaning of the term “cash.”

2.6 General Public Not Adversely Affected.

. . . A favorable determination in this matter would not adversely affect the general public as the general public relies upon the legal premise that cash cards are a cash equivalent . . . AR 5.

barred by the exhaustion of remedies doctrine, as set forth in RCW 34.05.534.¹⁵

RCW 34.05.534 provides that a party may file a petition for judicial review “only after they have exhausted all administrative remedies available within the agency whose actions are being challenged.” See *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 866, 947 P.2d 1208 (1997). Policies advanced through exercise of the exhaustion of administrative remedies doctrine include: (1) avoiding “premature interruption of the administrative process,” which “provides for full development of the facts, and allows the exercise of the agency’s expertise;” (2) protecting agency autonomy by giving the agency an opportunity to correct its own errors; and (3) discouraging parties from “ignoring administrative procedures” by seeking redress for administrative issues in the courts. *Harrington v. Spokane County*, 128 Wn. App. 202, 209-10, 114 P.3d 1233 (2005).

“Generally, the judgment in a suit for declaratory judgment must be responsive to the pleadings and issues presented,” as entry of judgment

¹⁵ Consistent with its Petition, ZDI’s Administrative Hearing Brief also lacks any argument that ZDI’s cash card technology met the regulatory definition of “merchandise.” AR 355-61. Although the ALJ asked a passing question regarding the meaning of “merchandise” during the administrative hearing, AR 893-94, ZDI never amended its pleadings to assert such an argument, never affirmatively argued this issue before the ALJ, and never asked the ALJ to render a ruling on this matter. Consequently, the ALJ’s Initial Declaratory Order and the Commission’s Final Declaratory Order are completely silent in this regard. See AR 408-27, 961-63.

beyond the scope of relief requested constitutes an “advisory opinion.” *Westport Ins. Corp. v. Bayer*, 284 F.3d 489, 499 (3d Cir. 2002). Here, the superior court issued a judgment on an issue that was never raised before the ALJ and never addressed by the Commission. As the superior court’s ruling interpreting the meaning of “merchandise” is not responsive to the pleadings or the issues presented below, it represents an advisory opinion that should not be allowed to stand.

Application of the exhaustion of remedies doctrine also ensures that administrative procedures are followed. *Harrington*, 128 Wn. App. at 209-10. If ZDI wants to raise the issue of whether its cash card technology qualifies as “merchandise” it may do so by following the administrative procedures governing administrative declaratory order actions, set forth in WAC 230-50-850 and RCW 34.05.240. This would afford the Commission and ZDI the opportunity to develop an evidentiary and legal record that would provide the basis for an initial order. The superior court’s ruling short-circuits this process by reaching the issue before it has been fully vetted below.

Because ZDI never petitioned the Commission for a declaratory order on the meaning of the term “merchandise,” ZDI has not exhausted its administrative remedies on the issue. Accordingly, the superior court’s

attempt to reach and resolve this issue is both premature and inappropriate, and must be reversed.

- c. **Alternatively, if ZDI properly raised the meaning of “merchandise” before the Commission, the appropriate remedy should have been a remand which would allow the Commission to correct its error.**

Finally, should this Court determine that the Commission erred by failing to address this issue in its Final Declaratory Order, the superior court’s ruling should still be vacated, as the proper remedy is to remand the case to the Commission with directions to correct this error.

RCW 34.05.574(1) provides:

In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and **shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action,** unless remand is impracticable or would cause unnecessary delay.

See Gelman, 102 Wn. App. at 871-72 (Emphasis added) (holding that the lower court erred by limiting agency’s discretion regarding how to comply with law).

As discussed in Section VI B 1, the Legislature has granted the Commission authority to promulgate and interpret regulations governing all state sanctioned gambling activities in the State of Washington. RCW 34.05.574(1) recognizes that a reviewing court has authority to

identify errors and impose necessary remedies. It further recognizes that such remedies do not extend to the exercise of statutory authority assigned to the agency. Accordingly, if this Court concludes that the Commission did err by failing to address the definition of “merchandise,” the superior court’s interpretation should still be vacated, because the appropriate remedy is to remand this issue back to the Commission for resolution.

C. The Commission’s Final Declaratory Order Was Not Arbitrary And Capricious.

As discussed in detail above, the Commission, exercising the broad authority granted by the Gambling Act, lawfully promulgated regulations restricting the types of consideration patrons could use to purchase pull-tabs and limiting the award of pull-tab winnings to “cash” or “merchandise.” Consistent with the plain meaning of the term “cash,” as well as the Legislature’s directive that gambling laws and regulations be “liberally construed” in favor of strict control of state-sanctioned gambling activities, the Commission ruled that “cash” as used in these regulations means currency or a universally accepted currency substitute, like a bank check. Applying this definition to the VIP Machine’s cash card technology, the Commission reasonably concluded that the VIP Machine did not comply with Washington’s laws and regulations governing gambling because its cash card technology was not universally accepted, and, therefore, conflicted with the Commission regulatory definition of

“cash.” Because the Commission’s conduct in this regard was reasonable and consistent with attending facts and circumstances, this Court must reverse the superior court’s determination that the Commission’s Final Declaratory Order was arbitrary and capricious.

Arbitrary and capricious action is action that “is willful and unreasoning and taken without regard to the attending facts or circumstances.” *Wash. Indep. Tel. Ass’n v. Wash. Utils. & Transp. Comm’n*, 149 Wn.2d 17, 26, 65 P.3d 319 (2003); *see also Pierce Cy. Sheriff v. Civil Service Comm’n of Pierce Cy*, 98 Wn.2d at 695, 658 P.2d 648 (1983). “Where there is room for two opinions, and the agency acted honestly and upon due consideration, [courts] should not find that an action was arbitrary and capricious, even though [the court] may have reached the opposite conclusion.” *Port of Seattle v. Pollution Control Hrgs. Bd.*, 151 Wn.2d 568, 589, 90 P.3d 659 (2004) (Emphasis added). “Action is not arbitrary and capricious when exercised honestly and upon due consideration of the facts and circumstances.” *Williams v. Young*, 6 Wn. App. 494, 497, 494 P.2d 508 (1972).

In its Letter Opinion, which is incorporated by reference into the superior court’s Findings of Fact and Conclusions of Law, the superior court concluded that the Commission’s refusal to approve the VIP Machine was arbitrary and capricious because (1) the Commission’s Final

Declaratory Order was “silent regarding its reasoning for denying ZDI’s petition, leaving this court to speculate as to its rationale;” (2) cash card technology was approved for use in tribal lottery systems, and; (3) cash card technology is widely used in “grocery and department stores” and there was no support in the record establishing that cash card technology “expands” gambling. CP 1066; *see* CP 1033 at ¶ 8. None of these conclusions, however, are supported by the administrative record or the Commission’s Final Declaratory Order. Accordingly, the superior court’s ruling in this regard must also be reversed.

- 1. The Commission’s reasoning was adequately set forth in the Final Declaratory Order which fully complied with the APA, RCW 34.05.464(8).**

The Commission’s Final Order, which incorporates certain portions of the Initial Order by reference, while vacating and specifically renouncing other portions as unnecessary to the resolution of the case, is fully consistent with the APA. Indeed, the practice of incorporating an Initial Order’s findings and conclusions into the Final Order by reference is expressly recognized and endorsed in RCW 34.05.464(8), which provides: “A final order shall include, or incorporate by reference to the initial order,” findings and conclusions that support the agency’s ruling. The superior court faulted the Commission because the Final Declaratory Order was “silent regarding its reasoning for denying ZDI’s petition,

leaving this court to speculate as to its rationale.” CP 1059, ¶ 23; 8/17/07 RP 22, Ins. 2-7. When the Final Declaratory Order is read in conjunction with the portions of the Initial Declaratory Order that are incorporated by reference, however, the rationale underlying the Commission’s Final Order is clear.

Among other conclusions, the Final Declaratory Order incorporates the ALJ’s second Conclusion of Law, at AR 442 ¶ 2, which contains extensive quotations from RCW 9.46.010 regarding Commission’s broad regulatory authority. Pursuant to this authority, as well as other provisions in the Gambling Act authorizing the Commission to define, regulate and control the game of pull-tabs, the Commission strictly construed the meaning of “cash” and concluded that ZDI’s cash card technology did not comply with its regulations. This ruling was supported by findings in the Initial Declaratory Order and evidence at the hearing establishing that use of ZDI’s cash card technology would speed up the rate of play and allow players to redeem pull-tab winnings without the assistance of a cashier. *See* AR 412 ¶¶ 9-11; 422, ¶ 23; 714-715.

In short, the Final Declaratory Order properly incorporated the findings of fact and certain conclusions of law in the Initial Declaratory Order by reference, while vacating and disavowing certain conclusions of law that it deemed unnecessary to reach. Neither the format nor the

content of the Commission's Final Declaratory Order supports the superior court's determination that the Commission acted arbitrarily and capriciously.

2. The superior court's Findings of Fact and Conclusions of Law expressly repudiate its Letter Opinion's conclusion regarding use of cash card technology in tribal lottery systems.

Although the superior court, in its Letter Opinion, cited the use of cash card technology by tribal lottery systems as one reason for its arbitrary and capricious finding, the superior court subsequently repudiated this position in its Findings of Fact and Conclusions of Law, holding that “[c]ash card technology has been authorized in the tribal lottery system, **but it is irrelevant to the issues before this Court because the tribes are subject to a separate and distinct regulatory system that is governed by federal law and the tribal/state compacts.**” CP 1030-31 at ¶ 25 (Emphasis added). *See* 8/17/07 RP 22, Ins. 8-13. In doing so, the superior court acknowledged that use of cash card technology by tribal lottery systems does **not** support its earlier conclusion that the Commission acted arbitrarily or capriciously.

3. Unlike other retail businesses, the gambling industry involves a disfavored vice that the Legislature requires to be strictly limited and closely controlled and regulated.

Under Washington law, gambling equipment manufacturers and distributors must be licensed, *see* RCW 9.46.070(4), and all technological advances or modifications to gambling devices, like pull tab dispensers, are subject to approval and close regulation by the Commission. RCW 9.46.070(11); RCW 9.46.215. While it is undisputed that grocery stores, coffee shops and other retail outlets have adopted cash card technology, none of these industries are subject to the same degree of regulation, control, and disfavor as the gambling industry. The fact that non-gambling industries embrace cash card technology is immaterial to whether ZDI's cash card technology complies with Washington's Gambling Act and the Commission's regulations. The superior court's citation to the widespread use of cash cards by non-gambling industries does not support its determination that the Commission engaged in arbitrary and capricious conduct.

The superior court's conclusions regarding the "expansion" of gambling should also be rejected. As described above, the record establishes that the VIP Machine's use of cash card technology changes the manner in which the game of pull-tabs is played (1) by speeding up the rate of play and (2) by removing an element of human interaction between a player and the cashier. *See* AR 206, p. 43, *Ins.* 3-22; 412 ¶¶ 9-11; 422, ¶ 23; 714-715. Although it is unclear what the superior court meant

when it concluded that cash card technology does not “expand” gambling, it is clear that its use in the VIP Machine results in significant changes to the manner in which the game of pull-tabs is played. Under these circumstances, the Commission, whose mission is to strictly control and regulate gambling activities, reasonably concluded that the VIP Machine did not comply with its regulations. The Commission’s actions in this regard were not arbitrary and capricious.

The Commission anticipates that ZDI will argue that the superior court’s ruling should be upheld because the VIP Machine enhances regulation of pull-tabs. While this may be true, there is no requirement that the Commission base its decisions on this factor alone. Given how the VIP Machine changes the manner in which pull-tabs are played and the directive that gambling activities be closely controlled and limited, the Commission acted reasonably when it concluded that policy concerns outweighed any regulatory benefit the machine might offer. At best, this is an instance where reasonable minds can disagree based on different policy emphases; it does not constitute the basis for a finding of arbitrary and capricious conduct. *See Port of Seattle*, 151 Wn.2d at 589 (agency action is not arbitrary and capricious where there is room for two opinions).

In short, none of the superior court's rationales for finding arbitrary and capricious conduct can survive close scrutiny. Accordingly, the superior court's determination that the Commission's Final Declaratory Order was arbitrary and capricious must be reversed.

D. ZDI Is Not Entitled To Recover Attorneys Fees And Costs Under The Equal Access To Justice Act (EAJA), RCW 4.84.350.¹⁶

As detailed above, the Commission has set forth numerous grounds justifying reversal of the superior court's order, including lack of subject matter jurisdiction, and superior court's failure to defer to the Commission's expertise when construing the Commission's own regulations governing gambling. If the superior court's ruling is reversed, the award of attorney's fees and costs must also be reversed because ZDI will no longer qualify as a "prevailing party" for purposes of the EAJA.¹⁷

Nonetheless, even if this Court refuses to overturn the superior court in whole or in part, the arguments presented earlier in this brief establish that the positions the Commission took in its Final Declaratory

¹⁶ RCW 4.84.350(1) provides:

[A] court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, **unless the court finds that the agency action was substantially justified** or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

¹⁷ If this Court reverses the superior court's ruling, the Commission, as the prevailing party, hereby requests an award of attorney's fees and costs on appeal, pursuant to RAP 18.1.

Order were reasonable under the circumstances, and, therefore, “substantially justified.” RCW 4.84.350(1); *Alpine Lakes Protection Soc’y v. Dep’t of Natural Resources*, 102 Wn. App. 1, 19, 979 P.2d 929 (1999) (adopting federal interpretation of “substantially justified” to mean “justified to a degree that could satisfy a reasonable person”). A finding of substantial justification is also supported by the fact that this was an issue of first impression for which there was no earlier precedent to rely. *See Davidson v. Veneman*, 317 F.3d 503 (5th Cir. 2003) (government substantially justified in denying application for disaster relief where decision was based in part on issue of first impression); *Plum Creek Timber Co. v. Forest Practices Appeals Board*, 99 Wn. App. 579, 993 P.2d 287 (2000) (finding that DNR’s actions were substantially justified given subjective nature of issue and lack of precedent).

In this case, the regulatory definition of “cash” was one of first impression. Moreover, the Commission’s narrow interpretation of “cash” comported with (1) RCW 9.46.010’s mandate that state-sanctioned gambling activities be strictly controlled and regulated; (2) dictionary definitions of “cash” that supported its interpretation, *see* AR 420, ¶¶ 15, 16; and, (3) preexisting regulation defining the term “cash equivalent,” *see* WAC 230-40-552. All of these factors demonstrate that the Commission’s actions were “substantially justified” under the

circumstances. Accordingly, even if this Court upholds the superior court's ruling in whole or in part, the superior court's award of attorney's fees and costs must still be reversed.

VII. CONCLUSION

For the reasons set forth above, the Commission respectfully requests that the superior court's ruling and award of attorney's fees and costs be reversed, and that the Commission's Final Declaratory Order be affirmed and reinstated in full.

RESPECTFULLY SUBMITTED this 11th day of February, 2008.

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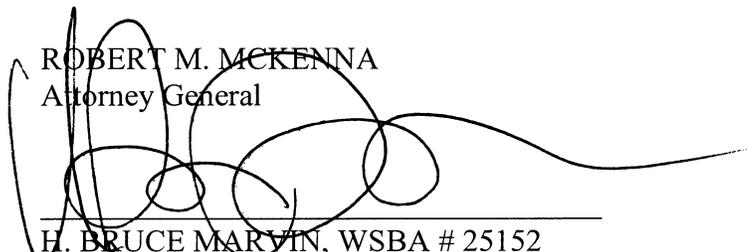
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circumstances. Accordingly, even if this Court upholds the superior court's ruling in whole or in part, the superior court's award of attorney's fees and costs must still be reversed.

VII. CONCLUSION

For the reasons set forth above, the Commission respectfully requests that the superior court's ruling and award of attorney's fees and costs be reversed, and that the Commission's Final Declaratory Order be affirmed and reinstated in full.

RESPECTFULLY SUBMITTED this 12th day of February, 2008.


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Appendix A

Hiring, firing, and evaluating gambling personnel; supervising and controlling the conduct of gambling activities; preparing or supervising the preparation of gambling records; controlling cash generated by gambling activities and making bank deposits; and purchasing gambling supplies. A commercial gambling manager is required to be licensed if they are responsible for supervising the operation of progressive jackpot pull-tab games as authorized in WAC 230-30-025.

[Statutory Authority: RCW 9.46.070, 9.46.120, 9.46.0273, 9.46.310 and 34.05.313. 96-24-006 (Order 305), § 230-02-240, filed 11/21/96, effective 1/1/97. Statutory Authority: RCW 9.46.070. 95-09-062 (Order 268), § 230-02-240, filed 4/18/95, effective 5/19/95. Statutory Authority: RCW 9.46.070 (7)(14). 91-07-021, § 230-02-240, filed 3/13/91, effective 4/13/91.]

WAC 230-02-250 Bingo equipment. Bingo equipment includes all equipment that is actually used, made for use, or sold for the purpose of use, in bingo games for which consideration is charged to participate and prizes are awarded to winners. Bingo equipment includes, but is not limited to:

- (1) Blowers or other devices from which balls are mixed and randomly withdrawn to determine the letters and numbers to be called;
- (2) Reusable and disposable bingo cards;
- (3) Electronic flashboards that interface with the mixing and selection device;
- (4) Electronic bingo card daubers, including software or equipment interfaced with such; and
- (5) Any other device commonly used in the direct operation of the game: Provided, That general purpose equipment and supplies that are only indirectly involved in the conduct of the game shall not be deemed bingo equipment. The following equipment and supplies will not be deemed bingo equipment for purposes of this title:
 - (a) Tables, chairs, or card stands;
 - (b) Audio or video equipment used only to communicate progress of the game to players;
 - (c) Computer or cash register equipment used to record sales or act as a storage medium for records;
 - (d) General supplies, such as glue sticks, daubers, and other items for resale to players; and
 - (e) Bingo games manufactured and sold for recreational purposes.

[Statutory Authority: RCW 9.46.070. 95-19-070, § 230-02-250, filed 9/18/95, effective 1/1/96; 94-01-033 § 230-02-250, filed 12/6/93, effective 1/6/94. Statutory Authority: RCW 9.46.070 (8), (11), and (14). 83-13-050 (Order 134), § 230-02-250, filed 6/14/83; Order 29, § 230-02-250, filed 1/23/75.]

WAC 230-02-255 Linked bingo prize defined. A linked bingo prize is a prize that is awarded to a player who is competing against players from multiple participating licensed bingo halls. Categories of prizes include:

- (1) The main prize, which is the prize paid each time the game is played to the first verified winner(s);
- (2) The consolation prize, which is the prize paid at each participating licensed bingo hall after the main prize has been determined; and
- (3) The bonus prize, which is a prize awarded when a player achieves the winning pattern in a predetermined number of calls or on a specific predetermined number.

[Statutory Authority: RCW 9.46.070. 98-24-090 (Order 369), § 230-02-255, filed 12/1/98, effective 1/1/99.]

(2005 Ed.)

WAC 230-02-260 Pull-tab defined. A "pull-tab" is a single folded or banded ticket or is a card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol or set of symbols, a few of which numbers or symbols out of every set of pull-tabs have been designated in advance and at random as prize winners, when, for the opportunity to obtain each such folded or banded ticket or card, view the numbers or symbols thereon and possibly obtain a prize winning pull-tab, a person pays some consideration to an operator.

[Order 5, § 230-02-260, filed 12/19/73.]

WAC 230-02-270 Punch board defined. "Punch board" means a board or device containing a number of receptacles of uniform size in which are placed, at random, punches (slips of paper or other substance, imprinted with numbers or symbols) and which:

- (1) A specific serial number is assigned to the punch board and printed on each punch;
- (2) A flare or face sheet covers the receptacles and sets out the winning numbers or symbols and prizes which may be won;
- (3) Upon the payment of consideration, a player may select and remove a punch from a receptacle; and
- (4) A prize is awarded if the number or symbol, set out on the selected punch, matches a symbol on the flare or face sheet.

[Statutory Authority: RCW 9.46.070. 93-12-082, § 230-02-270, filed 5/28/93, effective 7/1/93. Statutory Authority: Chapter 9.46 RCW. 86-19-056 (Order 161), § 230-02-270, filed 9/15/86; Order 5, § 230-02-270, filed 12/19/73.]

WAC 230-02-278 Program service expenses defined. Program service expenses are those relating to providing care, support, or assistance to individuals, and/or sponsoring or conducting activities that directly relate to the organization's stated purposes. These expenses are allocated as set forth in WAC 230-08-095. The following will be considered program service expenses:

- (1) Services directly provided to the public or the organization's members through programs operated by the organization; or
- (2) Services indirectly provided by:
 - (a) Making contributions to individuals or to other service-providing organizations;
 - (b) Funding scholarships; or
 - (c) Sponsoring activities directly related to any organizational purposes set out in WAC 230-04-024 (1)(b).

[Statutory Authority: RCW 9.46.070 (1), (8-11), (14), (16), (20). 96-07-075, § 230-02-278, filed 3/19/96, effective 7/1/96. Statutory Authority: RCW 9.46.070, 9.46.0261 and 9.46.0209. 94-01-035, § 230-02-278, filed 12/6/93, effective 1/6/94.]

WAC 230-02-279 Supporting service expenses defined. Supporting service expenses are those related to activities that are essential to the general operation of the organization's programs, but which are not directly identifiable to a specific program. These expenses are allocated as set forth in WAC 230-08-095. Supporting service expenses typically include management, general overhead, and any expenses related to the solicitation of contributions: Pro-

vided, That supporting service expenses do not include extraordinary items which are unusual and infrequent in nature. The following expenditures shall be considered supporting service expenses:

(1) Wages and benefits for general operation of the organization such as executive directors and other management or support personnel (secretarial, reception, bookkeeping, etc.);

(2) Expenses related to providing an administrative office, including rent, depreciation, interest, utilities, taxes, insurance, and supplies;

(3) General management functions of the organization such as planning (budget, etc.), recruiting and training staff, and procuring and distributing materials;

(4) Scheduling and conducting board, committee, and membership meetings;

(5) Publicizing the organization: Provided, That solicitation of new members or volunteers, or announcements and publications intended to educate the public regarding services provided by the organization, shall be deemed to be program service expenses;

(6) Outside supporting services such as accounting, audit, legal, etc.;

(7) General expenses related to the solicitation of contributions or grants; and

(8) Any net loss from nongambling fund-raising activities.

[Statutory Authority: RCW 9.46.070 (1), (8-11), (14), (16), (20), 96-07-075, § 230-02-279, filed 3/19/96, effective 7/1/96.]

WAC 230-02-280 Identification and inspection services stamps. Identification and inspection services stamps are printed under the control of the commission for purposes of identifying and controlling gambling devices within the state of Washington. Each stamp is preglued and imprinted with the seal of the commission and an unique number or combination of alpha characters and numbers.

[Statutory Authority: RCW 9.46.070 (8), (11) and (14), 88-13-060 (Order 179), § 230-02-280, filed 6/14/88.]

WAC 230-02-290 Records entry labels. Record entry labels are a set of removable, preglued labels, attached to identification and inspection services stamps and imprinted with the same unique number or combination of alpha characters and numbers as the stamp, plus an electronically identifiable bar code equivalent of the identification number. These labels are attached to a punch board or pull-tab series flare by the manufacturer of the punch board or pull-tab at the same time the identification and inspection services stamp is attached. These labels may only be removed and used as record entries as prescribed by other rules of this section.

[Statutory Authority: RCW 9.46.070 (8), (11) and (14), 88-13-060 (Order 179), § 230-02-290, filed 6/14/88.]

WAC 230-02-300 Substantial interest holder defined. Substantial interest holder means a person who has actual or potential influence over the management or operation of any organization, association or other business entity. Evidence of substantial interest includes, but is not limited to, one or more of the following:

(1) Directly or indirectly owning, operating, managing or controlling an entity or any part of an entity; or

(2) Directly or indirectly profiting from or assuming liability for debts of the entity; or

(3) Is an officer or director of the entity; or

(4) Owning ten percent or more of any class of stock in a privately or closely held corporation, or five percent or more of any class of stock in a publicly traded corporation; or

(5) Furnishing ten percent or more of the capital, whether in cash, goods, or services, for the operation of the business during any calendar year; or

(6) Directly or indirectly receiving a salary, commission, royalties or other form of compensation from the gambling activity in which an entity is or seeks to be engaged.

[Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4), 95-23-109, § 230-02-300, filed 11/22/95, effective 1/1/96; Order 23, § 230-02-300, filed 9/23/74; Order 12, § 230-02-300, filed 2/14/74; Order 5, § 230-02-300, filed 12/19/73.]

WAC 230-02-310 Bona fide newspaper or magazine defined. A newspaper or magazine shall be "bona fide" only if:

(1) To conduct, or participate in conducting, the contest or drawing of which the coupon or entry blank is a part is not a primary purpose underlying the publication; and

(2) The price of the publication is consistent with the price of similar publications sold in the state which contain no such coupons or entry blanks; and

(3) The publication has been published regularly and continuously for a period of at least three months prior to any such coupon or entry blank appearing therein; and

(4) At least three regularly scheduled issues have been published prior to any such coupon or entry blank appearing therein.

[Order 42, § 230-02-310, filed 9/18/75; Order 14, § 230-02-310, filed 3/27/74.]

WAC 230-02-350 Commercial stimulant defined. "Commercial stimulant" means a licensed gambling activity operated by an established food and/or drink business with the purpose of increasing the volume of food and/or drink sales for "on-premises" consumption.

[Statutory Authority: RCW 9.46.070 and 9.46.0217, 95-07-094, § 230-02-350, filed 3/17/95, effective 7/1/95. Statutory Authority: Chapter 9.46 RCW, 87-07-038 (Order 165), § 230-02-350, filed 3/16/87; 86-24-025 (Order 163), § 230-02-350, filed 11/24/86; 86-17-057 (Order 160), § 230-02-350, filed 8/18/86. Statutory Authority: RCW 9.46.020(5), 82-23-050 (Order 125), § 230-02-350, filed 11/15/82. Statutory Authority: RCW 9.46.020(5) and section 1(5), chapter 326, Laws of 1977 ex. sess. and RCW 9.46.070(4), 78-03-061 (Order 81), § 230-02-350, filed 2/22/78; Order 78, § 230-02-350, filed 11/17/77; Order 29, § 230-02-350, filed 1/23/75; Order 23, § 230-02-350, filed 9/23/74.]

WAC 230-02-360 Licensed premises defined. "Licensed premises" means the physical building and property, upon which the licensed gambling activity occurs, as set out on the license application and approved by the commission: Provided, That when only a portion of a building is utilized for purposes of operating a food and/or drink business or for conducting gambling or related activities, only that portion set out in the application on file with the commission, shall be considered the licensed premises.

WAC 230-02-418 Charitable or nonprofit gambling manager defined. A "charitable or nonprofit gambling manager" is any member or employee of a charitable or nonprofit organization who has the ability to, directly or indirectly, exercise a material degree of control over the operation of any gambling activity or the disbursement of funds generated from gambling activities. This definition includes all persons compensated to advise the board and/or officers regarding specific aspects of operating any gambling activity, whether as a consultant or any other short-term contract basis: Provided, That charitable or nonprofit organizations currently licensed to operate gambling activities, or their members or employees, may provide nonspecific advice to any other charitable/nonprofit organization, without being deemed a gambling manager for the receiving organization, if they are not directly or indirectly compensated for such advice. This section is not intended to restrict actions regarding the operation of any gambling activity that are initiated by the board and/or officers, if such actions are implemented through a gambling manager appointed by the board and/or officers.

For purposes of this title, the following individuals shall be deemed to be charitable or nonprofit gambling managers:

(1) Any member or employee who has the primary responsibility to supervise the operation of any gambling activity;

(2) Any employee of the organization who has been assigned the responsibility of supervising another gambling manager by the governing board or officers; or

(3) The employee who the officers or governing board of directors has delegated the highest level of authority over the day-to-day affairs of the organization and who is responsible for disbursement of funds generated from gambling activities and/or safeguarding assets purchased with funds generated from gambling activities.

[Statutory Authority: RCW 9.46.070. 95-09-062 (Order 268), § 230-02-418, filed 4/18/95, effective 5/19/95. Statutory Authority: RCW 9.46.070.(7), (17), (8) and (9). 91-13-070 (Order 223), § 230-02-418, filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 9.46.070(17). 81-21-032 (Order 113), § 230-02-418, filed 10/15/81.]

WAC 230-02-420 Social card room. A social card room is that area of the premises of a bona fide charitable or nonprofit organization which has been specifically set aside or designated by the licensee and approved by the commission for the playing of cards by bona fide members of that organization and their guests only, in accordance with state law and the rules of the commission.

[Order 23, § 230-02-420, filed 9/23/74.]

WAC 230-02-430 Guest. The term guest shall include only those persons not a member of a bona fide charitable or nonprofit organization, who are allowed to use the facilities of the organization to play card games, only when accompanied by the regular member of the organization sponsoring the guest and for a fee not to exceed the maximum fee for the playing of cards as set by the commission: Provided, That persons holding a valid "guest" card in accordance with Washington state liquor control board regulation 106 (WAC 314-04-040), need not be accompanied by a member.

[Title 230 WAC—p. 12]

If a person is charged, directly or indirectly, more than the maximum fee set by the commission to enter the facility and play cards, he is not a guest for the purpose of these rules.

[Order 23, § 230-02-430, filed 9/23/74.]

WAC 230-02-440 Calendar day defined. "Calendar day" means a twenty-four hour period commencing at 12:01 a.m. and ending at 12 o'clock midnight.

[Order 78, § 230-02-440, filed 11/17/77.]

WAC 230-02-450 Three consecutive days defined. "Three consecutive days" shall include any period of up to seventy-two consecutive hours.

[Order 78, § 230-02-450, filed 11/17/77.]

WAC 230-02-455 Social pastime defined. "Social pastime" means a gambling activity conducted primarily for entertainment. Charitable or nonprofit organizations are deemed to be conducting bingo as a social pastime when licensed to receive \$250,000 gross gambling receipts or less annually or operating under the provisions of RCW 9.46.-0321: Provided, That any licensee that pays wages or rent to conduct bingo shall be deemed to be operating bingo for purposes of fundraising and must comply with net return requirements for their class of license, as set forth in Table 1 of WAC 230-20-059.

[Statutory Authority: RCW 9.46.070, 9.46.0209, 9.46.0237, 9.46.0205 and 9.46.075. 96-24-008 (Order 303), § 230-02-455, filed 11/21/96, effective 12/22/96.]

WAC 230-02-500 Drawing defined. A drawing is defined as an approved random selection process for determining winners in a raffle. To be random, each ticket in the drawing must have an equal chance of selection.

[Statutory Authority: RCW 9.46.070 (11), (14) and 9.46.0218 [9.46.0281]. 89-05-024 (Order 186), § 230-02-500, filed 2/13/89.]

WAC 230-02-503 Fund raising defined. "Fund raising" means a gambling activity conducted for purposes of obtaining funds for a charitable or nonprofit organization's programs and which is operated with a profit motive. Organizations are deemed to be conducting bingo for fund raising to support the purposes of the organization when licensed to receive more than \$250,000 gross gambling receipts.

[Statutory Authority: RCW 9.46.070, 9.46.0209, 9.46.0237, 9.46.0205 and 9.46.075. 96-24-008 (Order 303), § 230-02-503, filed 11/21/96, effective 12/22/96.]

WAC 230-02-504 Fund-raising event defined. "Fund-raising event," as set forth in RCW 9.46.0233, is an event conducted by a charitable or nonprofit organization to raise money for the organization's stated goals and purposes. During these limited duration events, bingo, amusement games, contests of chance, lotteries, and raffles may be conducted.

[Statutory Authority: RCW 9.46.070. 00-15-048 (Order 387), § 230-02-504, filed 7/17/00, effective 8/17/00.]

WAC 230-02-505 Recreational gaming activity—Defined. A recreational gaming activity is a nongambling activity utilizing gambling devices authorized for use in fund

bers of the organization, including spouses, parents, children, and brothers or sisters of each;

(14) The names, duties performed, total hours worked, and total compensation paid for the following employees:

(a) All employees paid more than forty thousand dollars annually;

(b) Part-time employees paid more than twenty dollars per hour; and

(c) All officers receiving compensation for services rendered;

(15) In addition to information required in subsection (1) of this section, any organization licensed to conduct gambling activities in Group III, IV, or V must submit complete financial statements prepared in accordance with generally accepted accounting principles and all required disclosures or footnotes. Any organization licensed to conduct gambling activities in Groups IV and V must submit financial statements prepared by a licensed certified public accountant. This information must be submitted no later than one hundred twenty days following the end of the organization's fiscal year. The financial statements must include:

(a) A statement of financial position;

(b) A statement of activities. This statement may be presented in a consolidated form if details of each component are provided as supplemental information. Revenue and expenses for each activity must be presented separately as follows:

(i) Each gambling activity;

(ii) Retail sales conducted in conjunction with gambling activities;

(c) A statement of cash flows;

(d) A statement of functional expenses;

(e) In addition to all disclosures required by generally accepted accounting principles, the financial statements must disclose the following:

(i) Loans to or from officers, board members, and employees: Provided, That employee salary advances of five hundred dollars or less will not be considered as loans. Details of all terms, including interest rates and payment schedules, must be disclosed;

(ii) All civil penalties, fines, bribes, or embezzlements incurred or discovered during the period; and

(iii) An explanation of any adjustments made to prior period capital accounts or net asset balances;

(f) An explanation of material differences between amounts reported on gambling activity reports and the financial statements;

(16) The commission may require additional information to ensure completeness of the information reported including selected information covering the period from the end of the fiscal year reported and the license renewal date;

(17) The commission may grant an organization additional time to submit the information required if a written request is received prior to the due date. Any request for additional time shall be signed by the president, include a statement setting out the hardship necessitating the delay, and the expected date the required report(s) will be submitted;

(18) The commission may request any organization licensed to conduct gambling activities in Group II to submit financial statements and other information required by this rule in order to evaluate the organization's qualification.

[Title 230 WAC—p. 54]

[Statutory Authority: RCW 9.46.070. 98-15-073 (Order 358), § 230-08-122, filed 7/15/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (1), (8-11), (14), (16), (20). 96-07-075, § 230-08-122, filed 3/19/96, effective 7/1/96. Statutory Authority: RCW 9.46.070 (7), (8), (9), (10), (14), (19) and (20). 89-09-047 (Order 190), § 230-08-122, filed 4/18/89, effective 7/1/89.]

WAC 230-08-125 Annual activity reports—Certain activities operated by charitable or nonprofit organizations. Each charitable or nonprofit organization licensed to operate raffles, amusement games, Class A, B, or C bingo games, or combination license shall submit to the commission an annual summary of all such activities. The annual report shall be completed as follows:

(1) The report form shall be furnished by the commission, and the completed report shall be received in the office of the commission or postmarked no later than thirty days following the expiration of such organization's license year.

(2) The report shall be signed by the highest ranking officer or his/her designee. If the report is prepared by someone other than this officer, then the preparer shall include his/her name and phone number on the report;

(3) The report shall be completed in accordance with the related instructions furnished with the report. The report shall include, among other items, the following:

(a) The gross gambling receipts from the conduct of each licensed activity;

(b) The total amount of cash prizes actually paid out, and the total of the cost to the licensee of all merchandise prizes actually paid out for each licensed activity. Donated prizes will be recorded at the fair market value of the prize at the time they were received by the organization;

(c) The net gambling receipts for each activity;

(d) Full details on all expenses directly related to each activity, including all compensation paid by the licensee to each person for any work connected with the management, promotion, conduct or operation of each of the licensed activities, including a description of the work performed by that person: Provided, That RCW 9.46.0277 and WAC 230-20-070 are observed in relation to the restriction against employing persons to conduct or otherwise take part in the operation of a raffle;

(e) The net income from each activity;

(f) The total number of sessions conducted during the year; and

(g) The total number of players participating in bingo games.

(4) In addition, organizations that operate retail sales activities in conjunction with bingo games shall report the net income from such.

[Statutory Authority: RCW 9.46.070 and 9.46.116. 96-24-007 (Order 304), § 230-08-125, filed 11/21/96, effective 1/1/97. Statutory Authority: RCW 9.46.070 (1)(16). 90-10-007, § 230-08-125, filed 4/19/90, effective 7/1/90. Statutory Authority: RCW 9.46.070 (7), (8), (9), (10), (14), (19) and (20). 89-09-047 (Order 190), § 230-08-125, filed 4/18/89, effective 7/1/89. Statutory Authority: RCW 9.46.070 (8) and (9). 85-06-002 (Order 147), § 230-08-125, filed 2/22/85. Statutory Authority: RCW 9.46.070 (4), (7), (8) and (11). 83-06-077 (Order 127), § 230-08-125, filed 3/2/83.]

WAC 230-08-130 Quarterly activity reports by operators of punch boards and pull-tabs. Each licensee for the operation of punch boards and pull-tabs shall submit an activity report to the commission concerning the operation of the licensed activity and other matters set forth below:

(2005 Ed.)

(1) Reports shall be submitted detailing activities occurring during each of the following periods of the year:

- (a) January 1st through March 31st;
- (b) April 1st through June 30th;
- (c) July 1st through September 30th; and
- (d) October 1st through December 31st.

(2) A report shall be submitted for any period of time the activity was operated or a license was valid. If a license is not renewed, a report for the period between the previous report filed and the expiration date shall be submitted;

(3) The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than thirty days following the end of the period for which it is made;

(4) The report shall be signed by the highest ranking executive officer or their designee. If the report is prepared by someone other than the licensee or an employee, the preparer shall print his/her name and phone number on the report;

(5) The report shall be completed in accordance with the related instructions furnished with the report. The report shall include the following:

- (a) Gross gambling receipts from punch boards and from pull-tabs;
- (b) Total amount of cash prizes paid out and the cost to the licensee of all merchandise prizes paid out for punch boards and for pull-tabs;
- (c) Full details of all expenses related to the purchase and operation of punch boards and pull-tabs;
- (d) Total net gambling income;
- (e) The number of punch boards and the number of pull-tab series removed from play during the period; and
- (f) The number of punch boards and the number of pull-tab series purchased during the period, less all unplayed devices returned for credit during the period.

[Statutory Authority: RCW 9.46.070 and 9.46.0217. 95-07-094, § 230-08-130, filed 3/17/95, effective 7/1/95. Statutory Authority: RCW 9.46.070. 94-11-095 (Order 251), § 230-08-130, filed 5/17/94, effective 7/1/94. Statutory Authority: RCW 9.46.070 (8), (11) and (14). 88-13-060 (Order 179), § 230-08-130, filed 6/14/88. Statutory Authority: Chapter 9.46 RCW. 86-19-056 (Order 161), § 230-08-130, filed 9/15/86, effective 1/1/87. Statutory Authority: RCW 9.46.070 (8) and (9). 85-06-002 (Order 147), § 230-08-130, filed 2/22/85. Statutory Authority: RCW 9.46.070(8). 82-04-010 (Order 118), § 230-08-130, filed 1/22/82; Order 80, § 230-08-130, filed 12/28/77; Order 70, § 230-08-130, filed 5/24/77; Order 46, § 230-08-130, filed 2/13/76; Order 29, § 230-08-130, filed 1/23/75; Order 14, § 230-08-130, filed 3/27/74; Order 5, § 230-08-130, filed 12/19/73, 1:25 p.m.]

WAC 230-08-140 Quarterly activity reports by distributors. Each licensed distributor shall submit an activity report to the commission concerning sales and services relating to gambling activities each quarter by completing a report form furnished by the commission. The following requirements shall be followed for completion and filing of activity reports:

- (1) Quarterly reporting periods are defined as:
 - (a) January 1st through March 31st;
 - (b) April 1st through June 30th;
 - (c) July 1st through September 30th; and
 - (d) October 1st through December 31st.

(2) The completed report shall be received in the office of the commission or postmarked no later than thirty days following the end of the period for which it is made;

(3) The report shall be signed by the highest ranking executive officer or their designee. If the report is prepared by someone other than the licensee or their employee, then the preparer's name and business telephone number must be provided;

(4) The report shall include, among other items, the following:

(a) The gross sales of gambling related supplies or equipment or merchandise of any kind which could be used to operate, or in connection with, punch boards, pull-tabs, pull-tab dispensing devices, bingo, or amusement games, where such sales are made in the state of Washington or for use or distribution within this state;

(b) The quantity of each specific type of device, equipment or merchandise sold within this state or for distribution and use within this state by the licensee;

(c) A listing of the name and address of each person who was a distributor's representative for the licensee during the three month period or who attempted to solicit sales of such devices, equipment or merchandise, either within the state of Washington or for use or distribution within the state; and

(d) The number of employees in the state of Washington other than those listed in (c) of this subsection.

(5) Each distributor with an active license must submit a report regardless of the level of activity. If no activity was conducted during the period, a report stating "no activity" shall be submitted;

(6) If a licensee does not renew their license, then they shall file a report for the period between the previous report filed and the expiration date of the license.

[Statutory Authority: RCW 9.46.070. 94-01-033, § 230-08-140, filed 12/6/93, effective 1/6/94. Statutory Authority: RCW 9.46.070 (4), (11) and (14). 89-24-002 (Order 201), § 230-08-140, filed 11/27/89, effective 12/28/89. Statutory Authority: RCW 9.46.070 (8) and (9). 85-06-002 (Order 147), § 230-08-140, filed 2/22/85. Statutory Authority: RCW 9.46.070(7). 79-09-029 (Order 91), § 230-08-140, filed 8/14/79; Order 70, § 230-08-140, filed 5/24/77; Order 46, § 230-08-140, filed 2/13/76; Order 29, § 230-08-140, filed 1/23/75; Order 5, § 230-08-140, filed 12/19/73, 1:25 p.m.]

WAC 230-08-150 Quarterly activity reports by manufacturers. Each licensed manufacturer shall submit an activity report to the commission concerning all sales and services relating to gambling activities each quarter by completing a report form furnished by the commission. The following requirements shall be followed for completion and filing of activity reports:

(1) Quarterly reporting periods are defined as:

- (a) January 1st through March 31st;
- (b) April 1st through June 30th;
- (c) July 1st through September 30th; and
- (d) October 1st through December 31st.

(2) The completed report shall be received in the office of the commission or postmarked no later than thirty days following the end of the period for which it is made;

(3) The report shall be signed by the highest ranking executive officer or their designee. If the report is prepared by someone other than the licensee or their employee, then the preparer shall print his/her name and phone number on the report;

- (b) Play bingo at agricultural fairs or school carnivals;
- (c) Play amusement games, pursuant to the provisions set forth in RCW 9.46.0331 (4) and (5); and
- (d) Sell raffle tickets, pursuant to the provisions set forth in WAC 230-02-183.

Bingo advertisements directed to minors.

(3) All bingo advertisements that are directed to minors shall include language indicating that all minors must be accompanied by a member of their immediate family or a guardian, who is at least eighteen years old.

Enforcement of age restrictions.

(4) The licensee and those persons operating gambling activities are responsible for assuring that persons under the age of eighteen are not playing in or participating in the operation of any gambling activity.

[Statutory Authority: RCW 9.46.070. 00-01-002 (Order 379), § 230-12-027, filed 12/1/99, effective 1/1/00.]

WAC 230-12-030 No beer, wine or spirits as prizes.

Alcohol shall not be offered as a prize.

(1) Pursuant to the restrictions of the liquor control board, beverages that contain alcohol, including but not limited to beer, wine or spirits, shall not be offered or awarded as a prize or in lieu of a prize for winning at any gambling activity. Exceptions to this restriction are set forth in subsection (2) of this section.

Exceptions for alcohol to be offered as a prize.

(2) Alcohol may be offered and awarded as a prize in:

(a) Dice or coin contests for music, food, or beverage payment as authorized by RCW 9.46.0305 (Dice or coin contests for music, food, or beverage payment);

(b) Unlicensed members-only raffles as authorized by RCW 9.46.0315 (Raffles—No license required, when), but only if the appropriate permit has been granted by the liquor control board; and

(c) Other gambling activities that the liquor control board has authorized alcohol to be given away.

[Statutory Authority: RCW 9.46.070. 00-01-002 (Order 379), § 230-12-030, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 9.46.070, 9.46.0315 and 9.46.0321. 93-17-098 (Order 243), § 230-12-030, filed 8/17/93, effective 1/1/94; Order 51, § 230-12-030, filed 4/30/76; Order 12, § 230-12-030, filed 2/14/74; Order 5, § 230-12-030, filed 12/19/73.]

WAC 230-12-040 No firearms as prizes—Exceptions. No firearms, air guns, or other mechanical devices which are capable of discharging dangerous projectiles, including but not limited to, BB or CO₂ guns, rifles, shotguns, pistols or revolvers, or crossbows, shall be offered or awarded as a prize for any of the activities authorized by chapter 9.46 RCW: Provided, That bona fide charitable or nonprofit organizations licensed to conduct a raffle, may award any legal firearm or air gun as a prize for such raffles. Any firearm for which the transfer is restricted by state or federal law shall be awarded by providing the winner a certificate for such prize which is redeemable by a licensed firearms dealer.

[Statutory Authority: RCW 9.46.070. 95-07-093, § 230-12-040, filed 3/17/95, effective 7/1/95; 94-13-099 (Order 253), § 230-12-040, filed 6/15/94, effective 7/16/94. Statutory Authority: RCW 9.46.070 (1), (2), (4), (5), (6), (11), (14) and (17). 86-13-055 (Order 158), § 230-12-040, filed 6/13/86; Order 51, § 230-12-040, filed 4/30/76; Order 12, § 230-12-040, filed 2/14/74.]

WAC 230-12-045 Gambling promotions. Licensees may conduct gambling promotions to encourage players to participate in a gambling activity under the following conditions and restrictions:

(1) The following conditions apply:

(a) All players must have an equal opportunity to participate;

(b) Licensee must establish criteria to determine how promotional items will be distributed to players. The criteria must not include distribution based on an element of chance, such as a drawing or spinning wheel, except as authorized under WAC 230-20-242.

(c) All rules or restrictions must be conspicuously displayed in the gaming area and included on promotional materials or advertisements.

(2) The following restrictions apply:

(a) Promotional items must not exceed a cost of five hundred dollars per item;

(b) Promotional items awarded based on the outcome of a gambling activity must not be an additional opportunity to engage in a gambling activity regulated by the commission;

(c) Gambling activities and related gambling promotions must not be combined in any way with a promotional contest of chance, as defined in RCW 9.46.0356.

[Statutory Authority: RCW 9.46.070. 04-11-091 (Order 431), § 230-12-045, filed 5/18/04, effective 7/1/04; 02-11-084 (Order 413), § 230-12-045, filed 5/16/02, effective 7/1/02.]

WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception. No licensee, member or employee thereof shall extend credit, make a loan, or grant a gift to any person playing in an authorized gambling activity, or which enables a person to play in an authorized gambling activity.

Gifts prohibited—Exceptions.

(1) Gifts are items licensees give away to its customers and are not connected to gambling activities regulated by the commission. Licensees shall not offer gifts in conjunction with gambling activities, with the following exceptions:

(a) Promotions are allowed as authorized by WAC 230-12-045;

(b) Transportation services provided to and from gambling activities;

(c) Free or discounted food, drink or merchandise may be provided under the following conditions:

(i) The actual cost of any individual item may not exceed five hundred dollars;

(ii) The merchandise shall not be traded back to the licensee for cash or be used to further participate in an authorized gambling activity;

(d) For each individual gift with an actual cost over one hundred dollars, charitable and nonprofit organizations shall prepare and maintain a written record with the following information:

: Gambling Commission

[Statutory Authority: RCW 9.46.070. 95-07-093, § 230-12-040, filed 3/17/95, effective 7/1/95; 94-13-099 (Order 253), § 230-12-040, filed 6/15/94, effective 7/16/94. Statutory Authority: RCW 9.46.070 (1), (2), (4), (5), (6), (11), (14) and (17). 86-13-055 (Order 158), § 230-12-040, filed 6/13/86; Order 51, § 230-12-040, filed 4/30/76; Order 12, § 230-12-040, filed 2/14/74.]

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(1) The following conditions apply:

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(b) Licensee must establish criteria to determine how promotional items will be distributed to players. The criteria must not include distribution based on an element of chance, such as a drawing or spinning wheel, except as authorized under WAC 230-20-242.

(c) All rules or restrictions must be conspicuously displayed in the gaming area and included on promotional materials or advertisements.

(2) The following restrictions apply:

(a) Promotional items must not exceed a cost of five hundred dollars per item;

(b) Promotional items awarded based on the outcome of a gambling activity must not be an additional opportunity to engage in a gambling activity regulated by the commission;

(c) Gambling activities and related gambling promotions must not be combined in any way with a promotional contest of chance, as defined in RCW 9.46.0356.

[Statutory Authority: RCW 9.46.070. 04-11-091 (Order 431), § 230-12-045, filed 5/18/04, effective 7/1/04; 02-11-084 (Order 413), § 230-12-045, filed 5/16/02, effective 7/1/02.]

WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception. No licensee, member or employee thereof shall extend credit, make a loan, or grant a gift to any person playing in an authorized gambling activity, or which enables a person to play in an authorized gambling activity.

Gifts prohibited—Exceptions.

(1) Gifts are items licensees give away to its customers and are not connected to gambling activities regulated by the commission. Licensees shall not offer gifts in conjunction with gambling activities, with the following exceptions:

(a) Promotions are allowed as authorized by WAC 230-12-045;

(b) Transportation services provided to and from gambling activities;

(c) Free or discounted food, drink or merchandise may be provided under the following conditions:

(i) The actual cost of any individual item may not exceed five hundred dollars;

(ii) The merchandise shall not be traded back to the licensee for cash or be used to further participate in an authorized gambling activity;

(d) For each individual gift with an actual cost over one hundred dollars, charitable and nonprofit organizations shall prepare and maintain a written record with the following information:

- (i) How the recipients of the gifts were selected;
- (ii) The number of gifts awarded; and
- (iii) The total cost of each gift given.

Credit and loans prohibited—Exceptions.

(2) The consideration required to participate in the gambling activity shall be collected in full, by cash, check, or electronic point-of-sale bank transfer, prior to participation, with the following exceptions:

Punch boards/pull-tabs.

(a) The consideration paid for the opportunity to play a punch board or pull-tab series may be collected immediately after the play is completed only when such consideration is ten dollars or less;

Charitable/nonprofit organization's billing system for members.

(b) When a bona fide charitable or bona fide nonprofit organization conducting any of the activities authorized by chapter 9.46 RCW or commission rules has a regular billing system for all of the activities of its members with such organization, such billing system may be utilized in connection with the playing of any of the activities authorized hereunder if:

(i) The playing of such activity is limited to regular members of such organization who have become regular members prior to the commencement of such activity and whose qualifications for membership were not dependent upon, or in any way related to, the playing of such activity; and

(ii) The director has given prior written consent to the use of such billing system in connection with the conduct of activities authorized under these rules.

Raffle tickets purchased with credit cards.

(c) Charitable or nonprofit organizations utilizing credit cards, issued by a state and/or federally regulated financial institution, for payment to participate in raffles.

[Statutory Authority: RCW 9.46.070. 03-21-065 (Order 425), § 230-12-050, filed 10/13/03, effective 1/1/04; 02-11-084 (Order 413), § 230-12-050, filed 5/16/02, effective 7/1/02; 00-09-052 (Order 383), § 230-12-050, filed 4/14/00, effective 5/15/00; 00-07-140 (Order 381), § 230-12-050, filed 3/22/00, effective 7/1/00. Statutory Authority: RCW 9.46.070, 9.46.0209, 9.46.0237, 9.46.0205 and 9.46.075. 96-24-008 (Order 303), § 230-12-050, filed 11/21/96, effective 12/22/96. Statutory Authority: RCW 9.46.070. 94-13-099 (Order 253), § 230-12-050, filed 6/15/94, effective 7/16/94. Statutory Authority: RCW 9.46.070 (11), (14) and 9.46.0218 [9.46.0281]. 89-05-024 (Order 186), § 230-12-050, filed 2/13/89; Order 51, § 230-12-050, filed 4/30/76; Order 15, § 230-12-050, filed 4/17/74; Order 5, § 230-12-050, filed 12/19/73.]

WAC 230-12-053 Acceptance of checks—Requirements. (1) A licensee, member, or employee thereof may accept a check in lieu of cash from a player for activities authorized by chapter 9.46 RCW, when the following requirements are met:

(a) The check is not a third party check drawn on an individual's personal account or a counter check offered by the licensed establishment;

- (i) How the recipients of the gifts were selected;
- (ii) The number of gifts awarded; and
- (iii) The total cost of each gift given.

Credit and loans prohibited—Exceptions.

(2) The consideration required to participate in the gambling activity shall be collected in full, by cash, check, or electronic point-of-sale bank transfer, prior to participation, with the following exceptions:

Punch boards/pull-tabs.

(a) The consideration paid for the opportunity to play a punch board or pull-tab series may be collected immediately after the play is completed only when such consideration is ten dollars or less;

Charitable/nonprofit organization's billing system for members.

(b) When a bona fide charitable or bona fide nonprofit organization conducting any of the activities authorized by chapter 9.46 RCW or commission rules has a regular billing system for all of the activities of its members with such organization, such billing system may be utilized in connection with the playing of any of the activities authorized hereunder if:

- (i) The playing of such activity is limited to regular members of such organization who have become regular members prior to the commencement of such activity and whose qualifications for membership were not dependent upon, or in any way related to, the playing of such activity; and
- (ii) The director has given prior written consent to the use of such billing system in connection with the conduct of activities authorized under these rules.

Raffle tickets purchased with credit cards.

(c) Charitable or nonprofit organizations utilizing credit cards, issued by a state and/or federally regulated financial institution, for payment to participate in raffles.

[Statutory Authority: RCW 9.46.070. 03-21-065 (Order 425), § 230-12-050, filed 10/13/03, effective 1/1/04; 02-11-084 (Order 413), § 230-12-050, filed 5/16/02, effective 7/1/02; 00-09-052 (Order 383), § 230-12-050, filed 4/14/00, effective 5/15/00; 00-07-140 (Order 381), § 230-12-050, filed 3/22/00, effective 7/1/00. Statutory Authority: RCW 9.46.070, 9.46.0209, 9.46.0237, 9.46.0205 and 9.46.075. 96-24-008 (Order 303), § 230-12-050, filed 11/21/96, effective 12/22/96. Statutory Authority: RCW 9.46.070. 94-13-099 (Order 253), § 230-12-050, filed 6/15/94, effective 7/16/94. Statutory Authority: RCW 9.46.070 (11), (14) and 9.46.0218 [9.46.0281]. 89-05-024 (Order 186), § 230-12-050, filed 2/13/89; Order 51, § 230-12-050, filed 4/30/76; Order 15, § 230-12-050, filed 4/17/74; Order 5, § 230-12-050, filed 12/19/73.]

WAC 230-12-053 Acceptance of checks—Requirements. (1) A licensee, member, or employee thereof may accept a check in lieu of cash from a player for activities authorized by chapter 9.46 RCW, when the following requirements are met:

(a) The check is not a third party check drawn on an individual's personal account or a counter check offered by the licensed establishment;

(2005 Ed.)

(b) Any personal check must be dated the same day it is offered to the licensee and fully negotiable upon acceptance by the licensee; and

(c) The check is not from a player who has a balance owed to the licensee from a previous returned personal check. Provided: This shall not apply to a licensee who utilizes a check guarantee and collection service.

(2) If a licensee, member or employee thereof accepts a check that does not comply with the requirements set forth above, the licensee shall be deemed to have extended credit in violation of WAC 230-12-050.

[Statutory Authority: RCW 9.46.070 (11), (14) and 9.46.0218 [9.46.0281]. 89-05-024 (Order 186), § 230-12-053, filed 2/13/89.]

WAC 230-12-070 Conduct of gambling activity. No person operating any activity authorized by chapter 9.46 RCW shall, directly or indirectly, in the course of such operation:

- (1) Employ any device, scheme or artifice to defraud;
- (2) Make any untrue statement of a fact, or omit to state a fact necessary in order to make a statement not misleading, in consideration of the circumstance under which such statement was made;
- (3) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any person.

[Statutory Authority: RCW 9.46.070. 94-13-099 (Order 253), § 230-12-070, filed 6/15/94, effective 7/16/94; Order 53, § 230-12-070, filed 5/25/76; Order 5, § 230-12-070, filed 12/19/73.]

WAC 230-12-074 Sales on licensed premises only—Exceptions. (1) All gambling activities must be under the complete control of the licensed operator and conducted on the premises set forth in the license application as approved by the commission, with the following exceptions:

- (a) Raffle ticket sales; and
- (b) Amusement games operated on a Class A licensed premises.

(2) A bona fide charitable or nonprofit organization licensed to conduct bingo and punch board/pull-tab games may sell punch boards/pull-tabs to customers of a licensed card room provided that the following conditions are met:

- (a) The premises of the nonprofit licensee and the card room licensee share a common wall;
- (b) Any door, counter or window allowing customer access through the common wall between the two premises is under the control of the nonprofit licensee and must be capable of being securely closed and locked;

(c) All punch board/pull-tab games shall be maintained and sold only on the premises of the nonprofit licensee, however, pull-tab players may take purchased punch boards/pull-tabs into the card room area;

(d) Punch board/pull-tab sales shall only be conducted by employees of the bingo/punch board/pull-tab licensee; and

(e) Signs shall conspicuously be posted at the door, window or counter separating the two premises clearly notifying the customers of the identity of the licensee selling the punch board/pull-tabs.

(3) A licensed operator shall not be deemed to have violated this rule solely because the pull-tab players may take pull-tabs from the licensee's premises, if the pull-tabs are

body pursuant to RCW 9.46.150(2), and any amendments thereto, and no license, permit or certificate so voided shall be issued or reissued for such premises for a period of up to sixty days thereafter.

[Order 53, § 230-12-280, filed 5/25/76; Order 42, § 230-12-280, filed 9/18/75; Order 5, § 230-12-280, filed 12/19/73.]

WAC 230-12-300 Resident agent to be appointed by out-of-state licensees. (1) All licensees that do not own or otherwise maintain a business office or licensed premises within Washington state shall appoint a resident agent for the purpose of receipt and acceptance of service of process and other communications on their behalf from the commission.

(2) The resident agent shall be a natural person who is a resident and living in the state of Washington and who is eighteen years of age or older.

(3) The name and business address where service of process and delivery of mail can be made, and home address of such designated resident agent shall be filed with the commission.

[Statutory Authority: RCW 9.46.070 and 34.05.230. 01-01-016 (Order 396), § 230-12-300, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 9.46.070. 97-24-031, § 230-12-300, filed 11/25/97, effective 1/1/98. Statutory Authority: Chapter 9.46 RCW. 91-21-053 (Order 228), § 230-12-300, filed 10/15/91, effective 11/15/91; Order 60, § 230-12-300, filed 9/10/76; Order 33, § 230-12-300, filed 2/21/75; Order 5, § 230-12-300, filed 12/19/73.]

WAC 230-12-305 Licensee required to submit updated documents or information. In addition to any other requirements set forth in these rules, persons licensed by the commission shall submit any new or updated documents or information including, but not limited to, the following:

(1) Articles of incorporation or by laws, or any other documents which set out the organizational structure and purposes;

(2) Internal Revenue Service tax exemption status (charitable/nonprofit organizations only);

(3) All contracts and agreements, whether oral or written which relate to gambling activities or alter the organizational structure of the licensee or its business activities in Washington state; and

(4) All cash or asset contributions, draws from lines of credit, and loans, from other than recognized financial institutions, which individually or collectively exceed a total of ten thousand dollars during any calendar year: Provided, That cash or asset contributions do not include donations to licensed charitable or nonprofit organizations.

Submission timeline.

(5) The new or updated documents and/or information shall be submitted to the commission by notation on the next quarterly activity report filed, and by attaching all details concerning each transaction: Provided, That licensees not required to submit quarterly activity reports shall submit the required information no later than sixty days following the transaction(s) date.

[Statutory Authority: RCW 9.46.070. 03-11-041 (Order 420), § 230-12-305, filed 5/15/03, effective 7/1/03; 94-07-084 (Order 250), § 230-12-305, filed 3/16/94, effective 4/16/94. Statutory Authority: RCW 9.46.070 (7)(14). 91-

(2005 Ed.)

07-021, § 230-12-305, filed 3/13/91, effective 4/13/91. Statutory Authority: Chapter 9.46 RCW. 87-09-043 (Order 167), § 230-12-305, filed 4/14/87.]

WAC 230-12-310 Licensees to report to the commission civil, criminal and administrative actions filed against them. (1) Each licensee shall report to the commission within fourteen days, all criminal actions filed against the licensee or the licensee's president, chief executive officer, chairman of the board, treasurer (chief financial officer), partner, person holding a substantial interest or manager of the licensed gambling activity. The final disposition of the case must be attached with the next quarterly activity report filed with the commission. Organizations not required to submit quarterly activity reports shall send the report to the commission within thirty days after the final disposition.

(2) Each licensee shall report to the commission civil and administrative actions filed by or against persons listed in subsection (1) of this section that involve ownership or control of the business, dissolutions, actions significantly affecting business interests, such as patent or copyright infringement and all administrative actions from other gambling regulatory agencies, including those from other countries and Indian tribes. This report shall be attached to the next quarterly activity report filed with the commission. Organizations not required to submit quarterly reports shall send the report to the commission within thirty days of their receipt of notice of the action filed and within thirty days after the final disposition.

(3) The report shall consist of a complete copy of the original documents filed. The licensee shall notify the commission of the final disposition of the case and include a copy of the final documents filed including, but not limited to, settlement agreements.

(4) The director may exempt reporting specific types of civil actions upon written request and for good cause shown.

[Statutory Authority: RCW 9.46.070. 00-09-051 (Order 382), § 230-12-310, filed 4/14/00, effective 5/15/00. Statutory Authority: Chapter 9.46 RCW. 86-21-060 (Order 162), § 230-12-310, filed 10/14/86; Order 15, § 230-12-310, filed 4/17/74.]

WAC 230-12-315 Request for review services—Fees. Any person submitting equipment, paraphernalia, services, or schemes for review, inspection, and/or evaluation by commission staff shall reimburse the commission the cost of services performed. A deposit of the estimated cost may be required prior to performance of such service. If a deposit is required, it shall be received by the commission prior to the performance of any substantial work on the request.

[Statutory Authority: RCW 9.46.070. 03-11-042 (Order 421), § 230-12-315, filed 5/15/03, effective 7/1/03. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-12-315, filed 6/20/97, effective 7/21/97.]

WAC 230-12-316 Electronic or mechanical equipment review. A licensee must submit electronic or mechanical gambling equipment to the director for review to verify compliance with chapter 9.46 RCW and Title 230 WAC prior to the sale, lease or operation of such equipment. The equipment shall meet technical standards for compliance, accuracy, security and integrity. Persons not licensed by the commission may also request equipment review to verify compliance with state laws and rules.

(1) Manufacturers may be required to submit electronic or mechanical gambling equipment for review.

(a) To allow for continued testing and training, any equipment that is submitted for review under this section may be kept by the director for as long as the equipment remains out for play in the state of Washington.

(b) The gambling commission and staff are not liable for any damage to equipment while in their possession.

(2) Fees for review shall be as set forth in WAC 230-12-315.

(3) Equipment operated in Washington state must be identical to the version reviewed by the director.

(4) Equipment in operation on July 1, 2003, may continue in operation pending review by the director.

(5) If the person submitting such equipment does not agree with the director's decision, a petition for declaratory order may be filed with the commission to be heard de novo by an administrative law judge designated by the commission, pursuant to RCW 34.05.240 and WAC 230-50-850.

[Statutory Authority: RCW 9.46.070, 03-11-042 (Order 421), § 230-12-316, filed 5/15/03, effective 7/1/03.]

WAC 230-12-320 Manufacture and distribution of gambling equipment and services—Prohibited practices—Gifts, promotional activities, and loans—Exceptions. Manufacturers and distributors shall not seek to control the distribution of gambling equipment, devices, related supplies or paraphernalia, or services by any means other than those authorized by this title. The following restrictions and procedures apply to the distribution of gambling equipment, devices, related supplies or paraphernalia, and services:

Can licensees offer gifts or similar items to other licensees?

(1) Other than promotional activities as authorized by this section, or trade account terms authorized by WAC 230-12-340, no licensee or employee thereof selling or offering to sell gambling products or services shall directly or indirectly provide or offer any gift, free merchandise or service, credit or loan of money, premium, or rebate to any person or employee thereof who is licensed to purchase or operate such.

Can licensees solicit gifts or similar items from other licensees?

(2) No licensed operator or distributor, or employee thereof, shall directly or indirectly solicit any gift, free merchandise or service, credit or loan of money, premium, or rebate from any licensed manufacturer or distributor, or employee thereof.

What types of activities are allowed for manufacturers to promote their goods or services with operators?

(3) Manufacturers may provide promotional merchandise of nominal value, such as tee shirts, caps, cups, pens, calendars, etc., to licensed operators, and operators shall be allowed to accept such, under the following guidelines:

(a) The cost of such promotions shall not exceed fifteen dollars in value per item. Each manufacturer is responsible for establishing the value of each type of promotional merchandise and shall maintain records supporting such;

(b) Each item shall promote the manufacturer or a specific product or line of products made by the manufacturer;

(c) Such promotions shall not be based on past sales or a level of business; and

(d) Such promotions may not be contingent on the purchase of more than one case of a specific product.

What types of activities are allowed for manufacturers to promote their goods or services with distributors?

(4) Manufacturers may provide promotional merchandise, entertainment, or travel to distributors, and distributors shall be allowed to accept such, under the following guidelines:

(a) Promotional merchandise and services, such as tee shirts, caps, pens, calendars, etc., may be provided to distributors if:

(i) The value is limited to twenty-five dollars for each individual item; and

(ii) The total amount of promotional merchandise and services offered to a distributor and employees thereof shall not exceed a collective value of one thousand dollars during any calendar year;

(b) Entertainment such as meals, recreational or sporting events, etc., may be provided to distributors, or employees thereof, if:

(i) The distributor is accompanied by a licensed manufacturer's representative, owner, partner, officer, or substantial interest holder of a corporate licensee;

(ii) The total amount of entertainment to a distributor and employees thereof shall not exceed a collective value of one thousand dollars during any calendar year;

(iii) The entertainment is provided within the state of Washington; and

(iv) Written documentation of the business purpose of the entertainment is maintained;

(c) Trips to the factory location of a manufacturer, including transportation, meals, and lodging may be provided to distributors and/or their licensed representatives once each calendar year.

What additional requirements apply to authorized "promotional activities"?

(5) The following restrictions and procedures apply to promotional activities between manufacturers and distributors:

(a) All "promotional activities" shall be directly related to promotion of the manufacturer's products and in no way related to past sales;

(b) Promotional activities shall not include the direct or indirect transfer of cash, negotiable instruments, or cancellation or remittance of debts to a licensee or employee thereof. All costs related to "promotional activities" shall be initially paid for by the manufacturer rather than providing reimbursement to the distributor;

(c) Manufacturers shall be responsible for maintaining detailed records for all "promotional activities" and making such records available to the commission upon request. These records shall include at least the following:

(i) The product or service being promoted;

(b) Step-up boards that contain winners covered by seals must have at least twenty-five different face sheets for use on that specific step-up board. Face sheets shall be utilized in such a manner so as to ensure random distribution during the manufacturing process.

[Statutory Authority: RCW 9.46.070 (5), (6), (11), (14), 97-14-012, § 230-30-055, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070 (11) and (14), 87-24-016 (Order 173), § 230-30-055, filed 11/23/87.]

WAC 230-30-070 Control of prizes—Restrictions—Bonus prizes—Displaying—Procedures for awarding. Punch board and pull-tab prizes shall be closely controlled to ensure players are not defrauded.

(1) All prizes from the operation of punch boards and pull-tabs shall be awarded in cash or in merchandise.

No licensee shall offer to pay cash in lieu of merchandise prizes which may be won.

(2) Additional chances on a punch board or pull-tab game may not be awarded as a prize. Provided, That prizes may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab game as set forth in subsection (4) of this section.

(3) A bonus prize is a prize offered in a bonus pull-tab game, defined in WAC 230-30-040(1). A step-up prize is a prize offered on a punch board. The awarding of these prizes involves an immediate, additional opportunity to advance to a section of the game to determine the prize.

(4) On games where players advance, the bonus or step-up prizes may not be less than the highest prize available, which might otherwise have been won by the punch or pull-tab for which the opportunity was awarded. Each punch board or pull-tab game offering bonus or step-up prizes must clearly indicate on its flare the terms and conditions under which the bonus or step-up prize may be won, including the amount of the bonus or step-up prize.

(5) The licensee shall display prizes so that a customer can easily determine which prizes are available from any particular punch board or pull-tab series or device operated or located upon the premises. In addition, the following requirements apply.

(a) Merchandise prizes shall be displayed as follows:

(i) In the immediate vicinity of the punch board or pull-tab series and in plain view: Provided, That games that offer merchandise prizes that are "surprises" may be wrapped in some way so players are unable to identify what the prize is until opened;

(ii) If size or space constraints do not allow the prize to be displayed as provided in (a)(i) of this subsection, the merchandise prize may be displayed elsewhere on the premises provided that a specific reference to that actual prize is noted on the flare; or

(iii) If the merchandise prize cannot be displayed on the premises, an accurate description and/or photograph of the prize must be displayed in plain view on or immediately adjacent to the flare.

(b) Cash prizes shall be clearly represented on the prize flare;

(c) Combination cash and merchandise prizes must meet the requirements of both (a) and (b) of this subsection;

(6) The following procedures apply to the removal of prizes from the game flare and the presentation of prizes to winning players:

(a) Upon determination of a winner of a merchandise prize, the licensee shall immediately remove that prize from the flare and present the prize to the winner upon demand;

(b) Upon determination of a winner of any cash prize over twenty dollars, or of any merchandise prize with a retail value over twenty dollars, the licensee shall permanently and conspicuously delete all references to that prize from any flare, punch board, or pull-tab dispensing device upon which such reference may appear, and from any other list, sign, or notice which may be posted, in such a manner that all future customers will know the prize is no longer available. On step-up punch boards and bonus pull-tab games, once all opportunities in a section of the flare have been won, all references to prizes no longer available to be won must be deleted on the flare. Operators may correct an inadvertently deleted prize by noting on the flare that such prize is still available. Such reference shall be permanently and conspicuously deleted when the prize is actually awarded. Failure to permanently and conspicuously delete a prize from the flare may result in the director initiating actions to revoke a license for violation of RCW 9.46.190 (defrauding a participant). The prize shall be paid or delivered to the winner only after all reference to such prize has been deleted from the flare.

(7) Payment of prizes. The licensee must pay or award to the customer or player playing the punch board or pull-tab series all such prizes that are required to be, but have not been, deleted from the flare when the punch board or pull-tab series is completely played out.

(8) Record of winners. When any person wins a cash prize of over twenty dollars or wins a merchandise prize with a retail value of more than twenty dollars from the play of any punch board or pull-tab series, the licensee or licensee's representative shall make a record of the win. The record of the win shall be made in the following manner:

(a) The winners shall be required to print their name and date of birth, in ink, upon the side of the winning punch or tab opposite the winning symbol(s);

(b) The licensee or their representative shall then verify the winner's identity and record the date and initial the winning punch or tab; and

(c) If the pull-tab or punch is constructed or printed in such a manner as to preclude recording the information required in (a) and (b) of this subsection in a legible manner, the licensee may record the required information on a sheet of paper not less than three inches by five inches and staple the winning tab or punch thereto.

(9) Defacing winning punches or tabs. The licensee shall, within twenty-four hours after a winning pull-tab or punch worth more than twenty dollars has been presented for payment, mark or perforate the winning symbols in such a manner that the pull-tab or punch cannot be presented again for payment.

(10) Spindle, banded, or "jar" type pull-tabs played in a manner which awards merchandise prizes only. Pull-tab series which award only merchandise prizes valued at no more than twenty dollars, are hereby permitted to employ schemes whereby certain predesignated pull-tabs are free or the player is otherwise reimbursed the actual cost of said pull-

tabs. Flares for spindle-type pull-tabs operated in this manner shall designate the total number of pull-tabs in the series and the total number of pull-tabs designated as free or reimbursable. Free or reimbursable pull-tabs in these types of pull-tab series shall not constitute a prize or prizes nor shall moneys collected and later reimbursed constitute revenue for the purposes of determining gross gambling receipts.

[Statutory Authority: RCW 9.46.070. 00-21-095 (Order 389), § 230-30-070, filed 10/18/00, effective 1/1/01; 98-15-074 (Order 359), § 230-30-070, filed 7/15/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-070, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070, 9.46.120, 9.46.0273, 9.46.310 and 34.05.313. 96-24-006 (Order 305), § 230-30-070, filed 11/21/96, effective 1/1/97. Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4). 95-23-109 and 95-24-048, § 230-30-070, filed 11/22/95 and 11/30/95, effective 1/1/96. Statutory Authority: RCW 9.46.070. 94-23-094, § 230-30-070, filed 11/17/94, effective 1/1/95. Statutory Authority: Chapter 9.46 RCW. 91-21-053 (Order 228), § 230-30-070, filed 10/15/91, effective 11/15/91. Statutory Authority: RCW 9.46.070. 90-24-005 (Order 218), § 230-30-070, filed 11/26/90, effective 12/27/90. Statutory Authority: RCW 9.46.070 (11) and (14). 90-11-058, § 230-30-070, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 34.05.220(4), [34.05].230 and 9.46.070 (11) and (14). 90-05-032 (Order 205), § 230-30-070, filed 2/14/90, effective 3/17/90. Statutory Authority: RCW 9.46.070 (11) and (14). 89-17-056 (Order 196), § 230-30-070, filed 8/15/89, effective 9/15/89. Statutory Authority: RCW 9.46.[070] (8), (14). 87-17-052 (Order 171), § 230-30-070, filed 8/18/87. Statutory Authority: Chapter 9.46 RCW. 87-03-023 (Order 164), § 230-30-070, filed 1/13/87. Statutory Authority: RCW [9.46.]070 (1), (2) and (11) and [9.46.]110. 85-21-046 (Order 154), § 230-30-070, filed 10/14/85. Statutory Authority: RCW 9.46.070 (8), (11) and (14). 85-03-024 (Order 142), § 230-30-070, filed 1/9/85. Statutory Authority: RCW 9.46.070 (8) and (11). 82-01-065 and 82-03-033 (Order 115 and 116), § 230-30-070, filed 12/18/81 and 1/18/82; 81-21-033 (Order 114), § 230-30-070, filed 10/15/81. Statutory Authority: RCW 9.46.070(10). 79-09-029 (Order 91), § 230-30-070, filed 8/14/79; Order 43, § 230-30-070, filed 11/28/75; Order 29, § 230-30-070, filed 1/23/75; Order 27, § 230-30-070, filed 11/15/74; Order 23, § 230-30-070, filed 9/23/74; Order 14, § 230-30-070, filed 3/27/74; Order 12, § 230-30-070, filed 2/14/74; Order 5, § 230-30-070, filed 12/19/73.]

WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments. Each punch board and pull-tab series purchased or otherwise obtained by an operator shall be controlled and accounted for. Each operator shall closely monitor punch board and pull-tab series purchased to assure that Washington state identification and inspection service stamp numbers are correctly entered in all records and each device purchased is properly recorded. The following control procedures apply:

Delivery of new games.

(1) The delivery/receipt of punch boards and pull-tab series shall be recorded as follows:

Invoice record.

(a) All purchases of punch boards or pull-tab series shall be recorded on a standard distributor's invoice, which will be used by the operator as a record to account for the punch board or pull-tab series between the time it is purchased and removed from play. Each invoice shall include space for the operator to attach the records entry label from the device and the date the device was placed out for play: Provided, That in lieu of the distributor's invoice recording system, licensees utilizing a computerized recordkeeping system may use a separate inventory record to account for purchases and uses

(2005 Ed.)

of punch boards and pull-tabs as long as all necessary information is recorded. For these records, a computer generated facsimile of the stamp number may be imprinted on the inventory record in lieu of a records entry label.

Operator to review data and check ID stamps.

(b) At the time a punch board or pull-tab series is delivered, each operator will assure that all required data is correctly recorded by the distributor by comparing the actual Washington state identification and inspection services stamp number attached to each punch board and pull-tab series to the number recorded on the purchase invoice;

Invoice/inventory record - placing new games into play.

(2) At the time a punch board or pull-tab series is placed into play, each operator shall record in the allotted space on the distributor's invoice or the inventory record the following:

(a) Date placed into play; and

(b) Washington state identification and inspection services stamp number by attaching a records entry label.

Retention requirements.

(3) Each punch board or pull-tab series which is removed from play, together with the prize flare, all unplayed tabs, and all winning punches or tabs, shall be retained by the operator and made available for inspection, on the licensed premises, by commission agents and/or local law enforcement and taxing agencies. If devices are stored off premises, they must be produced for inspection upon demand. The minimum retention time for devices removed from play shall be:

Charitable.

(a) **Charitable or nonprofit licensees** - at least four months following the last day of the month in which the device was removed from play;

Commercial.

(b) **Commercial stimulant licensees** - at least two months following the last day of the month in which the device was removed from play: Provided, That the flare and all winning punches or pull-tabs in excess of twenty dollars shall be retained for at least ninety days following the day the device was removed from play: Provided further, That any commercial stimulant licensee who fails to comply with all recordkeeping requirements of this title or who misstates gross gambling receipts by more than one percent during any calendar quarter shall be required, after written notification by the director, to retain all devices for at least four months following the last day of the month in which it was removed from play. Any licensee so restricted may petition the director to remove the increased retention requirement imposed after a minimum of one year. Any such petition shall include documentation of the steps taken to correct recordkeeping deficiencies. For purposes of computing gross gambling receipts for determining compliance with the recording accuracy requirement, the procedures in subsection (6) of this section apply; and

Specially authorized games.

(c) **Specially authorized pull-tab series** may have retention requirements in addition to those set forth in subsections (a) and (b) of this section.

Storage requirements.

(4) Each punch board or pull-tab series which is not placed out for play must be retained on the licensed premises and made available for inspection by the commission and/or local law enforcement and taxing agencies: Provided, That devices may be stored off premises if they are produced for inspection upon demand;

Returning a game to the distributor or manufacturer.

(5) Each punch board or pull-tab series which has been placed out for play and is subsequently returned to a distributor or manufacturer is exempt from the retention requirements in subsection (3) of this section. The operator must retain a copy of the quality control report for the retention period normally applicable and must record each game on its monthly record required by WAC 230-08-010. If a device is returned to a distributor for any reason, including commission required recall, the operator shall record the date, invoice or credit memo number, and "returned" on the original purchase invoice or inventory record on the corresponding entry for the device;

Adjusting gross gambling receipts.

(6) For purposes of compliance with the requirements of this section and license class compliance, gross gambling receipts from the operation of punch boards and pull-tabs shall be adjusted for commission staff audit findings by using the following procedures:

(a) **Unrecorded devices** - gross gambling receipts shall be increased to account for any unrecorded devices purchased by an operator by adding the maximum amount that could be generated from the device, as determined by multiplying the total number of chances available by the price of a single chance. The adjustment shall be made to the records for the month in which the device was purchased; and

(b) **Recording errors** - gross gambling receipts shall be increased or decreased by an adjustment factor that is based upon the results of an audit of a sample of at least five devices randomly selected by the commission staff. The adjustment factor shall be determined by dividing the audited amount for the sample group of devices by the recorded amount for the same devices. The resulting product of this equation shall be applied to the total recorded gross gambling receipts for the calendar quarter from which the sample was taken and to the immediately preceding three quarters.

[Statutory Authority: RCW 9.46.070. 02-06-007 (Order 410), § 230-30-072, filed 2/22/02, effective 7/1/02. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-072, filed 6/20/97, effective 7/21/97. Statutory Authority: Chapter 9.46 RCW. 94-24-054 (Order 261), § 230-30-072, filed 12/5/94, effective 1/5/95. Statutory Authority: RCW 9.46.070. 94-07-084 (Order 250), § 230-30-072, filed 3/16/94, effective 4/16/94. Statutory Authority: RCW 9.46.070 (7), (8), (9) and (17). 93-13-063 (Order 241), § 230-30-072, filed 6/17/93, effective 7/18/93. Statutory Authority: RCW 9.46.070(6). 89-21-069 (Order 198), § 230-30-072, filed 10/17/89, effective 11/17/89. Statutory Authority: RCW 9.46.070 (8), (11) and (14). 88-13-060 (Order 179), § 230-30-072, filed 6/14/88.]

[Title 230 WAC—p. 126]

WAC 230-30-080 Punch board and pull-tab series restrictions—Prizes, size of game, and location of winners. No operator, distributor, or manufacturer, or representative thereof shall possess, display, put out for play, sell, or otherwise transfer to any person in this state, or for use in this state, any punch board or pull-tab series which:

(1) Does not offer prizes that are equal to or greater than sixty percent of the total gross receipts available from the punch board or pull-tab series. The following applies to the sixty percent calculation:

(a) For the purposes of determining the percentage of prizes offered on any punch board, or in any pull-tab series, total merchandise prizes shall be computed at the amount actually paid by the licensed operator plus fifty percent of that actual cost. For any merchandise prize with an actual cost over five hundred dollars, the total cost plus markup in this subsection shall not exceed seven hundred fifty dollars; and

(b) Prize and percentage requirements for progressive pull-tab series shall be calculated as set forth in WAC 230-30-025;

(2) Offers a single prize that exceeds:

(a) Five hundred dollars in cash: Provided, That progressive jackpot pull-tab prizes, as authorized in WAC 230-30-025, and pull-tab series with carry-over jackpots, as authorized in WAC 230-30-045 shall be exempt from this requirement and shall be subject to the limits defined in those rules: Provided further, That the cash limit may be increased from five hundred dollars to seven hundred fifty dollars only on pull-tab series with a cost per tab of one dollar after approval by the director; or

(b) A merchandise prize for which the operator has expended more than five hundred dollars: Provided, That operators may expend more than five hundred dollars, not to exceed seven hundred fifty dollars, subject to the limitations set forth in subsection (1)(a) of this section;

(3) Has multiple winners on an individual pull-tab or punch that combined values exceed the single cash or merchandise prize limit in subsection (2) of this section;

(4) Offers prizes for purchasing the last ticket or last punch that exceeds:

(a) One hundred dollars cash; or

(b) Merchandise for which the licensee has expended more than one hundred dollars; or

(c) The highest prize offered, whichever is less;

(5) Contains more than ten thousand individual pull-tabs: Provided, That progressive jackpot pull-tab series, as authorized by WAC 230-30-025, may contain up to fifty thousand individual pull-tabs;

(6) Utilizes a flare which does not meet the requirements of WAC 230-30-106;

(7) The winning punches or tabs have not been randomly distributed and mixed among all other punches or tabs in the board or series;

(8) The location, or approximate location, of any winning punches or tabs can be determined in advance of punching the punch board or opening the tabs in any manner or by any device, by markings on the board, tabs, or container, or by use of a light;

(9) There exists a key to any winning numbers or symbols; or

(2005 Ed.)

(10) Does not conform in any other respect to the requirements of WAC rules as to the manufacture, assembly, or packaging of punch boards or pull-tabs.

[Statutory Authority: RCW 9.46.070. 98-21-011 and 98-24-092 (Orders 367 and 367-A), § 230-30-080, filed 10/9/98 and 12/1/98, effective 1/1/99; 98-15-074 (Order 359), § 230-30-080, filed 7/15/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-080, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070, 9.46.120, 9.46.0273, 9.46.310 and 34.05.313. 96-24-006 (Order 305), § 230-30-080, filed 11/21/96, effective 1/1/97. Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4). 95-23-109, § 230-30-080, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 9.46.070. 93-12-082, § 230-30-080, filed 5/28/93, effective 7/1/93. Statutory Authority: RCW 9.46.070(11). 91-10-004 (Order 222), § 230-30-080, filed 4/18/91, effective 5/19/91. Statutory Authority: Chapter 9.46 RCW. 91-05-047 (Order 220), § 230-30-080, filed 2/14/91, effective 3/17/91. Statutory Authority: RCW 9.46.030 (2) and (3) and 9.46.070 (11) and (14). 83-19-024 (Order 136), § 230-30-080, filed 9/13/83. Statutory Authority: RCW 9.46.070(14). 81-19-073 (Order 112), § 230-30-080, filed 9/15/81. Statutory Authority: RCW 9.46.070(10). 79-07-019 (Order 90), § 230-30-080, filed 6/14/79; Order 55, § 230-30-080, filed 6/25/76; Order 43, § 230-30-080, filed 11/28/75; Order 15, § 230-30-080, filed 4/17/74; Order 9, § 230-30-080, filed 12/19/73, 1:26 p.m.; Order 5, § 230-30-080, filed 12/19/73, 1:25 p.m.]

WAC 230-30-090 All devices must comply with rules.

No operator shall display or put out for play, and no distributor or manufacturer or their representatives shall sell or otherwise furnish, any punch board, series of pull-tabs, or device for the dispensing of pull-tabs unless such punch boards, pull-tabs or devices for the dispensing of pull-tabs conform to all requirements of this state's laws and the rules of this commission, as they now exist or are hereafter amended.

[Order 18, § 230-30-090, filed 5/21/74.]

WAC 230-30-097 Standards—Approved pull-tab dispensing devices. Operators may utilize approved pull-tab dispensing devices provided that each device meets the following standards:

(1) Devices must be manufactured by a commission licensed manufacturer.

(2) Devices shall conspicuously display a stamp, seal, or label identifying its manufacturer and the city and state of its manufacture.

(3) Devices shall have the manufacturer's serial number for that device stamped or embossed into its case.

(4) Devices manufactured specifically for the dispensing of perforated window type pull-tabs shall meet the following standards:

(a) Be constructed so that consumers can clearly see each pull-tab within the device, except that area at the bottom of the device, not to exceed one inch in height, covered for security or mechanical reasons, and have permanent lines or markings which divide the pull-tabs remaining in the device into divisions of approximately twenty-five tabs so that the consumer can determine how many tabs remain within the device; or

(b) Have a resettable counter visible to the customer indicating the number of pull-tabs left in the device.

(5) Devices manufactured specifically for the dispensing of "jar" or "banded" type pull-tabs shall meet the following standards:

(a) Be constructed so that consumers can clearly see all jar tickets or jar ticket bundles within the device; or

(b) Have a resettable counter visible to the consumer indicating the number of jar tickets left in the device.

(6) Devices utilizing bill acceptors or similar devices that do not return change shall clearly disclose that fact to the consumer.

[Statutory Authority: RCW 9.46.070 (1), (4), (14), (20). 96-13-069 (Order 295), § 230-30-097, filed 6/18/96, effective 7/19/96. Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4). 95-23-109, § 230-30-097, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 9.46.070. 93-12-082, § 230-30-097, filed 5/28/93, effective 7/1/93.]

WAC 230-30-102 Pull-tab series assembly and packaging. (1) Manufacturers of pull-tabs shall assemble and package each pull-tab series in one container: Provided, That progressive jackpot pull-tab games, as authorized by WAC 230-30-025, may be packaged in more than one container under the following conditions;

(a) All boxes are shrink wrapped and sealed with a sticker or seal of the manufacturer;

(b) Each individual box must be identically labeled with a manufacturer designed referencing system to include:

(i) Individual box reference and total boxes per series;

(ii) Series number; and

(iii) Identification and inspection services stamp number;

(c) Each case must be labeled to include:

(i) Case reference and total cases per set; and

(ii) Series number; and

(d) Each box and/or case must be packaged and shipped together. Cases must be specially marked to easily identify the contents during shipping.

(2) Winning pull-tabs shall be randomly distributed and mixed among all other pull-tabs in a series so as to eliminate any pattern as between series, or portions of series, from which the location or approximate location of any of the winning tabs may be determined. The pull-tab series must be assembled so that no placement of winners or losers exist that allows the possibility of prize manipulation or "pick out."

(3) Manufacturers will mix pull-tabs prior to placing them in their final packing container. The mix shall insure that pull-tabs are separated from the original collated row position and dispersed amongst all rows in the final packing container.

(4) Each series of pull-tabs shall contain a packing slip placed inside the package containing the name of manufacturer, series number, date the series was packaged, and the name or identification of the person who packaged the series: Provided, That this information may be printed on the flare or the outside of the package, box or container in which the pull-tabs are packed. This information must be readily available to commission staff from the manufacturer upon request. For progressive jackpot pull-tab games, the packing slip and flare must be packaged with the first box of the series.

(5) Manufacturers of pull-tabs shall print on the outside of the box, package, or other container of pull-tabs the message that pull-tabs must be removed from the packaging container and thoroughly mixed prior to sale to the public: Provided, That the above information may be printed on a crack and peel sticker and placed on the outside of the box, package, or other container of pull-tabs or on a packing slip placed

aging of the tabs by the manufacturer, by any markings on the tabs or container, or by the use of a light; or

(c) Which does not conform in any other respect to the requirements of these rules as to manufacture, assembly, or packaging of pull-tabs.

[Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-104, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070 and chapter 34.05 RCW. 90-21-053, § 230-30-104, filed 10/15/90, effective 11/15/90. Statutory Authority: RCW 9.46.070 (8), (11) and (14). 85-03-024 (Order 142), § 230-30-104, filed 1/9/85; Order 78, § 230-30-104, filed 11/17/77.]

WAC 230-30-106 Punch board and pull-tab flares restrictions—Standards—Substitute flares. The following restrictions, standards, and procedures apply to the use of flares and substitute flares:

Only manufacturers to produce flares - exception.

(1) Except as set forth in subsection (6) of this section, the flare advertising prizes available from the operation of any punch board, or any series of pull-tabs, shall be made by the manufacturer only and shall not be altered by any operator or distributor;

One flare per game.

(2) No person shall place or have out in public view more than one flare advertising the prizes available from the operation of any punch board, or from any series of pull-tabs;

Displaying flares.

(3) Flares shall be placed as follows:

(a) Only upon the upper face, or on the top of any punch board; or

(b) In plain view and in the vicinity of any pull-tab dispensing device or container. If the flare is not attached to the dispensing device or container, a numerical or alphabetical reference shall be included directly on the flare and dispensing device or container clearly indicating which flare corresponds to which series.

Standards for flares.

(4) Flares shall meet the following standards:

(a) Flares must clearly set out each of the prizes available and the numbers or symbols which win each prize. For progressive jackpot series, the progressive jackpot meter board shall be considered a supplement to the flare. Reference to such shall be made on the flare;

(b) Flares must set out the winning numbers or symbols for prizes of over twenty dollars in cash, or merchandise worth more than twenty dollars at retail, in such a manner that each may be easily and clearly deleted or marked off as each prize is won and awarded. For the purposes of this subsection the retail value of a merchandise prize shall be the amount actually paid by the licensed operator plus fifty percent of that actual cost;

(c) The cost to the player for each punch or pull-tab shall be clearly posted on the flare;

(d) The manufacturer shall clearly set out on the flare the series number assigned to that punch board or pull-tab series by the manufacturer. For pull-tab series, this number shall be

clearly displayed on the face of the flare. This series number shall not be altered by the distributor or operator;

(e) The flare shall contain the Washington state identification and inspection services stamp number assigned to the board or series, as required by WAC 230-08-017;

(f) For pull-tab series, the total number of pull-tabs originally in the series shall be clearly disclosed on the face of the flare. The following flares shall prominently display the ticket count in one-half inch size lettering on the flare;

(i) Any newly designed flare;

(ii) Any previously designed flare for pull-tab series with a ticket count over six thousand, which has not yet been packaged;

(g) Flares must contain the manufacturer of the board or series. A stamp, seal, or label which identifies the manufacturer may be substituted if the commission has been informed of such prior to its use.

Bonus pull-tab flares.

(5) Additional standards for bonus pull-tab flares:

(a) The manufacturer shall develop and use at least twenty-five different versions of flares (face sheets) for each form number of a bonus series. Flares which contain prizes that are determined after the player receives the corresponding winning chance shall be constructed so that it is impossible to determine the prizes prior to removing the prize covering, in any manner or by any device. Face sheets shall be utilized in such a manner so as to ensure random distribution during the manufacturing and packing process;

(b) The middle or advance level shall be labeled with the term "ADVANCE SECTION" with a minimum one-quarter inch size lettering;

(c) The top tier level shall be labeled with the term "BONUS SECTION" with a minimum one-quarter inch size lettering;

(d) The number of winners which could be awarded in the top tier level shall be clearly noted on the flare with a minimum three-eighths inch size lettering. In addition, the number of winners and the number of advances in each advance level shall be clearly displayed;

(e) All prizes for each advance and bonus level shall be clearly displayed so that only the winners within the possible combinations are shown. Where applicable, the word "OR" shall be used to illustrate the possible combinations in which the bonus prizes can be won. Duplicate references to prizes shall not be shown on the flare.

Substitute flares.

(6) A substitute flare may be utilized on punch boards or pull-tabs, unless otherwise restricted by commission rules, provided all the requirements of this subsection are met:

(a) Distributors may apply manufacturer-produced substitute flares to punch boards and pull-tab series;

(b) Licensed operators or distributors may make and use substitute flares on punch boards and pull-tab series which offer merchandise or combination merchandise-cash prizes.

(c) The responsibility for ensuring the substitute flare meets the requirements set forth in this section shall rest with the manufacturer, distributor, or operator who changes the original flare and attaches the substitute flare.

(d) All substitute flares must comply with the requirements of subsections (4) and (5) of this section;

(e) All substitute flares shall have the Washington state identification and inspection services stamp number and series number assigned to the punch board or pull-tab series permanently recorded in ink on the face of the substitute flare;

(f) The original manufacturer's flare shall be permanently defaced so it is unusable and the substitute flare shall be attached to the original manufacturer's flare so that the original Washington state identification and inspection services stamp and series number can be accessed for inspection;

(g) For flares converted from cash prizes to combination merchandise-cash prizes, at least fifty percent of the total value of prizes offered shall be merchandise; and

(h) Substitute flares which offer merchandise, or combination merchandise-cash, must utilize numbers, not symbols, to denote winners. The substitute flare shall be constructed as follows:

(i) Winning numbers shall be selected from the flare made by the manufacturer, or from the manufacturer's designated winning numbers on the punch board;

(ii) The highest valued prize(s) shall be assigned to the lowest available winning number(s); and

(iii) The second highest valued prize(s) shall be assigned to the next lowest available winning number(s) and shall be repeated until all prizes are consecutively assigned winning numbers, based on their value: Provided, That if the substitute flare is made by a licensed distributor, the winning numbers may be selected sequentially from the original flare made by the manufacturer.

Happy hour pull-tab games.

(7) In addition to prizes established by manufacturers, pull-tab licensees may increase prizes or add additional prizes to punch boards or pull-tab series under the following conditions:

(a) Such prizes shall be cash or merchandise;

(b) The manufacturer's flare shall not be changed;

(c) Full details of the prizes, including requirements to qualify, shall be disclosed to players by means of an additional sign or notice that is permanently attached to the manufacturer's flare;

(d) The increase or additional prizes must be added to every prize that is within a tier or section of the flare;

(e) Documentation regarding all additional prizes shall be stapled or otherwise permanently attached to the winning punch or pull-tab for which such a prize is awarded. Minimum documentation shall include a description of the prize awarded and the name of the winner; and

(f) Bona fide charitable or nonprofit organizations shall limit games authorized in subsection (7) of this section to only one game in play at any point in time.

[Statutory Authority: RCW 9.46.070. 02-10-003 (Order 411), § 230-30-106, filed 4/18/02, effective 7/1/02; 01-13-089 (Order 402), § 230-30-106, filed 6/19/01, effective 7/20/01; 98-15-074 (Order 359), § 230-30-106, filed 7/15/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-106, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4). 95-23-109, § 230-30-106, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 9.46.070(8), 9.46.0325 and 9.46.070. 93-10-005

(Order 238), § 230-30-106, filed 4/21/93, effective 7/1/93. Statutory Authority: RCW 9.46.070 (8), (11) and (14). 89-11-048 (Order 192), § 230-30-106, filed 5/16/89. Statutory Authority: RCW 9.46.070 (11) and (14). 87-24-016 (Order 173), § 230-30-106, filed 11/23/87. Statutory Authority: RCW 9.46.070(10). 79-09-029 (Order 91), § 230-30-106, filed 8/14/79; Order 43, § 230-30-106, filed 11/28/75.]

WAC 230-30-210 Sales restrictions. (1) No manufacturer, distributor or distributor's representative, shall sell or otherwise make available to any person any punch boards, pull-tabs, pull-tab dispensing devices or related equipment in this state unless it has first determined that such person has a valid license issued by the commission to sell or otherwise distribute such equipment within this state, or to operate such activity on a particular premise within this state.

(2) No operator, distributor or distributor's representative, shall purchase or otherwise obtain from any person any punch board, pull-tab, device for the dispensing of pull-tabs or related equipment in this state until it has first determined that the person selling or otherwise offering such equipment has a valid license issued by the commission to sell the equipment in this state or has been registered with the commission as required.

(3) No operator shall put out for play and no distributor shall sell or otherwise furnish, any punch board or series of pull-tabs unless the manufacturer of punch boards or series of pull-tabs has been licensed by the commission.

(4) No manufacturer or distributor or representative thereof shall use as a sales promotion any statement, demonstration, or implication that any certain portion of a series of pull-tabs contains more winners than other portions of the series or that any series of pull-tabs may be sold by the operator in a particular manner that would give the operator any advantage in selling more of the pull-tabs before having to pay out winners.

(5) Manufacturers shall not offer for sale in Washington any punch board or pull-tab series in which the winning punches or pull-tabs are not randomly distributed and mixed among all other punches or pull-tabs in that board or series.

(6) This rule shall not prohibit licensed distributors from selling to Indian tribes operating Class II activities which are legal under federal law.

[Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-210, filed 6/20/97, effective 7/21/97; Order 5, § 230-30-210, filed 12/19/73.]

WAC 230-30-220 Interest in separate business involving punch boards and pull-tabs at a different marketing level prohibited. No manufacturer, distributor or operator of punch boards, pull-tabs, pull-tab dispensing devices or related equipment shall:

(1) Have any interest, directly or indirectly, in any other of these businesses operating in whole or in part at a different marketing level;

(2) Allow any of its officers, or any other person with a substantial interest in such business, to have any interest in any other of these businesses operating in whole or in part at a different marketing level;

(3) Shall employ any person in any capacity or allow any person to represent the business in any way if such person is also employed by, or represents any other of these businesses operating in whole or in part at a different marketing level;

Posted rules.

(2) Any rules related to the following shall be conspicuously posted in a location readily visible by all players.

- (a) Wagering limits for each type of game, including the ante as specified in WAC 230-40-120(3);
- (b) Prize pay-outs and any restrictions related to prizes;
- (c) Whether employees are allowed to play;
- (d) Procedures for resolving player disputes; and
- (e) For player-supported jackpots (PSJ):
 - (i) How a PSJ will be distributed in the event it is discontinued or the business closes;
 - (ii) Conditions under which prizes may be won;
 - (iii) Prize amount;
 - (iv) Cost to participate;
 - (v) Administrative fees; and
 - (vi) Any other conditions which may affect the outcome of the game.

Rules available for review.

(3) Any rules related to the following shall be conspicuously posted in a location readily visible by all players: Provided, That if a licensee chooses not to post these rules, the licensee shall conspicuously post a sign in a location readily visible by all players stating that the rules are immediately available upon request for review by commission staff, local law enforcement, or a player:

- (a) Methods of making wagers;
- (b) Procedures for misdeals;
- (c) Procedures for betting irregularities;
- (d) Procedures for splitting pots; and
- (e) Any other rules that may restrict a player's right to win a hand, pot, or jackpot prize.

[Statutory Authority: RCW 9.46.070. 01-13-091 (Order 403), § 230-40-505, filed 6/19/01, effective 7/20/01.]

WAC 230-40-550 Incompatible functions defined. Incompatible functions for accounting and internal control purposes are functions, duties, or responsibilities that place any person or department in a position to both perpetrate and conceal errors or irregularities in the normal course of his or her duties. Anyone both recording transactions and having access to the relevant assets is in a position to perpetrate errors or irregularities. For example, an employee that writes checks should not reconcile the bank account; or an employee that transports funds should not have access to keys for locks securing such funds or to surveillance recordings of the transaction.

[Statutory Authority: RCW 9.46.070. 03-09-076 (Order 418), § 230-40-550, filed 4/16/03, effective 7/1/03; 00-09-052 (Order 383), § 230-40-550, filed 4/14/00, effective 5/15/00.]

WAC 230-40-552 Cash equivalent defined. Cash equivalent is a treasury check, personal check, traveler's check, wire transfer of funds, money order, certified check, cashier's check, a check drawn on the licensee's account payable to the patron or to the licensee, or a voucher recording cash drawn against a credit card or debit card.

[Statutory Authority: RCW 9.46.070. 00-09-052 (Order 383), § 230-40-552, filed 4/14/00, effective 5/15/00.]

WAC 230-40-554 Chief executive officer or chief operations officer defined. The chief executive officer (CEO) or chief operations officer (COO) is the executive who has been designated by the owner, partners, or board of directors as the individual with overall responsibility for the business licensed to conduct card games. The CEO or COO may perform the duties of a gaming operation department manager as defined in WAC 230-40-556.

[Statutory Authority: RCW 9.46.070. 04-24-039 (Order 440), § 230-40-554, filed 11/24/04, effective 1/1/05; 00-09-052 (Order 383), § 230-40-554, filed 4/14/00, effective 5/15/00.]

WAC 230-40-556 Gaming operations department manager defined. A gaming operations department manager is a licensed card room employee who has been designated by the chief executive officer or chief operating officer as responsible for management of all card room operations.

[Statutory Authority: RCW 9.46.070. 00-09-052 (Order 383), § 230-40-556, filed 4/14/00, effective 5/15/00.]

WAC 230-40-558 Shift manager defined. A shift manager is a licensed card room employee who shall be responsible for all card room operations during a given shift. The shift manager reports to the gaming operations department manager and shall be the direct supervisor of the floor supervisor.

[Statutory Authority: RCW 9.46.070. 00-09-052 (Order 383), § 230-40-558, filed 4/14/00, effective 5/15/00.]

WAC 230-40-560 Floor supervisor defined. A floor supervisor is a licensed card room employee who shall be responsible for directly supervising a limited number of card games and the dealers assigned to those games within a designated area known as the "pit."

[Statutory Authority: RCW 9.46.070. 00-09-052 (Order 383), § 230-40-560, filed 4/14/00, effective 5/15/00.]

WAC 230-40-562 Dealer defined. A dealer is a licensed card room employee who is responsible for conducting card games and deals cards, collects and pays off players' bets, and collects fees. The dealer shall also be responsible for signing forms as required.

[Statutory Authority: RCW 9.46.070. 00-09-052 (Order 383), § 230-40-562, filed 4/14/00, effective 5/15/00.]

WAC 230-40-600 Authorization procedures for player-supported jackpots. Player-supported jackpots (PSJs) shall be tightly controlled and shall not be operated prior to approval by the director or the director's designee. The following procedures apply to approval of PSJs:

(1) The request shall be in writing and include at least the following:

- (a) A detailed description of the game;
- (b) All internal control procedures associated with controlling the game and accounting for fees and prizes;
- (c) All rules of play; and
- (d) The name of the prize fund custodian.

(2) Any changes to the approved game or applicable internal controls must be forwarded to the commission staff for review and approval prior to implementation.

[Statutory Authority: RCW 9.46.070. 00-09-052 (Order 383), § 230-40-600, filed 4/14/00, effective 5/15/00.]

(b) **Requesting amendment of an existing rule**, the petition should include the name, title, number of the rule, and the text or description of the amendment; or

(c) **Requesting repeal of an existing rule**, the petition should include the name, title, number of the rule, and a description of the effects of repealing the rule.

Locating a petition form.

(5) You, the petitioner, can obtain a standard petition from the office of financial management or any state agency involved in rule making. Agencies must accept petitions submitted using the standard form or in any other format that provides the information described in subsections (1) through (4) of this section.

Submitting a petition.

(6) Petitions for adoption, amendment, or repeal of a rule must be faxed or mailed to the administrative office of the commission in Lacey.

(7) Submission of a petition is defined as receipt of the petition by the gambling commission.

Agency response to a petition.

(8) Within a reasonable time, the administering agency will send you, the petitioner, acknowledgment of receipt of the petition, including the name and telephone number of a contact person.

(9) No later than sixty days after receipt of a petition, the agency must either:

(a) Initiate rule-making proceedings in accordance with chapter 34.05 RCW; or

(b) Deny the petition in writing, stating its reasons for the denial and specifically addressing the concerns stated in the petition. Where appropriate, the agency must indicate alternative means by which the agency will address the concerns raised in the petition.

Appealing the denial of a petition.

(10) If the gambling commission denies your petition, within thirty days of the denial, you, the petitioner, may:

(a) Appeal the denial to the governor.

The governor will process the appeal according to RCW 34.05.330(3); or

(b) Petition for a review by the joint administrative rules review committee according to RCW 34.05.330(2), only if your petition alleges that the rule you wish to amend is not within the intent of the legislature or not adopted in accordance with all applicable provisions of the law.

[Statutory Authority: RCW 9.46.070 and 34.05.230. 01-01-016 (Order 396), § 230-50-800, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 9.46.070 and chapter 34.05 RCW. 96-13-068 (Order 294), § 230-50-800, filed 6/18/96, effective 7/19/96. Statutory Authority: Chapter 34.05 RCW. 89-24-003 (Order 200), § 230-50-800, filed 11/27/89, effective 12/28/89; Order 9, § 230-50-800, filed 12/19/73.]

WAC 230-50-815 Deadlines for submitting items to be included in the commission meeting agenda—Exceptions. To ensure that the public and the commission has sufficient notice of public agenda items, the following deadline applies regarding submission of such items to the commission for action:

[Title 230 WAC—p. 180]

(1) Items for inclusion in the commission's monthly public meeting agenda must be in proper form and received at the commission headquarters' office at least fourteen days prior to the regularly scheduled commission meeting.

(2) The commission meeting agenda will be published and mailed within seven days of the regularly scheduled commission meeting.

(3) All items submitted after the time frame set forth in section one (1) above shall require approval by the commission in order to be included on the commission meeting agenda.

[Statutory Authority: Chapter 34.05 RCW and RCW 9.46.070. 96-21-073 (Order 301), § 230-50-815, filed 10/15/96, effective 1/1/97.]

WAC 230-50-850 Declaratory order. (1) Any person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory option;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(2) Within fifteen days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(3) Within thirty days after receipt of a petition for a declaratory order the commission, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition and give reasonable notification to the person(s) of the time and place for such hearing and of the issues involved;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(4) The time limits of subsection (3)(b) and (c) of this section may be extended by the commission for good cause.

(5) The commission may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(6) A declaratory order has the same status as any other order entered by the commission in an adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(7) Any person petitioning the commission for a declaratory order pursuant to RCW 34.05.240, shall generally adhere to the following form for such purpose.

(2005 Ed.)

(a) At the top of the page shall appear the wording "before the Washington state gambling commission." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption shall appear the word "petition."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(c) The original and two legible copies shall be filed with the commission. Petitions shall be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

[Statutory Authority: Chapter 34.05 RCW. 89-24-003 (Order 200), § 230-50-850, filed 11/27/89, effective 12/28/89; Order 9, § 230-50-850, filed 12/19/73.]

Chapter 230-60 WAC

PUBLIC RECORDS—DISCLOSURE

WAC

230-60-005	Purpose.
230-60-010	Definitions.
230-60-025	Public records available—Location—Time available.
230-60-030	Public records officers.
230-60-035	Office hours.
230-60-040	Requests for public records.
230-60-045	Copying.
230-60-050	Exemptions.
230-60-055	Review of denials of public records requests.
230-60-060	Protection of public records.
230-60-065	Records index.
230-60-100	Interpretive and policy statements.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

230-60-015	Description of central and field organization of the gambling commission. [Statutory Authority: RCW 9.46.070 (7), (13) and (18). 85-07-031 (Order 148), § 230-60-015, filed 3/15/85. Statutory Authority: RCW 42.17.250. 81-11-039 (Order 108), § 230-60-015, filed 5/19/81. Statutory Authority: RCW 42.17.250 and 42.17.260. 79-07-019 (Order 90), § 230-60-015, filed 6/14/79; Order 75, § 230-60-015, filed 9/16/77.] Repealed by 89-24-003 (Order 200), filed 11/27/89, effective 12/28/89. Statutory Authority: Chapter 34.05 RCW.
230-60-020	Operations and procedures. [Statutory Authority: RCW 42.17.250. 81-01-063 (Order 104), § 230-60-020, filed 12/15/80; Order 75, § 230-60-020, filed 9/16/77.] Repealed by 90-03-064 (Order 203), filed 1/18/90, effective 2/18/90. Statutory Authority: Chapter 34.05 RCW.
230-60-070	Communications with commission. [Statutory Authority: RCW 42.17.250. 81-11-039 (Order 108), § 230-60-070, filed 5/19/81; Order 75, § 230-60-070, filed 9/16/77.] Repealed by 83-19-024 (Order 136), filed 9/13/83. Statutory Authority: RCW 9.46.030 (2) and (3) and 9.46.070 (11) and (14).

WAC 230-60-005 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state gambling commission with the provisions of chapter 1, Laws of

(2005 Ed.)

1973 (Initiative 276), sections 25-32, RCW 42.17.250-42.17.320, dealing with public records.

[Order 75, § 230-60-005, filed 9/16/77.]

WAC 230-60-010 Definitions. (1) The following definitions and all definitions set forth in RCW 42.17.020 shall apply to this chapter:

(2) "Raw data" means facts, symbols, or observations which have all of the following characteristics:

- (a) They have not been processed, edited or interpreted.
- (b) They are unevaluated and unorganized.

(c) The fact, symbol, or observation does not, of itself, impart meaning to a potential user or fulfill a recognized need.

(d) To be useable the fact, symbol, or observation must go through some transformation process.

(3) "Information" means raw data that are organized, evaluative and interpreted to impart meaning to potential users and fulfill a recognized need.

(4) "Listing (list)" means a series of items of any kind including names, words or numbers no matter what the arrangement or purpose. When applied to the release of commission record information it means the names of two or more individuals contained in:

- Data processing magnetic tapes
- Data processing print-outs 1, 2, 3, or 4 part utility paper or copies of such print-outs
- Data processing print-outs in the form of labels
- Any form of writing.

(5) "Tabulation" means the systematic arrangement of facts, statistics, and similar information, except the names of individuals, in column or table format.

(6) "Individual" means a natural person.

(7) "Commercial purpose" means the using of information obtained, or intending to use the information obtained, in contact or in some way personally affect an individual identified on the list when the purpose of the contact would be to facilitate that person's (the requestor's) profit expecting business activity.

[Statutory Authority: Chapter 34.05 RCW. 90-03-064 (Order 203), § 230-60-010, filed 1/18/90, effective 2/18/90. Statutory Authority: RCW 42.17.250. 81-01-063 (Order 104), § 230-60-010, filed 12/15/80; Order 75, § 230-60-010, filed 9/16/77.]

WAC 230-60-025 Public records available—Location—Time available. All public records of the commission are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter 42.17 RCW, and WAC 230-60-050. The records available, their location, and the times they are available for inspection as follows:

(1) Public records - The following are deemed public records:

(a) The license application form and all supplemental information submitted at the commission's request subject to the exemptions in chapter 42.17 RCW and other applicable laws including, but not limited to, chapter 10.97 RCW: Provided, That consistent with chapter 10.97 RCW, the commission may disclose conviction data of an applicant or licensee;

(b) All activity reports and attachments required to be submitted to the commission on a periodic basis;

[Title 230 WAC—p. 181]

Appendix B

[Statutory Authority: RCW 9.46.070, 04-11-091 (Order 431), § 230-12-045, filed 5/18/04, effective 7/1/04; 02-11-084 (Order 413), § 230-12-045, filed 5/16/02, effective 7/1/02.]

WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception. No licensee, member or employee thereof shall extend credit, make a loan, or grant a gift to any person playing in an authorized gambling activity, or which enables a person to play in an authorized gambling activity.

Gifts prohibited—Exceptions.

(1) Gifts are items licensees give away to its customers and are not connected to gambling activities regulated by the commission. Licensees shall not offer gifts in conjunction with gambling activities, with the following exceptions:

(a) Promotions are allowed as authorized by WAC 230-12-045;

(b) Transportation services provided to and from gambling activities;

(c) Free or discounted food, drink or merchandise may be provided under the following conditions:

(i) The actual cost of any individual item may not exceed five hundred dollars;

(ii) The merchandise shall not be traded back to the licensee for cash or be used to further participate in an authorized gambling activity;

(d) For each individual gift with an actual cost over one hundred dollars, charitable and nonprofit organizations shall prepare and maintain a written record with the following information:

(i) How the recipients of the gifts were selected;

(ii) The number of gifts awarded; and

(iii) The total cost of each gift given.

Credit and loans prohibited—Exceptions.

(2) The consideration required to participate in the gambling activity shall be collected in full, by cash, check, electronic point-of-sale bank transfer, gift certificate, or gift card, prior to participation, with the following exceptions:

Punch boards/pull-tabs.

(a) The consideration paid for the opportunity to play a punch board or pull-tab series may be collected immediately after the play is completed only when such consideration is ten dollars or less;

Charitable/nonprofit organization's billing system for members.

(b) When a bona fide charitable or bona fide nonprofit organization conducting any of the activities authorized by chapter 9.46 RCW or commission rules has a regular billing system for all of the activities of its members with such organization, such billing system may be utilized in connection with the playing of any of the activities authorized hereunder if:

(i) The playing of such activity is limited to regular members of such organization who have become regular members prior to the commencement of such activity and whose qualifications for membership were not dependent

[Title 230 WAC—p. 92]

upon, or in any way related to, the playing of such activity; and

(ii) The director has given prior written consent to the use of such billing system in connection with the conduct of activities authorized under these rules.

Raffle tickets purchased with credit cards.

(c) Charitable or nonprofit organizations utilizing credit cards, issued by a state and/or federally regulated financial institution, for payment to participate in raffles.

[Statutory Authority: RCW 9.46.070, 06-15-099 (Order 460), § 230-12-050, filed 7/17/06, effective 8/17/06; 03-21-065 (Order 425), § 230-12-050, filed 10/13/03, effective 1/1/04; 02-11-084 (Order 413), § 230-12-050, filed 5/16/02, effective 7/1/02; 00-09-052 (Order 383), § 230-12-050, filed 4/14/00, effective 5/15/00; 00-07-140 (Order 381), § 230-12-050, filed 3/22/00, effective 7/1/00. Statutory Authority: RCW 9.46.070, 9.46.0209, 9.46.0237, 9.46.0205 and 9.46.075, 96-24-008 (Order 303), § 230-12-050, filed 11/21/96, effective 12/22/96. Statutory Authority: RCW 9.46.070, 94-13-099 (Order 253), § 230-12-050, filed 6/15/94, effective 7/16/94. Statutory Authority: RCW 9.46.070 (11), (14) and 9.46.0218 [9.46.0281], 89-05-024 (Order 186), § 230-12-050, filed 2/13/89; Order 51, § 230-12-050, filed 4/30/76; Order 15, § 230-12-050, filed 4/17/74; Order 5, § 230-12-050, filed 12/19/73.]

WAC 230-12-053 Acceptance of checks—Requirements. (1) A licensee, member, or employee thereof may accept a check in lieu of cash from a player for activities authorized by chapter 9.46 RCW, when the following requirements are met:

(a) The check is not a third party check drawn on an individual's personal account or a counter check offered by the licensed establishment;

(b) Any personal check must be dated the same day it is offered to the licensee and fully negotiable upon acceptance by the licensee; and

(c) The check is not from a player who has a balance owed to the licensee from a previous returned personal check. Provided: This shall not apply to a licensee who utilizes a check guarantee and collection service.

(2) If a licensee, member or employee thereof accepts a check that does not comply with the requirements set forth above, the licensee shall be deemed to have extended credit in violation of WAC 230-12-050.

[Statutory Authority: RCW 9.46.070 (11), (14) and 9.46.0218 [9.46.0281], 89-05-024 (Order 186), § 230-12-053, filed 2/13/89.]

WAC 230-12-070 Conduct of gambling activity. No person operating any activity authorized by chapter 9.46 RCW shall, directly or indirectly, in the course of such operation:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a fact, or omit to state a fact necessary in order to make a statement not misleading, in consideration of the circumstance under which such statement was made;

(3) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any person.

[Statutory Authority: RCW 9.46.070, 94-13-099 (Order 253), § 230-12-070, filed 6/15/94, effective 7/16/94; Order 53, § 230-12-070, filed 5/25/76; Order 5, § 230-12-070, filed 12/19/73.]

WAC 230-12-074 Sales on licensed premises only—Exceptions. (1) All gambling activities must be under the

(2007 Ed.)

play under any circumstances: Provided, That boards or series may be temporarily removed from play for any of the following reasons and returned to normal play at a later time:

(a) Pull-tab series removed under authority of subsection (6)(g);

(b) To reserve a game for a specific player when:

(i) The licensee has established house rules for reserving games that include reasons or conditions for reserving such games and the maximum time for which a game may be reserved;

(ii) The house rules are clear in meaning and posted in a manner that players can observe; and

(iii) The board or series is clearly identified as reserved;

(c) A board or series is designated to be played during certain hours of the licensee's operation, such as "happy hour." Such games shall be clearly identified and house rules shall be posted regarding hours of play and/or other conditions affecting play.

[Statutory Authority: RCW 9.46.070. 98-15-075 and 98-17-103 (Orders 360 and 360-A), § 230-30-050, filed 7/15/98 and 8/19/98, effective 9/19/98. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-050, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4). 95-23-109, § 230-30-050, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 9.46.070. 94-11-095 (Order 251), § 230-30-050, filed 5/17/94, effective 7/1/94. Statutory Authority: RCW 9.46.070 and chapter 34.05 RCW. 90-21-053, § 230-30-050, filed 10/15/90, effective 11/15/90. Statutory Authority: RCW 9.46.070 (4), (8), (11) and (14). 86-07-037 (Order 155), § 230-30-050, filed 3/14/86. Statutory Authority: RCW 9.46.020 (1) and (23) and 9.46.070(1). 85-11-023 (Order 150), § 230-30-050, filed 5/13/85. Statutory Authority: RCW 9.46.070(8). 81-21-033 (Order 114), § 230-30-050, filed 10/15/81; Order 5, § 230-30-050, filed 12/19/73.]

WAC 230-30-052 Punch boards and pull-tabs operated by charitable or nonprofit organizations—Net income required. Charitable or nonprofit organizations operating punch boards and pull-tabs and which do not operate bingo games at any level shall not pay excessive expenses. To ensure that licensees meet the intent of RCW 9.46.010 and to prevent the payment of excessive expenses, net income, as a percentage of gross gambling receipts from punch boards and pull-tabs, shall not be less than zero when measured over the annual license period: Provided, That the limits set out in WAC 230-20-059 shall apply to organizations operating punch boards and pull-tabs in conjunction with a bingo game.

[Statutory Authority: RCW 9.46.070. 01-05-020 (Order 397), § 230-30-052, filed 2/9/01, effective 4/1/01; 98-15-073 (Order 358), § 230-30-052, filed 7/15/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (1)(16). 90-10-007, § 230-30-052, filed 4/19/90, effective 7/1/90.]

WAC 230-30-055 Standards for construction of punch boards. All punch boards sold for use in the state of Washington must comply with the following standards:

(1) **Patterns:** The punch board shall be designed and manufactured with special care so as to eliminate any patterns between punch boards, or portions of punch boards, from which the location or approximate location of winning punches may be determined. Winning punches shall be randomly distributed and mixed among all other punches in the punch board. Manufacturers shall employ at least the following steps to insure that no pattern exists.

[Title 230 WAC—p. 148]

(a) The form or permanent number sheets shall be mixed prior to cutting;

(b) After the strips (straws) have been crimped, all strips shall be thoroughly mixed prior to insertion in punch boards;

(c) When filling punch boards, workers shall alter the procedures for filling each separate set, so as to prevent any pattern between sets of punch boards; and

(d) No more than eight punch boards from any one set of boards shall be included in any case of punch boards for shipment to Washington.

(2) **Serial numbers:** Serial numbers set forth on the form or permanent number sheets shall be nonsequential so as to ensure that no pattern is created which would permit the tracking of boards through the serial number.

(3) **Guaranteed numbers:** All numbers or symbols designated as winners on the flare must be guaranteed by the manufacturer as being present in the board. The manufacturer may at their option place a sticker or equivalent on the back of each punch board setting forth additional numbers or symbols that are guaranteed to be in the board. The additional numbers or symbols on the back of the board shall not exceed 5% of the total punches in the board without the written permission of the commission.

(4) **Security:** All punch boards must be sealed so it is impossible to determine the number or symbol of any punch prior to being punched out of the board by any method or device including but not limited to the use of markings or light. Punch boards which have taped sides, corners, or edges are prohibited.

(5) **Step-up boards:**

(a) All cards, straws, or punches that contain the winners in the step-up portion of any punch board shall be completely sealed so as to prevent premature winner identification and such items shall be thoroughly mixed so as to ensure that no pattern of winners exists.

(b) Step-up boards that contain winners covered by seals must have at least twenty-five different face sheets for use on that specific step-up board. Face sheets shall be utilized in such a manner so as to ensure random distribution during the manufacturing process.

[Statutory Authority: RCW 9.46.070 (5), (6), (11), (14). 97-14-012, § 230-30-055, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070 (11) and (14). 87-24-016 (Order 173), § 230-30-055, filed 11/23/87.]

WAC 230-30-070 Control of prizes—Restrictions—Bonus prizes—Displaying—Procedures for awarding. Punch board and pull-tab prizes shall be closely controlled to ensure players are not defrauded.

(1) All prizes from the operation of punch boards and pull-tabs shall be awarded in cash or in merchandise.

No licensee shall offer to pay cash in lieu of merchandise prizes which may be won.

(2) Additional chances on a punch board or pull-tab game may not be awarded as a prize. Provided, That prizes may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab game as set forth in subsection (4) of this section.

(3) A bonus prize is a prize offered in a bonus pull-tab game, defined in WAC 230-30-040(1). A step-up prize is a prize offered on a punch board. The awarding of these prizes

(2007 Ed.)

involves an immediate, additional opportunity to advance to a section of the game to determine the prize.

(4) On games where players advance, the bonus or step-up prizes may not be less than the highest prize available, which might otherwise have been won by the punch or pull-tab for which the opportunity was awarded. Each punch board or pull-tab game offering bonus or step-up prizes must clearly indicate on its flare the terms and conditions under which the bonus or step-up prize may be won, including the amount of the bonus or step-up prize.

(5) The licensee shall display prizes so that a customer can easily determine which prizes are available from any particular punch board or pull-tab series or device operated or located upon the premises. In addition, the following requirements apply.

(a) Merchandise prizes shall be displayed as follows:

(i) In the immediate vicinity of the punch board or pull-tab series and in plain view: Provided, That games that offer merchandise prizes that are "surprises" may be wrapped in some way so players are unable to identify what the prize is until opened;

(ii) If size or space constraints do not allow the prize to be displayed as provided in (a)(i) of this subsection, the merchandise prize may be displayed elsewhere on the premises provided that a specific reference to that actual prize is noted on the flare; or

(iii) If the merchandise prize cannot be displayed on the premises, an accurate description and/or photograph of the prize must be displayed in plain view on or immediately adjacent to the flare.

(b) Cash prizes shall be clearly represented on the prize flare;

(c) Combination cash and merchandise prizes must meet the requirements of both (a) and (b) of this subsection;

(6) The following procedures apply to the removal of prizes from the game flare and the presentation of prizes to winning players:

(a) Upon determination of a winner of a merchandise prize, the licensee shall immediately remove that prize from the flare and present the prize to the winner upon demand;

(b) Upon determination of a winner of any cash prize over twenty dollars, or of any merchandise prize with a retail value over twenty dollars, the licensee shall permanently and conspicuously delete all references to that prize from any flare, punch board, or pull-tab dispensing device upon which such reference may appear, and from any other list, sign, or notice which may be posted, in such a manner that all future customers will know the prize is no longer available. On step-up punch boards and bonus pull-tab games, once all opportunities in a section of the flare have been won, all references to prizes no longer available to be won must be deleted on the flare. Operators may correct an inadvertently deleted prize by noting on the flare that such prize is still available. Such reference shall be permanently and conspicuously deleted when the prize is actually awarded. Failure to permanently and conspicuously delete a prize from the flare may result in the director initiating actions to revoke a license for violation of RCW 9.46.190 (defrauding a participant). The prize shall be paid or delivered to the winner only after all reference to such prize has been deleted from the flare.

(7) Payment of prizes. The licensee must pay or award to the customer or player playing the punch board or pull-tab series all such prizes that are required to be, but have not been, deleted from the flare when the punch board or pull-tab series is completely played out.

(8) Record of winners. When any person wins a cash prize of over twenty dollars or wins a merchandise prize with a retail value of more than twenty dollars from the play of any punch board or pull-tab series, the licensee or licensee's representative shall make a record of the win. The record of the win shall be made in the following manner:

(a) The winners shall be required to print their name and date of birth, in ink, upon the side of the winning punch or tab opposite the winning symbol(s);

(b) The licensee or their representative shall then verify the winner's identity and record the date and initial the winning punch or tab; and

(c) If the pull-tab or punch is constructed or printed in such a manner as to preclude recording the information required in (a) and (b) of this subsection in a legible manner, the licensee may record the required information on a sheet of paper not less than three inches by five inches and staple the winning tab or punch thereto.

(9) Defacing winning punches or tabs. The licensee shall, within twenty-four hours after a winning pull-tab or punch worth more than twenty dollars has been presented for payment, mark or perforate the winning symbols in such a manner that the pull-tab or punch cannot be presented again for payment.

(10) Spindle, banded, or "jar" type pull-tabs played in a manner which awards merchandise prizes only. Pull-tab series which award only merchandise prizes valued at no more than twenty dollars, are hereby permitted to employ schemes whereby certain predesignated pull-tabs are free or the player is otherwise reimbursed the actual cost of said pull-tabs. Flares for spindle-type pull-tabs operated in this manner shall designate the total number of pull-tabs in the series and the total number of pull-tabs designated as free or reimbursable. Free or reimbursable pull-tabs in these types of pull-tab series shall not constitute a prize or prizes nor shall moneys collected and later reimbursed constitute revenue for the purposes of determining gross gambling receipts.

[Statutory Authority: RCW 9.46.070. 00-21-095 (Order 389), § 230-30-070, filed 10/18/00, effective 1/1/01; 98-15-074 (Order 359), § 230-30-070, filed 7/15/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14), 97-14-012, § 230-30-070, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070, 9.46.120, 9.46.0273, 9.46.310 and 34.05.313. 96-24-006 (Order 305), § 230-30-070, filed 11/21/96, effective 1/1/97. Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4), 95-23-109 and 95-24-048, § 230-30-070, filed 11/22/95 and 11/30/95, effective 1/1/96. Statutory Authority: RCW 9.46.070. 94-23-094, § 230-30-070, filed 11/17/94, effective 1/1/95. Statutory Authority: Chapter 9.46 RCW. 91-21-053 (Order 228), § 230-30-070, filed 10/15/91, effective 11/15/91. Statutory Authority: RCW 9.46.070. 90-24-005 (Order 218), § 230-30-070, filed 11/26/90, effective 12/27/90. Statutory Authority: RCW 9.46.070 (11) and (14). 90-11-058, § 230-30-070, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 34.05.220(4), [34.05].230 and 9.46.070 (11) and (14), 90-05-032 (Order 205), § 230-30-070, filed 2/14/90, effective 3/17/90. Statutory Authority: RCW 9.46.070 (11) and (14). 89-17-056 (Order 196), § 230-30-070, filed 8/15/89, effective 9/15/89. Statutory Authority: RCW 9.46[.070] (8), (14), 87-17-052 (Order 171), § 230-30-070, filed 8/18/87. Statutory Authority: Chapter 9.46 RCW. 87-03-023 (Order 164), § 230-30-070, filed 1/13/87. Statutory Authority: RCW [9.46.]070 (1), (2) and (11) and [9.46.]110. 85-21-046 (Order 154), § 230-30-070, filed 10/14/85. Statutory Authority: RCW 9.46.070 (8), (11) and (14). 85-03-024

(Order 142), § 230-30-070, filed 1/9/85. Statutory Authority: RCW 9.46.070 (8) and (11), 82-01-065 and 82-03-033 (Order 115 and 116), § 230-30-070, filed 12/18/81 and 1/18/82; 81-21-033 (Order 114), § 230-30-070, filed 10/15/81. Statutory Authority: RCW 9.46.070(10), 79-09-029 (Order 91), § 230-30-070, filed 8/14/79; Order 43, § 230-30-070, filed 11/28/75; Order 29, § 230-30-070, filed 1/23/75; Order 27, § 230-30-070, filed 11/15/74; Order 23, § 230-30-070, filed 9/23/74; Order 14, § 230-30-070, filed 3/27/74; Order 12, § 230-30-070, filed 2/14/74; Order 5, § 230-30-070, filed 12/19/73.]

WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments. Each punch board and pull-tab series purchased or otherwise obtained by an operator shall be controlled and accounted for. Each operator shall closely monitor punch board and pull-tab series purchased to assure that Washington state identification and inspection service stamp numbers are correctly entered in all records and each device purchased is properly recorded. The following control procedures apply:

Delivery of new games.

(1) The delivery/receipt of punch boards and pull-tab series shall be recorded as follows:

Invoice record.

(a) All purchases of punch boards or pull-tab series shall be recorded on a standard distributor's invoice, which will be used by the operator as a record to account for the punch board or pull-tab series between the time it is purchased and removed from play. Each invoice shall include space for the operator to attach the records entry label from the device and the date the device was placed out for play: Provided, That in lieu of the distributor's invoice recording system, licensees utilizing a computerized recordkeeping system may use a separate inventory record to account for purchases and uses of punch boards and pull-tabs as long as all necessary information is recorded. For these records, a computer generated facsimile of the stamp number may be imprinted on the inventory record in lieu of a records entry label.

Operator to review data and check ID stamps.

(b) At the time a punch board or pull-tab series is delivered, each operator will assure that all required data is correctly recorded by the distributor by comparing the actual Washington state identification and inspection services stamp number attached to each punch board and pull-tab series to the number recorded on the purchase invoice;

Invoice/inventory record - placing new games into play.

(2) At the time a punch board or pull-tab series is placed into play, each operator shall record in the allotted space on the distributor's invoice or the inventory record the following:

- (a) Date placed into play; and
- (b) Washington state identification and inspection services stamp number by attaching a records entry label.

Retention requirements.

(3) Each punch board or pull-tab series which is removed from play, together with the prize flare, all unplayed tabs, and all winning punches or tabs, shall be retained by the operator and made available for inspection, on the licensed premises,

by commission agents and/or local law enforcement and taxing agencies. If devices are stored off premises, they must be produced for inspection upon demand. The minimum retention time for devices removed from play shall be:

Charitable.

(a) **Charitable or nonprofit licensees** - at least four months following the last day of the month in which the device was removed from play;

Commercial.

(b) **Commercial stimulant licensees** - at least two months following the last day of the month in which the device was removed from play: Provided, That the flare and all winning punches or pull-tabs in excess of twenty dollars shall be retained for at least ninety days following the day the device was removed from play: Provided further, That any commercial stimulant licensee who fails to comply with all recordkeeping requirements of this title or who misstates gross gambling receipts by more than one percent during any calendar quarter shall be required, after written notification by the director, to retain all devices for at least four months following the last day of the month in which it was removed from play. Any licensee so restricted may petition the director to remove the increased retention requirement imposed after a minimum of one year. Any such petition shall include documentation of the steps taken to correct recordkeeping deficiencies. For purposes of computing gross gambling receipts for determining compliance with the recording accuracy requirement, the procedures in subsection (6) of this section apply; and

Specially authorized games.

(c) **Specially authorized pull-tab series** may have retention requirements in addition to those set forth in subsections (a) and (b) of this section.

Storage requirements.

(4) Each punch board or pull-tab series which is not placed out for play must be retained on the licensed premises and made available for inspection by the commission and/or local law enforcement and taxing agencies: Provided, That devices may be stored off premises if they are produced for inspection upon demand;

Returning a game to the distributor or manufacturer.

(5) Each punch board or pull-tab series which has been placed out for play and is subsequently returned to a distributor or manufacturer is exempt from the retention requirements in subsection (3) of this section. The operator must retain a copy of the quality control report for the retention period normally applicable and must record each game on its monthly record required by WAC 230-08-010. If a device is returned to a distributor for any reason, including commission required recall, the operator shall record the date, invoice or credit memo number, and "returned" on the original purchase invoice or inventory record on the corresponding entry for the device;

Appendix C

WSR 08-03-052

PERMANENT RULES

GAMBLING COMMISSION

[Order 621 -- Filed January 11, 2008, 1:28 p.m. , effective February 11, 2008]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The filing explicitly authorizes the use of the Gold Crown and ZDI type electronic video pull-tab dispensers by incorporating prior commission decisions and more recent rule changes into a new rule. In effect, this maintains the status quo, but authorization would be explicit. The alternative also defines "cash."

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-24-018 on November 27, 2007, and published December 19, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: January 11, 2008.

Susan Arland

Rules Coordinator

OTS-1218.1

NEW SECTION

WAC 230-06-003 Defining "cash." "Cash," when used as a noun in this title, means currency in the form of coins or bills issued by the government of the United States or Canada only and does not include electronic, digital or other representations of money or other methods of payment.

□

OTS-1213.1

ALTERNATIVE #1

NEW SECTION

WAC 230-14-047 Standards for electronic video pull-tab dispensers. Electronic video pull-tab dispensers must be approved by us prior to use, meet the requirements below, and may incorporate only the features below and not perform additional functions.

???? (1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

???? (a) Pull-tabs; and

???? (b) Flares; and

???? (c) Authorized pull-tab dispensers.

???? (2) Electronic video pull-tab dispensers that use a reading and displaying function must:

???? (a) Use a video monitor for entertainment purposes only; and

???? (b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and

???? (c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and

???? (d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

???? (e) Display the cash award from the pull-tab, one pull-tab at a time; and

???? (f) Provide:

???? (i) An electronic accounting of the number of pull-tabs dispensed; and

???? (ii) A way to identify the software version and name; and

???? (iii) A way to access and verify approved components; and

???? (iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

???? (3) Gift certificates or gift cards used in electronic video pull-tab dispensers must:

???? (a) Be purchased with cash, check or electronic point-of-sale bank transfer before use in the dispenser; and

???? (b) Be convertible to cash at any time during business hours; and

???? (c) Subtract the cash value for the purchase of the pull-tab one pull-tab at a time.

□

Appendix D

WSR 07-24-017

PROPOSED RULES

GAMBLING COMMISSION

[Filed November 27, 2007, 11:46 a.m.]

?????Original Notice.

?????Preproposal statement of inquiry was filed as WSR 07-16-035.

?????Title of Rule and Other Identifying Information: WAC 230-14-047 Standards for electronic video pull-tab dispensers.

?????Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 11, 2008, at 9:30 a.m.

?????Date of Intended Adoption: January 11, 2008.

?????Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2008.

?????Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by January 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

?????Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Two proposed rule changes that would no longer allow electronic video pull-tab dispensers, WAC 230-14-045 and 230-05-030, were up for filing at the September 2007 commission meeting. At that meeting, the commission requested that the proposal be held over until the October commission meeting. At the October meeting, the commission voted to file the rules (filed under WSR 07-21-092) and asked staff to work with the industry on an alternative. Shown below is alternative #2 which is proposed by the industry and not staff. Alternative #2 would explicitly authorize the use of the Gold Crown and ZDI type electronic video pull-tab dispensers. In addition, this rule would allow pull-tab dispensers to add prizes of twenty dollars or less to a cash card upon insertion of the winning pull-tab.

?????Reasons Supporting Proposal: See above.

?????Statutory Authority for Adoption: RCW 9.46.070.

?????Statute Being Implemented: Not applicable.

?????Name of Proponent: Industry representatives for Electronic Video Pull-Tab Dispensers, private.

?????Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

?????No small business economic impact statement has been prepared under chapter 19.85 RCW. Alternative #2 does not require a small business economic impact statement (SBEIS) because it provides clarification without changing current requirements. If the commission were to move forward with the original rule proposal, we would need to determine whether an exemption not requiring an SBEIS applies. If an exemption does not apply, an SBEIS would need to be completed.

?????A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

November 27, 2007

Susan Arland

Rules Coordinator

OTS-1214.1

ALTERNATIVE #2

NEW SECTION

WAC 230-14-047 Standards for electronic video pull-tab dispensers. Electronic video pull-tab dispensers must be approved by us prior to use, meet the requirements below, and may incorporate only the features below and not perform additional functions.

???? (1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

???? (a) Pull-tabs; and

???? (b) Flares; and

???? (c) Authorized pull-tab dispensers.

???? (2) Electronic video pull-tab dispensers that use a reading and displaying function must:

???? (a) Use a video monitor for entertainment purposes only; and

???? (b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and

???? (c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and

???? (d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

???? (e) Display the cash award from the pull-tab, one pull-tab at a time; and

???? (f) Provide:

???? (i) An electronic accounting of the number of pull-tabs dispensed; and

???? (ii) A way to identify the software version and name; and

???? (iii) A way to access and verify approved components; and

???? (iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

???? (3) Gift certificates or gift cards used in electronic video pull-tab dispensers must:

???? (a) Be purchased with cash, check or electronic point-of-sale bank transfer before use in the dispenser; and

???? (b) Be convertible to cash at any time during business hours; and

???? (c) Subtract the cash value for the purchase of the pull-tab one pull-tab at a time; and

???? (d) Pull-tab dispensers that accept cash cards may not add prizes over twenty dollars to a cash card. Pull-tab dispensers may add prizes twenty dollars or less to a cash card upon insertion of the winning pull-tab.

□

? Washington State Code Reviser's Office

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STATE OF WASHINGTON

NO. 36751-3

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

BY _____
DEPUTY

STATE OF WASHINGTON
GAMBLING COMMISSION,

Appellant and Cross-Respondent,

v.

ZDI GAMING, INC.,

Respondent and Cross-Appellant.

CERTIFICATE OF
SERVICE

I certify that on February 12, 2008, I caused a true and correct copy of the State's **Brief of Appellant**, in the above-referenced matter to be served upon the parties herein, as indicated below:

COURT OF APPEALS, DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402

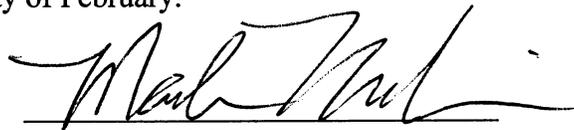
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1019 REGENTS BLVD., SUITE 204
FIRCREST, WA 98466

- U.S. Mail
 Hand Delivered:
ABC Legal Messenger
 Overnight Express

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 12th day of February.



MARLENA MULKINS
Legal Assistant

ORIGINAL