



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

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FILED

DATE: November 28, 2018

TIME: 10:21 AM

WSR 18-24-031

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

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 18-09-116 ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Vapor Product rules in chapter 314-35 WAC as follows: WAC 314-35-015 Definitions, 314-35-020 Vapor product licenses required-Licensing requirements, denials, suspensions, and revocations, 314-35-027 What persons or entities have to qualify for a vapor product license, 314-35-040 Sage-restricted vapor products retailer licensed locations, 314-35-050 Vapor product license suspensions, 314-35-130 Group 1 violations against public safety, 314-35-140 Group 2 regulatory violations, 314-35-150 Group 3 license violations

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
January 9, 2019	10:00 am	3000 Pacific Ave SE, Olympia, WA 98504	

**Date of intended adoption:** January 23, 2019 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Karen McCall

Address: 3000 Pacific Ave SE, Olympia, WA 98504

Email: rules@lcb.wa.gov

Fax: 360-664-9689

Other:

By (date) January 20, 2019

**Assistance for persons with disabilities:**

Contact Karen McCall

Phone: 360-664-1752

Fax: 360-664-9689

TTY:

Email: rules@lcb.wa.gov

Other:

By (date) January 9, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The new statutory framework for vapor products became effective on June 28, 2016, and was codified in chapter 70.345 RCW. The WSLCB engaged in rulemaking to implement the new statutory framework for vapor products passed by the Legislature later the same year. The board may adopt rules regarding the regulation of the licenses under RCW 70.345.020(2). WSLCB enforcement officers throughout the state of Washington have made contact at more than 1400 vapor product locations (licensed/unlicensed). Information gathered resulting from these contacts identified a need for changes to rules for vapor products licensees. Additional rulemaking is proposed to further refine and clarify existing requirements, as well as address other requirements needed as a result of what we have learned since the implementation of the new statutory and regulatory framework.

**Reasons supporting proposal:** Additional rules were needed to clarify legislation passed in 2016.

**Statutory authority for adoption:** RCW 70.C345.020 and 70.345.090

**Statute being implemented:** Chapter 70.345 RCW

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Washington State Liquor and Cannabis Board

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting: Coordinator	Karen McCall, Rules	3000 Pacific Ave SE, Olympia, WA	360-664-1752
Implementation: Director	Becky Smith, Licensing	3000 Pacific Ave SE, Olympia, WA	360-664-1615
Enforcement: Enforcement Chief	Justin Nordhorn,	3000 Pacific Ave SE, Olympia, WA	360-664-1726

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: There are no costs or reporting requirements to licensees

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |   |   |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** November 28, 2018

**Name:** Jane Rushford

**Title:** Chair

**Signature:**



NEW SECTION

**WAC 314-35-015 Definitions.** The following definitions apply to this chapter in addition to the definitions provided in RCW 70.345.010:

(1) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel upon which it is located. It is the place where a person intends to remain and where the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(2) "Manufacture" as defined in RCW 70.345.010, to include to make, modify, mix, process, label, repack, or relabel a vapor product substance.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-020 Vapor product licenses required—Licensing requirements, denials, suspensions, and revocations.**

(1) The vapor product license types are: Vapor product retailer's license, vapor product distributor's license, and vapor product delivery sale license. A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is required to perform the functions of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not the vapor product contains nicotine. A vapor product manufacturer must hold a vapor product distributor license if the manufacturer sells vapor products to persons other than ultimate consumers or is engaged in the business of selling vapor products in Washington state and brings or causes to be brought into this state from outside the state any vapor products for sale consistent with RCW 70.345.010 (7) and (9).

(2) A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license cannot be issued to a location that is a domicile.

(a) The Washington state liquor and cannabis board (WSLCB) will not approve any vapor product license for a location where WSLCB access without notice or cause is limited or to a mobile facility.

(b) Any vapor product license that is issued to a domicile or any other location inconsistent with this section in error will be revoked.

(3) A person or entity must meet certain qualifications as specified in this chapter and chapter 70.345 RCW to receive a vapor product license, and must continue to meet those qualifications to maintain the license.

(4) No more than one license of each vapor product license type may be issued at a single location.

(5) A licensed location must be separated from other vapor product businesses and not accessible through neighboring businesses.

(6) For the purpose of reviewing an initial or renewal application for a vapor product license or considering the denial of a license application, the WSLCB may consider prior criminal conduct of the applicant and criminal history record within the five years prior

to the date the application is received by the WSLCB. The WSLCB uses the following point system to determine a person's qualification for a license. The WSLCB will not normally issue a vapor product license to a person or entity that has accumulated eight or more points as determined in (a) through (e) of this subsection. If a case is pending for an alleged offense that would earn eight or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the WSLCB may administratively close the application.

(a) Felony conviction within the five years immediately prior to application: Twelve points.

(b) Gross misdemeanor conviction for violation of chapter 82.24 or 82.26 RCW within the five years immediately prior to application: Twelve points.

(c) Other gross misdemeanor conviction within three years immediately prior to application: Five points.

(d) Misdemeanor conviction within three years immediately prior to application: Four points.

(e) Nondisclosure of any of the above: Four points each in addition to underlying points.

(7) For the purpose of reviewing an initial or renewal application for a vapor product license and considering the denial of a vapor product license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the WSLCB.

(8) The WSLCB may conduct a final inspection of the proposed licensed business to determine if the applicant has complied with all the requirements of the license requested.

(9) A license may not be transferred or relocated without prior approval by the WSLCB.

(a) A licensee must notify the WSLCB at least ten business days before any ownership changes or location changes of the licensed vapor products business. Failure to do so without applying for a separate license for a new location will be treated as operating without a license.

(b) A licensee that fails to notify the WSLCB prior to moving a location may be suspended until such time that the new location meets the conditions required for a vapor products license.

(c) Prior approval may be sought by contacting enforcement by email at [enfcustomerservice@lcb.wa.gov](mailto:enfcustomerservice@lcb.wa.gov) or by phone at 360-664-9878.

(10) As a condition of licensure, all vapor products licensees must:

(a) Keep premises where vapor products are stored, manufactured, and offered for sale in a clean and sanitary condition; and

(b) Label all packages and containers that contain nicotine with the nicotine content of the product until such time that the product is packaged and labeled in finished packaging for sale consistent with the packaging and labeling requirements in RCW 70.345.075.

(11) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted

under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

NEW SECTION

**WAC 314-35-027 What persons or entities have to qualify for a vapor product license.** A vapor product license must be issued in the name(s) of the true party(ies) of interest. The Washington state liquor and cannabis board (WSLCB) may conduct a financial investigation as well as a criminal background check of all true parties of interest listed on the license.

(1) True parties of interest. For purposes of this section:

<b>True Party of Interest</b>	<b>Persons To Be Qualified</b>
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> <li>• All general partners and their spouses.</li> <li>• All limited partners and spouses.</li> </ul>
Limited liability company	<ul style="list-style-type: none"> <li>• All members and their spouses.</li> <li>• All managers and their spouses.</li> </ul>
Privately held corporation	<ul style="list-style-type: none"> <li>• All corporate officers (or persons with equivalent title) and their spouses.</li> <li>• All stockholders and their spouses.</li> </ul>
Publicly held corporation	<p>All corporate officers (or persons with equivalent title) and their spouses.</p> <p>All stockholders and their spouses.</p>
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise. Financial institutions are not considered true parties of interest.	<p>Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year.</p> <p>Any entity or person who exercises control over the licensed business in exchange for money or expertise.</p> <p>For the purposes of this chapter:</p>

True Party of Interest	Persons To Be Qualified
	<ul style="list-style-type: none"> <li>• "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</li> <li>• "Net profit" means gross sales minus cost of goods sold.</li> </ul>
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) Persons who exercise control of business. The WSLCB may conduct an investigation of any person or entity who exercises any control over the applicant's or licensee's business operations. This may include a financial investigation and/or a criminal history background check.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

**WAC 314-35-040 Age-restricted vapor products retailer licensed locations.** (1) Age-restricted vapor products retailer licensed locations must register as such with the WSLCB by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the WSLCB in writing ten business days prior to a change in the age-restriction status. The appropriate form is available on the WSLCB web site.

(2) Holders of a vapor product retailer license where entry into the licensed premises is age-restricted to persons eighteen years of age or older must post signs provided by the WSLCB at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time during opening hours of the licensed vapor products retail establishment.

(3) All vapor product licensed locations that allow vapor product sampling as allowed under the requirements provided in RCW 70.345.100, must be restricted to persons age eighteen and over at all times.

NEW SECTION

**WAC 314-35-050 Vapor product license suspensions.** (1) The board may revoke or suspend a retailer, distributor, or delivery seller license issued under chapter 70.345 RCW and this chapter upon sufficient cause showing a violation of chapter 70.345 RCW or this chapter that qualifies for a suspension.

(2) Any retailer license issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section and RCW 70.345.170.

(3) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of two years of the license or licenses, unless the license was revoked pursuant to RCW 70.345.180 (2)(e). The license or licenses may be approved by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter.

(4) A person whose license has been suspended or revoked may not sell vapor products or permit vapor products to be sold during the period of suspension or after revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form. If the suspension or revocation involves licenses issued under chapter 82.24 or 82.26 RCW, the person is prohibited from selling cigarette and tobacco products consistent with WAC 314-34-020.

(5) On the date a vapor product license suspension goes into effect a WSLCB enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the WSLCB due to a violation of a WSLCB law or rule.

(6) During the period of vapor product license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable vapor product laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the WSLCB's suspension notice.

(7) During the period of vapor product license suspension:

(a) A vapor product licensee may not operate his/her business.

(b) There is no sale, delivery, service, consumption, manufacturing, removal, or receipt of vapor products.

(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as otherwise provided in this chapter or chapter



70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

(9) Any determination and order by the board, and any order of suspension or revocation by the board of the license issued under chapter 70.345 RCW or this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal in the superior court of Thurston County. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

NEW SECTION

**WAC 314-35-130 Group 1 violations against public safety.** Group 1 violations are considered the most serious because they present a direct threat to public safety. The Washington state liquor and cannabis board (WSLCB) may exceed penalties set forth in this section consistent with RCW 70.345.180 based on aggravating circumstances. The WSLCB may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter and chapter 70.345 RCW based on mitigating circumstances as provided in RCW 70.345.180(11).

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
<b>Allowing minors to frequent age-restricted vapor products retailer licensed locations.</b> WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month suspension	\$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years
<b>Sales to a minor by an unlicensed person.</b> RCW 70.345.180 (5) and (6)	\$50 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty	\$100 monetary penalty
<b>Failure to properly label vapor products.</b> RCW 70.345.075	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month suspension of the license	\$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years
<b>Prohibited vapor packaging.</b> RCW 70.345.130	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month suspension of the license	\$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years
<b>Possession of, sale, or offer for sale CBD vapor products or vapor products containing a cannabidiol.</b> RCW 70.345.030(4)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month suspension of the license	\$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years

NEW SECTION

**WAC 314-35-140 Group 2 regulatory violations.** Group 2 violations are violations involving general regulation and administration of vapor product licenses.

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
<b>Vapor products purchased from unlicensed source.</b> WAC 314-35-140	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 90-day license suspension	\$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years
<b>Records: Improper recordkeeping.</b> WAC 314-35-030	\$100 monetary penalty	\$300 monetary penalty	\$1,000 monetary penalty and a 30-day license suspension	\$3,000 monetary penalty and a 90-day license suspension	Revocation of license with no possibility of reinstatement for 5 years
<b>Signs: Failure to post required signs.</b> WAC 314-35-040 and/or RCW 70.345.070	\$100 monetary penalty	\$300 monetary penalty	\$1,000 monetary penalty and a 30-day license suspension	\$3,000 monetary penalty and a 90-day license suspension	Revocation of license with no possibility of reinstatement for 5 years
<b>Failure to register as age restricted.</b> WAC 314-35-040	\$100 monetary penalty	\$300 monetary penalty	\$1,000 monetary penalty and a 30-day license suspension	\$3,000 monetary penalty and a 90-day license suspension	Revocation of license with no possibility of reinstatement for 5 years

NEW SECTION

**WAC 314-35-150 Group 3 license violations.** Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
<b>True party of interest violation.</b> WAC 314-35-130 and/or RCW 70.345.020	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 90-day license suspension	\$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years
<b>Failure to furnish required documents.</b> WAC 314-35-030	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 90-day license suspension	\$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>	<b>5th Violation in a three-year window</b>
<b>Misrepresentation of fact.</b> WAC 314-35-020 and/or RCW 70.345.020	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 90-day license suspension	\$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years