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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 *AS*
465.4081

DATE: November 17, 2020

RE: Filed Emergency Regulations: Alcoholic Beverage Control Board

Alcoholic Beverage Control Board Emergency Regulations re: curbside pickup and home delivery (3 AAC 304.185(g); 3 AAC 304.920; 3 AAC 304.925)

Attorney General File:	Emergency Regulations
Regulation Filed:	11/17/2020
Effective Date:	11/17/2020
Expiration Date:	March 16, 2021 unless made permanent by the adopting agency
Print:	236, January 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Jane P. 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 November 6 2020, the governor declared a public health disaster emergency under AS 26.23.020 due to the spread of COVID-19. According to the declaration, an outbreak of Covid-19 is occurring in Alaska due to widespread community transmission. The declaration is effective November 16, 2020 to December 15, 2020 and replaces a prior declaration of public health emergency that expired November 15, 2020.

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 where people can maintain the required social distance when inside.

Stores, restaurants, and bars have implemented strict measures to maintain physical distance and increasing the availability of drive-through and curbside pick-up and home delivery options. The board concludes 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.

On November 15, 2020, the governor issued Covid Outbreak Health Order No. 1, Relating to the Suspension of Sections of Alaska Administrative Code and Sections of Alaska Statutes. The order suspends the following statutes in Title 4, relating to the sales of alcoholic beverages, through the duration of the Public Health Emergency Disaster Declaration effective November 16, 2020 at 12:01 a.m.

<u>Authority</u>	<u>Division</u>	<u>Suspended as described below</u>
AS 04.06.050	AMCO	To suspend the requirement that the Alcoholic Beverage Control Board meet at least once each year in each judicial district. Suspension of the statute only to the extent necessary to allow for:
AS 04.11.090	AMCO	(1) curbside pickup of alcohol; and (2) delivery of beer and wine when included with an order of food being

AS 04.11.100	AMCO	<p>delivered by a licensed restaurant or eating place establishment.</p> <p>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.</p>
AS 04.11.130	AMCO	<p>Suspension of the statute only to the extent necessary to allow for (1) the curbside pickup of beer sales otherwise allowed under the statute; and (2) delivery of beer and wine when included with an order of food being prepared and delivered by a licensed restaurant or eating place establishment or by the bona fide restaurant on the licensed premises.</p>
AS 04.11.135(a)(3)	AMCO	<p>Suspension of the statute only to the extent necessary to allow for the curbside pickup of beer sales otherwise allowed under the statute.</p>
AS 04.11.135(d)(3)(C) & (e)	AMCO	<p>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.</p>
AS 04.11.140	AMCO	<p>Suspension of the statute only to the extent necessary to allow for (1) the curbside pickup of wine sales otherwise allowed under the statute; and (2) delivery of beer and wine when included with an order of food being prepared and delivered by a licensed restaurant or eating place establishment or by the bona fide restaurant on the licensed premises.</p>
AS 04.11.150	AMCO	<p>Suspension of the statute only to the extent necessary to allow for the curbside pickup of alcohol sales otherwise allowed under the statute.</p>
AS 04.11.170	AMCO	<p>Suspension of the statute only to the extent necessary to allow for curbside pickup of alcohol.</p>

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 November 16, 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 November 17, 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.

Date: 11/17/2020

DocuSigned by:

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Glen Klinkhart, Interim Director

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on November 17, 2020, at 5:44 p., I filed the attached regulation according to the provisions of AS 44.62.

April Simpson

Kevin Meyer
Lieutenant Governor

Effective: November 17, 2020.

Register: 236, January 2021.

Expires March 16, 2021
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.**



K. Meyer
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**KEVIN MEYER
LIEUTENANT GOVERNOR**

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(Words in boldface and underlined indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 304.185(g) is amended to read:

(g) Notwithstanding (a) - (f) of this section, a licensee may permit an agent or employee to take an alcoholic beverage off of a licensed premises and bring it to a purchaser for curbside pickup or home delivery [BEFORE NOVEMBER 15, 2020], under the conditions described in 3 AAC 304.920 or 3 AAC 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; am 8/23/2020, Register 235; am 11/17/2020, Register 236)

Authority: AS 04.06.090 AS 04.06.100 AS 26.23.020

3 AAC 304.920 is repealed and readopted 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

- (1) the alcoholic beverage offered for sale is factory sealed;
- (2) the licensee is permitted to sell the type of alcoholic beverage under the

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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.

(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. Nothing in this section limits the existing powers of investigative personnel.

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

(d) This section applies until the expiration of the governor's November 15, 2020 order, any extensions or renewals of the order, or any new adoptions of orders suspending AS 04.11.090, 04.11.100, 04.11.130(b)(1), 04.11.135(a)(3), (d)(3)(C), and (e), 04.11.140(b)(1)(A), 04.11.150, and 04.11.170 effective during the COVID-19 public health emergency disaster declaration.

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(e) 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 from 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; am 8/23/2020, Register 235; am 11 / 17 / 2020, Register 236)

Authority: AS 04.06.090 AS 04.06.100 AS 26.23.020

3 AAC 304.925 is repealed and readopted 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, a brewery licensee under AS 04.11.130 operating a bona fide restaurant on premises, a brewpub licensee under AS 04.11.135, or a winery licensee under AS 04.11.140 operating a bona fide restaurant on premises 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 prepared by the licensee or the bona fide restaurant on premises;

(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;

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(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;

(7) a 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

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

(b) This section applies until the expiration of the governor's November 15, 2020 order, any extensions or renewals of the order, or any new adoptions of orders suspending AS 04.11.090, 04.11.100, 04.11.130(b)(1), 04.11.135(a)(3), (d)(3)(C), and (e), 04.11.140(b)(1)(A), 04.11.150, and 04.11.170 effective during the COVID-19 public health emergency disaster declaration.

(c) 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 50 percent of the retail price of the alcoholic beverage purchase accompanying the order. (Eff. 4/16/2020, Register

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234; am 4/23/2020, Register 234; am 8/23/2020, Register 235; am 11/17/2020, Register 236)

Authority: AS 04.06.090 AS 04.06.100 AS 26.23.020