From:	Anna Brawley
To:	CED AMCO REGS (CED sponsored)
Cc:	Wilson, Joan M (CED)
Subject:	Comments: Draft Regulations (3 AAC 305) re: Title 4 Rewrite
Date:	Sunday, September 24, 2023 5:18:41 PM
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Hello,

Please find attached my comments on the draft regulations, to be considered by the ABC Board at its next meeting on September 29. Please note that these are submitted by myself as an individual, also specified on the comments.

I intend to submit some comments separately, from my role as Anchorage Assembly member, on different topics directly related to the Municipality.

Thank you,
A

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Comments on Draft Alcohol Regulations, Title 4 Rewrite Implementation

Submitted September 24, 2023 via e-mail: amco.regs@alaska.gov

Please note: The following comments are submitted as an individual. A separate comment letter will be submitted on my Anchorage Assembly letterhead, addressing specific items from my perspective as a member of that body, and regarding the Municipality.

To the Alcoholic Beverage Control Board and staff of the Alcohol and Marijuana Control Office:

This comment letter has two parts: first, a broad statement of congratulations and appreciation for the commitment and hard work to implement this package of regulations in advance of SB 9's effective date; and second, a brief list of comments on specific regulations.

Comments on Process and Broad Outcomes of Regulations Update Project

My sincerest appreciation, gratitude, and congratulations to the Board, AMCO staff, and all participating stakeholders who have spent many hours since the passage of SB 9 focused on a smooth and effective implementation of the new Title 4! The success of the policy changes depends on this group's ability to operationalize the new system, from regulations to the online license system, and to meet the critical deadline the bill's effective date places on this process. Having been a participant in some of this implementation work, and observing the hard work and dedication of the many people who continue to lead and support this effort, I feel confident that the roll-out of our new system will be a success.

It is important to recognize the commitment it takes to keep this complex project moving, so special thank you and recognition to Director Wilson and her staff for moving us all toward the finish line.

Specific Comments on Draft Regulations

Each comment cites the specific section and (where appropriate) draft language being referred to.

3 AAC 305.330. Endorsements available to beverage dispensary and beverage dispensary tourism licenses

1. Hotel or Motel Endorsement [-330(a)(2)(A & B)] and Large Resort Endorsement [-330(a)(3)(A & B)]

   I support the language as currently written, in particular the language in (A) of both sections that describes the licensed premises as being a portion of the overall location's area, and (B) of both sections, stating that the licensee must have multiple fixed counter endorsement(s) for any additional licensed premises.

   It should be noted that the underlying assumption of having licensed premises, is that it is a discrete area with boundaries, and not assumed to be the entire property, or square footage of a building. AS Title 4 was written, and was not altered by SB 9, to assume that any establishment is likely to have licensed and unlicensed premises, requiring definition of where alcohol will be produced, served, consumed, sold, and/or stored. Defining the premises is also necessary because it is intended to be a

limited-access area, excluding minors (except in certain situations) as well as adults who are not legally allowed to be on licensed premises.

Many of the new endorsements allow for a larger area, or areas, that may be licensed, beyond that allowed in the underlying license. The hotel or motel endorsement and large resort endorsement were both specifically created to address a longstanding issue before the board: how broadly to allow a duplicate license to be issued, beyond the statutory definition of an additional room with a fixed counter. Over time, hotels, motels, and resorts were recognized to have different characteristics and business model, and allowed to broaden that definition. The transition from duplicate licenses to multiple fixed counter endorsements is intended to still provide flexibility for having multiple premises. The hotel or motel and large resort endorsements allows more flexibility still, for businesses operating lodging and other activities, but still requires a multiple fixed counter endorsement for multiple premises—which also assumes some of the premises remains unlicensed. This is consistent with the intent of SB 9, and the new endorsements designed to address this issue of multiple premises from the same license.

3 AAC 305.340. Endorsements available to package store licenses

2. Package Store Delivery Endorsement [-340(c)]

I support the language as written. In particular, I appreciate the specificity in the section below, as well as the clear definition of "social event" in subsection (f):

> "between the hours of 8:00 a.m. and 5:00 p.m. to a responsible adult at the location of a social event"

The intent of this endorsement is to allow, as a convenience service for people organizing events that are not permitted events and open to the public, but are truly social events, organized in advance and with a moderate number of attendees. This endorsement was created from an existing activity allowed for package stores, but narrowly defined to only allow delivery to cruise ships via a local florist. The language in the endorsement is broader than what is allowed under Title 4 prior to the re-write; it was intended to allow this activity in more situations, but still focused on serving pre-planned events—not as a de facto legalization of broad home delivery activities. This language maintains the statutory intent by placing these guardrails on the time, place and manner of delivery.

3. Package Store Sampling [-340(e)]

> "(e) … notify its existing customers of sampling activities by electronic mail or by short message service or multimedia message service for telephone numbers gathered from existing customers while the existing customers are on the licensed premises. No other means of electronic notification is permissible."

I support the statutory language and overall intent of limiting advertising about a package store's sampling activities as a public health and safety protection, by avoiding the risk of heavy promotion of free alcohol consumption as a marketing strategy, particularly if an operator is not also conducting sampling activities responsibly. However, I oppose the language highlighted in subsection (e), because I do not believe it is a practical limitation to impose on businesses, and limiting customer data collection to this method is not in itself an effective risk mitigation.

While I was not present in discussion about this section, I imagine the rationale may be as follows: If a business wishes to broadly promote its sampling activities and not directly violate statute, they may instead make aggressive pushes to increase their customer mailing lists, by advertising on social media that customers should sign up to receive notice about special offers. By limiting the business to collecting customer information by those physically present on the premises, this will limit their audience and potential avoidance of the intent of the statute. Because the limit is placed specifically on phone numbers, it may also be written to prevent a business from purchasing a large dataset of numbers for advertising purposes, and conducting "robo-texts."

I understand this rationale, if this is indeed the thinking behind this section, but it does not seem practical, nor would it reduce the risk of misuse of actual sampling on the licensed premises. While requiring the person to be physically present to provide their number would limit the size of the mailing list, it is still a private mailing list; text messages to a large list is still not the same as a public advertisement, in terms of audience and visibility. Furthermore, it does not seem to be a reasonable restriction to require that a business only collect contact information from people physically present; if a person living in another Alaska community and who travels infrequently to the business's location, but wishes to follow the business's communications, do they need to wait until they are next at the business's location to sign up? The regulation language also does not appear to apply to collection of e-mail addresses, which is inconsistent; if the regulation is intended to apply to both formats, it is not plainly read that way.

<u>If the concern is not allowing mass advertising by text message, the language could be modified to simply say that the telephone number or e-mail address must have been provided with the consent of the customer</u>: this is the principle of "opt-in" communications, especially for mass electronic communications. It would also seem to preclude purchase of contact-information datasets, for which the individual contacts did not provide consent to join that business's list.

The language also appears to restrict communication about sampling activities broadly on public social media accounts. I do support this limit, because there is no practical way to utilize a business's social media presence, unless they are on a platform with purely private network communications; a business is very unlikely to have a private account, if its purpose is broad promotion of their brand.

Question: Intent to Address Manufacturer Direct Shipment License in Regulation?

The draft regulations, consistent with statute, exempt the direct shipment license (AS 04.09.370) from the full application process required for other licenses. The intent of this was to recognize that holders of this license are either already license holders in Alaska (an in-state winery, for example) or are operating and licensed in another state, and intend to ship products to Alaska customers in response to orders. This means, for example, in lieu of many of the requirements for a license applicant for a physical premises in Alaska, a licensee-applicant for a direct shipment license can provide a copy of an already-issued current license. However, the process and requirements for the manufacturer direct shipment license are not addressed in this packet.

What is the ABC Board's intent for this license type? Is this license's application process intended to be addressed in a subsequent regulation, by simply following the statute language, and/or by creating a form to address the detail?