



Washington State
Liquor and Cannabis Board

Date: November 18, 2020

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Audrey Vasek, Agency Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Kathy Hoffman, Agency Policy and Rules Manager

Subject: **Approval to adopt an emergency rule (CR 103E) regarding chapter 314-12 WAC – General – Applicable to all licensees to establish summary license suspension and stay provisions to enforce any Governor’s Proclamation.**

On March 23, 2020, Governor Inslee issued Proclamation 20-25, entitled, “Stay Home, Stay Safe,” that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and non-essential businesses in Washington State. Non-essential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations.

On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, amending proclamations 20-05 and 20-25 et seq. entitled “Safe Start – Stay Healthy” County-by-County Phased Reopening. Proclamation 20-25.8 extends and amends the four-phase plan for opening the State of Washington, and incorporates issued amendatory proclamations, including 20-13.

Establishments licensed by the Washington State Liquor and Cannabis Board (Board) are subject to the restrictions of Governor’s Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the Board are considered essential services, others are not or are subject to specific limitations.

The Board has the authority under RCW 66.44.010, RCW 70.155.150, and RCW 70.345.020 to enforce Governor’s Proclamations. Consistent with that authority, this emergency rule:

- Allows the Board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, vapor or tobacco product licensee has violated any Governor’s Proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the preservation of public health and welfare; and
- Provide a framework and process for the affected WSLCB licensee to petition the Board for a stay of summary suspension consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded, or considered for inclusion in adopted rules at a later date as appropriate.

Process

The Agency Policy and Rules Coordinator requests that the Board adopt the emergency rule as presented, and requests approval to file this emergency rule with the Washington State Office of the Code Reviser. A CR 103E Memorandum on this rule was presented at the Board meeting on November 18, 2020, and is attached to this order.

If adopted, the timeline for the rule making process is outlined below:

November 18, 2020	Board is asked to adopt the emergency rulemaking order (CR 103E) as described above.
November 18, 2020	Emergency rule becomes effective.

_____ Approve _____ Disapprove _____ Jane Rushford, Chair _____ Date

_____ Approve _____ Disapprove _____ Ollie Garrett, Board Member _____ Date

_____ Approve _____ Disapprove _____ Russ Hauge, Board Member _____ Date

Attachment: CR 103E Memorandum

Board Adoption – CR 103E re chapter 314-12 WAC – General –
 Applicable to all licensees to establish summary license suspension
 and stay provisions to enforce any Governor’s Proclamation.

11/18/2020



CR 103E Memorandum

Chapter 314-12 WAC – General – Applicable to all licensees to establish summary license suspension and stay provisions to enforce any Governor’s Proclamation

Date: November 18, 2020
Presented by: Audrey Vasek, Policy and Rules Coordinator

Background:

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on a number of findings, including but not limited to:

- Guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from 250 persons to 50 persons; and
- The necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food and beverage service, theater, bowling or other similar activities.

On March 23, 2020, Governor Inslee issued Proclamation 20-25, entitled, “Stay Home - Stay Healthy,” that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and non-essential businesses in Washington State. Non-essential businesses were prohibited from operation except for performing basic minimum

operations. Essential businesses were encouraged to remain open and maintain operations.

On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, amending proclamations 20-05 and 20-25 et seq. entitled “Safe Start – Stay Healthy” County-by-County Phased Reopening. Proclamation 20-25.8 extends and amends the four-phase plan for opening the State of Washington, and incorporates issued amendatory proclamations, including 20-13.

Establishments licensed by the Board are subject to the restrictions of Governor’s Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the Board are considered essential, others are not or are subject to specific limitations.

Reasons why rules are needed:

The Board has the authority under RCW 66.44.010, RCW 70.155.150, and RCW 70.345.020 to enforce Governor’s Proclamations. Consistent with that authority, these emergency rules serve a two-pronged purpose. These rules:

- Allow the Board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, vapor, or tobacco product licensee has violated any Governor’s Proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the preservation of public health and welfare; and
- Provide a framework and process for the affected WSLCB licensee to petition the Board for a stay of summary suspension consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded, or considered for inclusion in adopted rules at a later date as appropriate.

Process:

Consistent with RCW 34.05.350, any agency may find that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of 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. This rule change is exempt from the filing of a CR 101, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing.

Notice will be sent to all who have indicated that they want to receive notice of rule activity, and posted to the Board's website.



RULE-MAKING ORDER

EMERGENCY RULE ONLY

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

Agency: Washington State Liquor and Cannabis Board

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 314-12 WAC – General – Applicable to all licensees. The Washington State Liquor and Cannabis Board (Board) has adopted emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of any violation of any Governor’s Proclamation issued as a result of the COVID-19 outbreak. This filing supersedes and replaces emergency rules filed as WSR 20-15-162 on July 22, 2020.

Citation of rules affected by this order:

New: WAC 314-12-250, WAC 314-12-275
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 66.08.0501; RCW 66.08.030

Other authority: RCW 66.44.010; RCW 70.155.150; RCW 70.345.020

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 Washington State Liquor and Cannabis Board has the authority and responsibility to adopt rules for the preservation of public health. The immediate re-adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Governor’s Proclamations issued as a result of the COVID-19 outbreak.

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington State, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the State. Proclamation 20-13 was based on both guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from 250 persons to 50 persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

On March 23, 2020, Governor Inslee issued Proclamation 20-25, entitled, “Stay Home – Stay Healthy,” that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and non-essential businesses in Washington State. Non-essential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations.

On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, amending proclamations 20-05 and 20-25 et seq. entitled "Safe Start – Stay Healthy" County-by-County Phased Reopening. Proclamation 20-25.8 extends and amends the four-phase plan for opening the State of Washington, and incorporates issued amendatory proclamations, including 20-13.

Establishments licensed by the Board are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the Board are considered essential, others are not or are subject to specific limitations.

These emergency rules serve a two-pronged purpose. These rules:

- Allow the Board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any Governor's Proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the presentation of public health and welfare; and
- Provide a framework and process for an affected WSLCB licensee to petition the Board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded, or considered for inclusion in adopted rules at a later date as appropriate.

**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	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	<u>2</u>	Amended	___	Repealed	___
-----	----------	---------	-----	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>2</u>	Amended	___	Repealed	___

Date Adopted: November 18, 2020

Name: Jane Rushford

Title: Chair

Signature:

NEW SECTION

WAC 314-12-250 Summary license suspension. (1) The board may serve an order of summary suspension of any license under this Title 314 WAC after the board's enforcement division has:

(a) Completed a preliminary staff investigation of a violation of a governor's proclamation; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

NEW SECTION

WAC 314-12-275 Petition for stay. (1) When the board summarily suspends a license under WAC 314-12-250, an affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

(2) A hearing will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing is limited to consideration of whether a stay should be granted, or whether the terms of the suspension will be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay is effective immediately upon service unless another date is specified in the order.