

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		adopt the emergency rulemaking as described above.					
November 18, 2020	Emergency rule b	ecomes 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.

CODE REVISER USE ONLY



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
□ 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 c			an one categ	ory.	otory note.	
The number of sections adopted in order to comply	y with:					
Federal statute:	New	<u> </u>	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	a nong	overnmenta	ıl entity:			
	New		Amended		Repealed	
The number of sections adopted on the agency's c	own init	tiative:				
	New	<u>2</u>	Amended		Repealed	
The number of sections adopted in order to clarify	, strear	nline, or ref	orm agency _l	orocedur	es:	
	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		Signature:				
Name: Jane Rushford						
Title: Chair						

- 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.

[1] OTS-2191.1



[2] OTS-2191.1

CR 102 Memo - Attachment A

Public feedback on conceptual draft rules to implement 2020 alcohol legislation – HB 2412, ESSB 5006, ESSB 6095, and SSB 6392.

Source	Name	Date Received	Theme	Feedback
Email	Angie Rowley	9/15/2020	General	[Subject line: "new bills being preposed"] Hello Audrey, My name is Angie Rowley, I'm a mother of four young children and began working part-time in the prevention world a year ago. I coordinate the wellness coalition in the Pend Oreille County. I have a background in nursing and life experiences. Anyway, I just wanted to drop an email about these new proposals. The lauguage used in the bills is foregin to me. And I'd assume to many others as well. It raises concern to me because I do not know how to express if I think it's a good idea or not to make these changes. I was wondering how you feel about this thought Alcohol has been around since the beginging of time. And research shows that using it does not create a better or healthier community. Making alcohol more available is not going to help the communitys, it is going to hurt them. In all of my traveling through our nation the towns with liquor stores on every corner had more violence, abuse, crime and drugs than the small towns where no stores were. So, I don't know how to proceed with looking at those bills and giving feedback. If I had to guess on what they are saying I'm going to say that the bills are going to make it easier for the vendors to sell it and more of it. Sad. Well, I hope you are having a good day Audrey, I don't know if you can help me with this issue or not. I was going to involue my coalition in this matter but I don't think they will understand the laugauge either. Sincerely, Angie rowley

Email	Dawne Swanson	9/15/2020	ESSB 5006	[Subject Line "ESSB5006"] Long overdue! I suggest the fee be modified so that larger establishments pay a higher fee than small ones. Whether that is differentiated by case production, revenue, or square footage, my little tasting room would really benefit by offering this option to bi-beverage couples. But \$200/year Is probably more than my profit would be. Maybe a higher fee but waive or discount it for the little wineries? Sent from Dawne's iPhone by personal assistant Siri.
Email	Keith Johnsen	9/15/2020	ESSB 5006	[Subject line: "Public Feedback on ESSB 5006"]: Hello - We strongly support the passage of this endorsement, so that people who are either not fans of, or not physically tolerant of, either wine or beer can still enjoy the social environment and company of their friends and family who are, when visiting either wineries or microbreweries. My wife, for instance, is gluten intolerant but a wine lover; and yet at certain wonderful local breweries, she is unable to get a glass of wine if I want to go to try some of their newest artisinal beer. This actually limits the opportunity for those breweries to capture our business, because we will ultimately choose a different taproom or restaurant that does offer both. Especially during these brutally difficult times for small on-premise businesses, offering them every logical chance to succeed is crucial to their survival, and they deserve that much - especially as the neighborhood micro businesses that they often are. And the same cultural behavior of savoring a nice beer or glass of wine with close friends and family is not pushed to any negative extremesthese are not tequila shots or kamikazis that we are talking about! Cheers, Keith Johnsen & Kim Rookstool Bellingham
Email	Micah Mailand	9/15/2020	ESSB 5006	[Subject line: "Feedback"] Hello Audrey, I would like to see the draft rule ESSB 5006 enacted. This new endorsement for wineries and microbreweries is going to help my business

				grow by bringing in new customers and encouraging current customers to stay longer. Sincerely, Micah Mailand Co-Founder
Email	Gail Swanson	9/15/2020	ESSB 5006	[Subject line: "Emailing support"] I am emailing support for the proposed rule change ESSB 5006 to create a new type of endorsement allowing a licensed domestic winery to sell beer by the single serving for on-premises consumption and to allow a licensed domestic brewery or microbrewery to sell wine by the single serving for on-premises consumption. I think the fee should be done on some kind of a sliding scale to help the smaller establishments to participate.
Email	Brenda Robinson	9/15/2020	ESSB 5006	Thank you! Gail Swanson [Subject line: "ESSB 5006"] I support the proposed rule change ESSB 5006 where a licensed domestic winery may sell single serving beer, but please put the fees on some sort of sliding scale. Thank you. -Brenda Robinson Tacoma WA. Sent from my iPhone
Email	Tracy and Jim Whitlatch	9/15/2020	ESSB 5006	[Subject line: "Support for ESSB 5006"] Hello, I want to voice my support for proposed rule change ESSB 5006 creating a new type of endorsement allowing a licensed domestic winery to sell beer by the single serving for on-premises consumption and allows a licensed domestic brewery or microbrewery to sell wine by the single serving for on-premises consumption. This would be great for spouses that want to support small wineries and tasting rooms with their significant other who doesn't like wine. I understand that the fee would be \$200/year and I'd suggest that it should be some sort of sliding scale. As

				everyone, especially snap businesses are hurting.
				Sincerely, Tracy and Jim Whitlatch [Subject line: "ESSB 5006"] I fully support ESSB 5006 allowing a winery to sell on-
Email	Al Cutshall	9/24/2020	ESSB 5006	premises single serving beer. I also support a sliding scale on the fee for smaller tasting rooms, Thank you, Al Cutshall
Email	Annie McGrath	10/5/2020	HB 2412	[Subject line: "Re: LCB seeks input on Draft Rules"] Hi Audrey, I've reviewed the draft concept rules for 2020 liquor legislation and everything looks great. I have one question for clarification on HB 2412 as it relates to keg registrations. I don't know if we need any language in rule on it, but there may be some confusion as to whether keg registration requirements apply to breweries with a beer/wine restaurant license. As I read it, it looks like a brewery with that additional license is not subject to keg registration requirements for kegs of beer they produce, but would need to adhere to the requirements for any sales of kegs from another producer. Is that correct? Thanks so much for your work on these. It is very well done! Best, Annie Follow up suggestion received on 10/13: Add the following underlined language at the beginning of WAC 314-02-115(3) after "Domestic breweries and microbreweries and any additional domestic brewery or microbrewery licensed retail locations."

11/18/2020

ESSB 5006, ESSB 6095, SSB 6392 We have with conversations with the WSLCB as this endorsement became active, that this new allowance to serve three options of Washington State-produced craft beer extends to every tasting room location for a winery. We are pleased that the WSLCB already recognizes this and thus far approved many additional (remote/satellite) tasting room locations for the beer service endorsement created by SB 5006. SB 6095: As stakeholders in the creation and passage of SB 6095, we support the proposed rule language as written. SB 6392: As the author of this legislation passed in March 2020, we support the proposed rule language as written. We want to applaud the WSLCB for working with our industry to approve two of these licenses prior to this proposed rules language which resulted in the survival of one of our most charitable and industry-important events of the year with the Auction of WA Wines. On behalf of the Washington State wine industry, with a membership including own 98% of all wine produced in Washington State, we thank you for the opportunity to	Email		10/6/2020	5006, ESSB 6095,	important to the intent of this legislation. We want to be clear in our comments, as we have with conversations with the WSLCB as this endorsement became active, that this new allowance to serve three options of Washington State-produced craft beer extends to every tasting room location for a winery. We are pleased that the WSLCB already recognizes this and thus far approved many additional (remote/satellite) tasting room locations for the beer service endorsement created by SB 5006. SB 6095: As stakeholders in the creation and passage of SB 6095, we support the proposed rule language as written. SB 6392: As the author of this legislation passed in March 2020, we support the proposed rule language as written. We want to applaud the WSLCB for working with our industry to approve two of these licenses prior to this proposed rules language, which resulted in the survival of one of our most charitable and industry-important
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				need further clarification on any of the above comments, please don't hesitate to contact me.
				Kind Regards
				Josh McDonald Executive Director Washington Wine Institute
				[Subject line: "Re: Conceptual Draft Rules ESSB 6095"] Audrey:
				I reviewed the draft rule relating to common carriers (implementing SB 6095). The rule language focuses back to the language of the statute in most places.
Email	Scott Hazlegrove	11/02/2020	ESSB 6095	The only item I flagged was the reference to common carrier only including planes, trains, and ships. I was wondering about the inclusion of buses and other vehicles. However, when I went back to the definition of "common carrier" you citied in the rule, it is clear from the RCW language that the provision only applies to planes, trains, and ships.
				Great job. I apologize for the delay in getting comments to you.
				Scott Hazlegrove



CR 102 Memo—2020 Alcohol Attachment B

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LCB seeks input on Draft Rules

Washington State Liquor and Cannabis Board sent this bulletin at 09/15/2020 09:59 AM PDT

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September 9, 2020

Conceptual Draft Rules to Implement 2020 Alcohol Legislation

The Washington State Liquor and Cannabis Board (WSLCB) is seeking public feedback on conceptual draft rules to implement four alcohol-related bills enacted during the 2020 legislative session as described below.

The conceptual draft rules are linked here.

Background

On July 22, 2020, the WSLCB filed a preproposal statement of inquiry (CR 101) as WSR 20-15-160 (linked here), to consider implementation of the following legislation:

- HB 2412, which increases the number of retail liquor licenses a licensed domestic brewery or microbrewery may hold from two to four, and exempts licensed domestic breweries and microbreweries from certain keg registration and identification requirements.
- ESSB 5006, which creates a new type of endorsement allowing a licensed domestic winery to sell beer by the single serving for on-premises consumption and allows a licensed domestic brewery or microbrewery to sell wine by the single serving for onpremises consumption, under certain circumstances.
- ESSB 6095, which makes changes to the interstate common carrier license and creates new exceptions to the money or moneys' worth restrictions under the three-tier system for alcohol regulation.
- SSB 6392, which creates a new type of license for local wine associations.

The WSLCB invites and encourages written feedback on the conceptual draft rule language. All feedback will be reviewed and considered before a CR 102, or rule proposal, is presented to the Board. The CR 102 proposal is expected to be presented to the Board on or after October 28, 2020

How to Provide Feedback on the Conceptual Draft Rules

Please email feedback to Audrey Vasek at audrey.vasek@lcb.wa.gov by October 6, 2020.

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