



Notice of Permanent Rules

Allowing liquor licensed grocery stores to provide curbside service

This explanatory statement concerns the Washington State Liquor and Cannabis Board's adoption of rules to allow liquor licensed grocery stores to provide curbside service when customers order alcohol as part of an order placed online.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to prepare 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 rulemaking.

The Liquor and Cannabis Board appreciates your involvement in this rule making process. If you have any questions, please contact Janette Benham, Policy and Rules Coordinator, at (360) 664-1760 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting these rules

A petition for rulemaking was submitted by Deborah Herron, Walmart's Director of Public Affairs and State & Local Government. Walmart requested the board open rulemaking to allow grocery stores to provide curbside service for customers participating in online ordering and pickup. The rules ensure that grocery stores and customers have requirements in place for this service.

These rules were adopted by the board on January 9, 2019.

The effective date of these rules is August 1, 2019.

Summary of all public comments received on this rule proposal.

- CR 101 – filed January 24, 2018
- CR 102 – filed May 2, 2018
- Public Hearing – June 13, 2018
- Supplemental CR 102 – filed August 22, 2018
- Public Hearing – October 3, 2018
- 2nd Supplemental CR 102 – filed October 31, 2018
- Public Hearing – December 12, 2018

Six people testified at the June 13, 2018 public hearing. Eight written comments were received.

Two people testified at the October 3, 2018 public hearing. Five written comments were received.

Three people testified at the December 12, 2018 public hearing. Two written comments were received.



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Below is a summary of comments and testimony.

- 1. Walmart** – Written comments received at the Supplemental CR 102 stage of rulemaking and testimony heard at the June 13, 2018, October 3, 2018, and December 12, 2018 public hearings.
 - Supportive of allowing curbside service.
 - Requested removal of the minimum twenty-five dollar grocery and non-alcohol purchase requirement.
 - Requested removal of the requirement that the name of the person placing the order online be the same as the person picking up the order. The rule should give consideration to customers who aren't able to drive due to a variety of reasons, including seniors, home bound individuals, or customers who have disabilities.
 - Requested removal of the requirement that there be no minors in the vehicle except for when there is a clear parent/guardian and child relationship.
 - Requested an effective date of January 1, 2020 in order to program online ordering systems to meet the twenty-five dollar minimum order requirement.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The minimum twenty-five dollar “grocery items” requirement was changed to include a minimum twenty-five dollar “non-alcohol items” requirement. The minimum non-alcohol item order requirement was not removed from the final rule. The intent of the minimum of twenty-five dollars of non-alcohol items is to help ensure public safety by not allowing “alcohol only” orders for individuals driving to and from grocery stores to utilize curbside service.
 - The requirement that the name of the person placing the order online be the same as the person picking up the order was removed. The adopted rule language gives consideration to customers who aren't able to drive.
 - The requirement that there be no minors in the vehicle except for when there is a clear parent/guardian and child relationship was removed.
 - The board delayed the effective date of the rule to August 1, 2019 to accommodate businesses needing to change online ordering systems in order to meet the requirements of the rules. Board Interim Policy #02-2018 will remain in place until August 1, 2019.
- 2. Pillsbury Winthrop Shaw Pittman LLP, Representing Instacart** – Written comments received regarding the pre-proposal CR 101, proposed rules at the CR 102, Supplemental CR 102, and 2nd Supplemental CR 102 stages of rulemaking, and testimony heard at the October 3, 2018 public hearing.
 - Requested revision to allow curbside service for beer and wine specialty shops and spirits retailers, and that retail deliveries are allowed at curbside.
 - Requested removal of the minimum grocery and non-alcohol purchase requirement.



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- Requested clarification that the rules allow retail deliveries at curbside without customers physically entering the licensed premises.
- Requested clarification regarding advertising and processing orders through a third-party website or smartphone application.
- Requested clarification that any third party delivery model may participate in curbside delivery services without obtaining further approval.
- Requested that independent contractors be added as individuals who can deliver orders to vehicles.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The board determined that curbside service be extended only to grocery stores.
- The minimum twenty-five dollar “grocery items” requirement was changed to include a minimum twenty-five dollar “non-alcohol items.” The minimum non-alcohol order requirement was not removed from the final rule. The intent of the minimum of twenty-five dollars of non-alcohol items is to help ensure public safety by not allowing “alcohol only” orders for individuals driving to and from grocery stores to utilize curbside service.
- The rules clearly indicate that the curbside order be delivered to a “...vehicle parked in a designated pickup area owned or controlled by the licensee...” so the customer does not have to physical enter the licensed premises.
- The board did not add additional language regarding independent contractors, third-party websites, smartphone applications, and third-party delivery models because they are related to business models which aren’t addressed in these rules.
- The board considers “independent contractors” delivering orders curbside to be employees of the licensee since the licensee has contracted for these services on the licensed premises.

3. Amazon – Written comments received regarding the pre-proposal CR 101, and the proposed rules at the CR 102, Supplemental CR 102 and 2nd Supplemental CR 102 stages of rulemaking.

- Supportive of amending WAC 314-11-015 to allow curbside service. Requested clarification that curbside service not be allowed in-car and via a window (drive-in), and that the language addressing this in WAC 314-11-015 match the language in the new section, WAC 314-03-400.
- Requested removal of the minimum grocery and non-alcohol purchase requirement.
- Requested removal of the requirement that the name of the person placing the order online be the same as the person picking up the order.
- Requested removal of the requirement that there be no minors in the vehicle except for when there is a clear parent/guardian and child relationship.
- Requested clarification regarding independent contractors and employees.
- Requested curbside service be allowed for other retailers selling liquor for off-premises consumption.



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- Requested an effective date of January 1, 2020 in order to program online ordering systems to meet the twenty-five dollar minimum order requirement.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The rules sections were changed to reflect the same language in each, and prohibit drive-through service from pickup or pass-through windows.
- The minimum twenty-five dollar “grocery items” requirement was changed to include a minimum twenty-five dollar “non-alcohol items” requirement. The minimum non-alcohol item order requirement was not removed from the final rule. The intent of the minimum of twenty-five dollars of non-alcohol items is to help ensure public safety by not allowing “alcohol only” orders for individuals driving to and from grocery stores to utilize curbside service.
- The requirement that the name of the person placing the order online be the same as the person picking up the order was removed.
- The requirement that there be no minors in the vehicle except for when there is a clear parent/guardian and child relationship was removed.
- The board considers “independent contractors” delivering orders curbside to be employees of the licensee since the licensee has contracted for these services on the licensed premises.
- The board determined that curbside service be extended only to grocery stores.
- The board delayed the effective date of the rule to August 1, 2019 to accommodate businesses needing to change online ordering systems in order to meet the requirements of the rules. Board Interim Policy #02-2018 will remain in place until August 1, 2019.

4. Distilled Spirits Council – Written comments received regarding the pre-proposal CR 101, and the proposed rules at the CR 102 and Supplemental CR 102 stages of rulemaking.

- Supportive of allowing curbside service.
- Requested the board extend curbside service to all off-premise liquor licensed retailers, not only grocery stores, and that the rules be expanded to cover telephone orders as well as online orders.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The board determined that curbside service be extended only to grocery stores. In order to help ensure public safety by not allowing “alcohol only” orders for individuals driving to and from stores to utilize curbside service, the rules require a minimum twenty-five dollars of non-alcohol items be included in the order.

5. Washington Association of Sheriffs and Police Chiefs – Written comments received regarding the pre-proposal CR 101 and the proposed rules at the CR 102 stage of rulemaking.



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- Requested the board not create rules to allow curbside service of alcohol because it may endanger public safety through reduced prevention of driving under the influence, and not being able to physically observe a person purchasing alcohol for signs of intoxication.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- Online grocery ordering programs normally require that orders be placed by a certain time and are picked up within a specific timeframe.
- The board added public safety language to the rules which includes:
 - Curbside service is only allowed for grocery stores and orders must include at least twenty-five dollars of non-alcohol items. Alcohol-only orders are not allowed.
 - Curbside pickup is not allowed from pickup or pass-through windows. Employees are required to deliver the order to the vehicle.
 - Vehicles must be parked in designated pickup areas owned or controlled by the licensee.
 - Employees delivering orders must be at least eighteen years of age and be trained on verifying ID, recognizing signs of intoxication, and preventing youth access.
 - If ID cannot be verified, or if the driver appears intoxicated, all alcohol will be removed from the order.

6. Washington Food Industry Association – Written comments received at the CR 102 stage of rulemaking and testimony heard at the June 13, 2018 and December 12, 2018 public hearings.

- Supportive of allowing curbside service.
- Requested clarification of drive-in or drive-through areas and windows where orders are handed out.
- Requested that rule language state that employees have to physically approach the vehicle to check ID and that liquor orders cannot be handed through a drive-up window.
- Requested clarification on whose ID would be checked.
- Requested general clarification on terms used in the rule so specific training could be addressed.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The rules sections were changed to reflect the same language in each, and prohibit drive-through service from pickup or pass-through windows. This language prohibits orders from being handed out of a window.
- Language was added that requires orders be delivered by an employee of the licensee to a vehicle parked in a designated pickup area owned or controlled by the licensee as part of the licensed premises.



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- The person picking up the order does not have to be the driver of the vehicle; they may be a passenger. The rule language gives consideration to customers who aren't able to drive due to a variety of reasons, including seniors or customers who have disabilities.
- Terms were clarified and training requirements were added to the rule.

7. Gordon Thomas Honeywell, Representing Total Wine & More – Written comments received at the CR 102 and Supplemental CR 102 stages of rulemaking.

- Supportive of allowing curbside service
- Requested that curbside service be extended to all retailers, and not limited to grocery stores.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The board determined that curbside service be extended only to grocery stores. In order to help ensure public safety by not allowing “alcohol only” orders for individuals driving to and from stores to utilize curbside service, the rules require a minimum twenty-five dollars of non-alcohol items be included in the order.

8. Heritage Distilling Company – Written comments received at the CR 102 stage of rulemaking.

- Requested that curbside service be extended to licensed distilleries and craft distilleries.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The board determined that curbside service be extended only to grocery stores. In order to help ensure public safety by not allowing “alcohol only” orders for individuals driving to and from stores to utilize curbside service, the rules require a minimum twenty-five dollars of non-alcohol items be included in the order.

9. Holly Chisa, Northwest Grocery Association – Testimony heard at the December 12, 2018 public hearing.

- Supportive of allowing curbside service and having rules in place outlining requirements.
- Concerned that the rule only allows curbside service for grocery stores and would like to see it extended to other license types.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- The board determined that curbside service be extended only to grocery stores. In order to help ensure public safety by not allowing “alcohol only”



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orders for individuals driving to and from stores to utilize curbside service, the rules require a minimum twenty-five dollars of non-alcohol items be included in the order.

- 10. Don Skakie, citizen** – Testimony heard at the June 13, 2018 public hearing.
- Would like the board to keep in mind its other charge of cannabis regulation. If curbside delivery works for alcohol, requesting the board consider it for cannabis.
 - Agrees with removal of the requirement that the name of the person placing the order online be the same as the person picking up the order.

WSLCB response: Thank you for your comments and participating in the rulemaking process. The requirement that the name of the person placing the order online be the same as the person picking up the order was removed

- 11. Anne Sultan, A Bud and Leaf** – Testimony heard at the June 13, 2018 public hearing.
- Strongly opposes curbside service and thinks delivering alcohol to a car full of kids is a bad idea. Thinks that alcohol is pushed too much and people should consume responsibly. Bringing liquor and beer and wine out to the curb is against that idea.

WSLCB response: Thank you for your comments and participating in the rulemaking process.

- Online grocery ordering programs normally require that orders be placed by a certain time and are picked up within a specific timeframe.
- The board added public safety language to the rules which includes:
 - Curbside service is only allowed for grocery stores and orders must include at least twenty-five dollars of non-alcohol items. Alcohol-only orders are not allowed.
 - Curbside pickup is not allowed from pickup or pass-through windows. Employees are required to deliver the order to the vehicle.
 - Vehicles must be parked in designated pickup areas owned or controlled by the licensee.
 - Employees delivering orders must be at least eighteen years of age and be trained on verifying ID, recognizing signs of intoxication, and preventing youth access.
 - If ID cannot be verified, or if the driver appears intoxicated, all alcohol will be removed from the order.

WAC Changes

WAC 314-11-015 – Amended

WAC 314-03-400 – New Section

See attachment.