



Washington State
Liquor and Cannabis Board

Date: April 14, 2021

To: David Postman, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Audrey Vasek, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Megan Duffy, Deputy Director
Chandra Brady, Director of Enforcement and Education
Ronald Rupke, Deputy Chief, Enforcement and Education
Justin Nordhorn, Policy and External Affairs Director
Kathy Hoffman, Policy and Rules Manager

Subject: **Approval to file a pre-proposal statement of inquiry (CR 101) regarding summary license suspension and petition for stay provisions for enforcement of Governor’s proclamations.**

The Washington State Liquor and Cannabis Board (WSLCB) is considering rulemaking to create summary license suspension and petition for stay provisions that would allow for enforcement of Governor’s proclamations. These permanent rules would supersede and replace emergency rules WAC 314-12-250 and 314-12-275, which established summary license suspension and petition for stay provisions for the enforcement of Governor’s proclamations issued as a result of the novel coronavirus (COVID-19) outbreak, filed as WSR 21-07-077 on March 17, 2021, and any successive emergency rules that supersede and replace WSR 21-07-077.

As part of this rulemaking, the WSLCB is considering potentially amending or repealing existing summary license suspension and petition for stay provisions, and any related provisions, in Title 314 WAC and consolidating these provisions into new rule sections applicable to all licensees. The ability to use summary license suspension and petition for stay provisions to enforce Governor’s proclamations will support efforts to preserve public health and safety.

Process

The Policy and Rules Coordinator requests approval to file the pre-proposal statement of inquiry (CR 101) for the rulemaking described above. A CR 101 Memorandum was presented at the Board meeting on April 14, 2021, and is attached to this order.

If approved for filing, the **tentative timeline** for the rule making process is outlined below:

April 14, 2021	Board is asked to approve filing pre-proposal statement of inquiry (CR 101). CR 101 filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by GovDelivery distribution list. Initial comment period begins.
May 5, 2021	Notice published in the Washington State Register under WSR 21-09.
June 5, 2021	Initial comment period ends.
August 4, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by the rules distribution list. Formal comment period begins.
August 18, 2021	Notice published in the Washington State Register under WSR 21-16.
September 15, 2021	Public hearing held and formal comment period ends.
September 29, 2021	Board is asked to adopt rules, if no substantive changes are made (CR 103). Concise explanatory statement provided to individuals offering written or oral comment at the public hearing or during the formal comment period under RCW 34.05.325. CR 103 and adopted rules filed with the Office of the Code Reviser. WSLCB webpage updated and notice is circulated by the rules distribution list.
October 30, 2021	The rules are effective 31 days after filing unless otherwise specified. See RCW 34.05.380(2).

_____ Approve _____ Disapprove _____ David Postman, Chair _____ Date

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

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

Attachment: CR 101 Memorandum.



CR 101 Memorandum

Regarding summary license suspension and petition for stay provisions for enforcement of Governor's proclamations.

Date: April 14, 2021

Presented by: Audrey Vasek, Policy and Rules Coordinator

Background

The Washington State Liquor and Cannabis Board (WSLCB) has the authority and responsibility to adopt rules for the preservation of public health and safety. The WSLCB originally adopted emergency rules WAC 314-12-250 and 314-12-275 establishing summary license suspension and petition for stay provisions for the enforcement of Governor's proclamations issued as a result of the novel coronavirus (COVID-19) outbreak on April 6, 2020 as WSR 20-09-026, after the Governor issued a series of proclamations affecting establishments licensed by the WSLCB:

- 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 WSLCB are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the WSLCB are considered essential, others are not or are subject to specific limitations. For example, while cannabis licensees are considered essential, alcohol, tobacco, and vapor licensees generally are not and are subject to specific limitations. (See Appendix "WA Essential Critical Infrastructure Workers" to the March 23, 2020 Proclamation 20-25, [linked here](#).)

Between March 2020 and January 2021, Governor Inslee issued a series of proclamations in response to the changing conditions of the COVID-19 pandemic, 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.

In response to the changing conditions of the COVID-19 pandemic and the resulting amendments to the Governor's proclamations, the WSLCB extended the emergency rules for a first time on July 22, 2020 as WSR 20-15-162, for a second time on November 18, 2020 as WSR 20-23-123, and for a third time on March 17, 2021 as WSR 21-07-077.

The Governor's proclamations describe how the conditions of the COVID-19 pandemic and the state of emergency changed over time. An outline of major updates between April 2020 and April 2021 is provided 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.” 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.
- On March 11, 2021, Governor Inslee announced that “Healthy Washington – Roadmap to Recovery” would transition from a regional approach back to a county-by-county evaluation process. The governor also announced that a new third phase of the Roadmap to Recovery had been added, and effective March 22, 2021 the entire state would enter Phase 3.
- On April 9, 2021, Governor Inslee updated the criteria for counties to stay in Phase 3 of the “Healthy Washington – Roadmap to Recovery” pandemic reopening plan. In addition to being individually evaluated, large and small counties have different sets of appropriate criteria based on case counts and

hospitalizations. (See PDF issued by the Office of the Governor on April 9, 2021, [linked here](#).)

Reasons Why Rules May Be Needed

At this point, it is impossible to know precisely when the state of emergency as a result of COVID-19 will end. Given the uncertainty about the duration of the current state of emergency and the possibility of future states of emergency, the WSLCB is considering permanent rulemaking to create summary license suspension and petition for stay provisions that would allow for enforcement of Governor's proclamations. These permanent rules would supersede and replace emergency rules WAC 314-12-250 and 314-12-275, which established summary license suspension and petition for stay provisions for the enforcement of Governor's proclamations issued as a result of the COVID-19 outbreak, filed as WSR 21-07-077 on March 17, 2021, and any successive emergency rules that supersede and replace WSR 21-07-077.

As part of this rulemaking, the WSLCB is considering potentially amending or repealing existing summary license suspension and petition for stay provisions, and any related provisions, in Title 314 WAC and consolidating these provisions into new rule sections applicable to all licensees. The ability to use summary license suspension and petition for stay provisions to enforce Governor's proclamations will support efforts to preserve public health and safety.

Process

The rule making process begins by announcing the WSLCB's intent to consider changes to existing rules, adding new rule sections, or both by filing a CR 101 form with the Office of the Code Reviser. This allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing proposed rule changes. At the CR 101 stage of the rulemaking process, no proposed language is offered. Any interested party may comment on the subject of this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity pertaining to this preproposal inquiry. The notice will identify the public comment period and where comments can be sent.



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Washington State Liquor and Cannabis Board

Subject of possible rule making: The Washington State Liquor and Cannabis Board (WSLCB) is considering rulemaking to create summary license suspension and petition for stay provisions that would allow for enforcement of Governor's proclamations. These permanent rules would supersede and replace emergency rules WAC 314-12-250 and 314-12-275, which established summary license suspension and petition for stay provisions for the enforcement of Governor's proclamations issued as a result of the novel coronavirus (COVID-19) outbreak, filed as WSR 21-07-077 on March 17, 2021, and any successive emergency rules that supersede and replace WSR 21-07-077. As part of this rulemaking, the WSLCB is considering potentially amending or repealing existing summary license suspension and petition for stay provisions, and any related provisions, in Title 314 WAC and consolidating these provisions into new rule sections applicable to all licensees.

Statutes authorizing the agency to adopt rules on this subject: RCW 66.08.030, 66.08.150, 66.44.010, 69.50.342, 69.50.345, 70.155.150, 70.345.020.

Reasons why rules on this subject may be needed and what they might accomplish: The WSLCB has the authority and responsibility to adopt rules for the preservation of public health and safety. The WSLCB originally adopted emergency rules WAC 314-12-250 and 314-12-275 establishing summary license suspension and petition for stay provisions for the enforcement of Governor's proclamations issued as a result of the COVID-19 outbreak on April 6, 2020 as WSR 20-09-026, after the Governor issued a series of proclamations affecting establishments licensed by the WSLCB:

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- On May 4, 2020, Governor Inslee issued Proclamation 20-25.3, making additional adjustments and modifications to the "Stay Home, Stay Healthy" order.
- On May 31, 2020, Governor Inslee issued Proclamation 20-25.4, entitled "Safe Start – Stay Healthy—County-By-County Phased Reopening. Limitations established were gradually relaxed based on county-by-county phasing established according to metrics provided by the Secretary of Health.
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Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

	(If necessary)
Name: Audrey Vasek, Policy and Rules Coordinator	Name:
Address: PO Box 43080, Olympia, WA 98504	Address:
Phone: 360-664-1758	Phone:
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TTY:	TTY:
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Web site: lcb.wa.gov	Web site:
Other:	Other:

Additional comments: Interested persons can participate in the rule process through open public meetings and by submitting written comments, and are encouraged to sign up for the interested parties list (GovDelivery) at <https://public.govdelivery.com/accounts/WALCB/subscriber/new>. Rulemaking notices and stakeholder engagement opportunities will be emailed via GovDelivery and posted to the WSLCB website at lcb.wa.gov.

Date: April 14, 2021	Signature: Place signature here
Name: David Postman	
Title: Chair	