

WSR 21-02-092
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 6, 2021, 11:38 a.m., effective January 6, 2021, 11:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-1065 Prohibition—Vitamin E acetate, the Washington state liquor and cannabis board (board) has adopted an emergency rule to extend WAC 314-55-1065 that prohibits the sale of vapor products containing vitamin E acetate. This 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 including by telephone or other method of voice transmission, the mail or any other delivery service, or the internet or other on-line service. This filing supersedes and replaces emergency rules filed as WSR 20-19-080 on September 16, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-1065.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.342, 69.50.345.

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.

Reasons for this Finding: The standards in this emergency rule have not changed from the previous emergency rule. HB 2826 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 rule-making 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, March 19 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 multistate 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. Tetrahydrocannabinol 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 [were] 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, 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 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 prohibiting the use of vitamin E acetate. That emergency rule has been extended.

The extension of this emergency rule 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.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that prohibits the use of vitamin E acetate and preserves of [the] public health, safety and general welfare is necessary. Therefore, the immediate extension of a rule prohibiting the use of vitamin E acetate is necessary.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 6, 2021.

Jane Rushford
Chair

OTS-2295.1

NEW SECTION

WAC 314-55-1065 Prohibition—Vitamin E acetate. (1) Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. As part of the investigation into the multi-state outbreak of lung disease associated with the use of vapor products, the Centers for Disease Control (CDC) conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. All of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. The CDC did not determine that vitamin E acetate was 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.

Subsequently, tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease in sixteen states identified vitamin E acetate in forty-eight of the samples. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. 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 it is important that vitamin E acetate not be added to any vapor products. Adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate is necessary for the preservation of the public health, safety, and general welfare.

(2) 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.

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