**From:** Sally Jefferson
**To:** CED AMCO REGS (CED sponsored)
**Cc:** Wilson, Joan M (CED); Sawyer, Jane Preston (CED); ashleyreed@gci.net
**Subject:** RE: State of Alaska Draft Proposed Regulations Amending Manufacturer Direct Shipment License
**Date:** Friday, November 3, 2023 7:17:54 AM
**Attachments:** image001.png
305.347 new section draft - WI redline.docx

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Thank you for the opportunity to review the proposed Manufacturer Direct Shipment license rules.

As Director Wilson requested, attached is our redlined version with comments. We appreciate that the proposed draft rules conform with the manufacturer direct shipment license (MSDL) statutory requirements in the following ways: by allowing telephonic order; the use of age verifications services in lieu of having to retain personal identity documentation information; and requiring the retention of sales records under this license for at least two years.

However, the following are several areas of major concerns that are among the items we've commented on in the attached:

- Being able to comply with a new requirement for direct shipment licensees to check the restricted persons' list of the statewide database against a purchasers' and, if different, the recipients' unique identifier information. The use of age verification services was statutorily allowed so that such licensees would not have to collect and retain customers' sensitive personal identification information and therefore collecting this information for the purpose of checking the statewide database is equally problematic. No other state imposes similar requirements on direct shipment licensees. If instead, the state provided such licensees with a restricted persons list with their names and addresses so they could check against that without having to obtain personal identification numbers, our winery members would be able to comply with such a requirement.
- Also, if proposed, we also would have concerns about inputting sales and deliveries into the statewide database (which by statute is confidential except to persons for specific reasons named in the Act, Sec. 04.06.095, which does not include manufacturer direct shipment licensees). Unlike licensees with a package store shipping endorsement who are allowed to make shipments into any local option areas and have access to the statewide database, out of state manufacturer direct shipment licensees are prohibited from making any deliveries into local option areas.
- Unique requirements such as specific font size for shipment labels, of which the common carrier "alcoholic beverage" labels and stickers, which are permissible in all other direct shipping states including those that have approved common carriers, would not likely be in compliance. In addition, some licensees have chosen to preprint the labels for their boxes/packaging indicating that the contents include "alcohol beverages" and require an adult signature to ensure that their labeling is in compliance with all other states.
- Uniquely requiring that the sales invoice be on the outside of the box is problematic. Having

the invoice in the shipment box as well as sending electronically avoids the possibility of it being removed or degraded by weather and having access from outside of the box to information about the value of the wine contained therein might lead to theft. No other state has such a requirement.

- Finally, it is necessary that the rules reflect that direct shipment documentation is primarily maintained electronically.

Thank you for your time and consideration. If you have any questions or need additional information, please let Ashley and me know.

Sally

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**From:** CED AMCO REGS (CED sponsored) <amco.regs@alaska.gov>
**Sent:** Wednesday, November 1, 2023 4:07 PM
**To:** Sally Jefferson <sjefferson@wineinstitute.org>
**Cc:** Wilson, Joan M (CED) <joan.wilson@alaska.gov>; Sawyer, Jane Preston (CED) <jane.sawyer@alaska.gov>; CED AMCO REGS (CED sponsored) <amco.regs@alaska.gov>
**Subject:** State of Alaska Draft Proposed Regulations Amending Manufacturer Direct Shipment License

■ EXTERNAL EMAIL

Good afternoon,

I have attached the draft wording to create a new section dealing with shipments from a manufacturer direct shipment license (MDSL). The changes incorporate allowing for telephonic orders, allowing for use of an internet age verification

service, aligning recordkeeping requirements with statute (2 years) and otherwise separating the MDSL from the package store shipping endorsement.

My comments are meant for the board so please ignore them or add to them as you wish.

Thank you,

Kristina Serezhenkov
Regulations Specialist 2
Alcohol and Marijuana Control Office
550 West 7th Avenue, Suite 1600
Anchorage, Alaska 99501

907-269-0359

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

3 AAC 305 is amended by adding a new section to read:

**3 AAC 305.347. Shipments from a manufacturer direct shipment licensee.** (a) A holder of a manufacturer direct shipment license issued under AS 04.09.370 may sell alcoholic beverages in response to a written, telephonic, or electronic order.

(b) Manufacturer direct shipment licensees shall verify that the person submitting the order and that the named recipient of the shipment, if not the same person as the person submitting the order, is at least 21 years of age, using the method set out at 3 AAC 305.345(a) or an internet age verification service approved by the director. Approved internet age verification programs are located on the Alcohol and Marijuana Control Office's website at https://www.commerce.alaska.gov/web/amco/.

(c) Alcoholic beverages may be sold in response to a written, telephonic, or electronic order only if the order

~~(1) is signed and dated by the purchaser;~~

~~(~~2) describes in reasonable detail the type and quantity of alcoholic beverages being ordered;

~~(3) refers by number to the purchaser's proof-of-age document required by (b) of this section;~~

**Commented [KRS1]:** 04.09.460 pck shipping endorsement requires that the shipment goes only to the address where the purchaser resides--460c--for mdsl they can also ship to a 'recipient's address.

**Commented [KRS2]:** 305.345(a)……..The licensee shall retain the original, a clear photocopy, or an electronic copy of one of the following documents that bears the purchaser's signature and shows by date of birth or statement of age that the purchaser is at least 21 years of age:
(1) valid government-issued photographic identification from any state;
(2) a tribal identification card, issued by a federally recognized tribe that meets the following criteria:
(A) the identification card has a photograph, a signature, and a date of birth; and
(B) the identification card has security features as identified in AS 28.15.111(a)(4); or
(3) a foreign or domestic passport.

**Commented [KRS3]:** How do requirements 1, 3 and 4 work with age verification service?

~~(4) bears a signature reasonably determined by the licensee to match that on the proof-of-age document;~~ and

~~(5)~~ states the physical residence address of the purchaser and if not the same person as the person submitting the order, the physical residence address of the recipient; the recipients residence address must be sufficient for the licensee to determine whether the recipient's residence is within an area that has restricted the sale, importation, or possession of alcoholic beverages under AS 04.11.491. A manufacturer direct shipment licensee may not ship to any local option community~~; and~~

~~(6) is entered into the written and electronic order database established under AS 04.06.095~~.

(c) In response to a written, telephonic, or electronic order, a licensee

(1) shall provide written or electronic information to the person submitting the order and the named recipient of the alcoholic beverages on fetal alcohol spectrum disorder and fetal alcohol effects resulting from a woman's consumption of alcohol during pregnancy;

(2) may not package or deliver alcoholic beverages until the licensee has received full payment for the order at the licensed premises;

(3) shall ship the alcoholic beverages by a common carrier approved under AS 04.09.750; and

(4) shall package an order that is delivered or shipped under this subsection in a shipping container that

**Commented [SJ4]:** "(1) describes in reasonable detail the type and quantity of alcoholic beverages being ordered; (2) determine that the order will not exceed the limits of Sec. 04.09.370 2e; and (3) states the physical address of the purchaser and the recipient, if not the same as the person submitting the order, so that it is sufficient for the licensee to determine whether the zipcode of the recipient's address is within an area that has restricted the sale, importation, or possession of alcoholic beverages under AS .04.11.491. A manufacturer direct shipment licensee may not ship to any local option community." As Kristina points out 1,3, 4 are not applicable to licensees who utilize age verification services for validating that the purchaser and recipient are 21 years or older. Therefore, those would more appropriately apply to those not utilizing an age verification service.

**Commented [KRS5]:** Licensee must -at the least -access the written order database to view the 'restricted purchasers' list. If MDSL will also need to input orders into this database will be for board discussion.

**Commented [SJ6]:** With the use of age verification service, MDSLs will not have a purchaser's or recipient's unique identifier (ie drivers license or passport numbers) out of concern of protecting customer personal information and the business risks associated with retaining such proof of age documentation.
Furthermore, under the Title 4 Rewrite statute, the statewide database is confidential except to specific persons for specific reasons named in Sec. 04.06.095, which does not include MDSLs.

(A) bears ~~a non-removable~~ label that

(i) identifies the licensee;

~~(ii) shows the written order number assigned under (e) of this section~~; and

(ii) contains the words "alcoholic beverages" ~~in letters at least two inches high and drawn in lines one-quarter inch wide~~;

~~(B) contains one copy of the sales invoice enclosed in a non-removable, sealed envelope securely attached to the shipping container; the sales invoice~~

~~(i) must be legibly handwritten or typed;~~

~~(ii) must be prepared by the licensee, licensee's agent, or employee; and~~

~~(iii) must show the description, quantity, unit price, extended price, and total value of the alcoholic beverages in the container;~~

~~delivery site~~.

(d) The board will maintain a list of persons who, under AS 04.16.200, are convicted after October 24, 1987, of a violation of AS 04.11.010 and will provide this list to manufacturer direct shipment licensees. A licensee who receives the list may not sell or deliver alcoholic beverages-by written, electronic, or telephonic order to a person whose name appears on it until the board gives written notice to the licensee that sales to that person are no longer prohibited.

**Commented [SJ7]:** (A) bears "labelling" that

**Commented [SJ8]:** " contains the words "alcoholic beverages "and that the signature by a person who is at least 21 years of age is required upon delivery"

**Commented [SJ9]:** Common carriers have standardized language for packaging stickers and on shipment boxes about the package containing "alcoholic beverages" that has been approved by all states allowing direct shipments including states that have "approved common carriers". Here is an example of Fedex' label alcohol_shipping_label_SEL169_1691400292.pdf (fedex.com)

Based on the requirement proposed, the common carriers' label would not be compliant with such a requirement. Furthermore, many direct shipper licensees pre-print such stickers indicating that the contents contain alcohol beverages and that an adult signature is required upon delivery.

**Commented [SJ10]:** It is standard industry practice that the direct shipper includes an invoice inside the shipment as well as sends an invoice electronically to the purchaser and both are permissible in all 46 other direct shipment states. Imposing such a unique requirement of attaching the sales invoice to the outside of the shipping containers only for AK customers would make it more difficult to comply with. Also, having the invoice in the shipment box, as well as sending electronically, avoids the possibility of it being removed or degraded by weather and having access from outside of the box to information about the value of the wine contained therein might lead to theft.

**Commented [SJ11R10]:** Modify by requiring that a sales invoice be enclosed in the shipment.

**Commented [KRS12]:** This covers both purchaser and recipient. A MDSL licensee must run both names against the restricted purchasers list. To do so they will need to collect a unique identifyer for the purchaser and the recipient (drivers license #, passport # etc.)

**Commented [KRS13]:** The restricted purchasers list is kept in the written order database, access is granted to licensees upon request to enforcement only and access is through secure myalaska. The restricted purchasers list consists of a name and unique identifyer for each person on the list. Enforcement maintains this list.

**Commented [SJ14R13]:** Due to concerns about collecting and protecting customer personal ID documents and therefore are statutorily provided the authority to use age verification services, MDSLs will not have the unique identifier information to be able to check the database and comply with such a requirement. If instead, the Board would send to MDSLs a list of persons along with their addresses of those on the restricted alcohol purchase list than the licensee could check that list against the purchaser's and recipient's name and address prior to the completion of ... [1]

(e) The licensee shall ~~fasten together the documents pertaining to each order and shall~~ keep them on file with the purchaser's proof-of-age document or proof of age verification service. The licensee shall retain order documents for at least two years after the order is delivered. The licensee shall maintain a log of orders in a manner that

(1) allows cross-reference to the documents for each order;

(2) assigns an order number to each ~~written~~ order; and

(3) shows, for each order,

(A) the purchaser's name and the recipient's name if different from the purchaser;

(B) dates the order was received, modified, and shipped or delivered; and

(C) the address to which shipment was made.

~~(f) If alcoholic beverages are not delivered to the purchaser personally on the licensed premises, title to the alcoholic beverages passes from the licensee to the purchaser at the time the alcoholic beverages are packed and addressed to the purchaser and payment is received, and these actions are sufficient to constitute a sale on the licensed premises.~~

(g) The licensee may not ship alcoholic beverages

~~(1)~~ to a person other than the purchaser or purchaser's named recipient~~; or~~

~~(2) by taxicab.~~ (Eff. ____/____/_____, Register _____)

**Authority:** AS 04.06.090 AS 04.06.100 AS 04.09.370

**Commented [SJ15]:** "The licensee shall maintain documents on file or electronically with the purchaser's proof-of-age document or proof of age by use of verification service." This change reflects standard industry practice that such orders are retained and maintained electronically.

**Commented [KRS16]:** Two years in statute for MDSL.

**Commented [SJ17]:** The shipments are primarily coming from out of state manufacturer direct shipment licensees that are delivered only via common carrier, not delivered to the purchaser on the MDSL' licensed premise. Taking title also does not apply here.

**Commented [SJ18]:** Direct manufacturer shipments must be made by approved common carriers. There is no option for delivery by taxicab and therefore this reference should be stricken.

**Page 3: [1] Commented [SJ14R13]** **Sally Jefferson** **11/2/2023 3:36:00 PM**

Due to concerns about collecting and protecting customer personal ID documents and therefore are statutorily provided the authority to use age verification services, MDSLs will not have the unique identifier information to be able to check the database and comply with such a requirement. If instead, the Board would send to MDSLs a list of persons along with their addresses of those on the restricted alcohol purchase list than the licensee could check that list against the purchaser's and recipient's name and address prior to the completion of the sales transaction. It's worth noting that no other state requires direct shippers to check a state list or database of restricted persons for such sales.