



**Washington State  
Liquor and Cannabis Board**

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November 26, 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: Approval to file proposed rules (CR 102) regarding barrier requirements for liquor licensed establishments**

The Rules Coordinator requests approval to file proposed rules (CR 102) for the rule making described above. The proposed rules revisions allow options other than a forty-two-inch barrier to designate areas classified as off-limits to minors in beer/wine and spirits/bee/wine restaurants. The revisions also allow licensees to request reclassification of their off-limits areas as open to minors for regularly scheduled or special events with prior board approval. Rules revisions will help ensure applicants and licensees operate under applicable statutory provisions and have clear guidelines in place. An issue paper outlining the specific changes is attached.

**Process**

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

|                   |  |
|-------------------|--|
| November 26, 2019 | <ul style="list-style-type: none"> <li>• CR 102 and proposed rules filed with the Office of the Code Reviser</li> <li>• WSLCB webpage updated and notice sent to the rules distribution list</li> </ul>  |
| December 4, 2019  | Notice published by the Office of the Code Reviser in WSR # 19-24  |
| January 8, 2020   | Public Hearing held and end of written comment period  |
| January 22, 2020  | <ul style="list-style-type: none"> <li>• Board asked to adopt rules if no additional changes are made</li> <li>• Notice and Concise Explanatory Statement sent to those who commented both at the public hearing and in writing</li> <li>• CR 103 and adopted rules filed with the Office of the Code Reviser</li> <li>• WSLCB webpage updated and notice sent to the rules distribution list</li> </ul> |
| February 22, 2020 | Rules effective – Normally 31 days after filing the CR 103   |

\_\_\_\_\_ 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**

# **Barrier Requirements for Liquor Licensed Establishments**

Date: November 26, 2019

Presented by: Janette Benham, Policy and Rules Coordinator

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### **Description of the Issue**

The purpose of this Issue Paper is to request approval from the board to file the CR 102 with proposed revisions to WAC 314-02-025, WAC 314-02-033, and WAC 314-03-200.

The proposed revisions:

- Allow options other than a forty-two-inch barrier to designate areas classified as off-limits to minors in beer/wine and spirits/beer/wine restaurants;
- Outline several demarcation options;
- Clarify that floor plans and demarcation options must be approved by the board;
- Specifically exclude tape, paint, or stickers on floors, walls, or ceilings as demarcation options;
- Update requirements for “minor prohibited” signs to include the requirements that signage be visible to patrons who are approaching the off-limits areas, and also once inside the off-limits area.
- Allow licensees to request reclassification of their off-limits areas as open to minors for regularly scheduled or special events with prior board approval (Note: Reclassification requests are considered an alteration to a licensed premises under WAC 314-03-300);
- Make technical and clarifying changes;

### **Why is rule making necessary?**

Rulemaking was initiated by a rules petition received from Benjamin Humphrey, Heliotrope Architects. Mr. Humphrey requested the board revise rules that require restaurants to have a forty-two-inch barrier designating areas off-limits to minors. After review and discussion, the board agreed to open rules to explore options other than a forty-two-inch barrier to designate areas off-limits to minors.

### **Background**

RCW 66.44.310 gives the board authority to classify licensed premises or portions of licensed premises as off-limits to minors. The forty-two-inch barrier requirement was implemented through rules adopted in February of 2000. There have been several discussions since then regarding effective ways to designate

areas of liquor licensed establishments that are off-limits to minors. The current rulemaking process included:

- Surveying other states, looking at other state models, and follow-up discussions;
- Restaurant visits and discussions with managers;
- Stakeholder meetings and discussions with
  - Members of the prevention community;
  - Licensees and members of the Washington Hospitality Association;
  - Heliotrope Architects; and
- Several rules work sessions and implementation planning meetings with WSLCB licensing and enforcement staff members.

### **What changes are being made?**

#### **Amended Sections:**

WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license?

WAC 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put demarcations around their dedicated dining area(s)?

WAC 314-03-200 Outside or extended alcohol service

**WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license?**

(1) The liquor and cannabis board has the responsibility to classify what licensed premises or what portions of the licensed premises are off-limits to minors ~~((~~per~~ RCW 66.44.310(2).))~~ per RCW 66.44.310(2). Minors may not purchase, possess, or consume liquor, and may not enter any areas that are classified as off-limits to minors ~~((~~per~~ RCW 66.44.290 and 66.44.310.))~~ per RCW 66.44.290 and 66.44.310. The purpose of this rule is to clarify the ways in which licensees can prevent minors from consuming alcohol or entering ~~((~~restricted~~))~~ classified as off-limits to minors.

(2) Dedicated dining areas - If a spirits, beer, and wine restaurant licensee or a beer and wine restaurant licensee that allows minors chooses to have live music, Karaoke, patron dancing, live entertainment, or contests involving physical participation by patrons in the dedicated dining area after 11:00 p.m., the licensee must either:

(a) Request board approval to reclassify the dining area to a lounge for the period of time that live entertainment is conducted, thus restricting minors during that time; or

(b) Notify the ~~((~~board's licensing and regulation division~~))~~ board in writing at least forty-eight hours in advance that the sale, service, and consumption of liquor will end in the dedicated dining area after 11:00 p.m.

Requests or notifications may cover one event or a series of recurring events over a period of time.

~~(3) ((~~Barriers~~ Licensees must place barriers around areas that are classified as off-limits to minors and around game rooms.~~

~~(a) The barriers))~~ A licensed premises must have a clear demarcation between dedicated dining areas and areas that are off-limits to minors.

~~(a) Demarcation means a dividing line that must clearly separate ((restricted areas, and must be at least forty-two inches high.~~

~~(b) The barriers must be permanently affixed (folding or retractable doors or other barriers that are permanently affixed are acceptable). A portable or moveable rope and stanchion is not acceptable. Those licensees that have been approved by the board for moveable barriers prior to the effective date of this rule may keep their moveable barriers until the licensee requests alterations to the premises or the premises change ownership.~~

~~(c) Structures where customers can sit or stand and consume food or liquor are not acceptable as a barrier.~~

~~(d) Entrances to restricted areas may not be wider than ten feet. If a licensee has more than one entrance along one wall, the total entrance areas may not exceed ten feet.~~

~~(e))~~ areas classified as off-limits to minors from dedicated dining areas.

(b) Demarcation options available to applicants and licensees, subject to approval by the board, include:

(i) Visibly different and contrasting flooring;

(ii) Steps or ramps up or down;

(iii) Walls, half-walls, or forty-two inch barriers, where entrances to the restricted areas are not more than ten feet wide;

(iv) Permanently affixed stanchions, pillars, or posts at least six inches wide and placed no more than ten feet apart;

(v) Stationary planters at least six inches wide and placed no more than ten feet apart; and

(vi) Permanently affixed floor lighting or beacons placed no more than ten feet apart.

(c) Other demarcation options may be approved at the board's discretion.

(d) Demarcation does not include tape, paint, or stickers on floors, walls, or ceilings.

(e) Once the floor plan is approved by the board the demarcation cannot be moved or changed without prior board approval.

(f) "Minor prohibited" signs, as required by WAC 314-11-060(1), must be posted ((at each entrance to restricted areas.

(4-)) and clearly visible to patrons who are:

(i) Approaching the area(s) classified as off-limits to minors; and

(ii) Inside the area(s) classified as off-limits to minors.

(4) A spirits, beer, and wine restaurant licensee or a beer and wine restaurant licensee may request the board reclassify their off-limits area(s) as open to minors for regularly scheduled or special events. Reclassifying an off-limits area is considered an alteration to a licensed premises under WAC 314-03-300 and must be approved by the board prior to the event.

(5) If the business allows minors, the business's primary entrance must open directly into a dedicated dining area or into a neutral area, such as a lobby or foyer, that leads directly to a dedicated dining area. Minors must be able to access restrooms without passing through a lounge or other age-restricted area.

((5-)) (6) **Floor plans** - When applying for a license, the applicant must provide to the ((board's licensing and regulation division two copies of)) board a detailed drawing of the entire premises. The drawing must:

(a) Be drawn ((one foot to one-quarter-inch)) to scale;

(b) Have all ((rooms)) areas labeled according to their use; e.g., dining ((room)), lounge, ((game room)) gaming, kitchen, etc.; and

(c) Have all ((barriers labeled in a descriptive way; e.g., "full wall," "half wall," etc.

(6-)) demarcations that separate dedicated dining areas from areas off-limits to minors labeled and described in detail.

(7) **Convention centers** - To qualify ((for)) as a convention center ((there must be)) a premises must have two or more rooms that provide space and accommodations for private events only. ((Licensees holding a)) Convention center licensees may only sell alcohol for private events at the licensed premises.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

**WAC 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put ((barriers)) demarcations around their dedicated dining area(s)?** Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all

times are only required to place (~~the barriers~~) demarcations described in WAC 314-02-025(~~(+2)~~) around dedicated dining areas for the purpose of paying the lower annual license fee (fifty percent to ninety-nine percent dedicated dining area). Restaurants that do not allow minors at any time and do not wish to have (~~barriers~~) demarcations around their dining area(s) must pay the higher annual license fee (less than fifty percent dedicated dining area). (See WAC 314-02-020 for an explanation of fees.)

**WAC 314-03-200 Outside or extended alcohol service.** A licensee must request approval from the board's licensing division for ongoing outside or extended alcohol service. The following conditions must be met:

(1) The area must be enclosed with a permanent or movable barrier a minimum of forty-two inches in height (~~(; and)~~).

(2) There must be an interior access to the licensed premises. If the interior access is from a minor restricted area of the premises, minors are prohibited in the outside or extended alcohol service area.

(3) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(4) Must have leasehold rights to the area and have and be connected to the licensed premises.

(5) Openings into and out of the outside area cannot exceed ten feet. If there is more than one opening along one side, the total combined opening may not exceed ten feet.

(6) **Exception.** For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a forty-two inch barrier or permanent demarcation of the designated alcohol service areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed (~~(at a minimum of)~~) no more than ten feet apart;

(d) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present;

(e) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point;

(f) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) **Limited exception.** The board may grant limited exceptions to the required forty-two inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.



## Issue Paper

# Chapter 314-35 WAC – Vapor Products

Date: October 2, 2019

Presented by: Kathy Hoffman, Policy and Rules Coordinator

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### 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.

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~~));

(b) Vapor product distributor's license((~~τ~~)); 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 ~~((certain))~~ 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:

| <b>Entity</b>  | <b>True Party(ies) of Interest</b>  |
|--|---|
| 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.<br>All limited partners and spouses.                      |
| Limited liability company  | All members and spouses.<br>All managers and spouses.                                       |
| Privately held corporation   | All corporate officers (or persons with equivalent title) and spouses.<br>All stockholders. |
| Publicly held corporation  | All corporate officers (or persons with equivalent title) and spouses.<br>All stockholders. |

| Entity  | True Party(ies) of Interest   |
|---|---|
| Multilevel ownership structures   | All persons and entities that make up the ownership structure.  |
| <p>Any entity or person(s) expecting or receiving profits, or part thereof, or exercising control over a licensed business</p> <p>Any entity or person(s) who exercise(s) control over the licensed business in exchange for money or expertise</p> | <p>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.</p> <p>Any entity(s) or person(s) and spouses who exercise(s) control over the licensed business in exchange for money or expertise.</p> |
| 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.**

| <b>Violation Type</b>   | <b>1st Violation in a three-year period</b> | <b>2nd Violation in a three-year period</b> | <b>3rd Violation in a three-year window</b>               | <b>4th Violation in a three-year window</b>                | <b>5th Violation in a three-year window</b>                              |
|---|---|---|---|--|--|
| Sales to persons under twenty-one, allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting.<br><br>RCW 26.28.080<br>RCW 70.345.100<br>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:<br>Misrepresentation of fact; not permitting physical presence.<br><br>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.<br><br>RCW 70.345.030<br>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:<br>Permitting or engaging in criminal conduct, or both.<br><br>Title 9 RCW<br>Title 9A RCW<br>Chapter 69.50 RCW<br>Chapter 70.155 RCW<br>Chapter 70.158 RCW<br>Chapter 70.345 RCW<br>Chapter 82.24 RCW<br>Chapter 82.26 RCW<br>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.<br><br>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.**

| <b>Violation Type</b>  | <b>1st Violation in a three-year window</b> | <b>2nd Violation in a three-year window</b> | <b>3rd Violation in a three-year window</b> | <b>4th Violation in a three-year window</b>               | <b>5th Violation in a three-year window</b> |
|--|---|---|---|---|---|
| Failure to comply with child resistant packaging requirements.<br>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.<br>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.<br>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.<br>RCW 70.345.020<br>WAC 314-35-020<br>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.<br>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.<br>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.**

| <b>Violation Type</b>   | <b>1st Violation in a three-year window</b> | <b>2nd Violation in a three-year window</b> | <b>3rd Violation in a three-year window</b> | <b>4th Violation in a three-year window</b> | <b>5th Violation in a three-year window</b>               |
|---|---|---|---|---|---|
| Noncompliance with record keeping requirements.<br>WAC 314-35-020<br>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.<br>RCW 70.345.070<br>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 |

| <b>Violation Type</b>  | <b>1st Violation in a three-year window</b> | <b>2nd Violation in a three-year window</b> | <b>3rd Violation in a three-year window</b> | <b>4th Violation in a three-year window</b> | <b>5th Violation in a three-year window</b>               |
|--|---|---|---|---|---|
| Selling or distributing vapor products from self-serve displays or without the intervention of a store employee.<br>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.<br>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.<br>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.<br>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.<br>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 |