



## MEMORANDUM

TO: Bob Klein, Chair, and Members of the  
Alcoholic Beverage Control Board

DATE: August 14, 2018

FROM: Erika McConnell, Director

RE: Potential Regulations Change:  
Operating Requirements

**Statutory Authority:** AS 04.06.100(a): “The board shall adopt regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state that are consistent with this title and necessary to carry out the purpose of this title in a manner that will protect the public health, safety, and welfare.”

**Status:** Initial draft for board to consider opening a regulations project

**Background:** This proposed regulation clarifies that the listed items in 3 AAC 304.170(j) are operating requirements necessary for licensees who only operating 240 hours per year, but allows the board to accept alternate documentation to meet the burden of proof if the licensee fails to provide documentation proving each operating requirement. The proposal includes a list of example documents that could be provided. Staff has attempted to provide additional clarity to licensees, AMCO staff, and the board, and some flexibility to licensees and the board through this regulations project.

In addition, the project proposes that waiver of operations applications be required (to avoid a late fee) by the last meeting of any year rather than by the last meeting before November 30 of any year. Depending on the meeting schedule, current regulatory language would require (as it would for this year) waiver applications to be submitted in September for an October meeting.

3 AAC 304.170(h) is amended to read:

(h) In addition to the application fee under (c) of this section, the applicant shall pay \$1,000 for an application that is received too late for board consideration at its **last** meeting [BEFORE NOVEMBER 30] of the **calendar** year for which waiver is requested.

3 AAC 304.170(j) is amended to read:

(j) If a license is exercised only to satisfy the minimum operating requirement under AS 04.11.330(a)(3) or 3 AAC 304.107(c)(1), a licensee **shall operate** [HAS THE BURDEN OF PROOF TO SHOW THAT THE LICENSED PREMISES WAS OPERATED] in a similar fashion to other licensed premises of the same type **by meeting the following operating requirements if appropriate for the license type:** [AND SHALL, AT MINIMUM,]

(1) provide signage, of sufficient size and visibility to show that the premises is open for business, stating business name and hours of operations;

(2) offer for sale at the licensed premises, as appropriate to the type of license, a variety of malt beverages, wines, and distilled spirits;

(3) visibly display the alcoholic beverages stock in a licensed package store premises;

(4) provide seating in beverage dispensary licensed premises for at least one-half of the maximum number allowed by the occupancy permit;

(5) comply with all state or municipal health, fire, and zoning laws or ordinances required for the operation of business;

(6) maintain a record of all purchases of alcoholic beverages for resale on the licensed premises; and

(7) record sales with a cash register **or point of sale system** that retains a record of transactions.

3 AAC 304.170 is amended by adding a subsection to read:

(k) The licensee has the burden of proof to show that the licensed premises was operated for the minimum required period of time and met the operating requirements under (j) of this section. The licensee may provide receipts, invoices, photographs, permits, timecards, and other records to meet the burden of proof. If the licensee fails to provide proof that one or more of the operating requirements was met, the board may consider additional documentation provided by the licensee to determine whether the licensee has met the burden of proof. (Eff. 11/30/90, Register 116; am 5/22/92, Register 122; am 5/1/94, Register 130, am 5/11/96, Register 138; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:**    AS 04.06.090            AS 04.06.100            AS 04.11.330(a)