



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – WAC [S/C] 70.345.030(4).

Date: April 26, 2023

Presented by: Dr. Kathy Hoffman, Policy & Rules Manager

Background

On March 20, 2023, Mr. Chris Girard of Cultiva Law LLC submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC [sic] 70.345.030(4) to add the word “vapor” to the section’s introductory sentence.

In the rule petition, Mr. Girard provides:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: WAC 70.345.030(4)

I am requesting the following change: Add the word "Vapor" to the section to read as follows: (4) No person engaged in or conducting business as a retailer, distributor, or delivery seller in this state may sell or give, or permit to sell or give, a [VAPOR] product that contains any amount of any

This change is needed because: Many enforcement officers are pulling otherwise lawful hemp products from "smoke shop" retailer shelves, harming their business. Topical lotions, THC free and/otherwise compliant tinctures, and raw hemp products that are not isomer products are being

The effect of this rule change will be: Clarifying that non-intoxicating cannabinoids, such as CBD, may be sold by these smokeshop owners, to clarify that selling cannabinoid vapor products is still prohibited

The rule is not clearly or simply stated: This rule is creating confusion. There was never an intent to ban CBD lotions or lawful hemp products from being sold by retailers.

Mr. Girard did not offer any additional information in the email or the petition.

Issue

Whether the Board should initiate rulemaking to consider amending WAC [S/C] 70.345.030(4) to add the word “vapor.”

Authority

Laws

[RCW 70.345.020](#) describes the Board’s general rulemaking authority concerning vapor product retailer, distributor, and delivery sale licenses.

[RCW 70.345.090](#) describes the Board’s rulemaking authority concerning vapor product mail or internet sales.

Rules

[Chapter 314-35 WAC](#) provides rules that apply in addition to requirements regarding the manufacturers, delivery sales, and retail sellers of vapor products as provided in chapter [70.345](#) RCW.

Analysis

The Board has statutory authority under RCW 70.345.020 to adopt rules concerning vapor product retailer, distributor, and delivery sale licenses. The Board has developed those rules, consistent with that authority, in chapter 314-35 WAC.

The petitioner requests that the Board amend a regulation, WAC [*sic*] 70.345.330, that does not exist, and language that does not exist in rule.

Currently, there are three sections of chapter 314-35 WAC that reference **RCW 70.345.030** as follows

- WAC 314-35-055(1) concerning seizure of cannabinoid vapor products, as follows:
 - Any vapor product given or offered for sale containing cannabinoids is prohibited by RCW 70.345.030.
- WAC 314-35-075 describing Category I violations:
 - Obstruction: Misrepresentation of fact; not permitting physical presence. RCW **70.345.030**(2)
 - Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. RCW **70.345.030**
- WAC 314-35-080 describing Category II violations:
 - Operating without a valid license. RCW **70.345.030**

Rather, the language that the petitioner refers to is located in [RCW 70.345.030\(4\)](#) and provides,

“No person engaged in or conducting business as a retailer, distributor, or delivery seller in this state may sell or give, or permit to sell or give, a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. A violation of this subsection (4) is punishable according to RCW **69.50.401**.”

The petitioner suggests that by its rulemaking authority, the Board amend a *statute*, RCW 70.345.030(4) as follows:

“No person engaged in or conducting business as a retailer, distributor, or delivery seller in this state may sell or give, or permit to sell or give, a **vapor** product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. A violation of this subsection (4) is punishable according to RCW [69.50.401](#).”

The ability to adopt, amend or repeal the Revised Code of Washington (RCW) is a function of the Washington State Legislature conferred by way of the Washington State Constitution. The ability to adopt, amend or repeal Washington Administrative Code (WAC) pertaining to liquor, cannabis, vapor and tobacco products is a function of the Washington State Liquor and Cannabis Board, conferred by way of the Washington State Legislature. The rulemaking process is described in the Washington Administrative Procedures Act ([chapter 34.05 RCW](#)). The Washington State Liquor and Cannabis Board does not have the authority to adopt, amend or repeal RCW through rulemaking.

Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts

Divisional

Licensing

Licensing concurs with the summary contained in this document.

Education & Enforcement

Education & Enforcement concurs with the summary contained in this document.

Finance

The Finance division did not identify any impacts.

Information Technology/Infrastructure

The IT division did not identify any impacts.

Public Health/Prevention

The Public Health/Prevention Liaison did not identify any impacts.

Interagency

Department of Health

The requested rule revision would not impact Department of Health operations, rules or standards.

Labor & Industries

The requested rule revision would not impact Department of Labor & Industries operations, rules or standards.

Intergovernmental

Tribes

The Tribal Liaison did not identify any impacts.

DEIB, Social Equity

The Board does not have the authority to amend a Washington state statute through rulemaking. For that reason, it is not necessary for the Board to determine whether this petition for rulemaking has any DEIB or social equity impacts.

Options

Option 1: Deny the petition. The Board does not have the statutory authority to amend a Washington state statute by rule.

Board Action

After considering the option identified by Director’s Office staff, the Board accepts/denies the petition for rulemaking received on March 20, 2023, from Mr. Chris Girard.

_____ Accept _____ Deny

David Postman, Chair

Date

_____ Accept _____ Deny

Ollie Garrett, Board Member

Date

_____ Accept _____ Deny

Jim Vollendroff, Board Member

Date

Attachments

1. Email from Mr. Girard
2. Laws and Rules cited under the “Authority” section above.
3. RCW 70.345.030