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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**M E M O R A N D U M**

**TO:** Amy Demboski  
Department of Commerce, Community, and Economic Development

**FROM:** April Simpson, Office of the Lieutenant Governor   
465.4081

**DATE:** November 24, 2020

**RE:** Filed Emergency Regulations: Marijuana Control Board

Marijuana Control Board emergency regulations re: curbside and window pickup (3 AAC 306.305(a); 3 AAC 306.310(a); 3 AAC 306.995)

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Attorney General File:	Emergency Regulations
Regulation Filed:	11/24/2020
Effective Date:	11/24/2020
Expiration Date:	March 23, 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 Marijuana 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 outbreak and continued spread of COVID-19: in particular, 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 United States Centers for Disease Control and Prevention and the 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. Marijuana retail stores continue to operate and are open.

Marijuana retail stores have implemented strict measures, including capacity limitations, physical distancing, and mask requirements, to minimize the spread of COVID-19. Under the prior emergency, the board concluded those efforts were enhanced by permitting window and curbside delivery of retail purchases. The board concludes that so long as patrons are able to enter the premises of retail marijuana stores, it is necessary to take every possible step to protect the health and safety of those patrons and employees engaged in a retail transaction. Therefore, the Board concludes it is necessary to again permit curbside and window delivery of retail orders for the length of this COVID-19 public health emergency, any extension of this emergency, or any new adoption of this emergency by the Governor or Alaska State Legislature

To protect the public health, the board must pass emergency regulations to permit window and curbside delivery.


THEREFORE: The Marijuana Control Board finds that it is in the best interest of the state to enact emergency regulations.

## ORDER CERTIFYING ADOPTION

I certify that the Marijuana Control Board under the authority of AS 17.38.121 and 17.38.190, adopted at its November 23, 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: 11/24/2020

DocuSigned by:  
  
3877CBCDD3CA4CA

Glen Klinkhart, Interim Director

### FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on November 24, 2020, at 1:10 pm, I filed the attached regulation according to the provisions of AS 44.62.

  
for Lieutenant Governor Kevin Meyer

Effective: November 24, 2020.

Register: 236, January 2021.

Expires March 23, 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.**



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

**KEVIN MEYER  
LIEUTENANT GOVERNOR**

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

3 AAC 306.305 (a) is amended to read:

(a) A licensed retail marijuana store is authorized to

(1) sell marijuana purchased from a licensed marijuana cultivation facility, packaged and labeled as required under 3 AAC 306.345, 3 AAC 306.470, and 3 AAC 306.475 in an amount not exceeding the limit set out in 3 AAC 306.355, to an individual on the licensed premises **or as permitted under 3 AAC 306.995** for consumption off the licensed premises;

(2) sell a marijuana product purchased from a licensed marijuana product manufacturing facility, packaged and labeled as required under 3 AAC 306.345, 3 AAC 306.565, and 3 AAC 306.570, in a quantity not exceeding the limit set out in 3 AAC 306.355, to an individual on the licensed premises **or as permitted under 3 AAC 306.995** for consumption off the licensed premises;

(3) store marijuana and marijuana products on the licensed premises in a manner consistent with 3 AAC 306.710 – 3 AAC 306.720;

(4) with prior approval of the board, permit consumption of marijuana or a marijuana product purchased on the licensed premises, in a designated area on the licensed premises. (Eff. 2/21/2016, Register 217; em am 4/17/2020 - 8/14/2020, Register 234; am 11 / 24 / 2020, Register 236)

**Authority:** AS 17.38.010      AS 17.38.150      AS 17.38.200

AS 17.38.070

AS 17.38.190

AS 17.38.900

AS 17.38.121

3 AAC 306.310(a) is amended to read:

(a) A licensed retail marijuana store may not sell, give, distribute, deliver, or offer to sell, give, distribute, or deliver, marijuana or a marijuana product

(1) to a person under 21 years of age;

(2) to a person that is under the influence of an alcoholic beverage, inhalant, or controlled substance;

(3) that is not labeled and packaged as required in 3 AAC 306.345 and

(A) 3 AAC 306.470 and 3 AAC 306.475; or

(B) 3 AAC 306.565 and 3 AAC 306.570;

(4) in a quantity exceeding the limit set out in 3 AAC 306.355;

(5) **unless permitted under 3 AAC 306.995,** over the Internet; a licensed retail marijuana store may only sell marijuana or a marijuana product to a consumer who is physically present on the licensed premises **or who is physically present at the location designated for exterior window or curbside pickup as described and permitted under 3 AAC 306.995;**

(6) after the expiration date shown on the label of the marijuana or marijuana product. (Eff. 2/21/2016, Register 217; am 4/11/2019, Register 230; em am 4/17/2020 - 8/14/2020, Register 234; am 11 / 24 / 2020, Register 236)

**Authority:** AS 17.38.010      AS 17.38.150      AS 17.38.200  
AS 17.38.070      AS 17.38.190      AS 17.38.900  
AS 17.38.121

3 AAC 306.995 is repealed and readopted to read:

**3 AAC 306.995. Internet and phone orders; exterior window or curbside pickup. (a)**

A retail marijuana store licensed under 3 AAC 306.300 may accept Internet or telephonic orders of marijuana or marijuana products from consumers if consumers intend to be physically present at the time of purchase on the licensed premises or at the location designated for exterior window or curbside pickup.

(b) A retail marijuana store licensed under 3 AAC 306.300 may provide exterior window or curbside pickup of marijuana and marijuana products sold at retail on or before the expiration date described in (a) of this section only if

(1) the marijuana or marijuana product offered for sale does not exceed the amounts set out under 3 AAC 306.355 and is packaged as required under 3 AAC 306.345;

(2) a holder of a marijuana handler permit completing the sale verifies the requirements of 3 AAC 306.350 are satisfied and that the purchaser is not under the influence as described under 3 AAC 306.310(a)(2);

(3) the licensee extends the video surveillance requirements of 3 AAC 306.720 to include the area designated for exterior window or curbside pickup;

(4) the licensee submits, as applicable, a request for an operating plan change in accordance with 3 AAC 306.703 or a request for licensed premises alteration in accordance with 3 AAC 306.705, for which fees shall be waived, and the director provides written approval of that change or alteration; and

(5) the licensee provides written assurance that the local government permits the change or alteration.

(c) A licensee that offers marijuana or marijuana products for exterior window or curbside pickup must consent to inspections of the areas designated for exterior window or 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.

(d) This section applies until the expiration of the governor's November 6, 2020 COVID-19 public health emergency disaster declaration or any extensions or renewals of the declaration.

(e) For purposes of this section,

(1) "curbside pickup" means parking spots designated by a licensee for pickup of marijuana or marijuana products or an area immediately adjacent to an entrance to a licensee's business premise;



(2) “exterior window pickup” means a drive-through or sliding or opening window of a marijuana retail store from which marijuana or marijuana products may be purchased without consumers entering the licensed premises. (Eff. 4/17/2020, Register 234; am 8/23/2020, Register 235; am 11 / 24 / 2020 , Register 236 )

**Authority:** AS 17.38.010 AS 17.38.150 AS 17.38.900

AS 17.38.070 AS 17.38.190

AS 17.38.121 AS 17.38.200

AFFIDAVIT OF BOARD ACTION

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


The attached motion dealing with emergency regulations for curbside/window pickup of marijuana or marijuana product was passed by the Marijuana Control Board during its November 23, 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.

11/24/2020

Date: \_\_\_\_\_

DocuSigned by:  
  
3877CBCDD3CA4CA...

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

State of Alaska  
Municipality of Anchorage



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

## Department of Commerce, Community, and Economic Development

Alcohol and Marijuana Control Office

550 West 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501  
Main: 907.269.0350

### **Marijuana Control Board Meeting November 23, 2020, Unapproved Minutes**

#### **Curbside/Window Pickup – extension – emergency regulation**

1:00 p.m. Loren Jones calls the meeting to order.

Loren Jones lists the board members and staff present in the Zoom meeting:

Nick Miller  
Casey Dschaak  
Christopher Jaime  
Bruce Schulte  
Loren Jones  
Glen Klinkhart  
Carrie Craig  
Joan Wilson  
Jane Sawyer  
Nathan Hall

Loren Jones asks whether there are any changes to the agenda. Agenda approved.

Loren Jones addresses board governance on the agenda. No changes. And there is no public testimony.

Loren Jones tells the board they received two emails with the emergency regulations attached, and turns it over to counsel.

Joan Wilson summarizes the reason for the emergency regulations and what they would do. Explains that the Alcoholic Beverage Control Board adopted emergency regulations in response to Title 4 provisions being suspended by the governor. She asks the board to have the discussion.

**Bruce Shulte moves to move the packet which is the Emergency Findings and emergency regulations.**

**Nick Miller seconds.**

Discussion:

Bruce Shulte talks about what the board discussed at the last meeting where the board did not want to move forward with extending curbside/window pickup at that time: it was unknown whether the governor was going to extend the emergency declaration, it was prudent to let the emergency regulations sunset. Now that the governor extended the emergency declaration, it changes the dynamic hence the board is reconsidering extending curbside/window pickup.

Nick Miller states he has spoken to customers who are not happy about not having curbside/window pickup. It's hard to explain to customers why marijuana does not have regulations that allow for

curbside/window. He wants to let the board that there is significant public concern about not being able to.

Loren Jones offers some background regarding the emergency regulations. Asks question to Joan Wilson regarding "sunset" of these emergency regulations.

Joan Wilson answers his questions. The emergency regulations are depended upon the governor's extension of the declaration. She lets the board know what the ABC Board did: sent it out for public comment to adopt as a permanent regulation.

Chris Jaime asks if they move forward with a permanent regulation, would they still have a sunset?

Joan Wilson, yes and she explains further.

Casey Dschaak, would we be adopting these as permanent regulations today?

Joan Wilson, no, they would be sent out for public comment. Today you would only be adopting emergency regulations.

Casey Dschaak expresses his concerns regarding continuing the practice of curbside/window pickup via emergency regulations.

Bruce Schulte asks about the correlation between 120-day to the governor's declaration. But he believes there is a need for these emergency regulations.

Joan Wilson responds.

**Roll call: Mr. Jaime, yes. Mr. Dschaak, no. Mr. Schulte, yes. Mr. Miller, yes. Mr. Jones, yes. Motion passes 4-1.**

### **Consideration of making the emergency regulations permanent.**

**Bruce Schulte motions to put these regulations out for public comment.**

**Nick Miller seconds.**

Discussion:

Bruce Schulte says the word "permanent" gives him pause. He explains further.

Loren Jones follows up on Bruce Schulte's comments.

Casey Dschaak asks about what data has been collected regarding curbside/window pickup. Has there been any problems?

Loren Jones, suggest having a special meeting if the regulations do not make it to the January 2021 meeting to have more discussion about the topic.

Nick Miller seconds Casey's comments. He wants enforcement input. Have there been any problems?

Glen Klinkhart comments on the enforcement side of it.

Joan Wilson states there are enforceability constraints in that AMCO does not have the authority to go inside anyone's car where these transactions are occurring, and also the fact that children may be inside the vehicle. That's another thing to take into consideration. To her knowledge most of the states have only made these regulations temporary. She clarifies and lets licensees who are listening know that these emergency regulations will not become effective until the Lt. Governor signs them. She wants people to know that the board's action is not the end of the process.

Loren Jones recognizes Sarah Oates and reminds her that the board is not taking public comment. Sarah Oates makes comments about the word "permanent" on the alcohol emergency regulations and the confusion it caused to the industry. Makes a recommendation about the public notice for marijuana.

Joan Wilson states that that language is language that needs to be put on the public notice and the way it is clarified is through a FAQ. The same words will be on the public notice to meet the requirements of the Administrative Procedures Act with Department of Law. Joan states that an FAQ or advisory can

advise people regarding the “permanent” confusion should the public/licensees not read the regulations but it is their obligation to read them.

Jane Sawyer asks the board if it will be taking oral comments at the January meeting. She states she will do her best to have them in front of the at the January meeting even though is tight deadline.

Loren Jones states no.

**Roll call on the motion to put them out for public comment: Casey Dschaak, yes. Christopher Jaime, yes. Nick Miller, yes. Bruce Schulte, yes. Loren Jones, yes. Motion carries.**

1:25 p.m. meeting adjourned