



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Washington State Liquor and Cannabis Board

- Preproposal Statement of Inquiry was filed as WSR 16-09-118 ; or  
 Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or  
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice  
 Supplemental Notice to WSR \_\_\_\_\_  
 Continuance of WSR \_\_\_\_\_

**Title of rule and other identifying information:** (Describe Subject)

WAC 314-35-010 Vapor products – Introduction;  
WAC 314-35-020 Vapor product licenses required – Licensing requirements, denials, suspensions, and revocations;  
WAC 314-35-030 Vapor product licensee recordkeeping requirements; and  
WAC 314-35-040 Age-restricted vapor products retailer licensed locations.

**Hearing location(s):**

Washington State Liquor and Cannabis Board  
Board Room  
3000 Pacific Ave SE  
Olympia, WA 98504

Date: November 2, 2016 Time: 10:00 am

**Submit written comments to:**

Name: Joanna Eide, Policy and Rules Coordinator  
Address: PO Box 43080  
Olympia, WA 98504  
e-mail [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov)  
fax (360) 664-9689 by (date) November 2, 2016

**Assistance for persons with disabilities:** Contact

Joanna Eide by October 26, 2016

TTY ( ) \_\_\_\_\_ or (360) 664-1622

**Date of intended adoption:** On or after November 2, 2016

(Note: This is **NOT** the **effective** date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The purpose of this rule making is to create a new chapter in title 314 WAC, chapter 314-35 WAC, to implement ESSB 6328 relating to vapor products regulation passed during the 2016 Legislative Session, codified mostly in chapter 70.345 RCW. Rules address administrative provisions regarding how the WSLCB will handle licensing, including when to approve or deny a license, as well as records-generating and records keeping requirements, and reporting on age-restricted vapor products retail locations.

**Reasons supporting proposal:** Rule changes are necessary to implement changes made to statute by the Legislature during the 2016 Legislative Session creating a new regulatory scheme for vapor products. The new rules proposed as part of this rulemaking supplement the laws created by the legislature, mostly found in chapter 70.345 RCW and are necessary to regulate the new vapor product licenses created. WSLCB needs these rules in place to ensure the proper administration of vapor products licenses and to ensure licensees comply with state law regarding vapor products.

**Statutory authority for adoption:** RCW 70.345.020 and 70.345.090

**Statute being implemented:** RCW 70.345.020 and 70.345.090

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No  
If yes, CITATION:

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** September 21, 2016  
**TIME:** 10:56 AM

**WSR 16-19-101**

**DATE**  
September 21, 2016

**NAME** (type or print)  
Jane Rushford

**SIGNATURE**

**TITLE**  
Chair

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

None.

**Name of proponent:** (person or organization) Washington State Liquor and Cannabis Board

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting.....Joanna Eide, Rules/Policy Coordinator	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1622
Implementation....Justin Nordhorn, Chief Enforcement	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1726
Enforcement..... Justin Nordhorn, Chief Enforcement	3000 Pacific Ave SE, Olympia, WA 98504	(360) 664-1726

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Joanna Eide, Policy and Rules Coordinator  
Address: Washington State Liquor and Cannabis Board  
3000 Pacific Ave. SE  
Olympia, WA 98504  
phone (360) 664-1622  
fax (360) 664-9689  
e-mail [Joanna.Eide@lcb.wa.gov](mailto:Joanna.Eide@lcb.wa.gov)

No. Explain why no statement was prepared.

**Is a cost-benefit analysis required under RCW 34.05.328?**

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

phone ( ) \_\_\_\_\_  
fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

No: Please explain: A cost-benefit analysis was not required under RCW 34.05.328.



**Date:** September 21, 2016

**To:** Jane Rushford, Board Chair  
Ruthann Kurose, Board Member  
Ollie Garrett, Board Member

**From:** Joanna Eide, Policy and Rules Coordinator

**Copy:** Rick Garza, Agency Director  
Peter Antolin, Agency Deputy Director  
Justin Nordhorn, Chief of Enforcement  
Becky Smith, Licensing Director  
Karen McCall, Agency Rules Coordinator

**Subject: Small Business Economic Impact Statement  
Vapor Products Rules**

A small business economic impact statement (SBEIS) has been prepared under chapter 19.85 RCW for the proposed new chapter concerning vapor products rules, chapter 314-35 WAC.

**1. Description of reporting, record keeping and other compliance requirements of the proposed rule:**

The proposed new chapter in Title 314 WAC regarding vapor products is in response to ESSB 6328 passed by the Legislature during the 2016 legislative session and codified primarily in chapter 70.345 RCW. The proposed rules in this rulemaking are in addition to the requirements in chapter 70.345 RCW. This rulemaking is aimed primarily at the creation administrative provisions relating to vapor products license applications, and how the Washington State Liquor and Cannabis Board (WSLCB) will handle applications, renewals, suspensions, and revocations of vapor products licenses.

The proposed new rules include record-generation requirements a new five-year record keeping requirement for vapor products licensees in new WAC 314-35-030. Record-generation requirements are designed to mirror those records that are generally created in the normal course of business operations. Record keeping requirements are proposed so WSLCB enforcement officers may inspect records to ensure vapor products licensees are adhering to state law requirements that vapor products licensees only purchase from or sell to other vapor products licensees unless selling directly to the



end consumer. Licensees may maintain records in any form they wish, so long as the records are available at the licensed location for inspection. The record keeping requirements included in this rulemaking are similar to those requirements for other licensees the WSLCB regulates, including tobacco licensees.

The proposed new rules also include a reporting requirement should a vapor products retailer license applicant or holder of a license wish to have an age-restricted location in new WAC 314-35-040. This reporting may be accomplished at the time of application for a vapor products retail license, or at a later date should a licensed vapor products retailer choose to change the retail location to an age-restricted location so long as the licensee gives the WSLCB 10 days advance notice. Retailers may revert back to an unrestricted location if they so choose, but likewise must report this change at least 10 days prior to doing so. The reporting requirement allows a vapor products licensee to report using an online form made available by the WSLCB.

## **2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:**

Applicants for vapor products licenses and vapor products licensees will not likely need professional services to comply with the requirements in proposed new chapter 314-35 WAC.

## **3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs:**

There should be little to no costs associated with complying with the proposed record-generation requirements in this rulemaking. Businesses generally produce invoices or receipts when selling products, and this rulemaking is intended to require records creation similar to those records that businesses would generate in the normal course of business.

The proposed records keeping requirements in this rulemaking may have some minor costs associated with compliance as licensees will have to keep and maintain records for potential inspection by WSLCB staff. However, this requirement is flexible and licensees will have the option to choose the record keeping method that is most cost effective for the licensee.

The reporting requirement for age-restricted vapor products retail locations should have little to no costs for compliance since reporting will be done either at the time of application for a license or at a later date should a license holder wish to change the age-restricted status of their business location. Additionally, reporting at a time later



than the application for the license may be done via a form that the WSLCB will make available online, thus facilitating the ease of reporting and reducing costs as much as possible.

#### **4. Will compliance with the rules cause businesses to lose sales or revenue?**

The WSLCB does not anticipate that the new requirements proposed in this rulemaking will impact sales or revenue generated from those sales.

#### **5. Costs of compliance for small businesses compared with the cost of-compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:**

- a. Cost per employee;**
- b. Cost per hour of labor; or**
- c. Cost per one hundred dollars of sales**

Many vapor products businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including the business type. These businesses have not been regulated thus far by the WSLCB – new chapter 70.345 RCW imposed by the 2016 Legislature created the first regulatory scheme for vapor products businesses beyond standard business requirements in preexisting laws and rules. Because these businesses did not have any reporting requirements or a licensing requirement with the WSLCB prior to the creation of chapter 70.345 RCW, the WSLCB has little data on the sizes of the businesses that deal in vapor products. Efforts are being made to assess these businesses as we move forward in the new regulatory construct, and through the WSLCB's ongoing education and outreach efforts with these businesses.

Costs will vary depending on the level of activity the licensee engages in, the location they are situated in, and other business decisions that individual licensees make. The costs for compliance with baseline records creation and maintenance requirements, though they may vary based on individual choices by businesses and the size of the business, are expected to be minor regardless of business size. Larger businesses may have more costs associated with compliance than smaller businesses as they will generate more records if they deal in larger volumes of products and sales.



**6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:**

The WSLCB has reduced the amount of costs on small businesses through maintaining flexibility in records keeping and records generation requirements in proposed rules and by attempting to use standard business practices as a basis for proposed records-generation requirements. Additionally, the reporting requirements for age-restricted businesses are designed to be as easy as possible to comply with through allowing a business to report age-restricted status at the time of application for a vapor products license or through the use of a WSLCB created form that will be available online should a license holder wish to change its age-restricted status at a later date.

**7. A description of how the agency will involve small businesses in the development of the rule:**

Most vapor products businesses are small businesses. They are invited to provide feedback to the rules during the rulemaking process. WSLCB enforcement staff is also conducting a large, ongoing educational effort to inform these previously unregulated businesses of the new requirements in state law due to the passage of ESSB 6328 (codified mostly in chapter 70.345 RCW). The WSLCB met with stakeholder groups to discuss the new requirements imposed by chapter 70.345 RCW and will continue to work with stakeholders groups and vapor products businesses to share information and ensure businesses have what they need to comply with the new requirements in state law and this rulemaking proposal.

**8. A list of industries that will be required to comply with the rule:**

Businesses who engage in the manufacturing, sale, and distribution of vapor products, including stand-alone vapor retail locations, gas stations and convenience stores, manufacturing businesses, and distribution businesses.

**9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:**

The changes in this rulemaking are not likely to result in the loss or creation of jobs.

**Chapter 314-35 WAC  
VAPOR PRODUCTS**

NEW SECTION

**WAC 314-35-010 Vapor products—Introduction.** This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

NEW SECTION

**WAC 314-35-020 Vapor product licenses required—Licensing requirements, denials, suspensions, and revocations.** (1) The vapor product license types are: Vapor product retailer's license, vapor product distributor's license, and vapor product delivery sale license. A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is required to perform the functions of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not the vapor product contains nicotine.

(2) A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license cannot be issued to a location that is a domicile.

(3) A person or entity must meet certain qualifications to receive a vapor product license, and must continue to meet those qualifications to maintain the license.

(4) No more than one license of each vapor product license type may be issued at a single location.

(5) A licensed location must be separated from other vapor product businesses and not accessible through neighboring businesses.

(6) For the purpose of reviewing an initial or renewal application for a vapor product license or considering the denial of a license application, the WSLCB may consider prior criminal conduct of the applicant and criminal history record within the five years prior to the date the application is received by the WSLCB. The WSLCB uses the following point system to determine a person's qualification for a license. The WSLCB will not normally issue a vapor product license to a person or entity that has accumulated eight or more points as determined in (a) through (e) of this subsection. If a case is pending for an alleged offense that would earn eight or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the WSLCB may administratively close the application.

(a) Felony conviction within the five years immediately prior to application: Twelve points.

(b) Gross misdemeanor conviction for violation of chapter 82.24 or 82.26 RCW within the five years immediately prior to application: Twelve points.

(c) Other gross misdemeanor conviction within three years immediately prior to application: Five points.

(d) Misdemeanor conviction within three years immediately prior to application: Four points.

(e) Nondisclosure of any of the above: Four points each in addition to underlying points.

(7) For the purpose of reviewing an initial or renewal application for a vapor product license and considering the denial of a vapor product license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the WSLCB.

(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

#### NEW SECTION

**WAC 314-35-030 Vapor product licensee recordkeeping requirements.** (1) Vapor product distributors and manufacturers must keep complete and accurate records, including itemized invoices, at each place of business for that place of business of vapor products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of vapor products made. These records must show the names and addresses of purchasers, the inventory of all vapor products, and other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(2) Vapor product licensees must render with each sale of vapor products to persons other than ultimate consumers itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices. Vapor product licensees must preserve legible copies of all such invoices for five years from the date of sale.

(3) Every licensed vapor product retailer must procure itemized invoices of all vapor products purchased. The invoices must show the seller's name and address, the date of purchase, and all prices and discounts.

(4) The licensed vapor product retailer must keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept un-

der this section must be preserved for five years from the date of purchase.

NEW SECTION

**WAC 314-35-040 Age-restricted vapor products retailer licensed locations.** (1) Age-restricted vapor products retailer licensed locations must register as such with the WSLCB by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the WSLCB in writing ten business days prior to a change in the age-restriction status. The appropriate form is available on the WSLCB web site.

(2) Holders of a vapor product retailer license where entry into the licensed premises is age-restricted to persons eighteen years of age or older must post signs provided by the WSLCB at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time during opening hours of the licensed vapor products retail establishment.