



RULE-MAKING ORDER

EMERGENCY RULE ONLY

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

Agency: State Board of Health

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) 12/20/2021

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: WAC 246-101-017, Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. The Washington State Board of Health has adopted a fifth emergency rule to continue to designate COVID-19 as a notifiable condition and extends reporting requirements for health care providers, health care facilities, laboratories, local health jurisdictions, and the Department of Agriculture to report certain data with each COVID-19 test, including test results, relevant demographic details (e.g., patient's age, race, ethnicity, sex), and additional information. The rule allows for certain waivers by a local health officer. The rule establishes what testing and demographic data need to be reported as well as the timing and mechanism of reporting in accordance with Public Law 116-136, § 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Citation of rules affected by this order:

New: WAC 246-101-017
 Repealed: None
 Amended: None
 Suspended: None

Statutory authority for adoption: RCW 43.20.050(2)(f)

Other authority:

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 immediate adoption of a rule to continue the designation of COVID-19 as a notifiable condition, and requiring the reporting of demographic, testing, and other relevant data by health care providers, health care facilities, laboratories, local health jurisdictions, and the Department of Agriculture for each COVID-19 test is necessary to comply with federal law and related guidance. Immediate adoption of this rule is necessary for the preservation of the public health, safety and general welfare of the State of Washington during this pandemic.

The CARES Act requires "every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the Secretary of the U.S. Department of Health and Human Services (HHS). In addition, the Act authorizes the Secretary to prescribe the form, manner, timing, and frequency of such reporting. The HHS Secretary released laboratory data reporting guidance for COVID-19 on June 4, 2020, and later updated the guidance on January 8, 2021. The guidance requires all data components be reported through existing state and local public health data reporting methods until the end of the public health emergency. Of these requirements, demographic information such as the patient's age, race, ethnicity, and sex must be collected and reported in accordance with state law or policies.

In September 2020, the Centers for Medicare and Medicaid Services (CMS) published an interim final rule in Federal Register 54826, Volume 85, Number 171, to update requirements for reporting SARS-CoV-2 test results by laboratories. The interim final rule states all laboratories conducting SARS-CoV-2 testing and reporting patient-specific results, including hospital laboratories, nursing homes, and other facilities conducting testing for COVID-19, who fail to report information

required under the CARES Act will be subject to monetary penalties. The interim final rules became effective September 2, 2020.

Adoption of a sixth emergency rule ensures continued compliance with the CARES Act and CMS requirements, and better reflects Department capacity to receive data and local health jurisdictions to submit data, in order to improve the public health response to COVID-19. The Board intends to incorporate these provisions into permanent rule, and filed a CR-101 on July 23, 2021 as WSR 21-15-105.

**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	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

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

New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted:

Name: Michelle A. Davis

Title: Executive Director, Washington State Board of Health

Signature: