

# WASHINGTON STATE BOARD OF HEALTH

**Date:** October 13, 2020

**To:** Washington State Board of Health Members

**From:** Thomas Pendergrass, MD, MSPH, Vice Chair

**Subject:** Rules Hearing - Permanently adopting a new section of rule, WAC 246-80-021, Prohibition – Vitamin E Acetate.

## Background and Summary:

The Washington State Board of Health has the authority under RCW 43.20.050(2)(f) to adopt rules to prevent and control the spread of infectious and noninfectious diseases, including food and vector borne illness.

In July 2019, the U.S. Centers for Disease Control and Prevention (CDC), U.S. 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 2,807 confirmed cases reported across 50 states, the District of Columbia, Puerto Rico and the US Virgin Islands, including 68 deaths confirmed in 29 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 48 samples of fluid collected from the lungs of patients with vaping-associated lung disease from 10 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 82 % of the samples, and nicotine was identified in 62 % of the samples. A further study found 94% of EVALI patients tested had vitamin E acetate in the bronchoalveolar 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 Board adopted an emergency rule that prohibits the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location in Washington including telephone and internet sales

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(WSR 19-24-001, filed on November 20, 2019). The Board subsequently readopted on March 11, 2020 and July 17, 2020. On March 11, 2020 the Board also approved a motion to initiate rulemaking to permanently adopt the emergency rule. Board staff filed a CR-101 on May 6, 2020 to initiate the rulemaking process. A CR-102 was filed as WSR 20-18-012 on August 21, 2020.

The proposed new section of rule, WAC 246-80-021, would continue to prohibit the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location in Washington, including telephone and internet sales.

I have invited Samantha Pskowski, Policy Advisor to the Board, to provide a summary of the proposed changes, share comments that were received on the proposed rule, and provide staff recommendations. Following the presentation, we will hold a public hearing on the rule and discuss proposed changes if any.

#### Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt the following motion:

The Board adopts the proposed new section of rule, WAC 246-80-021, published in WSR-20-18-012, with the revisions agreed upon at today's meeting, if any, and directs staff to file a CR-103 and establish an effective date.

#### Staff

Samantha Pskowski

To request this document in an alternate format or a different language, please contact Kelie Kahler, Washington State Board of Health Communication Manager, at 360-236-4102 or by email at [kelie.kahler@sboh.wa.gov](mailto:kelie.kahler@sboh.wa.gov). TTY users can dial 711.

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