



Washington State  
**Liquor and Cannabis Board**

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**Date:** July 21, 2021

**To:** David Postman, Board Chair  
Ollie Garrett, Board Member  
Russ Hauge, Board Member

**From:** Jeff Kildahl, Policy and Rules Coordinator

**Copy:** Rick Garza, Agency Director  
Toni Hood, Deputy Director  
Justin Nordhorn, Director of Policy and External Affairs  
Becky Smith, Licensing Director  
Chandra Brady, Director of Education and Enforcement  
Kathy Hoffman, Policy and Rules Manager

**Subject:** Request for approval of final rules (CR 103) regarding amendments to WAC 31-55-077 Marijuana processor license—Privileges, requirements, and fees and WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees.

The Policy and Rules Coordinator requests that the Board adopt the final rules, and approve the CR 103 to ensure the Board's ability to take disciplinary action against any licensed marijuana processor or retailer failing to comply with prohibition of the use of vitamin E acetate.

The Board has been briefed on the rule development background for this rule making project. There were no public comments received. A CR 103 memorandum, CR 103 form, and rule text are attached.

If approved, the Policy and Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing, or August 21, 2021.

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

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

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

Attachments: CR 103 Memorandum  
Concise Explanatory Statement



## CR 103 Memorandum

### Regarding Amendment to WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees and WAC 314-55-079 Marijuana retailer license — Privileges, requirements, and fees.

Date: July 21, 2021  
Presented by: Jeff Kildahl, Policy and Rules Coordinator

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#### Background

Consistent with RCW 69.50.342(1)(m), the Board is authorized to 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 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.

Rules regarding the Board's ability to take disciplinary action against any licensed marijuana processor or retailer failing to comply with prohibition of the use of vitamin E acetate are necessary to provide enforcement continuity of WAC 246-80-021 concerning the permanent prohibition of vitamin E acetate.

The complete background for this project is explained more fully in Attachment A, CR 102 Memorandum.

#### Rule Necessity

These rules are needed to ensure the Board's ability to take disciplinary action against any licensed marijuana processor or retailer failing to comply with prohibition of the use of vitamin E acetate.

#### Description of Rule Changes

**New Subsection. WAC 314-55-077(16):** Language added stating that the Board may take disciplinary action against any marijuana processor that fails to comply with the provisions of WAC 246-80-021.

**New Subsection. WAC 314-55-079(14):** Language added stating that the Board may take disciplinary action against any marijuana retailer that fails to comply with the provisions of WAC 246-80-021.

## **Variance between proposed rule (CR 102) and final rule:**

There is no variance between the proposed rule and the final rule.

## **Rule Implementation**

### Informing and Educating Persons Impacted by the Rule

To help inform and educate persons impacted by the rule, the WSLCB will:

- Email notice with the adoption materials to the rule making and licensee distribution lists, and the general WSLCB GovDelivery list;
- Post rule adoption materials, including final rule language, final analysis (Concise Explanatory Statement), and any other relevant documents on the rulemaking webpage for public access.
- Provide information and training on request.

### Promoting and Assisting Voluntary Compliance

WSLCB will promote and assist voluntary compliance through technical assistance.

- WSLCB staff are available to respond to phone and email inquiries about the rules.
- Agency leadership and staff have actively participated in rule development, and are familiar with the final product. Internal and external education efforts to share knowledge and assure consistent application of rule have will be supported.
- Rule and guidance documents will be available on the WSLCB website.
- WSLCB will use available and customary resources to disseminate materials and information to all persons impacted by the rules.

These actions are designed to inform and educate all persons impacted by the rules to support and promote voluntary compliance.

### Training and Informing WSLCB Staff

Several WSLCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The WSLCB will also consider:

- Provision of internal and external training and education, as needed, potentially including webinars, training, and videos if appropriate;
- Coordinating and centrally locating decisions to assure consistency between agency, staff, and industry.

## **Rule Effectiveness Evaluation**

The WSLCB will evaluate the effectiveness of these rules in the following ways, including but not limited to:

- Monitoring questions received after the effective date of these rules, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and final outcome;
- Monitoring the number of requests for rule language revisions or changes;
- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.

### **Attachments:**

Attachment A: CR 102 Memorandum



# RULE-MAKING ORDER

## PERMANENT RULE ONLY

### CR-103P (December 2017) (Implements RCW 34.05.360)

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

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**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; WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) has adopted rule amendments to 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.

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

New: \_\_\_\_\_  
 Repealed: \_\_\_\_\_  
 Amended: WAC 314-55-077; WAC 314-55-079.  
 Suspended:

**Statutory authority for adoption:** RCW 69.50.342; RCW 69.50.345.

**Other authority:** N/A

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 21-12-052 on May 26, 2021 (date).

Describe any changes other than editing from proposed to adopted version: There were no changes from the proposed rules to the adopted rules.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Jeff Kildahl  
 Address: 1025 Union Avenue SE, Olympia WA 98501  
 Phone: 360-664-1781  
 Fax: 360-664-3208  
 TTY:  
 Email: rules@lcb.wa.gov  
 Web site: www.lcb.wa.gov  
 Other:

**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>2</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>2</u>	Repealed	___

**Date Adopted:** July 21, 2021

**Name:** David Postman

**Title:** Chair

**Signature:**

Place signature here

**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 246-80-021.

**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 board 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 board may reopen the marijuana processor application window at subsequent times when the board 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 board 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 board 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 board for approval. More information on the product, packaging, and label review process is available on the board's website.

(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 board. 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 board or its designee.

(c) If the board 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 be homogenized to ensure uniform disbursement of cannabinoids.

(9) A marijuana processor may infuse food or drinks with marijuana, provided that:

(a) The product or products do not require cooking or baking by the consumer;

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1)(c).

(10) 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.

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

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

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

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

(d) Fruit or vegetable butters;

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

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

(g) Dried or cured meats.

(h) 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.

(i) 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.

(12) Consistent with 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.

The board may designate other food items that may not be infused with marijuana.

(13) 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.

(14) **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.

(15) 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.

(16) The board may take disciplinary action against any marijuana processor that fails to comply with the provisions of WAC 246-80-021.



## Notice of Permanent Rules

**Regarding Amendment to WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees and WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees.**

**This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (WSLCB) adoption of amendments to WAC 314-55-077 and WAC 314-55-077.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the WSLCB received comment.

The WSLCB appreciates and encourages your involvement in the rule making process. If you have questions, please contact Jeff Kildahl, Policy and Rules Coordinator, at (360) 664-1781 or e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

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### Background and reasons for adopting these rules:

#### *EVALI Outbreak*

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.

#### *Washington State Board of Health Response*

Based on these findings, the Washington State Board of Health (SBOH) adopted two emergency rules prohibiting the use of vitamin E acetate by a person licensed under chapter 69.50 or 70.345 RCW. The first was filed on March 19, 2020 as WSR 20-08-007, and the second was filed as WSR 20-15-117 on July 17, 2020. At the same time, the SBOH began rulemaking to make the emergency prohibition permanent on May 6, 2020, and the permanent prohibition of vitamin E acetate became effective November 15, 2020 as WSR 20-23-006, codified as WAC 246-80-021.

#### *LCB Response*

Consistent with the statutory authority provided to the Board by House Bill (HB) 2826 (Chapter 133, Laws of 2020) concerning marijuana vapor products, now codified in RCW 69.50.101, RCW 69.50.327, RCW 69.50.342, and upon the determination of the SBOH that vitamin E acetate is a drug of concern and should be prohibited, the Board adopted an emergency rule on May 27, 2020 as WAC 314-55-1065 under WSR 20-12-035, prohibiting the sale of vitamin E acetate.

Emergency amendments concerning WAC 314-55-077 and -079 were adopted on May 27, 2020 allowing the Board to take disciplinary action against any licensed marijuana processor or marijuana retailer failing to comply with the provisions of WAC 314-55-1065. These emergency amendments were extended on September 16, 2020 and on January 6, 2021.

On April 28, 2021, the Board rescinded its emergency prohibition of vitamin E acetate. Since the SBOH prohibition was permanent, the emergency rule was no longer needed. The Board also rescinded emergency amendments to WAC 314-55-077 and -079 referencing WAC 314-55-1065.

Following this, the Board filed new emergency amendments to WAC 314-55-077 and -079 referencing the permanent SBOH vitamin E acetate as WSR 21-10-044.

Consistent with RCW 69.50.342(1)(m), the Board is authorized to 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 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.

Rules regarding the Board's ability to take disciplinary action against any licensed marijuana processor or retailer failing to comply with prohibition of the use of vitamin E acetate are necessary to provide enforcement continuity of WAC 246-80-021 concerning the permanent prohibition of vitamin E acetate.

**Rulemaking history for this adopted rule:**

**CR 101** – filed March 31, 2021 as WSR #21-08-035.

**CR 102** – filed May 26, 2021 as WSR #21-12-052.

Public hearing held July 7, 2021.

**The effective date of these rules is August 21, 2021.**

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**Public comment received on the rule proposal:**

There were no public comments received on the proposed rules.

**Changes from Proposed Rules (CR-102) to the Rules as Adopted:**

There were no changes to the proposed rules.



## CR 102 Memorandum

### **Rules Concerning Marijuana Processor and Marijuana Retailer Compliance with Washington State Board of Health Prohibition of vitamin E acetate.**

Date: March 26, 2021  
Presented by: Kathy Hoffman, Policy and Rules Manger

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#### **Background**

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

#### *EVALI Outbreak*

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.

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#### *LCB Response*

Consistent with the statutory authority provided to the Board by House Bill (HB) 2826 (Chapter 133, Laws of 2020) concerning marijuana vapor products, now codified in RCW 69.50.101, RCW 69.50.327, RCW 69.50.342, and upon the determination of the SBOH that vitamin E acetate is a drug of concern and should be prohibited, the Board adopted an emergency rule on May 27, 2020 as WAC 314-55-1065 under WSR 20-12-035, prohibiting the sale of vitamin E acetate.

Emergency amendments concerning WAC 314-55-077 and -079 were adopted on May 27, 2020 allowing the Board to take disciplinary action against any licensed marijuana processor or marijuana retailer failing to comply with the provisions of WAC 314-55-1065. These emergency amendments were extended on September 16, 2020 and on January 6, 2021.

On April 28, 2021, the Board rescinded its emergency prohibition of vitamin E acetate. Since the SBOH prohibition was permanent, the emergency rule was no longer needed. The Board also rescinded emergency amendments to WAC 314-55-077 and -079 referencing WAC 314-55-1065.

Following this, the Board filed new emergency amendments to WAC 314-55-077 and -079 referencing the permanent SBOH vitamin E acetate as WSR 21-10-044.

## Stakeholder Engagement

Emergency rules allowing the Board to take action if a licensed marijuana producer or retailer sells a product containing vitamin E acetate have been in place continuously for a year. There have been no petitions to rescind the emergency rules, and no comment has been received regarding these rules. For these reasons, the agency did not host any virtual Listen and Learn sessions regarding the substance of these proposed rules.

## Estimated Costs of Compliance

Agencies are required to consider costs **imposed** on business and costs associated with compliance with proposed rules. Agencies are **not** required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Fines, penalties, or defense costs associated with enforcement actions for failure to comply with the proposed rules are considered to be indirect costs that are not associated with compliance. As a result, these costs were not analyzed. However, an analysis of potential administrative costs was conducted, and is described more fully in the CR 102 form. That analysis indicates that these rules are not anticipated to result in more than minor costs on businesses as defined in RCW 19.85.020(2).

## Rule Necessity

Consistent with RCW 69.50.342(1)(m), the Board is authorized to 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 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.

Emergency rules regarding the Board's ability to take disciplinary action against any licensed marijuana processor or retailer failing to comply with prohibition of the use of vitamin E acetate have been in place continuously since May 27, 2020. The proposed rule amendments are necessary to provide permanent, rather than temporary enforcement continuity of WAC 246-80-021 concerning the permanent prohibition of vitamin E acetate.

## Description of Rule Changes

**Amended section. WAC 314-55-077:** The proposed rule amendment would allow the Board to take disciplinary action against any licensed marijuana processor for failing to comply with the provisions of WAC 246-80-021 concerning the sale of vitamin E acetate.

**Amended section. WAC 314-55-079:** The proposed rule amendment would allow the Board to take disciplinary action against any licensed marijuana processor for failing to comply with the provisions of WAC 246-80-021 concerning the sale of vitamin E acetate.