



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: March 19, 2020

TIME: 3:40 PM

WSR 20-08-007

Agency: State Board of Health

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) 03/20/2020

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: WAC 246-80-021 Prohibition-- Vitamin E Acetate. The Washington State Board of Health has adopted an emergency rule to continue the ban on 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 means including by telephone or other method of voice transmission, the mail or any other delivery service or the internet or other online service.

Citation of rules affected by this order:

New: WAC 246-80-021
 Repealed: None
 Amended: None
 Suspended: None

Statutory authority for adoption: RCW 43.20.050(2)(f)

Other authority: NA

EMERGENCY RULE

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.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The standards in this emergency rule have not changed from the previous emergency rule.

In July 2019 the U.S. Centers for Disease Control and Prevention (CDC), U.S. Food and Drug Administration (FDA), state and local health jurisdictions and other clinical and public health partners began investigation 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 2,807 cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and 68 deaths in 29 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 51 samples of fluid collected from the lungs of patients with vaping-associated lung disease from 16 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 47 of 50 samples and nicotine was identified in 30 of 47 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.

This 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 Board has determined that continuing a ban is necessary to protect the public health, safety and welfare.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: 03/19/2020

Name: Michelle A. Davis

Title: Executive Director

Signature:

