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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Amy Demboski
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor
465.4081

DATE: April 16, 2020

RE: Filed Emergency Regulations: Alcoholic Beverage Control Board

Alcoholic Beverage Control Board Emergency Regulations re: suspension of statutes in response to COVID-19 pandemic (3 AAC 304.185(g); 3 AAC 304.920; 3 AAC 304.925)

Attorney General File:	Emergency Regulations
Regulation Filed:	4/16/2020
Effective Date:	4/16/2020
Expiration Date:	August 13, 2020 unless made permanent by the adopting agency
Print:	234, July 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Jane Sawyer, Regulations Specialist

FINDING OF EMERGENCY

The Alcoholic Beverage Control Board finds that an emergency exists and that the attached regulations are necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

On March 11, 2020, the governor declared a public health disaster emergency under AS 26.23.020 due to the spread of COVID-19. The Center for Disease Control and Alaska Department of Health and Social Services have warned that COVID-19 is highly contagious and that physical distancing is paramount to containing the spread of the virus. Alaska instituted public health mandates requiring that individuals maintain physical distance from people who are not members of the person's household. The mandates allow for the continued operation of businesses that provide essential services and supplies and businesses where people can maintain the required social distance when inside.

Stores providing essentials, such as groceries and pharmaceuticals, are implementing strict measures to maintain physical distance and increasing the availability of drive-through and curbside pick-up and home delivery options. The board anticipates that so long as patrons are able to enter the premises of alcohol licensees for purchasing, it is necessary to take every possible step to protect the health and safety of those patrons and employees by providing purchasing opportunities that minimize physical distance between patrons and employees.

The governor suspended the following statutes in Title 4, relating to the sales of alcoholic beverages.

Suspended as of April 14, 2020

<u>Authority</u>	<u>Division</u>	<u>Suspended as described below</u>
AS 04.11.090	AMCO	Suspension of the statute only to the extent necessary to allow for: (1) curbside pickup of alcohol; and (2) delivery of beer and wine when included with an order of food being delivered by a licensed restaurant or eating place establishment.
AS 04.11.100	AMCO	Suspension of the statute only to the extent necessary to allow for: (1) curbside pickup of alcohol; and (2) delivery of beer and wine when included with an order of food being delivered by a licensed restaurant or eating place establishment. .
AS 04.11.130(b)(1)	AMCO	Suspension of the statute only to the extent necessary to allow for the curbside pickup of beer sales otherwise allowed under the statute.
AS 04.11.135(a)(3)	AMCO	Suspension of the statute only to the extent necessary to allow for the curbside

AS 04.11.135(d)(3)(C)&(e)	AMCO	pickup of beer sales otherwise allowed under the statute. Suspension of the statute only to the extent necessary to allow for: (1) curbside pickup of alcohol; and (2) delivery of beer and wine when included with an order of food being delivered by a licensed restaurant or eating place establishment.
AS 04.11.140(b)(1)(A)	AMCO	Suspension of the statute only to the extent necessary to allow for the curbside pickup of wine sales otherwise allowed under the statute.
AS 04.11.150	AMCO	Suspension of the statute only to the extent necessary to allow for the curbside pickup of alcohol sales otherwise allowed under the statute.
AS 04.11.170	AMCO	Suspension of the statute only to the extent necessary to allow for curbside pickup of alcohol.

The practical effect of these suspensions is that licensees are able to sell alcoholic beverages off of the licensed premises. To provide constraints and avoid confusion, the board must pass emergency regulations so that physical distancing can be balanced with existing public peace, health, and safety protections, including verification that the purchasers are of legal drinking age and are not intoxicated at the time of purchase and protections against alcohol being left unattended.

THEREFORE: The Alcoholic Beverage Control Board finds that upon suspension of the listed Title 4 statutory provisions as stated in the Governor's Suspension Order, effective April 14, 2020, it is in the best interest of the state to enact emergency regulations 3 AAC 304.185(g), 3 AAC 304.920, and 3 AAC 304.925.

ORDER CERTIFYING ADOPTION

I certify that the Alcoholic Beverage Control Board under the authority of AS 04.06.090, adopted at its April 15, 2020, meeting the attached five pages of regulation changes as an

emergency regulation to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

4/16/2020

Date: _____

DocuSigned by:


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Glen Klinkhart, Interim Director

FILING CERTIFICATION

April Simpson for

I, [↑]Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on April 16th, 2020, at 12:37 p.m., I filed the attached regulation according to the provisions of AS 44.62.

April Simpson
for Lieutenant Governor *Kevin Meyer*

Effective: April 16, 2020.

Register: 234, July 2020.

Expires August 13, 2020
unless made "permanent"
by the adopting agency

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



A handwritten signature in blue ink, appearing to read "K. Meyer", is written over a horizontal dotted line.

**KEVIN MEYER
LIEUTENANT GOVERNOR**

EMERGENCY REGULATION

Register 234, July 2020

COMMERCE, COMMUNITY, AND EC. DEV.

3 AAC 304.185 is amended by adding a new section to read:

(g) Notwithstanding (a) – (f) of this section, a licensee may permit an agent or employee to take alcohol off of a licensed premises and bring it to a purchaser for curbside pickup or home delivery under the conditions described in 3 AAC 304.920 or 3 AAC on 304.925. (Eff. 11/29/81, Register 80; am 12/13/2009, Register 192; am 7/1/2018, Register 226; am 8/17/2018, Register 227; am 4 / 16 / 2020, Register 234)

Authority: AS 26.23.020 AS 04.06.090 AS 04.06.100

3 AAC 304 is amended by adding a new section to read:

3 AAC 304.920. Curbside pickup. (a) Notwithstanding 3 AAC 304.185(a) – (f), a beverage dispensary licensee under AS 04.11.090, a restaurant or eating place licensee under AS 04.11.100, a brewery licensee under AS 04.11.130, a brewpub licensee under AS 04.11.135, a winery licensee under AS 04.11.140, a package store licensee under AS 04.11.150, or a distillery licensee under AS 04.11.170 may permit curbside pickup of alcoholic beverages sold at retail only if:

EMERGENCY REGULATION

Register 234, July 2020

COMMERCE, COMMUNITY, AND EC. DEV.

(1) the alcoholic beverage offered for sale is factory sealed;

(2) the licensee is permitted to sell the type of alcoholic beverage under the

licensee's current license;

(3) a holder of an alcohol server education card who is an agent, excluding

through third-party contract, or employee of the licensee takes the alcoholic beverage from the

licensed premises to the location designated for curbside pickup;

(4) the holder of an alcohol server education card verifies in person that the

purchaser of the alcoholic beverage is 21 years of age or older as required under 3 AAC 304.425

and is not otherwise restricted from purchasing alcoholic beverages under AS 04.16.160, by

requiring the purchaser to produce a valid driver's license or valid identification card; and

(5) the transaction is in accordance with AS 04.16.030.

EMERGENCY REGULATION

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(b) A licensee that offers alcoholic beverages for curbside pickup must consent to inspections of the areas designated for curbside pickup, excluding private vehicles, at all reasonable times and in a reasonable manner by investigative personnel of the board or by other peace officers acting in their official capacity. This section is not intended to limit the existing powers of investigative personnel.

(c) A licensee providing curbside pickup shall provide written information regarding their license and curbside service on a form designated by the Director.

(d) For purposes of this section,

(1) “curbside pickup” means a parking place designated by a licensee for pickup of food or alcoholic beverages or an area not greater than 50 feet of an entry to a licensee’s business premises.

(2) “factory sealed” means in a closed, manufacturer-sealed or packaged bottle or can, or a licensee sealed, tamper proofed, and labeled growler of beer. (Eff.

4 / 16 / 2020, Register 234)

Authority: AS 26.23.020

AS 04.06.090

AS 04.06.100

EMERGENCY REGULATION

Register 234, July 2020

COMMERCE, COMMUNITY, AND EC. DEV.

3 AAC 304 is amended by adding a new section to read:

3 AAC 304.925. Home delivery. (a) Notwithstanding 3 AAC 304.185(a) – (f) and 3 AAC 304.635(b), a beverage dispensary licensee under AS 04.11.090, a restaurant or eating place licensee under AS 04.11.100, or a brewpub licensee under AS 04.11.135 may permit home delivery of beer or wine sold at retail only if:

- (1) the order of beer or wine accompanies an order of a meal;
- (2) the beer or wine offered for sale is factory sealed;
- (3) the licensee is permitted to sell beer or wine under the licensee's current license;
- (4) the licensee does not use a third-party delivery service;
- (5) a holder of an alcohol server education card who is an agent, excluding through third-party contract, or employee of the licensee takes the beer or wine from the licensed premises to a residence for home delivery;
- (6) the purchaser is at home and available to confirm the purchase at the time of home delivery;

EMERGENCY REGULATION

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(7) a holder of an alcohol server education card verifies that the purchaser of the alcoholic beverage is 21 years of age or older and is not otherwise restricted from purchasing alcoholic beverages under AS 04.16.160, by requiring the purchaser to produce a valid driver's license or valid identification card; and

(8) the transaction is in accordance with AS 04.16.030.

(b) For purposes of this section,

(1) "factory sealed" means in a closed, manufacturer-sealed or packaged bottle or can or a licensee sealed, tamper proofed, and labeled growler of beer.

(2) "meal" means food purchased at a retail price that is at least fifty percent of the retail price of the alcohol purchase accompanying the order. (Eff. 4 / 16 / 2020, Register 234)

Authority: AS 26.23.020 AS 04.06.090 AS 04.06.100



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

Alcohol and Marijuana Control Office

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Alcoholic Beverage Control Board Meeting April 15, 2020 Excerpt from Unapproved Minutes

Sara Erickson motions to adopt amended emergency regulations. Sara Erickson amends motion to add what Joan suggested as of 3:45 pm. Dana Walukiewicz 2nds. 5-0, motion passes.

Rex motions to adopt the emergency findings, Charlie 2nds. 5-0, motion passes.

AFFIDAVIT OF ALCOHOLIC BEVERAGE CONTROL ACTION

I, Glen Klinkhart, Interim Director, for the Alcoholic Beverage Control Board, under penalty of perjury, state the following:

The attached motion dealing with response to COVID-19 outbreak was passed by the Alcoholic Beverage Control Board during its April 15, 2020, meeting.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 4/16/2020

DocuSigned by:

3877CBCDD3CA4CA...

[original or password-protected electronic signature]
Glen Klinkhart, Interim Director

State of Alaska
Municipality of Anchorage