



Washington State Liquor and Cannabis Board

Topic: Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – (WAC 314-35-075 Category I— Violations that create a direct or immediate threat to public health, safety, or both.)

Date: June 21, 2023

Presented by: Daniel Jacobs, Policy and Rules Coordinator

Background

On April 26, 2023, Chris Girard of Cultiva Law, submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-35-075 to insert the word “vapor” in front of an instance of the word “product” to clarify that it refers to a “vapor product.”

In the rule petition, Chris Girard stated:

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

List rule number (WAC), if known: WAC 314-35-075 Describing Category I violations

- I am requesting the following change: Addition of the word "Vapor" to clarify the section: Sell, 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.
- This change is needed because: Many enforcement officers are pulling lawful hemp products from "smoke shop" retailer shelves, harming their business and causing much confusion. Sale of non-vaporized items such as those containing CBD products are agricultural products
- The effect of this rule change will be: Clarification for officers, and a clear line allowing non-vaporized, non-intoxicating hemp products, such as topicals, and other CBD products to be sold at retailers. clarify that selling cannabinoid vapor products is in the Category 1 penalty
- 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 general retailers. WAC 314-55-055 plainly speaks to this, and completely defining the Violation Type will harmonize the current laws,

In a follow-up email to the rule petition later the same day, Chris Girard further stated:

However, the last section should read :This rule is creating confusion. There was never an intent to ban CBD lotions or lawful hemp products from being sold by general retailers. WAC 314-55-055 plainly speaks to this, and completely defining the Violation Type will harmonize the current laws, remove confusion, and comply with the definitions within SB 5367

Issue

Whether the Board should initiate the rulemaking process to consider amending WAC 314-35-075 to insert the word “vapor” before the word “product” to clarify that this refers to a “vapor product.”

Authority

Laws

[RCW 69.50.575](#) states that Cannabis health and beauty aids are not subject to the regulations and penalties of this chapter that apply to cannabis, cannabis concentrates, or cannabis-infused products. The statute also defines the term “cannabis health and beauty aids” to mean a product containing parts of the cannabis plant, and which:

- (a) Is intended for use only as a topical application to provide therapeutic benefit or to enhance appearance;
- (b) Contains a THC concentration of not more than 0.3 percent;
- (c) Does not cross the blood-brain barrier; and
- (d) Is not intended for ingestion by humans or animals.

[RCW 70.345.010](#)(18) provides that ““Vapor product” means any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance.

- (a) "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.
- (b) "Vapor product" does not include any product that meets the definition of cannabis, useable cannabis, cannabis concentrates, cannabis-infused products, cigarette, or tobacco products.
- (c) For purposes of this subsection (18), "cannabis," "useable cannabis," "cannabis concentrates," and "cannabis-infused products" have the same meaning as provided in RCW [69.50.101](#).

[RCW 70.345.020](#)(1) authorizes the Board to issue a vapor product retailer, distributor and delivery sale license. Section 2 authorizes the Board to adopt rules regarding the regulation of the licenses.

[RCW 70.345.030](#)(4) provides that 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](#).

Rules

[WAC 314-35-010](#) states that [t]his chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, delivery sales, and retail sellers of vapor products provided in chapter [70.345](#) RCW. Penalties for violations of this chapter and for violations of chapter [70.345](#) RCW are provided in chapter [70.345](#) RCW.

[WAC 314-35-055](#) regarding seizure of cannabinoid vapor products provides that

- (1) Any vapor product given or offered for sale containing cannabinoids is prohibited by RCW [70.345.030](#).
- (2) Any vapor product offered for sale that is labeled or marketed as containing cannabinoid, synthetic cannabinoid, cathinone, or methcathinone may be seized without a warrant by an agent of the board and subject to forfeiture.
- (3) It is prima facie evidence that the vapor product contains a cannabinoid if the packaging or labeling in which it is offered for sale contains language or depictions that the product is or contains a cannabinoid.

[WAC 314-35-070](#) identifies the penalty structure as follows:

- (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:
 - (a) Category I: Violations that create a direct or immediate threat to public health, safety, or both;
 - (b) Category II: Violations that create a potential threat to public health, safety, or both; and
 - (c) Category III: Regulatory violations.
- (2) For purposes of assessing penalties, only violations occurring in the three-year time period immediately preceding the date of the violation will be considered unless otherwise provided in the chapter.
- (3) The board may, at its discretion, deviate from the prescribed penalties herein consistent with RCW [70.345.180](#). Such deviations will be determined on a case-by-case basis, considering mitigating or aggravating factors.
 - (a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a vapor products license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

[WAC 314-35-075](#) provides the following chart of violations identified as Category I because they create a direct or immediate threat to public health, safety, or both:

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one, allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. RCW 26.28.080 RCW 70.345.100 WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
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 314-35-055	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty

[WAC 314-55-055](#) relates to cannabis retailer license forfeiture.

Analysis

The Board has statutory authority under RCW 70.345.020 to issue three types of vapor product licenses (retailer, distributor and delivery sale), and to adopt rules regarding the regulation of these licenses. The Board's regulations regarding vapor products are contained in WAC 314-35.

Consistent with this statutory authority, the board promulgated a structure for penalties identified in WAC 314-35-070, determining the penalty amount based on the severity of the violation in question, which in turn is categorized from most serious (Category I) and decreasing in severity. Category I violations are identified in WAC 314-35-075. This is similar in structure to the penalties that have been established in rules for alcohol (See [WAC 314-29](#)) and for cannabis (See [WAC 314-55-509](#); [WAC 314-55-520](#) through [314-55-525](#)).

WAC 314-55-075 identifies a particular category of violation by referring to products that create an immediate or direct threat to public health, safety, or both. The violation that Mr. Girard refers to is identified as "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." Mr. Girard states that the use of the term "product" is insufficiently specific resulting in enforcement officers pulling non-vapor products such as topicals and lawful non-intoxicating hemp products from the shelves.

Regarding topicals specifically, RCW 69.50.575 specifically exempts cannabis health and beauty aids ("CHABA") from the rules and regulations of 69.50, and therefore, any removal of CHABA products from shelves would not be contemplated under RCW 69.50. However, it is less clear whether CHABA can be removed under RCW 70.345, which are the relevant statutes here.

RCW 70.345.030(4) prohibits a vapor licensee from selling, giving, or permitting the sale or gifting of any *product* containing any cannabinoid, synthetic cannabinoid, cathinone or methcathinone. (Emphasis added). The definition of "vapor product" in RCW 70.345.010(18) notably does not include the term "product" as synonymous with "vapor product." Thus, the word "product" appears in the statutory scheme of RCW 70.345 to be intentionally broader than "vapor product."

The specific part of WAC 314-35-075 that Mr. Girard is requesting to amend cites to RCW 70.345.030, and as such, the use of the term "product" as opposed to "vapor product" in both instances is reasonably connected. To amend the word "product" to "vapor product" in WAC 314-35-075 may impermissibly limit the scope of RCW 70.345.030(4), which the Board is not authorized to do.

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

Divisional

Licensing – no additional feedback.

Enforcement & Education

Enforcement & Education Division agrees that further defining the term “product” in WAC 314-35-075 to “vapor product” would narrow the scope of the regulation beyond that intended by its corresponding statute, RCW 70.345.030(4). The statute would need to be amended along with the rule.

Finance – no additional feedback.

Information Technology/Infrastructure – no additional feedback.

Public Health/Prevention

It is agreed that adding the term “vapor” narrows the scope of the regulation further than what is found in the corresponding statute. Additionally, many types of retail outlets hold tobacco and vapor licenses, and some of these outlets have been found to carry products other than vapor products that contain hemp-derived THC and are intoxicating. Limiting the regulation in this way would hinder the ability of the LCB to seize these products. Changing the regulation requires a change in statute that needs to provide more specificity than just adding the word “vapor.”

Interagency

Department of Health

This proposed rulemaking would not appear to intersect with the Department of Health.

Labor & Industries

This proposed rulemaking would not appear to intersect with the Department of Labor & Industries.

Intergovernmental

Tribes

While this rulemaking does not appear to intersect with tribal governments specifically, any change to what vapor licensees are permitted to do might impact vapor licensees that are on tribal land.

DEIB, Social Equity

From: [Chris Girard](#)
To: [LCB DL Rules](#)
Subject: Proposed Rule Change
Date: Wednesday, April 26, 2023 2:27:03 PM
Attachments: [PETITION FOR ADOPTION.doc.pdf](#)

External Email

Please find the attached rule change. I am not certain that the entire fields will show on your side. Please let me know if this is the case, and I can supplement. This is a copy of a formerly submitted, however the wrong rule was cited previously as an RCW rather than a WAC. Deepest apologies for this former oversight.

Thank you,
-Chris

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PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name Christopher Girard
Name of Organization Cultiva Law, PLLC
Mailing Address 23510 western ave #500
City seattle State wa Zip Code 98121
Telephone 2063555527 Email chris@culturalaw.com

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Washington State Liquor and Cannabis Board

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is: _____

The rule is needed because: _____

The new rule would affect the following people or groups: _____

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

List rule number (WAC), if known: WAC 314-35-075 Describing Category I violations

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3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

- It does not do what it was intended to do.
- It is no longer needed because: _____
- It imposes unreasonable costs: _____
- The agency has no authority to make this rule: _____
- It is applied differently to public and private parties: _____
- It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____
- It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____
- Other (please explain): _____

From: [Chris Girard](#)
To: [Jacobs, Daniel \(LCB\)](#)
Cc: [LCB DL Rules](#)
Subject: Re: Proposed Rule Change
Date: Wednesday, April 26, 2023 3:45:37 PM

External Email

Hello,

Thank you for letting me know. I was hoping you had the ability to scroll on your end.

For the section you referenced. the ag products is the end.

However, the last section should read :This rule is creating confusion. There was never an intent to ban CBD lotions or lawful hemp products from being sold by general retailers. WAC 314-55-055 plainly speaks to this, and completely defining the Violation Type will harmonize the current laws, remove confusion, and comply with the definitions within SB 5367

Thank you

-Chris

On Wed, Apr 26, 2023 at 3:16 PM Jacobs, Daniel (LCB) <daniel.jacobs@lcb.wa.gov> wrote:

Dear Mr. Girard:

Thank you for your petition to adopt, amend, or repeal state administrative rules.

Your petition was received today, April 26, 2023. Consistent with RCW 34.05.330 and WAC 82-05-040, the Board has 60 days after submission of a rulemaking petition to either:

(a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or

(b) initiate rule-making proceedings in accordance with RCW 34.05.320.

The Board will have until June 25, 2023, to take action as detailed above.

Additionally, sometimes it is hard for us to tell whether or not we have received the entire included text on the petition form. I will forward you the form we received under separate cover, and if there is additional text that you meant to include, you can provide it at that time and I will be sure to attach it so that your petition is presented as intended.

Please reach out to me if you have any additional questions or concerns.

Sincerely,

Daniel Jacobs *(he/him/his)*

Policy & Rules Coordinator

Washington State Liquor and Cannabis Board

Daniel.jacobs@lcb.wa.gov

Mobile: (360) 480-1238



**Washington State
Liquor and Cannabis Board**

DISCLAIMER: The information provided above does not, and is not intended to, constitute legal advice; instead, all information, content, and materials included are done so in the scope of my employment as Policy & Rules Coordinator with the Washington State Liquor & Cannabis Board (LCB).

From: Chris Girard <chris@cultivalaw.com>

Sent: Wednesday, April 26, 2023 2:26 PM

To: LCB DL Rules <rules@lcb.wa.gov>

Subject: Proposed Rule Change



External Email

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Thank you,

-Chris

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RCW 69.50.575 Cannabis health and beauty aids. (1) Cannabis health and beauty aids are not subject to the regulations and penalties of this chapter that apply to cannabis, cannabis concentrates, or cannabis-infused products.

(2) For purposes of this section, "cannabis health and beauty aid" means a product containing parts of the cannabis plant and which:

(a) Is intended for use only as a topical application to provide therapeutic benefit or to enhance appearance;

(b) Contains a THC concentration of not more than 0.3 percent;

(c) Does not cross the blood-brain barrier; and

(d) Is not intended for ingestion by humans or animals. [2022 c 16 § 110; 2015 2nd sp.s. c 4 § 701.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

RCW 70.345.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the Washington state liquor and cannabis board.

(2) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing vapor products in this state.

(3) "Child care facility" has the same meaning as provided in RCW 70A.320.020.

(4) "Closed system nicotine container" means a sealed, prefilled, and disposable container of nicotine in a solution or other form in which such container is inserted directly into an electronic cigarette, electronic nicotine delivery system, or other similar product, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

(5) "Delivery sale" means any sale of a vapor product to a purchaser in this state where either:

(a) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the internet or other online service; or

(b) The vapor product is delivered by use of the mails or of a delivery service. The foregoing sales of vapor products constitute a delivery sale regardless of whether the seller is located within or without this state. "Delivery sale" does not include a sale of any vapor product not for personal consumption to a retailer.

(6) "Delivery seller" means a person who makes delivery sales.

(7) "Distributor" has the same meaning as in RCW 82.25.005.

(8) "Liquid nicotine container" means a package from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold soluble nicotine in any concentration. "Liquid nicotine container" does not include closed system nicotine containers.

(9) "Manufacturer" means a person who manufactures and sells vapor products.

(10) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(11) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale.

(12) "Playground" means any public improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, including but not limited to any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

(13) "Retail outlet" means each place of business from which vapor products are sold to consumers.

(14) "Retailer" means any person engaged in the business of selling vapor products to ultimate consumers.

(15) (a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(b) The term "sale" includes a gift by a person engaged in the business of selling vapor products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(16) "School" has the same meaning as provided in RCW 70A.320.020.

(17) "Self-service display" means a display that contains vapor products and is located in an area that is openly accessible to customers and from which customers can readily access such products without the assistance of a salesperson. A display case that holds vapor products behind locked doors does not constitute a self-service display.

(18) "Vapor product" means any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance.

(a) "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(b) "Vapor product" does not include any product that meets the definition of cannabis, useable cannabis, cannabis concentrates, cannabis-infused products, cigarette, or tobacco products.

(c) For purposes of this subsection (18), "cannabis," "useable cannabis," "cannabis concentrates," and "cannabis-infused products" have the same meaning as provided in RCW 69.50.101. [2022 c 16 § 135; 2021 c 65 § 69. Prior: 2019 c 445 § 210; 2019 c 15 § 4; 2016 sp.s. c 38 § 4.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Effective date—2019 c 15: See note following RCW 26.28.080.

Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.

RCW 70.345.020 Types of licenses—Applications—License

expiration and display. (1) The licenses issuable by the board under this chapter are as follows:

- (a) A vapor product retailer's license;
- (b) A vapor product distributor's license; and
- (c) A vapor product delivery sale license.

(2) Application for the licenses must be made through the business licensing system under chapter 19.02 RCW. The board may adopt rules regarding the regulation of the licenses. The board may refuse to issue any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license, retailer's license, or delivery seller's license, and for considering the denial, suspension, or revocation of any such license, the board may consider criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board may, in its discretion, issue or refuse to issue the retailer's license, distributor's license, and delivery sale license subject to the provisions of RCW 70.155.100.

(3) The application processes for the retailer license and the distributor license, and any forms used for such processes, must allow the applicant to simultaneously apply for a delivery sale license without requiring the applicant to undergo a separate licensing application process in order to be licensed to conduct delivery sales. However, a delivery sale license obtained in conjunction with a retailer or distributor license under this subsection remains a separate license subject to the delivery sale licensing fee established under this chapter.

(4) No person may qualify for a retailer's license, distributor's license, or delivery sale license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24, 69.50, 82.24, or 82.26 RCW, the background check done under the authority of chapter 66.24, 69.50, 82.24, or 82.26 RCW satisfies the requirements of this subsection.

(5) Each license issued under this chapter expires on the business license expiration date. The license must be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board adopted pursuant to this chapter.

(6) Each license and any other evidence of the license required under this chapter must be exhibited in each place of business for which it is issued and in the manner required for the display of a business license. [2016 sp.s. c 38 § 5.]

Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28: "(1) Sections 5 through 10 and 28 of this act take effect thirty days after the Washington state liquor and cannabis board prescribes the form for an application for a license required under section 6 of this act.

(2) The Washington state liquor and cannabis board must provide written notice of the effective date of sections 5 through 10 and 28 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department." [2016 sp.s. c 38 § 32.] Written notice of the effective date, August 1, 2016, for sections 5 through 10 and 28, chapter 38, Laws of 2016 sp.s. required by section 32, chapter 38, Laws of 2016 sp.s. was provided by the liquor and cannabis board to the office of the code reviser on June 27, 2016.

RCW 70.345.030 License required—Must allow inspections—Sale of certain substances prohibited—Penalties. (1) (a) No person may engage in or conduct business as a retailer, distributor, or delivery seller in this state without a valid license issued under this chapter, except as otherwise provided by law. Any person who sells vapor products to ultimate consumers by a means other than delivery sales must obtain a retailer's license under this chapter. Any person who meets the definition of distributor under this chapter must obtain a distributor's license under this chapter. Any person who conducts delivery sales of vapor products must obtain a delivery sale license.

(b) A violation of this subsection is punishable as a class C felony according to chapter 9A.20 RCW.

(2) No person engaged in or conducting business as a retailer, distributor, or delivery seller in this state may refuse to allow the enforcement officers of the board, on demand, to make full inspection of any place of business or vehicle where any of the vapor products regulated under this chapter are sold, stored, transported, or handled, or otherwise hinder or prevent such inspection. A person who violates this subsection is guilty of a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, any person licensed under this chapter as a retailer, and any person licensed under this chapter as a delivery seller may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection is a misdemeanor.

(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 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.

(5) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter. [2019 c 445 § 211; 2016 sp.s. c 38 § 6.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28: See note following RCW 70.345.020.

WAC 314-35-010 Vapor products—Introduction. This chapter provides rules that apply in addition to those requirements regarding the manufacturers, distributors, delivery sales, and retail sellers of vapor products provided in chapter 70.345 RCW. Penalties for violations of this chapter and for violations of chapter 70.345 RCW are provided in chapter 70.345 RCW.

[Statutory Authority: Chapter 70.345 RCW, RCW 82.24.250, 82.32.300, and 2019 c 15 and 2019 c 445. WSR 20-01-074, § 314-35-010, filed 12/11/19, effective 1/1/20. Statutory Authority: RCW 70.345.020 and 70.345.090. WSR 16-23-088, § 314-35-010, filed 11/16/16, effective 12/17/16.]

WAC 314-35-055 Seizure of cannabinoid vapor products. (1) Any vapor product given or offered for sale containing cannabinoids is prohibited by RCW 70.345.030.

(2) Any vapor product offered for sale that is labeled or marketed as containing cannabinoid, synthetic cannabinoid, cathinone, or methcathinone may be seized without a warrant by an agent of the board and subject to forfeiture.

(3) It is prima facie evidence that the vapor product contains a cannabinoid if the packaging or labeling in which it is offered for sale contains language or depictions that the product is or contains a cannabinoid.

[Statutory Authority: Chapter 70.345 RCW, RCW 82.24.250, 82.32.300, and 2019 c 15 and 2019 c 445. WSR 20-01-074, § 314-35-055, filed 12/11/19, effective 1/1/20.]

WAC 314-35-070 Penalty structure. (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:

(a) Category I: Violations that create a direct or immediate threat to public health, safety, or both;

(b) Category II: Violations that create a potential threat to public health, safety, or both; and

(c) Category III: Regulatory violations.

(2) For purposes of assessing penalties, only violations occurring in the three-year time period immediately preceding the date of the violation will be considered unless otherwise provided in the chapter.

(3) The board may, at its discretion, deviate from the prescribed penalties herein consistent with RCW 70.345.180. Such deviations will be determined on a case-by-case basis, considering mitigating or aggravating factors.

(a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a vapor products license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

[Statutory Authority: Chapter 70.345 RCW, RCW 82.24.250, 82.32.300, and 2019 c 15 and 2019 c 445. WSR 20-01-074, § 314-35-070, filed 12/11/19, effective 1/1/20.]

WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.

Category I: Violations that create a direct or immediate threat to public health, safety, or both.

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one, allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. RCW 26.28.080 RCW 70.345.100 WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
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 314-35-055	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty

[Statutory Authority: Chapter 70.345 RCW, RCW 82.24.250, 82.32.300, and 2019 c 15 and 2019 c 445. WSR 20-01-074, § 314-35-075, filed 12/11/19, effective 1/1/20.]

WAC 314-55-055 Cannabis retailer license forfeiture. (1)(a) A cannabis retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after 12 months of issuance of the license. No cannabis retailer's license is subject to forfeiture within the first nine months of issuance.

(b) Fully operational means the business meets the following criteria for at least 12 consecutive weeks within a 12-month period after issuance of the license:

(i) The business is open to the public for a minimum of five hours a day between the hours of 8:00 a.m. and 12:00 midnight, three days a week;

(ii) The business posts hours of operation outside of the premise in the public view; and

(iii) The business reports monthly sales from the sale of cannabis products and pays applicable taxes.

(2) A cannabis retailer's license will not be subject to forfeiture if the licensee is not able to open a fully operational retail cannabis business based on actions by the city, town, or county with jurisdiction over the licensed business including:

(a) The adoption of a ban or moratorium that prohibits the retail cannabis business from opening; or

(b) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed cannabis retailer from becoming operational.

(3) Exceptions to license forfeiture.

(a) The board has the sole discretion to grant exceptions to the license forfeiture process if a cannabis retailer licensee experiences circumstances that are out of their control such as a natural disaster.

(b) Sufficient documentation is required to verify any of the exceptions to license forfeiture in this section. Licensees must inform the board if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

(c) If the underlying condition exempting a cannabis retail license from forfeiture under subsection (2) of this section or (a) of this subsection is removed, then the 12-month time frame to become fully operational and open to the public requirement under subsection (1) of this section will begin from the time the condition exempting the retail license from forfeiture is removed.

(4) A cannabis retail licensee who receives a notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than 20 days after service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 1025 Union Avenue S.E., Olympia, WA 98504, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 1025 Union Avenue S.E., Olympia, WA 98504.

[Statutory Authority: RCW 69.50.335, 69.50.336, 69.50.342, and 2022 c 16. WSR 22-21-058, § 314-55-055, filed 10/12/22, effective 11/12/22.

Statutory Authority: RCW 69.50.325, 69.50.342, and 69.50.345. WSR 18-12-046, § 314-55-055, filed 5/30/18, effective 6/30/18.]