



RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 10, 2019

TIME: 12:27 PM

WSR 19-21-050

Agency: State Board of Health

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose: Chapter 246-80 WAC - Vapor products and flavors. The Washington State Board of Health has adopted emergency rules to ban the sale of flavored vapor products, including flavored THC vapor products, to require retailers to display a sign warning of the risk of lung disease associated with use of vapor products, and to require reporting of cases of lung injury associated with the use of vapor products from health care providers and health care facilities.

Citation of rules affected by this order:

New: WAC 246-80-001, WAC 246-80-010, WAC 246-80-020, WAC 246-80-025, WAC 246-80-030, WAC 246-80-040

Repealed: None

Amended: None

Suspended: None

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

Other authority:

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 immediate adoption of a rule prohibiting the sale of flavored vapor products and requiring sellers of vapor products to post warning signs about the risk of vaping-related lung disease is necessary to prevent and reduce youth and young adult exposure, especially of youth and young adults, to severe lung disease associated with the use of vapor products. The Washington State Board of Health has the authority and responsibility to adopt rules for the prevention and control of such disease.

The Centers for Disease Control, U.S. Food and Drug Administration, Washington State Department of Health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including eighteen deaths. Seven cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remains unknown, and no single product or substance has been linked to all lung injury cases.

Notwithstanding state law prohibiting the sale or distribution of vapor products to minors, the 2018 Washington state healthy youth survey indicates that the prevalence of vapor product use within the past thirty days by eighth, tenth, and twelfth graders in Washington has increased by sixty-nine, sixty-seven, and forty-nine percent, respectively, since 2016, and these results may be an underestimate. Research consistently shows that flavors, and associated advertising, contribute to the appeal, initiation, and use of vapor products, particularly among adolescents and young adults. National data show that the

use of flavored e-cigarettes among adolescents and young adults increased significantly from 2013-2018. Vapor products are not adequately regulated and there is not sufficient standardization, testing, or oversight of these products. Vapor products are not regulated or approved for smoking cessation.

The State Board of Health's Health Impact Review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products. Requiring sellers of vapor products to post signs warning of the risk of vaping-associated lung disease will allow members of the public to make more informed decisions about the purchase and use of vapor products. Because the outbreak of lung disease is occurring now and growing, the immediate adoption of a rule prohibiting the sale of flavored vapor products and requiring the posting of warning signs is necessary for the preservation of the public health, safety, and general welfare by reducing youth exposure, especially of youth and young adults, to vaping-related severe lung disease.

**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>6</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>6</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: 10/09/2019

Name: Michelle A. Davis

Title: Executive Director, Washington State Board of Health



**Chapter 246-80 WAC
VAPOR PRODUCTS AND FLAVORS**

NEW SECTION

WAC 246-80-001 Purpose and necessity. The immediate adoption of a rule prohibiting the sale of flavored vapor products and requiring sellers of vapor products to post warning signs about the risk of vaping-related lung disease is necessary to prevent and reduce exposure, especially of youth and young adults, to severe lung disease associated with the use of vapor products. The board has the authority and responsibility to adopt rules for the prevention and control of such disease.

The Centers for Disease Control, U.S. Food and Drug Administration, Washington state department of health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including eighteen deaths. Seven cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remains unknown, and no single product or substance has been linked to all lung injury cases.

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NEW SECTION

WAC 246-80-010 Definitions. The definitions in this section apply throughout chapter 246-80 WAC unless the context clearly requires otherwise:

(1) "Business day" means any day that the department or a local health jurisdiction is open for business.

(2) "Case" means a person, alive or dead, diagnosed with a probable or confirmed case of a particular disease or condition by a health care provider or health care facility with diagnosis based on clinical or laboratory criteria or both.

(3) "Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco or marijuana or a taste or aroma derived from compounds or derivatives such as terpenes or terpenoids derived directly and solely from marijuana, as defined in RCW 69.50.101(y), or hemp plants that have been grown and tested as required by state law, imparted by a vapor product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A vapor product does not have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. It is the presence of a distinguishable taste or aroma, or both, that constitutes a characterizing flavor.

(4) "Department" means the Washington state department of health.

(5) "Flavored vapor product" means any vapor product that imparts a characterizing flavor.

(6) "Health care facility" means:

(a) Any assisted living facility licensed under chapter 18.20 RCW; birthing center licensed under chapter 18.46 RCW; nursing home licensed under chapter 18.51 RCW; hospital licensed under chapter 70.41 RCW; adult family home licensed under chapter 70.128 RCW; ambulatory surgical facility licensed under chapter 70.230 RCW; or private establishment licensed under chapter 71.12 RCW; and

(b) Clinics, or other settings where one or more health care providers practice.

(7) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Military personnel providing health care within the state regardless of licensure.

(8) "Marijuana product" has the same meaning provided in RCW 69.50.101.

(9) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corpora-

tion, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(10) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis or treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

(11) "Sell" means to transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a person engaged in the business of selling vapor products giving or offering vapor products free of charge.

(12) "Vapor product" means any noncombustible product that may contain nicotine or a marijuana product and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance including any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine or a marijuana product in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device including, but not limited to, marijuana-infused extracts or marijuana concentrates for inhalation.

NEW SECTION

WAC 246-80-020 Prohibition. No person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with the intent to sell or offer for sale flavored vapor products or any product that he or she knows or reasonably should know will be used with or in a vapor product to create a flavored vapor product. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale flavored vapor products 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.

NEW SECTION

WAC 246-80-025 Warning signs. A person who holds a vapor product retailer's license or a vapor product delivery sale license issued under chapter 70.345 RCW must display a sign warning of the risk of lung disease associated with the use of vapor products, which the department shall design and make available on its website, so that it is clearly visible to anyone purchasing vapor products from the license holder.

NEW SECTION

WAC 246-80-030 Reporting. (1) Principal health care providers and health care facilities shall submit individual case reports of cases of lung injury associated with the use of vapor products to the local health jurisdiction within three business days. For the purposes of this subsection, local health jurisdiction means where the patient resides, or, in the event the patient's residence cannot be determined, the local health jurisdiction in which the patient received treatment.

(2) Health care providers and health care facilities shall provide the following information in each case report:

- (a) Patient first and last name;
- (b) Patient physical address including zip code;
- (c) Patient date of birth;
- (d) Patient sex;
- (e) Patient best contact telephone number;
- (f) Name of the principal health care provider;
- (g) Telephone number of the principal health care provider;
- (h) Address where patient received care;
- (i) Name and telephone number of the person providing the report;
- (j) Case diagnosis;
- (k) Pertinent laboratory data, if available;
- (l) Pertinent lung imaging, if available; and
- (m) Patient history of vapor product use, including whether the vapor product used included nicotine, marijuana, or both.

(3) Health care facilities may assume the notification requirements established in this chapter for health care providers practicing within the health care facility.

(4) Health care providers and health care facilities shall comply with the requirements for the handling of case reports and medical information described in WAC 246-101-120.

(5) Local health jurisdictions shall notify the department within three business days using a secure electronic disease surveillance system for each case report received by the local health jurisdiction.

(6) Local health jurisdictions shall submit a case report to the department using a secure electronic disease surveillance system for each case report received by the local health jurisdiction:

- (a) Within seven days of completing a case investigation; or
- (b) Within twenty-one days of receiving the case report if the investigation is not complete.

NEW SECTION

WAC 246-80-040 Enforcement. (1) Violations of these rules may be subject to enforcement by any agency under authority of RCW 43.20.050(5). Enforcement actions may include, but are not limited to, requiring a person to stop selling flavored vapor products prohibited under WAC 246-80-020 through the use of one or more of the following:

- (a) A conference with the person to explore facts and resolve problems;
- (b) A compliance agreement with the person;
- (c) A notice of correction;

- (d) A notice of violation;
- (e) An order;
- (f) Other authorized proceedings.

(2) Enforcement orders issued under this section shall be in writing and shall include the violation and the corrective action required, and the name, business address, and phone number of an appropriate staff person who may be contacted regarding the order.

(3) Enforcement orders shall be personally served in the manner of service of a summons in a civil action or in a manner showing proof of receipt.