



Washington State Liquor and Cannabis Board

Date: October 23, 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 to adopt an emergency rule (CR103E) regarding WAC 314-55-077 – Marijuana processor license – Privileges, requirements and fees: adding a new section to allow enforcement of the provisions of chapter 246-80 WAC.**

On October 10, 2019, the Washington State Board of Health (SBOH) issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, and consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis. This emergency rule allows the Board to take disciplinary action against any processor that fails to comply with the provisions of the SBOH emergency rules described in chapter 246-80 WAC, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-077.

Process

The Policy and Rules Coordinator requests that the Board adopt the emergency rule described above, and requests approval to file the emergency rule described above. An issue paper on this rule was presented at the Board meeting on October 23, 2019, and is attached to this order.

If adopted, the timeline for the rule making process is outlined below:

October 23, 2019	Board is asked to adopt the emergency rulemaking order (CR-103E) as described above.
October 24, 2019	Emergency rule becomes effective.

_____ 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

Emergency Rule Regarding Enforcement of chapter 246-80 WAC – Adding a New Section to WAC 314-55-077 – Marijuana processor license – Privileges, requirements, and fees.

Date: October 23, 2019

Presented by: Kathy Hoffman, Policy and Rules Coordinator

Description of the Issue

The Centers for Disease Control, U.S. Food and Drug Administration, Washington State Department of Health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington State, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The Washington State Board of Health (SBOH) Impact Review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

On October 10, 2019, the SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis. This emergency rule bridges the enforcement requirements of chapter 246-80 WAC with the authority of chapter 69.50 RCW realized in WAC 314-55-077.

This Issue Paper requests approval from the Board to adopt and file a CR103E that allows the board to take disciplinary action against any marijuana processor that fails to comply with the provisions of chapter 246-80 WAC.

Reasons why rules are needed:

The immediate adoption of a rule establishing the ability to take disciplinary action against a marijuana processor in this context is necessary for the enforcement of Washington State Board of Health (SBOH) rules described in chapter 246-80 WAC that, among other things, bans the sale of flavored vapor products. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

This rule is necessary to enforce the provisions of chapter 246-80 WAC.

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that establish disciplinary provisions are necessary for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare. The Board filed a pre-proposal statement of inquiry on May 29, 2019 as WSR #19-12-029 that includes revision and updates exclusive to WAC 314-55-077(8) and (9). This emergency rule is not being considered as part of any future rule proposal associated with WSR #19-12-029.

Process

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule change is exempt from the filing of a CR101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity, and posted to the Board's website.



RULE-MAKING ORDER

EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350
and 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- ☒ Immediately upon filing.
☐ Later (specify) _____

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

- ☐ Yes ☒ No If Yes, explain:

Purpose: WAC 314-55-077 – Marijuana processor license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rules that establish a new section of rule allowing the Board to take disciplinary action against any processor failing to comply with the provisions of chapter 246-80 WAC – Vapor Products and Flavors.

Citation of rules affected by this order:

New: WAC 314-55-077(13)
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.345.

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Washington State Board of Health (SBOH) rules described in chapter 246-80 WAC, banning the sale of flavored vapor products. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

The Centers for Disease Control, U.S. Food and Drug Administration, Washington State Department of Health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The SBOH's Health Impact Review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

On October 10, 2019, the SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, and consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis.

This emergency rule allows the Board to take disciplinary action against any processor that fails to comply with the provisions of the SBOH emergency rules described in chapter 246-80 WAC, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-077.

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that establish provisions necessary for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare. The Board filed a pre-proposal statement of inquiry on May 29, 2019 as WSR #19-12-029 that includes revision and updates exclusive to WAC 314-55-077(8) and (9). This emergency rule is not being considered as part of any future rule proposal associated with WSR #19-12-029.

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted on the agency's own initiative:

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

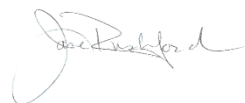
Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New		Amended	1	Repealed	_____

Date Adopted: October 23, 2019

Name: Jane Rushford

Title: Chair

Signature:



WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) Application and license fees.

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The WSLCB may reopen the marijuana processor application window at subsequent times when the WSLCB deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the WSLCB or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5)(a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) Recipes, product, packaging, and labeling approval.

(a) A marijuana processor licensee must obtain label and packaging approval from the WSLCB for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the WSLCB for approval. More information on the product, packaging, and label review process is available on the WSLCB's website at www.lcb.wa.gov.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the WSLCB. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the WSLCB or its designee.

(c) If the WSLCB denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must:

(a) Be homogenized to ensure uniform disbursement of cannabinoids throughout the product; and

(b) Until January 1, 2019, prominently display on the label "This product contains marijuana."

(9) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana. Marijuana-infused products that require cooking or baking by the consumer are prohibited. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

(a) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(b) Other food items that may not be infused with marijuana to be sold in a retail store include:

(i) Any food that has to be acidified to make it shelf stable;

(ii) Food items made shelf stable by canning or retorting;

(iii) Fruit or vegetable juices (this does not include shelf stable concentrates);

(iv) Fruit or vegetable butters;

(v) Pumpkin pies, custard pies, or any pies that contain egg;

(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(vii) Dried or cured meats.

(c) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(d) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(e) Per WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to

be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

(f) The WSLCB may designate other food items that may not be infused with marijuana.

(10) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

(11) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(12) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

(13) The board may take disciplinary action against any processor that fails to comply with the provisions of chapter 246-80 WAC.



Washington State Liquor and Cannabis Board

Date: October 23, 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 to adopt an emergency rule (CR103E) regarding WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees: adding a new section to allow enforcement of the provisions of chapter 246-80 WAC.**

On October 10, 2019, the Washington State Board of Health issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, and consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis. This emergency rule allows the Board to take disciplinary action against any retailer that fails to comply with the provisions of the SBOH emergency rules described in chapter 246-80 WAC, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-079.

Process

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Attachment: Issue Paper



Issue Paper

Emergency Rule Regarding Enforcement of chapter 246-80 WAC – Adding a New Section to WAC 314-55-079 – Marijuana retailer license – Privileges, requirements, and fees.

Date: October 23, 2019

Presented by: Kathy Hoffman, Policy and Rules Coordinator

Description of the Issue

The Centers for Disease Control, U.S. Food and Drug Administration, Washington State Department of Health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington State, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The Washington State Board of Health (SBOH) Impact Review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

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This Issue Paper requests approval from the Board to adopt and file a CR103E that allows the board to take disciplinary action against any marijuana retailer that fails to comply with the provisions of chapter 246-80 WAC.

Reasons why rules are needed:

The immediate adoption of a rule establishing the ability to take disciplinary action against a marijuana retailer in this context is necessary for the enforcement of Washington State Board of Health (SBOH) rules described in chapter 246-80 WAC that, among other things, bans the sale of flavored vapor products. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

This rule is necessary to enforce the provisions of chapter 246-80 WAC.

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that disciplinary provisions are necessary for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare.

Process

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule change is exempt from the filing of a CR101, analytical, and public hearing requirements.

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RULE-MAKING ORDER

EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350
and 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- ☒ Immediately upon filing.
☐ Later (specify) _____

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

- ☐ Yes ☒ No If Yes, explain:

Purpose: WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rules that establish a new section of rule allowing the Board to take disciplinary action against any processor failing to comply with the provisions of chapter 246-80 WAC – Vapor Products and Flavors.

Citation of rules affected by this order:

New: WAC 314-55-079(14)
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.345.

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
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No descriptive text.**

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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
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The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted on the agency's own initiative:

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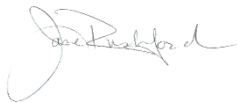
Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New		Amended	1	Repealed	_____

Date Adopted: October 23, 2019

Name: Jane Rushford

Title: Chair

Signature:



WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees. (1) A marijuana retailer license allows the licensee to sell only useable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) The WSLCB may accept applications for marijuana retail licenses at time frames published on its website at www.lcb.wa.gov. Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(b) The number of retail licenses determined by the board can be found on the WSLCB website at www.lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than five retail marijuana licenses.

(4) Application and license fees.

(a) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is responsible for fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana retailer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(5) Internet sales and delivery of product to customers are prohibited.

(6) Sales of marijuana-infused products not permissible under WAC 314-55-077 are prohibited.

(7) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.

(10) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(11) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in WAC 314-55-085.

(12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097.

(14) The board may take disciplinary action against any marijuana retailer that fails to comply with the provisions of chapter 246-80 WAC.



Washington State Liquor and Cannabis Board

Date: October 23, 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 to adopt emergency rules (CR103E) regarding chapter 314-35 WAC: summary license suspension and petition for stay**

On October 10, 2019, the Washington State Board of Health issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis. To assure that the Board is able to enforce the requirements of chapter 246-80 WAC within the context of chapter 70.345 RCW, these emergency rules provide a framework for summary license suspension, and a process for vapor product licensees to petition for stay of suspension.

Process

The Policy and Rules Coordinator requests that the Board adopt the emergency rule described above, and requests approval to file the emergency rule described above. An issue paper on this rule was presented at the Board meeting on October 23, 2019, and is attached to this order.

If adopted, the timeline for the rule making process is outlined below:

October 23, 2019	Board is asked to adopt the emergency rulemaking order (CR-103E) as described above.
October 24, 2019	Emergency rule becomes effective.

_____ 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 - Emergency Rules Regarding Summary License Suspension and Petition for Stay

Date: October 23, 2019

Presented by: Kathy Hoffman, Policy and Rules Coordinator

Description of the Issue

The Centers for Disease Control, U.S. Food and Drug Administration, Washington State Department of Health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington State, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The Washington State Board of Health (SBOH) Impact Review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

On October 10, 2019, the SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis. To assure that the board is able to enforce the requirements of chapter 246-80 WAC within the context of chapter 70.345 RCW, these emergency rules provide a framework for summary license suspension, and a process for vapor product licensees to petition for stay of suspension.

This Issue Paper requests approval from the Board to adopt and file a CR103E that establishes summary license suspension and petition for stay provisions necessary for the enforcement of chapter 246-80 WAC – Vapor products and flavors, issued by the SBOH on October 10, 2019.

Reasons why rules are needed:

The immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Washington State Board of Health (SBOH) rules described in chapter 246-80 WAC, banning the sale of flavored vapor products. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

These rules serve a two-pronged purpose:

- Allows the Board to serve an order of summary license suspension after a preliminary staff investigation indicates that a vapor product licensee has violated SBOH rules described in chapter 246-80 WAC, and that immediate cessation of licensed activities is necessary for the presentation of public health and welfare; and
- Provides a framework and process for an affected vapor product licensee to petition the Board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that establish summary license suspension and petition for stay provisions are necessary for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare. The Board filed a rule proposal on October 16, 2019 as WSR #19-21-102. These rules may be extended, rescinded or considered for inclusion in adopted rules at a later date as appropriate.

Process

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule change is exempt from the filing of a CR101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity, and posted to the Board's website.



RULE-MAKING ORDER

EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350
and 34.05.360)

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- ☒ Immediately upon filing.
☐ Later (specify) _____

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

- ☐ Yes ☒ No If Yes, explain:

Purpose: Chapter 314-35 WAC – Vapor Products. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of chapter 246-80 WAC – Vapor products and flavors, effective October 10, 2019.

Citation of rules affected by this order:

New: WAC 314-35-090, WAC 314-35-095
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 70.345.

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Washington State Board of Health (SBOH) rules described in chapter 246-80 WAC, banning the sale of flavored vapor products. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

The Centers for Disease Control, U.S. Food and Drug Administration, Washington State Department of Health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The SBOH Health Impact Review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

On October 10, 2019, the SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, and consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis.

These emergency rules serve a two-pronged purpose:

- Allow the Board to serve an order of summary license suspension after a preliminary staff investigation indicates that a vapor product licensee has violated SBOH rules described in chapter 246-80 WAC, and that immediate cessation of licensed activities is necessary for the presentation of public health and welfare; and
- Provide a framework and process for an affected vapor product licensee to petition the Board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that establish summary license suspension and petition for stay provisions are necessary for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare. The Board filed a rule proposal on October 16, 2019 as WSR #19-21-102. These rules may be extended, rescinded or considered for inclusion in adopted rules at a later date as appropriate.

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted on the agency's own initiative:

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

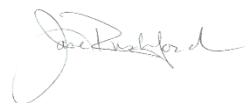
Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>2</u>	Amended	_____	Repealed	_____

Date Adopted: October 23, 2019

Name: Jane Rushford

Title: Chair

Signature:



NEW SECTION

WAC 314-35-090 Summary license suspension. (1) The board may serve an order of summary suspension of any license under this chapter after the board's enforcement division has:

(a) Completed a preliminary staff investigation of a violation of state board of health rules, chapter 246-80 WAC; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

NEW SECTION

WAC 314-35-095 Petition for stay. (1) When the board summarily suspends a license under WAC 314-35-090, an affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

(2) A hearing will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing is limited to consideration of whether a stay should be granted, or whether the terms of the suspension will be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay is effective immediately upon service unless another date is specified in the order.



Washington State
Liquor and Cannabis Board

Memorandum

DATE: October 23, 2019

TO: Rick Garza, Director
Justin Nordhorn, Chief of Enforcement

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

SUBJECT: Delegation of Authority for Summary Suspension of Vapor Product Licenses

The provisions of WAC 314-35-090 prescribe that the WSLCB may summarily suspend any vapor product license after the WSLCB's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

The authority to serve orders of summary suspension of vapor product licenses is delegated to the enforcement division under the supervision of the chief of enforcement, who may further delegate this authority. The enforcement division may serve an order of summary suspension when a licensee has continued to sell or distribute flavored vapor products in violation of State Board of Health rules, chapter 246-80 WAC.

Under the provisions of WAC 314-35-095, a summary suspension order may be appealed to the office of administrative hearings for a hearing, and a decision by the presiding officer may be appealed to the Board.

This delegation is effective immediately.

_____ Approve	_____	_____
	Jane Rushford, Chair	Date
_____ Approve	_____	_____
	Ollie Garrett, Board Member	Date
_____ Approve	_____	_____
	Russ Hauge, Board Member	Date