



Washington State
Liquor and Cannabis Board

Date: March 17, 2021

To: David Postman, 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
Chandra Brady, Director of Enforcement and Education
Becky Smith, Licensing Director
Kathy Hoffman, Agency Policy and Rules Manager

Subject: **Approval to re-adopt emergency rules (CR 103E) WAC 314-12-250 and 314-12-275 regarding summary license suspension and petition for stay provisions to enforce Governor’s proclamations.**

The Washington State Liquor and Cannabis Board (Board) has the authority and responsibility to adopt rules for the preservation of public health. These rules are needed to supersede and replace emergency rules filed as WSR 20-23-123 on November 18, 2020. 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 ([linked here](#)) 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 ([linked here](#)) 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, first entitled, “Stay Home – Stay Healthy” ([linked here](#)), 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.

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.

Between March 2020 and January 2021, Governor Inslee issued a series of proclamations in response to the evolving COVID-19 situation, including Proclamations 20-25.01 through 20-25.12, which amended Proclamations 20-05 and 20-25 et seq. and incorporated issued amendatory proclamations, including 20-13.

On January 11, 2021, Governor Inslee issued Proclamation 20-25.12 ([linked here](#)), entitled "Healthy Washington – Roadmap to Recovery" (see also, PDF document with the same name issued by the Office of the Governor on February 14, 2021, [linked here](#)). Proclamation 20-25.12 introduced a new phased recovery plan with a regional recovery approach that replaced the previous county-by-county approach. Proclamation 20-25.12 was based on evidence of increasing COVID-19 infection rates across the state, evidence of how the virus is spread through very small droplets called aerosols, the known factors that increase the risk for person-to-person COVID-19 transmission, and the knowledge that two vaccines have been approved for use in the United States and efforts to vaccinate vulnerable populations are underway.

Under RCW 66.44.010, 70.155.150, and 70.345.020, the Board has the authority to enforce Governor's proclamations, and under RCW 66.08.150, the Board has the authority to summarily suspend a license or permit if public health, safety, or welfare requires emergency action.

Consistent with that authority, these emergency rules serve a two-pronged purpose. These rules are needed to:

- 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

The Agency Policy and Rules Coordinator requests that the Board adopt the emergency rules 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 March 17, 2021, and is attached to this order.

If adopted, the timeline for the rulemaking process is outlined below:

March 17, 2021	Board is asked to adopt the emergency rulemaking order (CR 103E) as described above.
March 17, 2021	Emergency rule becomes effective.

_____ Approve _____ Disapprove _____
 David Postman, Chair Date

_____ Approve _____ Disapprove _____
 Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
 Russ Hauge, Board Member Date

Attachment: CR 103E Memorandum



CR 103E Memorandum

WAC 314-12-250 and 314-12-275: Emergency rules establishing summary license suspension and petition for stay provisions to enforce Governor's proclamations.

Date: March 17, 2021
Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

On February 29, 2020, Governor Inslee issued Proclamation 20-05 ([linked here](#)) 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 ([linked here](#)) 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, first entitled, "Stay Home – Stay Healthy" ([linked here](#)), 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.

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.

Between March 2020 and January 2021, Governor Inslee issued a series of proclamations in response to the evolving COVID-19 situation, including Proclamations 20-25.01 through 20-25.12, which amended proclamations 20-05 and 20-25 et seq. and incorporated issued amendatory proclamations, including 20-13. The updates are described in sequential order below:

In April and early May 2020, Governor Inslee issued Proclamations 20-25.2 and 20-25.3, making certain adjustments and modifications to the “Stay Home, Stay Healthy” order. (See [Proclamation 20-25.2](#) issued April 27, 2020; and [Proclamation 20-25.3](#) issued May 4, 2020.)

On May 31, 2020, Governor Inslee issued Proclamation 20-25.4, entitled “Safe Start – Stay Healthy—County-By-County Phased Reopening ([linked here](#); see [Proclamation 20-25.4](#)). Limitations established were gradually relaxed based on county-by-county phasing established according to metrics provided by the Secretary of Health.

On June 24, 2020, the Secretary of Health first issued Order of the Secretary of Health 20-03 which, among other things, requires (with exceptions) the use of face coverings throughout the state. (See Department of Health [news release](#) dated June 24, 2020.)

On July 1, 2020, Governor Inslee issued Proclamation 20-25.05 ([linked here](#)), extending and modifying certain statewide restrictions. The following day, on July 2, 2020, Governor Inslee ordered a freeze on all counties moving forward to a subsequent phase due to increased COVID-19 infection rates across the state (see Governor’s [news release](#) dated July 2, 2020).

On July 7, 2020, Governor Inslee issued Proclamation 20-25.06 ([linked here](#)), again extending and modifying certain statewide restrictions. On July 24, 2020, Governor Inslee issued Proclamation 20-25.07 ([linked here](#)) and the Secretary of Health issued Order of the Secretary of Health 20-03.1 ([linked here](#)), extending the requirement (with exceptions) to use face coverings throughout the state.

On October 7, 2020, Governor Inslee announced several updates to the “Safe Start Washington –Phased Reopening County-by-County” plan ([linked here](#); See Governor’s [news release](#) dated October 6, 2020) to align guidance and adjustments to regulations of several industries.

On November 15, 2020, in response to a large surge of new COVID-19 cases and increased hospitalizations and deaths, Governor Inslee issued Proclamation 20-25.8, entitled “Stay Safe – Stay Healthy—Rollback of County-By-County

Phased Reopening Responding to a COVID-19 Outbreak Surge” (See [Proclamation 20-25.8](#)).

In December 2020, Governor Inslee amended Proclamation 20-25 several times, extending and modifying some statewide restrictions. (See [Proclamation 20-25.9](#) issued December 10, 2020; [Proclamation 20-25.10](#) issued December 21, 2020; and [Proclamation 20-25.11](#) issued December 30, 2020.)

On January 11, 2021, Governor Inslee issued Proclamation 20-25.12 ([linked here](#)), entitled “Healthy Washington – Roadmap to Recovery” (see also, PDF document with the same name issued by the Office of the Governor on February 14, 2021, [linked here](#)). Proclamation 20-25.12 introduced a new phased recovery plan with a regional recovery approach that replaced the previous county-by-county approach. Proclamation 20-25.12 was based on evidence of increasing COVID-19 infection rates across the state, evidence of how the virus is spread through very small droplets called aerosols, the known factors that increase the risk for person-to-person COVID-19 transmission, and the knowledge that two vaccines have been approved for use in the United States and efforts to vaccinate vulnerable populations are underway.

Reasons why rules are needed

The Board has the authority and responsibility to adopt rules for the preservation of public health. These rules are needed to supersede and replace emergency rules filed as WSR 20-23-123 on November 18, 2020. 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.

Under RCW 66.44.010, 70.155.150, and 70.345.020, the Board has the authority to enforce Governor’s proclamations, and under RCW 66.08.150, the Board has the authority to summarily suspend a license or permit if public health, safety, or welfare requires emergency action.

Consistent with that authority, these emergency rules serve a two-pronged purpose. These rules are needed to:

- 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, an 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 CR 101, CR 102, analytical, and public hearing requirements.

An emergency rule adopted under RCW 34.05.350 takes effect upon filing with the Code Reviser's Office, 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 posted to the Board's website and sent to all who have indicated that they want to receive notice of rule activity.



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 violations of any Governor’s Proclamation issued as a result of the COVID-19 outbreak. This filing supersedes and replaces emergency rules filed as WSR 20-23-123 on November 18, 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 and 66.08.030

Other authority: RCW 66.08.150, 66.44.010, 70.155.150, and 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 ([linked here](#)) 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.

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

New	<u>2</u>	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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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: March 17, 2021

Name: David Postman

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.