



Notice of Rule Change – Explanatory Statement Internet Sales and Delivery

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of rules regarding Internet Sales and Delivery.**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately February 14, 2010).

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Karen McCall, Rules Coordinator, at (360) 664-1631 or e-mail at rules@liq.wa.gov.

What are the agency's reasons for revising these rules?

These rules are being revised as to implement current board policy on internet sales and delivery for grocery stores and specialty shops.

What changes are being made?

The Board adopted these rules on January 13, 2010. The rules were filed on January 25, 2010 and will be effective on February 25, 2010.

New Chapter 314-03 WAC – Allowed Activities.

Creates Chapter 314-03 WAC – Allowed Activities. This chapter will contain activities that are permitted for some, but not all, (retail) license types.

New Section WAC 314-03-020 – Consumer orders, internet sales, and delivery for grocery stores and beer and wine specialty shops.

Sets the requirements and conditions under which a grocery store or beer and wine specialty shop licensee may accept liquor orders from, and deliver liquor orders to, consumers.

Summary of all public comments received on this rule proposal.

All comments made by R. Corbin Houchins, Attorney at Law.

Time of Delivery

Comment:

Does the time of delivery proposed in subsection (6) refer to the licensee's time (*i.e.*, Pacific) or to the recipient's time?

Response:

The recipient's time.

Out-of-State Delivery

Comment:

Is the regulation intended to apply only to deliveries in Washington?

Response:

No. The rule will apply to both in- and out-of-state deliveries, with the understanding that other states may have applicable regulations of their own.

Third-Party Service for Internet Websites

Comment:

Would the operator of a site with links to retailers be considered a third-party service soliciting orders on a licensee's behalf for the purposes of subdivision (4)(a)?

Response:

Yes, if the operator is anyone other than a licensee or a licensee's direct employee.

The rule intends that a licensee will own the licensed business's website, and that a licensee or a licensee's direct employee will operate the website when accepting or processing orders or payments via the Internet. A third-party service, such as PayPal, Merchant Account Services or Google Checkout, may act as an intermediary to transmit payment, provided that such third-party service does not accept or process orders and payments, or advertise or otherwise solicit customer business on behalf of a licensee. A third-party service may also create, program, and perform periodic maintenance of, a licensee's website.

Jessica Nguyen, Attorney - Cairncross & Hempelmann, P.S.

Comment:

If liquor purchased on the Internet is delivered to a hotel or condominium unit, may the package with the liquor be left with the hotel concierge or condominium management office?

Response:

Yes, a concierge or a person employed in a management office may accept delivery so long as that person is at least twenty-one years old and does not show signs of intoxication, and delivery occurs between 6:00a.m. and 2:00a.m.

Testimony at Public Hearing – January 6, 2010, Olympia, WA

None

WAC Changes

Chapter 314-03 WAC

ALLOWED ACTIVITIES

NEW SECTION

WAC 314-03-020 Consumer orders, internet sales, and delivery for grocery stores and beer and wine specialty shops. A grocery store or beer and wine specialty shop licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) *Payment method.* Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) *Internet.* To sell liquor via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A

residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of six a.m. and two a.m. Delivery must be fully completed by two a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory-sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in

one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.