



## **Notice of Permanent Rules for Internet Sales and Delivery of Spirits by Spirits Retail Licensees**

This explanatory statement concerns the **Washington State Liquor Control Board's adoption of WAC 314-03-030 Consumer orders, internet sales, and delivery for spirits retail licensees.**

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 December 8, 2012).

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](mailto:rules@liq.wa.gov).

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### **What are the agency's reasons for adopting this rule?**

Creating a rule for internet sales and delivery of spirits by spirits retail licensees with the same requirements for beer and wine creates consistency for all types of alcohol.

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### **Summary of all public comments received on this rule proposal.**

Five comments were received at the public hearing held on October 31, 2012. Thirty-one written comments were received on this rulemaking.

#### **Comments received at the public hearing:**

##### **Holly Chisa – Northwest Grocers Association**

**Comment:** NWA supports this rule after verifying this will not prohibit internet sales and delivery to retail licensees.

**Peter Yoakum – Congnoscenti, LLC**

**Comment:** Supports the rule but feels that subsection (2) should be removed (“spirits must come directly from a licensed retail location”) and changed to spirits sold to a retailer to be delivered to a carrier engaged by either party to the transaction.

**LCB response:** This rule doesn’t apply to spirits sold to a retailer. It only applies to spirits sold to a consumer.

**Comment:** Subsection (4)(a) should be changed to allow a third party service to solicit customer business on behalf of a spirits retail licensee.

**LCB response:** This rule doesn’t apply to spirits sold to a retailer. It only applies to spirits sold to a consumer.

**Jim Halstrom – Southern Wine and Spirits**

**Comment:** Oppose the rule. I-1183 was specific on retail liquor sales within the state. No provision was granted to retail sales other than at the licensed premises and the location met the 10,000 square foot requirement.

**LCB response:** Spirits may be ordered in person at a retail licensed location, by mail, telephone, or internet, or by other similar methods. The sale will still be to the licensed premises which must meet the 10,000 square feet of retail space requirement.

**Comment:** The possibility of control problems arising from internet sales and delivery of spirits by spirits retail licensees is why we are opposing this rule.

**LCB response:** Spirits retail licensees are not allowed to sell or deliver spirits to persons under twenty-one years of age. Age verification for the person accepting delivery is also required by the delivery person.

**Ron Risdon – Citizen**

**Comment:** Support rule. Small craft distillers are the victims and should also be allowed to sell to consumers over the internet.

**LCB response:** WAC 314-28-050 specifically state that consumer sales for off-premises consumption must occur when the consumer is physically present on the craft distillery premises. The board received a request from a craft distillery requesting the language be revised to allow internet sales and delivery. The board will make a decision by November 27, 2012, whether to open rulemaking for this change.

**Jas Sangha – Washington Liquor Store Association (WALSA)**

**Comment:** Oppose rule. This will open up internet sales to two million locations – the number of smart phones.

**LCB response:** Only a spirits retail licensee will be allowed internet sales and delivery of spirits. They must hold the license and meet the requirements of the spirits retail license.

**Tillman Carr – Spirits Retail Licensee**

**Comment:** The rule should specifically state that advertising on or linking to a third party website will not be considered as soliciting customer business on behalf of a spirits retail licensee.

**LCB response:** The allowance for industry members listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites is covered in RCW 66.28.310.

**Shara Coffman – Spirits Retail Licensee**

**Comment:** Support the rule. This rule may allow me to be more competitive in this new marketplace.

**Edmond Squiffet – Citizen**

**Comment:** Support the rule. I would very much appreciate home delivery of spirits.

**Amy Brackenbury – Washington Food Industry**

**Comment:** Support the rule. By adopting this rule, the Board makes it clear that beer, wine, and spirits should be treated the same in this regard and provides clarity to spirits retail licensees consistent with the new laws adopted as part of I-1183.

**Julia Clark – Washington Restaurant Association (WRA):**

**Comment:** My concern is that this would prohibit spirits retail licensees from taking internet orders from on-premises licensees.

**LCB response:** This rule does not affect retail-to-retail sales. This rule only applies to consumer orders.

**John Guadnola – Washington Beer & Wine Distributors Association**

**Comment:** Oppose the rule. I-1183 was specific on retail liquor sales within the state. No provision was granted to retail sales other than at the licensed premises and the location met the 10,000 square foot requirement.

**LCB response:** Spirits may be ordered in person at a retail licensed location, by mail, telephone, or internet, or by other similar methods. The sale will still be to the licensed premises which must meet the 10,000 square feet of retail space requirement.

**Comment:** The possibility of control problems arising from internet sales and delivery of spirits by spirits retail licensees is why we are opposing this rule.

**LCB response:** Spirits retail licensees are not allowed to sell or deliver spirits to persons under twenty-one years of age. Age verification for the person accepting delivery is also required by the delivery person.

**Michael Cho – Washington Liquor Store Association**

**Comment:** Recommend changes to the proposed rule. Subsection (2) states spirits must come directly from a licensed retail location. Language should be added that states “spirits may not be sold or delivered from any storage or warehouse of the licensee that is not part of their licensed premises”.

**LCB response:** LCB feels the language is clear that spirits must come directly from the licensed location as written.

**Comment:** Subsection (3) should have language added that any spirits retail licensee or their employee must verify the age of any person placing an internet order.

**LCB response:** All licensees and their employees are required to verify that any person purchasing alcohol is at least 21 years of age. Accepting internet orders does not relieve them of this responsibility.

**Comment:** Subsection (7)(b) should require the delivery person to verify the person’s name as well as their age. Subsection (7)(c) should only allow the person who placed the order to accept delivery. Subsection (9) should add language that only the person who made the order may accept delivery. Subsection (10) should add language that only the person who made the order may accept delivery and the sales record should include the name of the delivery person.

**LCB response:** The board’s main concern is that the person accepting the order is at least 21 years of age. The licensee will have a record of the person making the delivery.

**Comment:** Subsection (12) should add language that the delivery person should also be responsible for any violation.

**LCB response:** The board does not feel this language is needed. The spirits retail licensee is the person we feel is responsible for the violation. It is their responsibility to train their delivery personnel.

**Chief Wilson – Mountlake Terrace Police Department**

**Comment:** I have concerns related to age verification techniques to be utilized in online purchasing. Licensees will seek out the cheapest private carrier to keep costs down. It is highly possible that these contract carriers will employ persons that may fail to obtain required adult signatures, have no experience in being able to differentiate between authentic and fake identification, or even fail to check identification.

**LCB response:** The spirits retail licensee is responsible to ensure the delivery person obtains identification to verify the person accepting the delivery is at least 21 years of age. The licensee is held accountable for any violation in regards to delivery.

**The following sent in objections to the rule based on easier access to spirits by minors:**

- **Beth Dannhardt - Citizens**
- **Karen Owens-Ewing – Citizens**
- **Patricia J. Brick - Citizens**
- **Shirley & Larry Noedel - Citizens**
- **Kimber Bailey - Citizens**
- **Beverly KincaidRichard A. Butler - Citizen**
- **Alana Morris – CTC Board, Mercer Island**
- **Derek Franklin – President WASAVP**
- **Project Handle – 13 citizens**

## **WAC Changes**

### NEW SECTION

**WAC 314-03-030 Consumer orders, internet sales, and delivery for spirits retail licensees.** A spirit retail licensee may accept orders for spirits from, and deliver spirits to, customers.

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

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

(3) **How to place an order.** Spirits 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 spirits retail licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits retail licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a spirits retail licensee.

(b) All orders and payments shall be fully processed before spirits 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 spirits via the internet, a new spirits retail license applicant must request internet-sales privileges in his or her application. An existing spirits retail 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 spirits retail 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.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under 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 spirits must be factory sealed in bottles. 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 the 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) Time and date 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 the spirits retail licensee's registered trade name.

(12) **Accountability.** A spirits retail 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.