



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
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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.