



## Washington State Liquor and Cannabis Board

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**Date:** May 27, 2020

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

**From:** Kathy Hoffman, Policy and Rules Manager

**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 (CR 103E) regarding WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees: adding a new section to allow enforcement of the provisions of WAC 314-55-1065.**

On May 27, 2020, the Washington State Liquor and Cannabis Board (Board) adopted an emergency rule as WAC 314-55-1065 providing that no person including, but not limited to, a person licensed under chapter 69.50 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 retailer that fails to comply with the provisions of WAC 314-55-1065 under the authority of chapter 69.50 RCW.

### Process

The Policy and Rules Manager requests that the Board adopt the emergency rule described above, and requests approval to file the emergency rule described above. A CR 103E Memorandum on this rule was presented at the Board meeting on May 27, 2020, and is attached to this request.

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

May 27, 2020	Board is asked to adopt the emergency rulemaking order (CR 103E) as described above.
May 27, 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: CR 103E Memorandum



Washington State  
**Liquor and Cannabis Board**

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**CR 103E Memorandum**

**Emergency Rule Regarding Enforcement of WAC 314-55-1065 –  
Adding a New Section to WAC 314-55-079 – Marijuana retailer  
license – Privileges, requirements, and fees.**

Date: May 27, 2020

Presented by: Kathy Hoffman, Policy and Rules Manager

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**Issue:**

House Bill (HB) 2826 (Chapter 133, Laws of 2020) concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the Board's rulemaking authority by adding a new section (m), providing that the Board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and the prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the Board determines, following a determination by the Washington State Department of Health or any other authority the Board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019 and March 19, 2020, the Washington State Board of Health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] 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 multi-state outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths 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, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from

the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven 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 recommends that vitamin E acetate not be added to any vapor products.

- During the 2020 legislative session, the governor submitted request legislation (SB 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate the SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the Board by HB 2826, and upon the determination of the SBOH that vitamin E acetate is a drug of concern and should be banned, the Board adopted an emergency rule on May 27, 2020 as WAC 314-55-1065 prohibiting the use of vitamin E acetate.

Emergency rule WAC 314-55-1065(2) provides that:

No person, including but not limited to, a person licensed under chapter 69.50 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 retailer that fails to comply with the provisions of emergency rule WAC 314-55-1065 prohibiting the use of vitamin E acetate consistent with the authority of chapter 69.50 RCW.

The immediate adoption of rule that establishes provisions for both the enforcement of WAC 314-55-1065, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing provisions for the enforcement of WAC 314-55-1065 that prohibits the use of vitamin E acetate is necessary.

**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 CR 101, 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 WAC 314-55-1065 concerning prohibition of the sale of vitamin E acetate.

**Citation of rules affected by this order:**

New:  
 Repealed:  
 Amended: WAC 314-55-079  
 Suspended:

**Statutory authority for adoption:** HB 2826 (Chapter 133, Laws of 2020), effective March 25, 2020; 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:** House Bill (HB) 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the Board's rulemaking authority by adding a new section (m), providing that the Board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and the prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the Board determines, following a determination by the Washington State Department of Health or any other authority the Board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019 and March 19, 2020, the Washington State board of Health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] 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 multi-state outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths 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, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate,

providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven 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 recommends that vitamin E acetate not be added to any vapor products.

- During the 2020 legislative session, the governor submitted request legislation (SB 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate the SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the Board by HB 2826, and upon the determination of the SBOH that vitamin E acetate is a drug of concern and should be banned, the Board adopted an emergency rule on May 27, 2020 as WAC 314-55-1065 prohibiting the sale of vitamin E acetate.

This emergency rule allows the Board to take disciplinary action against any licensed marijuana retailer that fails to comply with the provisions of WAC 314-55-1065 prohibiting the use of vitamin E acetate.

The Board has the authority and responsibility to adopt rules for the preservation of public health. The immediate adoption of rule that establishes provisions for both the enforcement of WAC 314-55-1065, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing provisions for the enforcement of WAC 314-55-1065 that prohibits the sale of vitamin E acetate is necessary.

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

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

**The number of sections adopted in order to comply with:**

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

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

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


New	_____	Amended	<u>1</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

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

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

<b>Date Adopted:</b> May 27, 2020	<b>Signature:</b> 
<b>Name:</b> Jane Rushford	
<b>Title:</b> Chair	



**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](http://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](http://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 WAC 314-55-1065.