



Washington State  
**Liquor and Cannabis Board**

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**Date:** March 31, 2021

**To:** David Postman, 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  
 Chandra Brady, Director of Enforcement and Education  
 Justin Nordhorn, Policy and External Affairs Director  
 Becky Smith, Licensing Director

**Subject:** **Approval to file pre-proposal statement of inquiry (CR 101) regarding WAC 314-55-077 – Marijuana processor license – Privileges, requirements and fees and WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees**

The Washington State Liquor and Cannabis Board (Board) is considering rule amendments that would allow the board to take disciplinary action against any licensed marijuana processor or retailer for failure to comply with the provisions of WAC 246-80-021, concerning the sale of vitamin E acetate.

**Process**

The Policy and Rules Manager requests approval to file the pre-proposal statement of inquiry (CR 101) for the rule making described above. A CR 101 Memorandum on this rule was presented at the Board meeting on March 31, 2021, and is attached to this request.

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

March 31, 2021	CR 101 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Informal comment period begins.
April 21, 2021	Notice published in the Washington State Register under WSR #21-08

May 21, 2021	End of informal comment period.
May 26, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list. Formal comment period begins.
June 16, 2021	Notice published in the Washington State Register.
July 7, 2021	Public hearing held and formal comment period ends.
July 21, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals offering written and oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by rules distribution list.
August 21, 2021	Rules are effective 31 days after filing (unless otherwise specified).

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
David Postman, Chair      \_\_\_\_\_  
Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Ollie Garrett, Board Member      \_\_\_\_\_  
Date

\_\_\_\_\_ Approve      \_\_\_\_\_ Disapprove      \_\_\_\_\_  
Russ Hauge, Board Member      \_\_\_\_\_  
Date

Attachment: CR 101 Memorandum



## **CR 101 Memorandum**

### **Pre-proposal statement of inquiry (CR 101) regarding WAC 314-55-077 – Marijuana processor license – Privileges, requirements and fees and WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees**

Date: March 31, 2021

Presented by: Kathy Hoffman, Policy and Rules Manager

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#### **Background**

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 e-cigarette or vaping associated lung injury (EVALI). In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multi-state outbreak. As of its final update on February 18, 2020, the CDC has identified two thousand eight hundred seven confirmed cases reported across fifty states, the District of Columbia, Puerto Rico and the US Virgin Islands, including sixty-eight deaths confirmed in twenty-nine states and the District of Columbia. Twenty-seven cases of EVALI, including two deaths, have been reported in Washington State.

As part of the investigation into the multistate outbreak of EVALI, the CDC conducted laboratory tests of forty-eight 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. A further study found ninety-four percent of EVALI patients tested had vitamin E acetate in the bronchoalveolar lavage but no samples from a health comparison group indicated evidence of vitamin E. Two samples showed presence of other toxicants (one each) in the EVALI group but did not provide sufficient evidence to identify another toxicant as the source of disease. The CDC has identified vitamin E acetate as a chemical strongly linked to EVALI and recommends that vitamin E acetate not be added to vapor products.

Based on these findings, the Washington State Board of Health adopted a permanent prohibition of vitamin E acetate on November 15, 2020 as WSR 20-23-006, codified in WAC 246-80-021.

Consistent with RCW 69.50.342(1)(m), the Board is authorized to prohibit any type of device used in conjunction with a marijuana vapor product and the prohibition of 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 consultation with the 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.

### **Reasons why rules are needed:**

Based on its authority under RCW 69.50.342(1)(m), the Board prohibited use of vitamin E acetate by any person licensed under chapter 69.50 RCW by emergency rule WAC 314-55-1065 on September 16, 2020 as WSR 20-19-080, and by extension on January 6, 2021 as WSR 21-02-092. These amendments allow the Board to take disciplinary action against any licensed marijuana processor or retailer failing to comply with the provisions of WAC 314-55-1065.

The Washington State Board of Health (SBOH) also prohibited the use of vitamin E acetate by any person licensed under chapter 69.50 RCW by permanent rule on November 14, 2020 as WSR 20-23-006. Since the SBOH prohibition of vitamin E acetate is permanent, WAC 314-55-077 and WAC 314-55-079 should be updated to reference this permanent prohibition of vitamin acetate as described in WAC 246-80-021. Once references are updated, Board emergency rule WAC 314-55-1065 should be rescinded.

### **Process:**

The rule making process begins by announcing LCB's intent to consider changes to existing rules, adding new rule sections, or both by filing a CR 101 form with the Office of the Code Reviser. This allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing proposed rule changes.

At the CR 101 stage of the rulemaking process, no proposed language is offered. Any interested party may comment on the subject of this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity pertaining to this preproposal inquiry. The notice will identify the public comment period and where comments can be sent.

# PREPROPOSAL STATEMENT OF INQUIRY



## CR-101 (October 2017) (Implements RCW 34.05.310)

Do **NOT** use for expedited rule making

**Agency:** Washington State Liquor and Cannabis Board

**Subject of possible rule making:** WAC 314-55-077 – Marijuana processor license- Privileges, requirements and fees; WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) is considering rule amendments that would allow the Board to take disciplinary action against any licensed marijuana processor or retailer failing to comply with the provisions of WAC 246-80-021, concerning the sale of vitamin E acetate. No other amendments or revisions to these sections are being considered at this time.

**Statutes authorizing the agency to adopt rules on this subject:** RCW 69.50.342; RCW 69.50.345; HB 2826 (Chapter 133, Laws of 2020), now codified in RCW 69.50.101, RCW 69.50.327, RCW 69.50.342.

**Reasons why rules on this subject may be needed and what they might accomplish:** Based on its authority under RCW 69.50.342(1)(m), the Board prohibited use of vitamin E acetate by any person licensed under chapter 69.50 RCW by emergency rule WAC 314-55-1065 on September 16, 2020 as WSR 20-19-080, and by extension on January 6, 2021 as WSR 21-02-092. These amendments allow the Board to take disciplinary action against any licensed marijuana processor or retailer failing to comply with the provisions of WAC 314-55-1065.

The Washington State Board of Health (SBOH) also prohibited the use of vitamin E acetate by any person licensed under chapter 69.50 RCW by permanent rule on November 14, 2020 as WSR 20-23-006. Since the SBOH prohibition of vitamin E acetate is permanent, WAC 314-55-077 and WAC 314-55-079 should be updated to reference this permanent prohibition of vitamin acetate as described in WAC 246-80-021. Once references are updated, Board emergency rule WAC 314-55-1065 should be rescinded.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** Washington State Board of Health; Washington State Department of Health.

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative rule making.

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

	(If necessary)
Name: , Policy and Rules Coordinator	Name:
Address: PO Box 43080, Olympia WA 98504	Address:
Phone: 360-664-1760	Phone:
Fax: 360-664-9689	Fax:
TTY:	TTY:
Email: rules@lcb.wa.gov	Email:
Web site: lcb.wa.gov	Web site:
Other:	Other:

Additional comments: Interested persons can participate in the rule process through open public meetings and by submitting written comments, and are encouraged to sign up for the interested parties list (GovDelivery) at

<https://public.govdelivery.com/accounts/WALCB/subscriber/new>. Rule-making notices and stakeholder engagement opportunities will be emailed via GovDelivery and posted to the WSLCB website at [lcb.wa.gov](http://lcb.wa.gov).

<b>Date:</b> March 31, 2021	<b>Signature:</b>  Place signature here
<b>Name:</b> David Postman	
<b>Title:</b> Chair	