



Washington State Liquor and Cannabis Board

To: David Postman, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Kathy Hoffman, Policy and Rules Manager

Date: September 15, 2021

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Policy and External Affairs Director
Becky Smith, Licensing and Regulation Director
Chandra Brady, Director of Enforcement and Education

Subject: Request for approval to rescind Board Interim Policy (BIP) 15-2019 concerning return of flavored marijuana vapor products by retailers to processors in exchange for credit.

On October 10, 2019, State Board of Health (SBOH) emergency rules codified in chapter 246-80 WAC became effective, prohibiting the sale of flavored vapor products by persons licensed under chapters 69.50 or 70.345 RCW, consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis. This prohibition created a financial liability for many marijuana licensees because existing LCB rule does not allow retailers to return prohibited products in exchange for credit to be used for future purchases of allowed products.

The purpose of BIP 15-2019 was to allow LCB licensed marijuana retailers, for a limited time, to return flavored marijuana concentrates for inhalation and flavored marijuana extracts for inhalation, as defined in chapter 246-80 WAC, to LCB licensed marijuana processors for credit against future purchases of marijuana products. LCB licensed marijuana processors could then grant credit to LCB licensed marijuana retailers for return of flavored marijuana concentrates for inhalation and flavored marijuana extracts for inhalation against future purchases of marijuana products.

BIP 15-2019 also provided that LCB licensed processors could accept prohibited vapor products and issue a refund, credit, or exchange of similar product, not to exceed the acquisition cost of the product being returned until December 31, 2019. A credit balance could be maintained for up to six months, until June 30, 2020. Records had to be maintained that clearly showed a detailed accounting of each transaction involving a return for refund, credit, or exchange, and a record of all expired credit had to be maintained. All records were required to comply with WAC 314-55-087.

BIP 15-2019 was designed to expire on December 31, 2019, and the Board reserved its discretion to extend or rescind BIP 15-2019 as necessary.

However, the SBOH did not renew emergency rules to extend the prohibition of flavored vapor products as described in chapter 246-80 WAC because it was determined by the CDC that flavored vapor products were not directly related to EVALI, but a particular additive - vitamin E acetate - was. Subsequent SBOH and LCB emergency rulemaking concerned prohibition of vitamin E acetate, and both the SBOH and LCB have engaged in and completed permanent rulemaking to address this additive. As a result, BIP 15-2019 is no longer necessary.

If the Board approves rescission of BIP 15-2019, the agency will send notice to stakeholders, and remove the BIP from the LCB website.

The Board approves/disapproves the rescission of BIP 15-2019.

☒ Approve ☐ Disapprove



David Postman, Chair

9.15.2021

Date

☒ Approve ☐ Disapprove



Ollie Garrett, Board Member

9.15.2021

Date

☐ Approve ☐ Disapprove

Not Present

Russ Hauge, Board Member

9.15.2021

Date



**Washington State
Liquor and Cannabis Board**

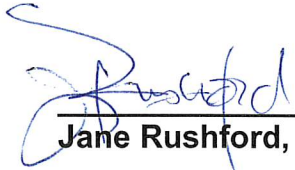
Liquor and Cannabis Board Interim Policy BIP-15-2019

Subject: Return of flavored marijuana vapor products by retailers to processors in exchange for credit.

Effective Date: October 30, 2019

Ending Date: December 31, 2019

Approved:



Jane Rushford, Board Chair



Ollie Garrett, Board Member



Russ Hauge, Board Member

Background:

On October 10, 2019, State Board of Health emergency rules codified at chapter 246-80 WAC became effective, prohibiting the sale of flavored vapor products by persons licensed under chapters 69.50 or 70.345 RCW, consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis.

On October 23, 2019, WSLCB emergency rules WAC 314-55-077 and 314-55-079 became effective, providing that the Board may take disciplinary action against any processor or retailer, respectively, failing to comply with the provisions of chapter 246-80 WAC. These emergency rules bridged the enforcement requirements of chapter 246-80 WAC with the authority of chapter 69.50 RCW.

The Board of Health emergency rule at chapter 246-80 WAC banning flavored marijuana vapor products has created a financial liability for many marijuana licensees. Current Board rules do not allow retailers to return the banned products in exchange for credit to be used for future purchase of allowed products.

Relevant statutes and rules:

- RCW 69.50.328 Marijuana producer processor – No direct or indirect financial interest in licensed marijuana retailers.

- WAC 314-55-018 Prohibited practices – Money advances – Contracts – Gifts – Rebates, discounts, and exceptions, etc.
- WAC 314-55-077(12) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.
- WAC 314-55-115 What method of payment can a marijuana licensee use to purchase marijuana?

Purpose:

The purpose of this interim policy is to allow, for a limited time, WSLCB licensed marijuana retailers to return flavored marijuana concentrates for inhalation and flavored marijuana extracts for inhalation, as defined in chapter 246-80 WAC, to WSLCB licensed marijuana processors for credit against future purchases of marijuana products.

Policy Statement:

Effective immediately, and retroactively to October 10, 2019, WSLCB licensed marijuana retailers may return flavored marijuana concentrates for inhalation and flavored marijuana extracts for inhalation, as defined in chapter 246-80 WAC, to WSLCB licensed marijuana processors for credit against future purchases of marijuana products.

WSLCB licensed marijuana processors may grant credit to WSLCB licensed marijuana retailers for return of flavored marijuana concentrates for inhalation and flavored marijuana extracts for inhalation, as defined in chapter 246-80 WAC, against future purchases of marijuana products.

WSLCB licensed processors may accept banned vapor products and issue a refund, credit, or exchange of similar product, not to exceed the acquisition cost of the product being returned, until December 31, 2019. A credit balance may be maintained for up to six months, until June 30, 2020. Records must be maintained that clearly show a detailed accounting of each transaction involving a return for refund, credit, or exchange. A record of all expired credit must also be maintained. All records must comply with WAC 314-55-087.

The Board reserves its discretion to extend or rescind BIP 15-2019 as necessary.