Washington State
Liquor and Cannabis Board

CR 101 Memorandum

Pre-proposal statement of inquiry (CR101) regarding WAC 314-55-077 – Marijuana processor license – Privileges, requirements and fees and WAC 314-55-079 – Marijuana retailer license – Privileges, requirements and fees

Date: March 31, 2021
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Background

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 e-cigarette or vaping associated lung injury (EVALI). In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multi-state outbreak. As of its final update on February 18, 2020, the CDC has identified two thousand eight hundred seven confirmed cases reported across fifty states, the District of Columbia, Puerto Rico and the US Virgin Islands, including sixty-eight deaths confirmed in twenty-nine states and the District of Columbia. Twenty-seven cases of EVALI, including two deaths, have been reported in Washington State.

As part of the investigation into the multistate outbreak of EVALI, the CDC conducted laboratory tests of forty-eight 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. A further study found ninety-four percent of EVALI patients tested had vitamin E acetate in the bronchoalveloar lavage but no samples from a health comparison group indicated evidence of vitamin E. Two samples showed presence of other toxicants (one each) in the EVALI group but did not provide sufficient evidence to identify another toxicant as the source of disease. The CDC has identified vitamin E acetate as a chemical strongly linked to EVALI and recommends that vitamin E acetate not be added to vapor products.

Based on these findings, the Washington State Board of Health adopted a permanent prohibition of vitamin E acetate on November 15, 2020 as WSR 20-23-006, codified in WAC 246-80-021.

Consistent with RCW 69.50.342(1)(m), the Board is authorized to prohibit any type of device used in conjunction with a marijuana vapor product and the prohibition of 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 consultation with the 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.

Reasons why rules are needed:

Based on its authority under RCW 69.50.342(1)(m), the Board prohibited use of vitamin E acetate by any person licensed under chapter 69.50 RCW by emergency rule WAC 314-55-1065 on September 16, 2020 as WSR 20-19-080, and by extension on January 6, 2021 as WSR 21-02-092. These amendments allow the Board to take disciplinary action against any licensed marijuana processor or retailer failing to comply with the provisions of WAC 314-55-1065.

The Washington State Board of Health (SBOH) also prohibited the use of vitamin E acetate by any person licensed under chapter 69.50 RCW by permanent rule on November 14, 2020 as WSR 20-23-006. Since the SBOH prohibition of vitamin E acetate is permanent, WAC 314-55-077 and WAC 314-55-079 should be updated to reference this permanent prohibition of vitamin acetate as described in WAC 246-80-021. Once references are updated, Board emergency rule WAC 314-55-1065 should be rescinded.

Process:

The rule making process begins by announcing LCB's intent to consider changes to existing rules, adding new rule sections, or both by filing a CR101 form with the Office of the Code Reviser. This allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing proposed rule changes.

At the CR101 stage of the rulemaking process, no proposed language is offered. Any interested party may comment on the subject of this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity pertaining to this preproposal inquiry. The notice will identify the public comment period and where comments can be sent.