



Washington State
Liquor and Cannabis Board

Date: October 2, 2019

To: Jane Rushford, Board Chair
 Ollie Garrett, Board Member
 Russ Hauge, Board Member

From: Janette Benham, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
 Megan Duffy, Deputy Director
 Justin Nordhorn, Chief of Enforcement
 Becky Smith, Licensing Director

Subject: Adoption of final rules (CR 103) regarding spirits distributor license fees

The rules coordinator requests that the board approve final rulemaking (CR 103) and adopt rules amending WAC 314-02-106, 314-23-001, 314-23-005, 314-23-021, 314-23-022, 314-23-030, 314-23-041, 314-23-042, 314-28-070, and repealing WAC 314-23-025.

The board was briefed on the rulemaking background and held a public hearing on September 18, 2019. An issue paper and the text of the rules is attached.

If approved, the rules coordinator will send an explanation of the rulemaking to all people who submitted comments and file the rules with the Office of the Code Reviser. The effective date of the rules will be January 1, 2020.

_____ Approve _____ Disapprove _____
 Jane Rushford, Chair _____
 Date

_____ Approve _____ Disapprove _____
 Ollie Garrett, Board Member _____
 Date

_____ Approve _____ Disapprove _____
 Russ Hauge, Board Member _____
 Date

Attachment: Issue Paper

Issue Paper

Spirits Distributor License Fees

Date: October 2, 2019

Presented by: Janette Benham, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rulemaking (CR 103) to adopt rules regarding spirits distributor license fees. These revisions will have a delayed effective date of January 1, 2020, which is at the beginning of the quarterly reporting and payment period.

Why is rule making necessary?

Rulemaking was initiated as a result a Court of Appeals Decision, Washington Restaurant Association, et.al., v. WSLCB, 200 Wn.App. 119, 401 P.3d 428 (2017). The decision stated in part that spirits distributor license fees cannot be collected from licensed distillers, craft distillers, or certificate of approval holders. The decision also stated that per RCW 66.24.055 retailers selling spirits for resale must pay the distributor license fee when no other distributor license fee has been paid.

What changes are being made?

WAC 314-02-106 What is a spirits retailer license? Revisions to this section add the requirement under RCW 66.24.055 that spirits retail licensees selling for resale pay a ten percent distributor license fee in the first twenty-seven months of licensure, and a five percent distributor license fee in month twenty-eight and thereafter when no other distributor license fee has been paid. Outdated language was removed from this section, and reporting and payment references were added.

Chapter 314-23 WAC (seven sections)

WAC 314-23-001 What does a spirits distributor license allow?

WAC 314-23-005 What are the fees for a spirits distributor license?

WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?

WAC 314-23-030 What does a spirits certificate of approval license allow?

WAC 314-23-041 What are the monthly reporting requirements for a spirits certificate of approval licensee?

WAC 314-23-042 What if a spirits certificate of approval licensee fails to report or reports late?

Revisions to the above sections remove outdated language, clarify requirements regarding sales and fees, update reporting and payment requirements, remove the fee requirement where applicable, and make additional technical and clarifying changes.

WAC 314-28-070 Monthly reporting and payment requirements for a distiller and craft distiller. Revisions to this section remove outdated language, remove the distributor fee requirement for distilleries and craft distilleries, update reporting and payment requirements, and make additional technical and clarifying changes.

WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders. This section was repealed since it expired on March 31, 2013.

Public Comment

No one testified at the September 18, 2019 public hearing.

Two written comments were received and are summarized in the Concise Explanatory Statement. The Concise Explanatory Statement will be available on the WSLCB's website under the Laws and Rules tab after the rules are adopted. Information and FAQs regarding the revisions will be available on the website.

WAC 314-02-106 What is a spirits retailer license? (1) (~~A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license.~~) The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. (~~The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).~~)

~~Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.)~~

(5) Per RCW 66.24.055, a spirits retail licensee selling for resale must pay to the board a ten percent distributor license fee for the first twenty-seven months of licensure, and a five percent distributor license fee for month twenty-eight and each month thereafter. The fee is required on sales of spirits which the licensee selling to another licensee for resale is the first to have received:

(a) Spirits manufactured in the state, from the distiller; or

(b) Spirits manufactured outside of the state from an authorized out-of-state supplier; and

(c) No other distributor license fee has been paid.

(6) Reporting of spirits sales and payment of fees must be submitted electronically or on forms provided by the board. Reporting requirements are outlined in WAC 314-02-109.

(7) A spirits retail licensee may apply for a spirits sampling endorsement to conduct spirits sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For spirits retail licensees that also hold a grocery store license, signs advertising spirits samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) For spirits retail licensees that also hold a beer/wine specialty store license, advertising of spirits sampling may be advertised but not state that sampling is free of charge.

(c) Spirits samplings are to be conducted in the following manner:

(i) Spirits samplings service area and facilities must be located within the licensees' fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area.

(ii) The licensee must provide a sketch of the sampling area. Fixed or (~~moveable~~) movable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. The sketch is to be included with the application for the spirits sampling endorsement.

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples may be altered with mixers, water, and/or ice.

(iv) The licensee must have food available for the sampling participants.

(v) Customers must remain in the service area while consuming samples.

(vi) All employees serving spirits during sampling events must hold a class 12 server permit.

(vii) There must be at least two employees on duty when conducting spirits sampling events.

(viii) Spirits sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled spirits samplings to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included.

(~~(+6)~~) (8) The annual fee for a spirits retail license is one hundred sixty-six dollars.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-001 What does a spirits distributor license allow?

(1) (~~(A spirits distributor licensee may not commence sales until March 1, 2012.)~~) A spirits distributor licensee is allowed to:

(a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;

(b) Sell spirits to any liquor licensee allowed to sell spirits;

(c) Sell spirits to other spirits distributors; (~~and~~)

(d) Sell spirits to bona fide full-time employees per RCW 66.28.185 under the following conditions:

(i) No spirits may be sold unless they are in such condition that they cannot reasonably be sold in the normal course of business, such as damage to the label on an individual bottle;

(ii) No spirits may be sold for less than the spirits distributor licensee's cost of acquisition; and

(iii) No spirits may be sold to a person who has been employed by the spirits distributor licensee for less than ninety days at the time of the sale or who is under the age of twenty-one.

(e) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-005 What are the fees for a spirits distributor license?

(1) The holder of a spirits distributor license must pay to the board a monthly license fee (~~(as follows)~~). The license fee is:

(a) Ten percent of the total revenue from all sales of spirits to employees and retail licensees made during the month for which the fee is due for the first (~~(two years)~~) twenty-seven months of licensure; (~~and~~) or

(b) Five percent of the total revenue from all sales of spirits to employees and retail licensees made during the month for which the fee is due for the (~~(third year)~~) twenty-eighth month of licensure and (~~(every year)~~) each month thereafter (~~(-)~~); and

(c) (~~(The license fee is only calculated)~~) Required on sales of (~~(items)~~) spirits which the licensee was the first spirits distributor in the state to have received:

(i) (~~(In the case of)~~) Spirits manufactured in the state, from the distiller; or

(ii) (~~(In the case of)~~) Spirits manufactured outside of the state, from (~~(a spirits certificate of approval holder.~~ ~~(d))~~) an authorized out-of-state supplier.

(2) For sales to employees under RCW 66.28.185 and 66.24.630, the holder of a spirits distributor license must pay a license fee of seventeen percent of the total revenue from sales of spirits to employees made during the month for which the fee is due.

(3) Reporting of sales and payment of fees must be submitted electronically or on forms provided by the board.

~~((2))~~ (4) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars for each licensed location.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license? (1) A spirits distributor must submit monthly sales reports and payments to the board.

(2) The required monthly sales reports must be:

(a) Filed electronically or on a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with any payment due(~~(7)~~) to the board on or before the twentieth day of each month(~~(7)~~) for the previous month(~~(-)~~) (for example, a report listing transactions for the month of January is due by February 20th(~~(-)~~). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(3) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late? (1) Failure of a spirits distributor licensee to submit (~~its~~) monthly reports and payment to the board as required in WAC 314-23-021(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) A penalty of two percent per month will be assessed on any payments postmarked or posted in the WSLCB receiving account if paying electronically after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the (~~filing~~) report and payment must be postmarked (~~by the U.S. Postal Service~~) or posted in the WSLCB receiving account if paying electronically no later than the next postal business day.

Absent a postmark, and if not paying electronically, the date received at the (~~Washington state liquor control board, or designee,~~) WSLCB will be used to determine if penalties are to be assessed.

(3) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

WAC 314-23-030 What does a spirits certificate of approval license allow? (1) (~~(A spirits certificate of approval licensee may not commence sales until March 1, 2012.)~~) A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) There are three separate spirits certificate of approval licenses as follows:

(a) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to spirits distributors or spirits importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(b) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain a spirits authorized representative domestic certificate of approval license which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(c) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States obtains a spirits authorized representative foreign certificate of approval which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

(3) A spirits certificate of approval holder, a spirits authorized representative domestic certificate of approval holder, and/or a spirits authorized representative foreign certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license.

(4) The holder of a certificate of approval license that sells directly to licensed liquor retailers must

~~(a))~~ report to the board monthly, electronically or on forms provided by the board, the amount of all sales of spirits to licensed spirits retailers

~~(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.~~

~~(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter) and spirits distributors.~~

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-041 What are the monthly reporting ((and payment)) requirements for a spirits certificate of approval licensee? (1) A spirits certificate of approval licensee must submit monthly reports ((and payments)) to the board.

(2) The required monthly reports must be:

(a) Filed electronically or on a form furnished by the board;

(b) Filed every month, including months with no activity ((or payment due));

(c) Submitted((, with payment due, to the board)) on or before the twentieth day of each month, for the previous month((-)) (for example, a report listing transactions for the month of January is due by February 20th((-)). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(3) Absent a postmark, the date received at the WSLCB will be used to determine timeliness.

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

WAC 314-23-042 What if a spirits certificate of approval licensee fails to report ((or pay,)) or reports ((or pays)) late? ((-1)- If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.) The board may revoke or suspend a certificate of approval license for failure to submit monthly reports or for submitting reports after the monthly due date.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders.

WAC 314-28-070 (~~(What are the)~~) **Monthly reporting and payment requirements for a (~~(distillery)~~) distiller and craft (~~(distillery license?)~~) distiller.**

(1) A distiller or craft distiller must submit monthly production and sales reports and payment(~~(s)~~) to the board.

(2) The required monthly reports must be:

(a) Filed electronically or mailed on a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted(~~(r)~~) with any payment due(~~(r)~~) to the board on or before the twentieth day of each month(~~(r)~~) for the previous month(~~(r)~~) (for example, a report listing transactions for the month of January is due by February 20th).(~~(r)~~) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the (~~(fil-~~
~~ing)~~) report and payment must be submitted electronically or postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

~~((2))~~ (3) For reporting purposes, production is the distillation of spirits from mash, wort, wash, or any other distilling material. After the production process is (~~(completed)~~) complete, a production gauge (~~(shall)~~) must be made to establish the quantity and proof of the spirits produced. (~~(The)~~) Designation (~~(as to)~~) of the kind of spirits (~~(shall also)~~) must be made at the time of the production gauge. The distiller must maintain a record of the production gauge (~~(shall be maintained by the distiller)~~). The (~~(completion of the)~~) production process is complete when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

~~((3))~~ A distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first twenty-seven months of licensure and five percent of their gross spirits revenues to the board in the twenty-eighth month and thereafter.

~~(a)~~ A distillery) (4) A distiller must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

~~((b))~~ (a) Payments must be submitted(~~(r)~~) with the monthly reports(~~(r to the board)~~) on or before the twentieth day of each month(~~(r)~~) for the previous month(~~(r)~~) (for example, payment for a report listing transactions for the month of January is due by February 20th).(~~(r)~~) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be made or postmarked by the U.S. postal service no later than the next postal business day.

(b) Electronic payments will be considered received on the date they post in the WSLCB receiving account.



Washington State
Liquor and Cannabis Board

Date: October 2, 2019

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Kathy Hoffman, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director

Subject: **Approval for filing proposed rules (CR 102) for chapter 314-35 WAC – Vapor Products, creating new sections and amending existing sections of rule to implement the directives of Engrossed House Bill (EHB) 1074 regarding vapor product legal age for sales; and Engrossed Second Substitute House Bill (E2SHB) 1873, regarding vapor product taxation.**

The proposed rules apply to vapor products, defined in RCW 70.345.010(19) as any noncombustible product that may contain nicotine and employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or other substance. Vapor products include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic device. The proposed rules *do not* apply to any product that meets the definition of marijuana as provided in RCW 69.50.101. It is important to distinguish these rules and those products given the attention to reported adverse health impacts attributed to vaping nicotine products, non-nicotine products, and vapor products containing marijuana, or THC.

Chapter 70.345 RCW provides the Board with limited licensing and enforcement authority of vapor product distributors, retailers, and product delivery sales. RCW 70.345.020(2) provides, in relevant part, that the Board may adopt rules regarding the regulation of vapor *licenses*. RCW 70.345.160(4) provides that the Board may work with local health departments or districts, as well as law enforcement to conduct random unannounced inspections to ensure compliance. More importantly, RCW 70.345.160(5) provides that if the Secretary of Health or local health jurisdiction determines that a product may be injurious to human health, or poses a significant risk that the Board, in consultation with the Department of Health and others, may cause a vapor product to be

analyzed. Thus, while the Board’s regulatory authority is currently limited with respect to vapor *products*, the extent of Board’s authority with respect to *licensing* and *enforcement* is reflected in this rule proposal, and supports the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

Process

The Rules Coordinator requests approval to file proposed rules (CR 102) for the rule making described above. An issue paper on this rule was presented at the Board meeting on October 2, 2019, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

October 2, 2019	Board is asked to approve filing the proposed rules (CR 102 filing)
October 21, 2019	Code Reviser publishes notice, LCB sends notice to rules distribution list
November 13, 2019	Public hearing held
November 13, 2019	End of written comment period
December 11, 2019	Board is asked to adopt rules
December 11, 2019	Agency sends notice to those who commented both at the public hearing and in writing.
December 11, 2019	Agency files adopted rules with the Code Reviser (CR 103)
January 1, 2020	Rules are effective consistent with RCW 34.05.380(3)(a), the rule is effective on a date required by state law (see EHB 1074 and E2SHB 1873).

_____ Approve _____ Disapprove _____ Jane Rushford, Chair _____ Date

_____ Approve _____ Disapprove _____ Ollie Garrett, Board Member _____ Date

_____ Approve _____ Disapprove _____ Russ Hauge, Board Member _____ Date

Attachment: Issue Paper

Issue Paper

Chapter 314-35 WAC – Vapor Products

Date: October 2, 2019

Presented by: Kathy Hoffman, Policy and Rules Coordinator

Description of the Issue

The proposed rules apply to vapor products, meaning any noncombustible product that may contain nicotine and employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or other substance. Vapor products include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic device. The proposed rules *do not* apply to any product that meets the definition of marijuana as provided in RCW 69.50.101. It is important to distinguish these products given the attention to reported adverse health impacts attributed to vaping nicotine, non-nicotine, and marijuana.

Chapter 70.345 RCW provides the Board with limited licensing and enforcement authority of vapor product distributors, retailers, and product delivery sales. RCW 70.345.020(2) provides, in relevant part, that the Board may adopt rules regarding the regulation of vapor *licenses*. RCW 70.345.160(4) provides that the Board may work with local health departments or districts, as well as law enforcement to conduct random unannounced inspections to ensure compliance. More importantly, RCW 70.345(5) provides that if the Secretary of Health or local health jurisdiction determines that a product may be injurious to human health, or poses a significant risk that the Board, in consultation with the Department of Health and others, may cause a vapor product to be analyzed. Thus, while the Board's regulatory authority is currently limited with respect to vapor *products*, the extent of Board's authority with respect to *licensing* and *enforcement* is reflected in this rule proposal, and supports the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

Washington State recognizes that there is a growing body of empirical research, including a recent report issued by the National Institute of Medicine to support an overall, state-wide health goal of increasing the age of sale for both tobacco and vapor products to twenty-one. Based on this evidence, increasing the age of sale for these products will significantly reduce the number of adolescents and young adults who are smoking, and will immediately improve the health of adolescents, young adults, young mothers, and young children. To achieve that goal, Engrossed House Bill (EHB) 1074 (Chapter 15, Laws of 2019), prohibits the

sale of cigarettes, tobacco products, and vapor products to persons under the age of twenty-one. This aligns Washington with several other states who have raised the minimum legal sales age to twenty-one in an effort to save lives and reduce healthcare costs.

Additionally, Engrossed Second Substitute House Bill (E2SHB) 1873 (Chapter 445, Laws of 2019) accomplishes several related goals. In addition to establishing a vapor tax structure that applies to all persons licensed to sell vapor products under chapter 70.345 RCW, it also contains statutory amendments and new sections that include, but are not limited to the establishment of recordkeeping, business, product sales and distribution requirements that also apply to all persons licensed to sell vapor products under chapter 70.345 RCW.

Since the legislation directing these rule revisions was enacted, concern around the use of vapor products has significantly increased. These concerns hinge on several factors, including but not limited to the composition and content of the concentrates used in vapor products, and the product delivery system. Based on the current regulatory environment, the heightened concern around the safety of vapor products, and Governor Inslee's Executive Order 19-03 Addressing the Vaping Use Public Health Crisis, the overall public health and safety benefits of these rule amendments and new sections outweigh any increase in costs or administrative burden related to their implementation.

This Issue Paper provides appropriate background and support to request approval from the Board to file a rule proposal (CR102) regarding new sections and amendments to chapter 314-35 WAC – Vapor Products, consistent with EHB 1074 and E2HSB 1873.

Rule Necessity

Currently, chapter 314-35 WAC provides a limited regulatory framework around the manufacturing, distribution and sale of vapor products. Both EHB 1074 and E2SHB 1873 expanded WSLCB's regulatory authority by:

- Increasing the age of sale of vapor products;
- Increasing record keeping requirements;
- Clarifying vapor product licensee requirements, including qualification, application denials, insurance requirements, license suspension and revocation;
- Establishing transportation requirements;
- Establishing the ability for WSLCB to seize both cannabinoid vapor products and vapor products;
- Establishing forfeiture guidelines;

- Establishing a penalty structure that aligns with current WSLCB penalty reform framework.

These new rule sections and amendments support the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current dynamic environment.

Description of Rule Changes

Amended Section. WAC 314-35-010 – Vapor products-

Introduction. Added “delivery sales” to the list of licensees to whom the chapter applies.

New Section. WAC 314-35-015 – Definitions. Created and established definitions for “domicile,” “control,” “financial institution,” and “profit” for clarity.

Amended Section. WAC 314-35-020 – Licensing requirements.

Clarifies and more concisely describes licensing requirements for all vapor product licensees, including background investigation, and premise inspection.

New Section. WAC 314-35-021 – Insurance requirements. Requires vapor product licensees to obtain commercial general liability insurance, to increase and protect public safety.

New Section. WAC 314-35-023 – Vapor product license transfer and relocation. Establishes requirements for transfer, or relocation of a vapor product license, in addition to ownership or location changes of a licensed vapor product business.

New Section. WAC 314-35-024 – Vapor product packaging and labeling. Describes vapor product packaging and labeling requirements, consistent with RCW 70.345.075.

New Section. WAC 314-35-025 – Vapor product applicant and licensee hearing rights. Describes applicant and licensee hearing rights language consistent with the applicable provisions of the Administrative Procedures Act, chapter 34.05 RCW.

New Section. WAC 314-35-027 – Qualifying for a vapor product license. Establishes a framework and guidelines to determine which true party(ies) of interest must be qualified to be listed on a vapor product license, consistent with RCW 70.345.020(4).

Amended Section. WAC 314-35-030 – Vapor product licensee recordkeeping requirements. Clarifies and more concisely describes recordkeeping requirements. Adds recordkeeping requirements established in E2SHB 1873 regarding the requirement to provide the board with a list of names and addresses of all vapor product representatives and distributors.

Amended Section. WAC 314-35-040 – Age-restricted vapor products retailer license locations. Updates existing rule to incorporate age of sale requirements of EHB 1074, increasing age of sale from eighteen to twenty-one.

New Section. WAC 314-35-045 – Vapor product licensee responsibilities. Establishes a framework to guide licensee, employee and patron conduct that aligns with liquor and marijuana regulation.

New Section. WAC 314-35-050 – Vapor product license suspensions and revocations. Establishes a framework and guidelines effectuating the requirements of RCW 70.345.180 regarding penalties, sanctions and actions against licensees.

New Section. WAC 314-35-053 –Transportation. Establishes a framework and guiding requirements for the transportation of vapor products in Washington State as described in E2SHB 1873, including invoice and or delivery ticket requirements, and the provision of WSLCB authority to stop a vehicle and inspect for contraband vapor products.

New Section. WAC 314-35-055 – Seizure of cannabinoid vapor products. Consistent with the statutory authority provided in E2SHB 1873, establishes a process for the WSLCB to seize, without warrant, any vapor product given or offered for sale containing cannabinoids as provided in RCW 70.345.030.

New Section. WAC 314-35-060 – Seizure of vapor products. Consistent with the statutory authority provided in E2SHB 1873, establishes a process for the WSLCB to seize, without warrant, any vapor product in the possession of a person acting as a distributor, delivery seller, manufacturer or retailer of vapor products, and who is not licensed as required by statute and regulation. Provides that seized products are subject to forfeiture. Establishes conveyance forfeitures, and exceptions.

New Section. WAC 314-35-065 – Forfeiture. Consistent with the statutory authority and direction provided in E2SHB 1873, establishes a process and guidelines for property made subject to forfeiture by seizure.

New Section. WAC 314-35-070 – Penalty structure. Establishes a penalty structure consistent with the framework of the redesigned marijuana licensee penalty framework. Establishes three distinct penalty categories:

- Category I: Violations that create a direct or immediate threat to public health, safety, or both;
- Category II: Violations that create a potential threat to public health, safety, or both; and
- Category III: Regulatory violations.

Consistent with the authority provided in chapter 70.345 RCW, describes aggravating and mitigating factors that the board may consider when assessing penalties.

New Section. WAC 314-35-075 – Category I. Establishes list of violations and associated penalties that may result in license cancellation, consistent with the provisions of chapter 70.345 RCW, RCW 26.28.080, chapter 82.24 RCW, chapter 82.26 RCW, and others.

New Section. WAC 314-35-080 – Category II. Establishes list of violations and associated penalties that create a potential threat to public health, safety, or both, consistent with the provisions of chapter 70.345 RCW.

New Section. WAC 314-35-085 – Category III. Establishes list of regulatory violations and associated penalties consistent with the provisions of chapter 70.345 RCW.

PROPOSED RULE MAKING



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

Do **NOT** use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-13-036 ; or

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

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

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 314-35 WAC – Vapor Products. The Washington State Liquor and Cannabis Board (Board) proposes new sections and amendments to existing rule to implement the directives of Engrossed House Bill (EHB) 1074 (Chapter 15, Laws of 2019), regarding vapor product legal age for sales; and Engrossed Second Substitute House Bill (E2SHB) 1873 (Chapter 445, Laws of 2019), regarding vapor taxation.

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

November 13, 2019	10:00 am	1025 Union Avenue, Olympia, WA 98501	
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Date of intended adoption: December 11, 2019 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Katherine Hoffman

Address: 1025 Union Avenue, Olympia, WA 98501

Email: rules@lcb.wa.gov

Fax: 360-664-9689

Other:

By (date) November 13, 2019

Assistance for persons with disabilities:

Contact Claris Nhanabu, ADA Coordinator, Human Resources

Phone: 360-664-1642

Fax: 360-664-9689

TTY: 7-1-1 or 1-800-833-6388

Email: Claris.Nhanabu@lcb.wa.gov

Other:

By (date) November 6, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules expand the regulatory authority of the WSLCB concerning vapor product licensing and enforcement consistent with the directives of EHB 1074 and E2SHB 1873. The proposed rules increase the age of sale for vapor products; increase vapor product licensee record keeping requirements; clarify vapor product licensee requirements, including qualification, application denial, insurance requirements, license suspension and revocation; establish transportation requirements, establish the ability for the WSLCB to seize both cannabinoid vapor products and vapor products; establish forfeiture guidelines; and establish a penalty structure that aligns with the current WSLCB penalty reform framework. The proposed rules apply to existing and future vapor product manufacturers, distributors, retailers, and product delivery sellers.

Reasons supporting proposal: Washington State recognizes that there is a growing body of empirical research to support an overall, state-wide health goal of increasing the age of sale for both tobacco and vapor products to twenty-one. Based on this evidence, increasing the age of sale for these products will significantly reduce the number of adolescents and young adults who are smoking, and improve the health of adolescents, young adults, young mothers, and young children. EHB 1074 accomplishes this by prohibiting the sale of tobacco and vapor products to persons under the age of twenty-one. In addition to creating a vapor tax structure that applies to all persons licensed to sell vapor products under chapter 70.345 RCW, E2SHB 1873 added vapor licensee responsibilities, and broadened WSLCB enforcement authority. Further, Governor Inslee's Executive Order 19-03 Addressing The Vaping Use Public Health Crisis became effective September 27, 2019. This rule proposal is a significant step toward alignment with the goals expressed in Executive Order 19-03. Rules are needed to set enforceable standards consistent with legislative and policy directives, and to clarify existing rule.

Statutory authority for adoption: RCW 70.345; RCW 82.24.250; RCW 82.32.300.

Statute being implemented: RCW 70.345.010; 70.345.030; 70.345.090; RCW 82.25.030; 82.25.040; 82.25.090; 82.25.095.

Is rule necessary because of a:

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

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: 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: Coordinator	Katherine Hoffman, Rules	3000 Pacific Ave SE, Olympia, WA	360-664-1622
Implementation: Captain	Lisa Reinke, Enforcement	3000 Pacific Ave SE, Olympia, WA	360-664-1753
Enforcement: Captain	Lisa Reinke, Enforcement	3000 Pacific Ave SE, Olympia, WA	360-664-1753

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

If yes, insert statement here:

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

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

Is a cost-benefit analysis required under RCW 34.05.328?

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

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

Other:

No: Please explain: A cost benefit analysis is not required under RCW 34.05.328(5)(b)(v) because of the subject of proposed rulemaking is explicitly and specifically dictated by statute.

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

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

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

Citation and description:

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

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

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

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

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3): WAC 314-35-010; 314-35-015; 314-35-020; 314-35-023; 314-35-024; 314-35-025; 314-35-027; 314-35-030; 314-35-040; 314-35-045; 314-35-050; 314-35-055; 314-35-060; 315-35-065; 314-35-070; 314-35-075; 314-35-080; 314-35-085.

Explanation of exemptions, if necessary: RCW 34.05.310(4)(d): WAC 314-35-010; WAC 314-35-015; WAC 314-35-020; and WAC 314-35-023; RCW 34.05.310(4)(e): WAC 314-35-024; WAC 314-35-025; WAC 314-35-027; WAC 314-35-030; WAC 314-35-040; WAC 314-35-045; WAC 314-35-050; WAC 314-35-053; WAC 314-35-055; WAC 314-35-060; WAC 314-35-065; WAC 314-35-070; WAC 314-35-075; WAC 314-35-080; and WAC 314-35-085.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

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

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

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

What is the scope of the rule package?

Compliance with the majority of the proposed requirements described in this document are not likely to cause vapor product licensees to lose sales or revenue. However, the proposed specific requirement to carry commercial liability insurance coverage will likely result in additional compliance costs.

Which businesses are impacted by the proposed rule package? What was their North American Industry Classification (NAICS) code or codes? What are their minor cost thresholds?

The NAICS code, business description, and minor cost thresholds are described and calculated below:

NAICS CODE	NAICS Business Description	# of businesses in WA	Minor cost threshold= 1% of Average Annual Payroll
453998	Tobacco Stores	3,869	\$183.99

These calculations are based on the following:

- NAICS 453998, All Other Miscellaneous Store Retailers (except Tobacco Stores). This code specifically includes retailing electronic cigarettes.
- BLS (Bureau of Labor Statistics), Retail Salesperson, SOC (Standard Occupational Classification) code is 41-2031.

- Washington state ESD (Employment Security Department) reports \$14.40 as the median hourly wage for SOC 41-2031. The reported annual wage for the SOC is \$35,594. For purposes of this calculation, the agency assumed that each business employed, on average, two full time Retail Salespersons.
- The number of vapor licensees that could be considered to be small businesses as defined in RCW 19.85.020(3) is estimated at 2,176. This estimate does not include gas station chains or franchises, such as Chevron, Arco or Shell. It does not include grocery or drug store chains, such as Safeway, QFC, Walmart, Walgreens or Rite Aid.
- For purposes of this calculation, the agency assumes that each business employs, on average, two full-time employees. Annual payroll based on ESD data for two full-time Retail Salespersons = \$35,594 x 2 = \$71,188.
- $\$71,188 \times (1,000/3869) \times (0.01) = \mathbf{\$183.99}$ (minor cost threshold)

Does the rule have a disproportionate impact on small businesses?

Basic, commercial general liability insurance is estimated to range in cost from \$2,500 and \$3,500 annually depending on a variety of factors, including but not limited to levels of coverage and geographic location. These estimates suggest that there may be a disproportionate impact on small businesses (defined as businesses with less than 50 employees, and not by receipts/sales).

Did the agency make an effort to reduce the impact of the rule?

Much like the marijuana industry, the vapor product industry sells products that have not been thoroughly researched for public health and safety. The current estimated costs associated with the proposed rules are related to the necessary protection of public health and safety. The agency asserts that these costs are necessary, appropriate, and supported by the Governor's Executive Order 19-03, Addressing the Vaping Use Public Health Crisis.

Did the agency involve small businesses in the rule development process?


The majority of the proposed rules are required by statute and non-negotiable. The specific section that is the subject of this analysis is necessary, appropriate, and supported by the Governor's Executive Order 19-03, Addressing the Vaping Use Public Health Crisis.

Will businesses have to hire or fire employees because of the requirements in the rule?

The proposed rules do not require additional staffing. Vapor product licensees may modify current business models, including staffing levels, in response to market shifts and adjustments that may occur as a result of the attention to the reported effects of nicotine and non-nicotine vapor product consumption. However, some businesses may already be insured at the proposed minimum, and these rule proposal would not result in any staffing level adjustment.

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

Name: Katherine Hoffman
 Address: 1025 Union Avenue, Olympia, WA 98501
 Phone: 360-664-1622
 Fax: 360-664-9689
 TTY:
 Email: rules@lcb.wa.gov
 Other:

Date: October 2, 2019	Signature: 
Name: Jane Rushford	
Title: Chair	

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-010 Vapor products—Introduction. This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, delivery sales, 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 314-35-015 Definitions. The following definitions apply to this chapter in addition to the definitions provided in RCW 70.345.010, unless the context clearly indicates otherwise:

(1) "Control" means the direct power to order or direct the management of a licensee.

(2) "Domicile" means a person's true, fixed primary permanent home. It is the place where a person intends to remain and where the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(3) "Financial institution" means any bank, consumer loan company, credit union, savings bank, savings and loan association, trust company, or similar lending institution under the jurisdiction and registered with the department of financial institutions.

(4) "Profit" means the entire gross receipts from all sales and services made in, upon or from a licensed business.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-020 (~~Vapor product licenses required Licensing requirements, denials, suspensions, and revocations.~~) Licensing requirements. (1) ~~((The))~~ Vapor product license types are:

(a) Vapor product retailer's license((τ))_i

(b) Vapor product distributor's license((τ))_i and

(c) Vapor product delivery sale license. ((A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is))

(2) All vapor product license types are required to perform the functions ((of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not)) of the respective license type regardless of whether 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) (3) A vapor product manufacturer must hold a vapor product distributor license if the manufacturer is engaged in the business of selling vapor products in Washington state, and brings or causes to be brought into

this state from outside the state any vapor products for sale consistent with RCW 70.345.010 (7) and (9).

(4) No vapor product license will be issued to a location that is a domicile or attached to a domicile, is not a fixed or stationary location, or both.

~~((3))~~ (a) The board will not approve any vapor product license for a location where board access without notice or cause is limited.

(b) The board may revoke any vapor product license that is issued to an attached structure or any other location inconsistent with this section.

(5) A person or entity must meet ~~((ertain))~~ all qualifications ~~((to receive))~~ described in this chapter and chapter 70.345 RCW to be issued a vapor product license, and must continue to meet those qualifications to maintain the license.

~~((4) No more than))~~ (6) One license of each vapor product license type may be issued at a single location.

~~((5))~~ (7) A licensed location must be separated from other vapor product businesses, and not accessible through neighboring businesses.

~~((6))~~ (8) For the purpose of initial or renewal application review for a vapor product license, the board may conduct an investigation of all licenses it has issued to an applicant including, but not limited to, administrative violation history. The board reserves its discretion to 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 board.

(9) For the purpose of ~~((reviewing an))~~ initial or renewal application review for a vapor product license ~~((or considering the denial of a license application, the WSLCB)),~~ the board may consider the applicant's 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))~~ board. The ~~((WSLCB))~~ board 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 70.345, 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 is-~~

~~sue 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.)~~ (10) The board may, at its discretion, issue a vapor product license to a person or entity that has accumulated eight or more points as described in this subsection.

(11) If an applicant has a pending case for an alleged offense that totals eight or more points, the board 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 board may administratively close the application.

(12) The board may conduct a final inspection of the proposed licensed premises to determine if the applicant has met the requirements of the licensure requested.

NEW SECTION

WAC 314-35-021 Insurance requirements. Vapor product licensees must obtain insurance coverage described in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the vapor product licensees. Vapor product licensees must furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secure. Failure to provide proof of insurance may result in license cancellation.

(1) Commercial general liability insurance: The licensee must at all times carry and maintain commercial general liability insurance or commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. The limits of liability insurance must not be less than one million dollars.

(a) This insurance must cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants.

(b) The insurance must also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section must be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The state and its employees, agents, and volunteers must be named as an additional insured on insurance poli-

cies required under this section. All policies must be primary over any other valid and collectable insurance.

NEW SECTION

WAC 314-35-023 Vapor product license transfer and relocation.

(1) A license may not be transferred or relocated without prior approval of the board.

(a) A licensee must notify the board at least ten business days before any ownership changes or location changes of the licensed vapor products business. Failure to notify the board without applying for a separate license for a new location will be treated as operating without a license.

(b) If a licensee fails to notify the board prior to moving a location, the licensee may be suspended until the new location meets the requirements and qualifications for a vapor products license.

(c) License relocation may be requested by contacting board enforcement by email or telephone.

(2) As a condition of licensure, all vapor products licensees must:

(a) Keep premises where vapor products are stored, manufactured, and offered for sale in a clean and sanitary condition.

Examples of clean and sanitary conditions include, but are not limited to:

(i) Vapor product mixing areas separate from restroom;

(ii) Storage of cleaning agents separate from consumable vapor products;

(iii) Vapor products not in contact or stored with or near hazardous materials and products.

(b) Label all packages and containers that contain nicotine with the nicotine content of the product until the product is packaged and labeled in finished packaging for sale consistent with the packaging and labeling requirements described in RCW 70.345.075.

(c) Vapor product licensees may only purchase vapor products from board licensed vapor product locations.

NEW SECTION

WAC 314-35-024 Vapor product packaging and labeling.

(1) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must label the vapor product with all of the following:

(a) A warning regarding the harmful effects of nicotine;

(b) A warning to keep the vapor product away from children;

(c) A warning that vaping is illegal for those under the legal age to use the product; and

(d) Except as provided in WAC 314-35-023 of this section, the amount of nicotine in milligrams per milliliter of liquid along with the total volume of the liquid contents of the product expressed in milliliters.

(2) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers must comply with any other packaging and labeling requirements including, but not limited to, specific warnings as mandated by the United States Food and Drug Administration, any other federal agency, or any agency of state of Washington including, but not limited to, the Washington state department of health.

NEW SECTION

WAC 314-35-025 Vapor product applicant and licensee hearing rights. (1) If the board denies a vapor product license application or renewal, or suspends or revokes a license for any of the reasons listed in this chapter or in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions of chapter 34.05 RCW.

(2) Appeals under this chapter will be conducted by 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 314-35-027 Qualifying for a vapor product license. A vapor product license must be issued in the name(s) of the true party(ies) of interest.

(1) True parties of interest must qualify to be listed on the license, consistent with RCW 70.345.020. For purposes of this chapter, "true party of interest" means:

Entity	True Party(ies) of Interest
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	All general partners and spouses. All limited partners and spouses.
Limited liability company	All members and spouses. All managers and spouses.
Privately held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.
Publicly held corporation	All corporate officers (or persons with equivalent title) and spouses. All stockholders.

Entity	True Party(ies) of Interest
Multilevel ownership structures	All persons and entities that make up the ownership structure.
Any entity or person(s) expecting or receiving profits, or part thereof, or exercising control over a licensed business Any entity or person(s) who exercise(s) control over the licensed business in exchange for money or expertise	Any entity or person who is in receipt of, or has the right to receive profits, or part thereof, from the licensed business during any full or partial calendar or fiscal year. Any entity(s) or person(s) and spouses who exercise(s) control over the licensed business in exchange for money or expertise.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) The board may conduct an investigation of any person or entity who exercises any control over the applicant's or licensee's business operations, including a financial investigation, a criminal history background check, or both. When an entity other than the owner controls daily business operations consistent with an agreement between the owner and the operating entity, the operating entity becomes a true party of interest. The operating entity must meet the same qualifications and requirements as a licensee.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-030 Vapor product licensee recordkeeping requirements. (1) Vapor product (~~((distributors and manufacturers))~~) licensed locations must keep complete, legible and accurate records, including itemized invoices, at each place of business for that place of business of vapor products held, purchased, manufactured, brought (~~((in))~~) into or caused to be brought (~~((in from without))~~) into the state from outside the state, or shipped or transported to (~~((retailers in this state, and of all sales of vapor products made. These))~~) locations in Washington state, or sold. The required records must show:

- (a) The names and addresses of purchasers((~~r~~));
- (b) The names and addresses of sellers;
- (c) The inventory of all vapor product(~~(s~~r~~)~~) (to include the description of the product, size (mL), brand); and
- (d) 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, brand, size (mL), 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~~) licensees must (~~procure~~) obtain itemized invoices of all vapor products purchased. The invoices must show the seller's name and address, the date of purchase, brand, size (mL), 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 under this section must be preserved for five years from the date of purchase.~~) Vapor product licensees must make all records available for inspection upon request of the board or its duly authorized agents or employees, and may not interfere with location inspection, record inspection, or both. The board or its duly authorized agents or employees may enter any vapor product licensed location at any time without a search warrant to inspect the premises for:

(a) Required invoices as described in this section; and

(b) Regulated products contained in the licensed location.

(5) All invoices, documents, or other records required under the provisions of this chapter must be legible, preserved, and retained for five years from the date of the invoices, documents, or other records at the place of the business where the vapor products are sold or stored.

(6) Vapor product licensees must provide the board, any of its agents or employees free, unhindered access to the vapor product licensed location.

(7) A licensed manufacturer with representatives who sell or distribute the manufacturer's vapor products must provide the board with a list of the names and addresses of all such representatives at an email address established by the board and maintained on the board's web site. The licensed manufacturer must ensure that the list of representatives who sell or distribute its vapor products is kept current.

(a) A manufacturer's representative is not authorized to distribute or sell vapor products unless the manufacturer holds a valid distributor's license under chapter 70.345 RCW; and

(b) A manufacturer's representative must carry a copy of the hiring distributor's license at all times when selling or distributing the manufacturer's vapor products.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

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~~) board 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~~) board in writing ten business days prior to a change in the

age-restriction status. The board will make the appropriate age-restricted status form ((is)) available on ((the WSLCB)) its web site.

(2) ((Holders of a)) Vapor product retailer ((license)) licensed locations where entry into the licensed premises is age-restricted to persons ((eighteen)) twenty-one years of age or older must post signs provided by the ((WSLCB)) board 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)).

(3) All vapor product licensed locations that allow vapor products to be consumed on the premises, including vapor product tastings as provided in RCW 70.345.100, must be restricted to persons age twenty-one and over at all times.

(4) Any restricted location as described above may not employ persons under the age of twenty-one.

NEW SECTION

WAC 314-35-045 Vapor product licensee responsibilities. (1) Vapor product licensees and their employees must conduct the licensed premises in compliance with all applicable statutes as they now exist or may later be amended including, but not limited to, Titles 9, 9A RCW, chapters 69.50, 70.155, 70.158, 70.345, 82.24, and 82.26 RCW.

(2) Licensees have the responsibility to control their conduct and the conduct of employees and patrons at all times. Except as otherwise provided by law, licensees and employees may not:

(a) Be disorderly, apparently intoxicated, or under the influence of a controlled substance, on the licensed premises;

(b) Permit any disorderly person to remain on the premises;

(c) Engage in or allow behavior that provokes conduct that may endanger public safety.

NEW SECTION

WAC 314-35-050 Vapor product license suspensions and revocations. (1) The board may revoke or suspend a retailer, distributor, or delivery seller license issued under chapter 70.345 RCW and this chapter upon sufficient cause showing a violation of chapter 70.345 RCW, this chapter, or both.

(2) Any retail location license issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section and RCW 70.345.170.

(3) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of two years of the license or licenses, unless the license was revoked pursuant to RCW 70.345.180 (2)(e). The license or licenses may be approved by the board if it finds that the licensee has complied with the provisions of this chapter.

(4) A person whose license has been suspended or revoked may not sell vapor products or permit vapor products to be sold during the period of suspension or after revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form. If the suspension or revocation involves licenses issued under chapter 82.24 or 82.26 RCW, the person is prohibited from selling cigarette and tobacco products consistent with WAC 314-34-020 and RCW 26.28.080.

(5) On the date a vapor product license suspension goes into effect a board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the board due to a violation of a board law or rule.

(6) During the period of vapor product license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable vapor product laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises has been closed for any reason other than what is stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than what is stated in the board's suspension notice.

(7) During the period of vapor product license suspension:

(a) A vapor product licensee may operate their business provided there is no sale, delivery, service, consumption, removal, or receipt of vapor products.

(b) If a vapor product license is suspended, revoked, or both, the location's licenses under chapter 82.24 or 82.26 RCW if held are also revoked, consistent with subsection (4) of this section.

(8) If the board makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license for the reasons listed in this section, or as provided in this chapter or chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions described in 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.

(9) Any determination and order by the board, and any order of suspension or revocation by the board of the license issued under chapter 70.345 RCW or this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal in the superior court of Thurston County. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

NEW SECTION

WAC 314-35-053 Transportation. (1) No person may transport or cause to be transported vapor products for sale, except:

(a) A licensed distributor under chapter 70.345 RCW;

- (b) A licensed retailer under chapter 70.345 RCW;
 - (c) A seller with a valid delivery sale license under chapter 70.345 RCW; or
 - (d) A person who has given the board advance notice of the commencement of transportation of vapor products.
- (2) When transporting vapor products for sale, the person must have, in their actual possession, invoices or delivery tickets for the vapor products that must show:
- (a) The true name and address of the consignor or seller;
 - (b) The true name and address of the consignee or purchaser; and
 - (c) The number of items, size of each item in mL, and brands of the vapor products being transported.
- (3) In any case where the board has knowledge or reasonable grounds to believe that any vehicle is transporting vapor products in violation of this section or chapter 70.345 RCW, the board is authorized to stop the vehicle and to inspect for contraband vapor products.

NEW SECTION

WAC 314-35-055 Seizure of cannabinoid vapor products. (1) Any vapor product given or offered for sale containing cannabinoids is prohibited by RCW 70.345.030.

(2) Any vapor product offered for sale that is labeled or marketed as containing cannabinoid, synthetic cannabinoid, cathinone, or methcathinone may be seized without a warrant by an agent of the board and are subject to forfeiture.

(3) It is prima facie evidence that the vapor product contains a cannabinoid if the packaging or labeling in which it is offered for sale contains language or depictions that the product is or contains a cannabinoid.

NEW SECTION

WAC 314-35-060 Seizure of vapor products. (1) Any vapor products in the possession of a person acting as a distributor or retailer of vapor products, and who is not licensed as required under this chapter, chapter 70.345 RCW or both, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the board. Any vapor products seized under this subsection are deemed forfeiture.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, retailer, or a manufacturer's representative, and who transports vapor products for sale without having provided notice to the board as required under WAC 314-35-053, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of

vapor products under this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the board upon process issued by any superior court or district court having jurisdiction over the property.

(5) Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant; or

(b) The board has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(6) This section may not be construed to require the seizure of vapor products if the board's agent reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(7) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

NEW SECTION

WAC 314-35-065 Forfeiture. (1) In all cases of seizure of any vapor products made subject to forfeiture under this chapter, the board must proceed as provided in RCW 82.24.135.

(2) When vapor products are forfeited under this chapter, the board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the vapor products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board must require the purchaser to pay the proper amount of any tax due. The proceeds of the sale must be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds must be distributed consistent with chapter 70.345 RCW.

(3) The board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

NEW SECTION

WAC 314-35-070 Penalty structure. (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:

(a) Category I: Violations that create a direct or immediate threat to public health, safety, or both;

(b) Category II: Violations that create a potential threat to public health, safety, or both; and

(c) Category III: Regulatory violations.

(2) For purposes of assessing penalties, only violations occurring in the three-year time period immediately preceding the date of the violation will be considered unless otherwise provided in the chapter.

(3) The board may, at its discretion, deviate from the prescribed penalties herein consistent with RCW 70.345.180. Such deviations will be determined on a case-by-case basis, considering mitigating or aggravating factors.

(a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a vapor products license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

NEW SECTION

WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.

Category I: Violations that create a direct or immediate threat to public health, safety, or both.

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one, allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. RCW 26.28.080 RCW 70.345.100 WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. RCW 70.345.030 WAC 314-35-055	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty

NEW SECTION

WAC 314-35-080 Category II—Violations that create a potential threat to public health, safety, or both.

Category II: Violations that create a potential threat to public health, safety, or both.

Violation Type	1st Violation in a three-year window	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Failure to comply with child resistant packaging requirements. RCW 70.345.130	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Failure to comply with product labeling requirements. RCW 70.345.075	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Vapor products purchased from an unlicensed source. WAC 314-35-023	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
True party of interest. RCW 70.345.020 WAC 314-35-020 WAC 314-35-027	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Operating without a valid license. RCW 70.345.030	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension
Transportation violations. WAC 314-35-053	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 and a 12-month license suspension

NEW SECTION

WAC 314-35-085 Category III—Regulatory violations.

Category III: Regulatory Violations.

Violation Type	1st Violation in a three-year window	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Noncompliance with record keeping requirements. WAC 314-35-020 WAC 314-35-030	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to post required signs. RCW 70.345.070 WAC 314-35-040	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension

Violation Type	1st Violation in a three-year window	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Selling or distributing vapor products from self-serve displays or without the intervention of a store employee. RCW 70.345.080	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Noncompliance with mail or internet sales requirements. RCW 70.345.090	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to verify age or accepting unpermitted forms of identification. RCW 70.345.120	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Failure to comply with license suspension or revocation. WAC 314-35-050	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension
Giving or distributing vapor products without charge by coupon, unless exempted. RCW 70.345.110	\$75 monetary penalty	\$150 monetary penalty	\$300 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension