



Washington State
Liquor and Cannabis Board

Date: February 5, 2020

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

From: Janette Benham, Policy and Rules Coordinator

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

Subject: **Adoption of final rules (CR 103) regarding implementation of 2019 legislation – WAC 314-02-015, WAC 314-02-045, and WAC 314-30-010**

The rules coordinator requests that the board approve final rulemaking (CR 103) and adopt rules amending WAC 314-02-015, WAC 314-02-045, and WAC 314-30-010. The amendments implement Substitute House Bill 1034, House Bill 1672, and Senate Bill 5909 that passed during the 2019 legislative session.

The board was briefed on the rulemaking background and held a public hearing on January 22, 2020. An issue paper and the text of the rules is attached.

If approved, the rules coordinator will send an explanation of the rulemaking to all people who submitted comments and file the rules with the Office of the Code Reviser. The rules will be effective March 7, 2020.

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member Date

Attachment: Issue Paper



Issue Paper

2019 Legislation Implementation:

Substitute House Bill 1034 – Soju Endorsement

House Bill 1672 – Recapping Sake

Senate Bill 5909 – Manufacturers Packaging

Date: February 5, 2020

Presented by: Janette Benham, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to recommend that the board adopt final rules to implement legislation that passed during the 2019 legislative session.

Rule Necessity

Substitute House Bill 1034 created an endorsement that allows spirits, beer, and wine restaurants to serve bottles of soju for on-premises consumption to tables of two or more patrons. The new law also allows restaurants to recap soju bottles and for patrons to remove recapped soju bottles from the premises.

House Bill 1672 allows spirits, beer, and wine restaurants and beer and wine restaurants to recap sake purchased for consumption with a meal. The new law also allows patrons to remove recapped sake from the premises.

Senate Bill 5909 allows manufacturers licensed under RCW 66.24.150 to contract with distilleries, breweries, and wineries to provide packaging services.

Description of Rule Changes

WAC 314-02-015 What is a spirits, beer, and wine restaurant license?

Amendments were made to allow service of soju by the bottle and to allow patrons to remove recapped sake from the premises.

Additional technical and clarifying changes were made.

WAC 314-02-045 What is a beer and/or wine restaurant license?

Amendments were made to allow patrons to remove recapped sake from the premises.

Additional technical and clarifying changes were made.

WAC 314-30-010 Sales and contracting by manufacturers.

Amendments were made to include packaging and add a reference to the packaging provisions outlined in statute.

Additional technical and clarifying changes were made and unnecessary language was removed.

Public Comment

No written comments were received. No one testified at the public hearing.

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

(a) Serve spirits by the individual glass or soju by the bottle for on-premises consumption(~~(+)~~).

(i) Soju served by the bottle may only be served in restaurants holding a soju endorsement and must be served under the provisions outlined in RCW 66.24.400(5);

(ii) Soju endorsement holders must ensure servers providing soju to patrons are trained every five years in the soju curriculum developed by the board.

(b) Serve beer by the bottle or can or by tap for on-premises consumption;

(c) Serve wine and sake for on-premises consumption;

(d) Allow patrons to remove recorked or recapped wine, sake, or soju from the licensed premises;

(e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and

(f) Sell kegs of malt liquor with the appropriate endorsement. This endorsement also allows the sale of beer or cider as defined in RCW 66.24.210(6) (~~(to a purchaser)~~) in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 8:00 a.m. and 11:00 p.m., three days a week.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" means a business where the board can clearly determine that the primary purpose of the business is the service of complete meals. "Complete meals" is defined in WAC 314-02-035.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-02-045 What is a beer and/or wine restaurant license?

(1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$200
(b) Serve wine <u>or sake</u> for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked <u>or recapped</u> wine <u>or sake</u> from the premises).	\$200
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$120

Privilege	Annual fee
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in (c) of this subsection.
(e) Sell cider as defined in RCW 66.24.210(6) for off-premises consumption to a purchaser in a sanitary container brought to the premises by the purchaser or provided by the licensee and filled at the tap in the restaurant at the time of purchase. The licensee must comply with federal regulations.	In conjunction with off-premises privilege outlined in (c) of this subsection.
(f) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in (c) of this subsection.

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010 ~~((+30))~~.

(a) Minimum food service is required, as defined in WAC 314-02-010.

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, three days a week.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license ~~((+see))~~ as described in WAC 314-02-070 ~~((regarding the tavern license))~~.

WAC 314-30-010 Sales and contracting by manufacturers. (1) Manufacturers licensed ~~((in accordance with))~~ under RCW 66.24.150 may sell within the state:

(a) Spirituous liquor products only to spirits distributor~~((s))~~ licensees;

(b) Wine products only to wine distributor licensees;

(c) Beer products only to beer distributor licensees; or

(d) To permit holders as authorized by RCW 66.20.010 (7) through (10).

(2) Manufacturers licensed under RCW 66.24.150 may contract with licensed liquor distillers, craft distillers, domestic brewers, micro-breweries, wineries, and domestic wineries to provide packaging services. Contracted packaging services must be done under the provisions outlined in RCW 66.24.150 (2) and (3).

(3) The first spirits distributor, wine distributor, or beer distributor to receive spirits, wine, or ~~((malt beverages))~~ beer from a ~~((distiller,))~~ distillery, winery, brewery, or manufacturer ~~((, rectifier, or bottler shall be liable for))~~ must pay the fees and/or taxes due.

~~((3) Manufacturers selling spirits, wine, or malt beverage products will be considered a supplier and will be required to meet the requirements of WAC 314-23-005, 314-24-190, and 314-20-100 respectively.~~

~~(4) Manufacturers selling spirits to a licensed spirits distributor, wine to a licensed wine distributor, or beer to a licensed beer distributor shall file monthly reports with the board on forms prescribed by the board showing the quantity of liquor shipped to each above referenced licensee during the preceding month. Such report shall be submitted on or before the twentieth day of the month following the month of sale or delivery.~~

~~(5) Failure to make such report at the time prescribed will be sufficient cause for the board to forthwith suspend or cancel the license privilege of the manufacturer. When the twentieth day of any month falls on a Sunday, or a legal holiday, the report may be filed not later than the close of business the next business day.)~~



**Washington State
Liquor and Cannabis Board**

Date: February 5, 2020

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 rules (CR103E) regarding chapter 314-35 WAC: summary license suspension and petition for stay**

On November 20, 2019, the Washington State Board of Health (SBOH) issued emergency rules as WSR 19-24-001, providing that no person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. 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 are necessary to 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 February 5, 2020, and is attached to this request.

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

February 5, 2020	Board is asked to adopt the emergency rulemaking order (CR-103E) as described above.
February 5, 2020	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: CR103E Memorandum



CR103E Memorandum

Chapter 314-35 WAC - Emergency Rules Regarding Summary License Suspension and Petition for Stay

Date: February 5, 2020
Presented by: Kathy Hoffman, Policy and Rules Coordinator

Issue:

While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-182 on October 23, 2019, the reasons supporting the necessity for this rule are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from

ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

The SBOH prohibition of vitamin E acetate provides, in relevant part, that:

WAC 246-80-021(2): No person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

Reasons why rules are needed:

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 pertaining to the use of vitamin E acetate as 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 continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, 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) rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate.

The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health. 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 to create WAC 314-35-090 and WAC 314-55-095 that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of chapter 246-80 WAC concerning the prohibition of the use of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 19-21-182 on October 23, 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: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-182 on October 23, 2019, the reasons supporting the necessity of this rule are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC

vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

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 pertaining to the use of vitamin E acetate as 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.

The SBOH prohibition of vitamin E acetate (WAC 246-80-021(2)) provides, “No person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.”

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate re-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) rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health. 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	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency’s own initiative:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

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: February 5, 2020

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

Date: February 5, 2020

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 November 20, 2019, the Washington State Board of Health (SBOH) adopted emergency rules as WSR 19-24-001, providing that no person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. This emergency rule allows the Board to take disciplinary action against any processor that fails to comply with the provisions of the SBOH emergency rule 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. A CR103E Memorandum on this rule was presented at the Board meeting on February 5, 2020, and is attached to this request.

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

February 5, 2020	Board is asked to adopt the emergency rulemaking order (CR-103E) as described above.
February 5, 2020	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: CR103E Memorandum



CR103E Memorandum

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: February 5, 2020
Presented by: Kathy Hoffman, Policy and Rules Coordinator

Issue:

While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-180 on October 23, 2019, the reasons supporting this finding are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from

ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

The SBOH prohibition of vitamin E acetate provides, in relevant part, that:

WAC 246-80-021(2): No person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

Reasons why rules are needed:

This emergency rule allows the Board to take disciplinary action against any licensed marijuana processor that fails to comply with the provisions of the SBOH emergency rule described in chapter 246-80 WAC prohibiting the use of vitamin E acetate, 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 continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing that the Board may take disciplinary action against any licensed marijuana processor who does not comply with the provisions of WAC 246-80-021 is necessary for the enforcement of Washington State Board of Health (SBOH) rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

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 rule as WAC 314-55-077(13) that allows the Board to take disciplinary action against any licensed marijuana processor failing to comply with the provisions of chapter 246-80 WAC concerning prohibition of the use of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 19-21-180 on October 23, 2019.

Citation of rules affected by this order:

New:
Repealed:
Amended: WAC 314-55-077
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: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-180 on October 23, 2019, the reasons supporting the necessity of this rule are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples,

and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

Specifically, the SBOH emergency rule provides that, "...[n]o person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

This emergency rule allows the Board to take disciplinary action against any licensed marijuana processor that fails to comply with the provisions of the SBOH emergency rule described in chapter 246-80 WAC prohibiting the use of vitamin E acetate, 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 continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, 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) rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

**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	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

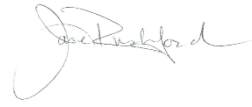
The number of sections adopted using:

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

Date Adopted: February 5, 2020

Signature:

Name: Jane Rushford

A handwritten signature in black ink, appearing to read "Jane Rushford", written in a cursive style.

Title: Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

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.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-077, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-077, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-077, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-077, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-077, filed 10/21/13, effective 11/21/13.]



Washington State
Liquor and Cannabis Board

Date: February 5, 2020

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 November 20, 2019, the Washington State Board of Health (SBOH) adopted emergency rules as WSR 19-24-001, providing that no person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. This emergency rule allows the Board to take disciplinary action against any processor that fails to comply with the provisions of the SBOH emergency rule 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

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. A CR103E Memorandum on this rule was presented at the Board meeting on February 5, 2020, and is attached to this request.

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

February 5, 2020	Board is asked to adopt the emergency rulemaking order (CR-103E) as described above.
February 5, 2020	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: CR103E Memorandum



CR103E Memorandum

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: February 5, 2020
Presented by: Kathy Hoffman, Policy and Rules Coordinator

Issue:

While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-181 on October 23, 2019, the reasons supporting this finding are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from

ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

The SBOH prohibition of vitamin E acetate provides, in relevant part, that:

WAC 246-80-021(2): No person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

Reasons why rules are needed:

This emergency rule allows the Board to take disciplinary action against any licensed marijuana processor that fails to comply with the provisions of the SBOH emergency rule described in chapter 246-80 WAC prohibiting the use of vitamin E acetate, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-079.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing that the Board may take disciplinary action against any licensed marijuana processor who does not comply with the provisions of WAC 246-80-021 is necessary for the enforcement of Washington State Board of Health (SBOH) rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

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 314-55-079 – Marijuana retailer license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rule as WAC 314-55-079(14) that allows the Board to take disciplinary action against any licensed marijuana retailer failing to comply with the provisions of chapter 246-80 WAC concerning prohibition of the use of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 19-21-181 on October 23, 2019.

Citation of rules affected by this order:

New:
Repealed:
Amended: WAC 314-55-079
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: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-181 on October 23, 2019, the reasons supporting the necessity for this rule are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples,

and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

Specifically, the SBOH emergency rule provides, in relevant part that, "...[n]o person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

This emergency rule allows the Board to take disciplinary action against any licensed marijuana retailer that fails to comply with the provisions of the SBOH emergency rule described in chapter 246-80 WAC prohibiting the use of vitamin E acetate, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-079.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, 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) rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

**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	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>1</u>	Repealed	___
-----	-----	---------	----------	----------	-----

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

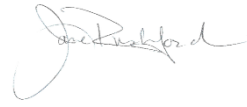
The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New		Amended	<u>1</u>	Repealed	___

Date Adopted: February 5, 2020

Signature:

Name: Jane Rushford

A handwritten signature in black ink, appearing to read "Jane Rushford", written in a cursive style.

Title: Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

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.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-079, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, 2016 c 170, 2016 c 171, and 2016 c 17. WSR 16-19-102, § 314-55-079, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-079, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-079, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-079, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-079, filed 10/21/13, effective 11/21/13.]



Washington State
Liquor and Cannabis Board

Date: February 5, 2020

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) Emergency Rule Regarding Mandatory Disclosure of All Compounds Used in the Production and Processing of Marijuana Vapor Products for Inhalation**

On November 20, 2019, the Washington State Board of Health (SBOH) adopted emergency rules as WSR 19-24-001, providing that no person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate.

This emergency rule requires that marijuana licensees disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin.

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. A CR103E Memorandum on this rule was presented at the Board meeting on February 5, 2020, and is attached to this request.

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

February 5, 2020	Board is asked to adopt the emergency rulemaking order (CR-103E) as described above.
February 5, 2020	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: CR103E Memorandum



CR103E Memorandum

Emergency Rule Regarding Mandatory Disclosure of All Compounds Used in the Production and Processing of Marijuana Vapor Products for Inhalation

Date: February 5, 2020
Presented by: Kathy Hoffman, Policy and Rules Coordinator

Issue:

While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-100 on October 16, 2019, the reasons supporting the necessity for this rule are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that

all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

The SBOH prohibition of vitamin E acetate provides, in relevant part, that:

WAC 246-80-021(2): No person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

Reasons why rules are needed:

This emergency rule requires that marijuana licensees disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, and submitted to an email address or other platform provided or maintained by the board.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate re-adoption of rule requiring disclosure of compounds and other substances, including but not limited to vitamin E acetate added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation is necessary for the preservation of public health, safety and general welfare. Re-adoption of this emergency rule continues to assist public health officials in

isolating the compounds and products that may be connected to the growing outbreak of lung disease.

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 314-55 WAC – Marijuana Licenses, Application Process, Requirements, and Reporting. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rule to create WAC 314-55-1055 – Ingredient Disclosure, requiring the disclosure of all ingredients used in the production of marijuana concentrates for inhalation and marijuana extracts for inhalation. This filing supersedes and replaces emergency rules filed as WSR 19-21-100 on October 16, 2019.

Citation of rules affected by this order:

New: WAC 314-55-1055
 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: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-100 on October 16, 2019, the reasons supporting the necessity for this rule are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples,

and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

Specifically, the SBOH emergency rule provides, in relevant part that, "...[n]o person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

This emergency rule requires that marijuana licensees disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, and submitted to an email address or other platform provided or maintained by the board.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of rule requiring disclosure of compounds and other substances, including but not limited to vitamin E acetate added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation is necessary for the preservation of public health, safety and general welfare. Adoption of this emergency rule continues to assist public health officials in isolating the compounds and products that may be connected to the growing outbreak of lung disease.

**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	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	___	Repealed	___
-----	----------	---------	-----	----------	-----

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

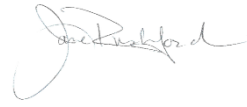
The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>1</u>	Amended	___	Repealed	___

Date Adopted: February 5, 2020

Signature:

Name: Jane Rushford

A handwritten signature in black ink, appearing to read "Jane Rushford", written in a cursive style.

Title: Chair

NEW SECTION

WAC 314-55-1055 Ingredient disclosure. (1) All licensed marijuana processors and producers must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation.

(2) All chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, must be disclosed to the board as follows:

(a) On a form provided by the board and stored by the licensee, either electronically or in hard copy, and made available for inspection if requested by an employee of the board; and

(b) In a manner directed by the board including, but not limited to, submission to an email address or other online platform provided and maintained by the board.

(3) The complete list of all chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates

for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, that is required under subsection (2) of this section must be kept and maintained, consistent with recordkeeping requirements described in WAC 314-55-087, at the facility in which the products are processed. The list must be updated whenever there is any change in product composition.

[]