



CR 103E Memorandum

Emergency Rule Regarding Enforcement of WAC 314-55-1065 – Adding a New Section to WAC 314-55-079 – Marijuana retailer license – Privileges, requirements, and fees.

Date: September 16, 2020
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Issue:

The standards in this emergency rule have not changed from the previous emergency rule. House Bill (HB) 2826 (Chapter 133, Laws of 2020) concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the Board's rulemaking authority by adding a new section (m), providing that the Board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and 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 a determination by the Washington State 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.

On November 19, 2019 and March 19, 2020, and July 17, 2020, the Washington State Board of Health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] 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 multi-state outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths 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, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven 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 recommends that vitamin E acetate not be added to any vapor products.
- During the 2020 legislative session, the governor submitted request legislation (SB 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate the SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the Board by HB 2826, and upon the determination of the SBOH that vitamin E acetate is a drug of concern and should be banned, the Board adopted an emergency rule on May 27, 2020 as WAC 314-55-1065 under WSR 20-12-035 prohibiting the use of vitamin E acetate. That emergency rule has been extended.

Emergency rule WAC 314-55-1065(2) provides that:

No person, including but not limited to, a person licensed under chapter 69.50 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.

Reasons why rules are needed:

The extension of this emergency rule allows the Board to take disciplinary action, without interruption, against any licensed marijuana retailer that fails to comply with the provisions of extended emergency rule WAC 314-55-1065 prohibiting the use of vitamin E acetate consistent with the authority of chapter 69.50 RCW.

The Board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that provides uninterrupted enforcement of WAC 314-55-1065, and preserves public health, safety, and general welfare is necessary. Therefore, the immediate extension of this emergency rule concerning enforcement provisions for WAC 314-55-1065 that prohibits the use of vitamin E acetate is necessary.

Process:

Consistent with RCW 34.05.350, any agency may find that the 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. This rule change is exempt from the filing of a CR101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity, and posted to the Board's website.