



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: February 05, 2020

TIME: 12:18 PM

WSR 20-05-003

Agency: Washington State Liquor and Cannabis Board

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
- No
- If Yes, explain:

Purpose: WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees. The Washington State Liquor and Cannabis Board (Board) has adopted an emergency rule as WAC 314-55-079(14) that allows the Board to take disciplinary action against any licensed marijuana retailer failing to comply with the provisions of chapter 246-80 WAC concerning prohibition of the use of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 19-21-181 on October 23, 2019.

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: WAC 314-55-079
- Suspended:

Statutory authority for adoption: RCW 69.50.342; RCW 69.50.345.

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-181 on October 23, 2019, the reasons supporting the necessity for this rule are modified as follows:

On November 20, 2019, the Washington State Board of Health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- 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 lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine 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. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

Specifically, the SBOH emergency rule provides, in relevant part that, "...[n]o person including, but not limited to, a person licensed under chapter [69.50](#) or [70.345](#) RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

This emergency rule allows the Board to take disciplinary action against any licensed marijuana retailer that fails to comply with the provisions of the SBOH emergency rule described in chapter 246-80 WAC prohibiting the use of vitamin E acetate, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-079.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Washington State Board of Health (SBOH) rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health.

**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>1</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>1</u>	Repealed	___

Date Adopted: February 5, 2020

Signature:

Name: Jane Rushford

A handwritten signature in black ink, appearing to read "Jane Rushford", written in a cursive style.

Title: Chair

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. 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.

(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 chapter 246-80 WAC.