

## QUESTIONS AND ANSWERS RELATING TO OPEN ALCOHOL REGULATIONS PROJECTS

### Alternating Licensed Premises Project

**QUESTION 1:** How does a regulation change like these happen? How do they come forward?

**ANSWER TO QUESTION 1:** This project initially came about upon inspection of some recreational site licensed premises that had no alcohol on site but were open for recreation by youth teams. These licensed premises stored alcohol off site and only brought alcohol onto its “premises” when there was a game or event with a “wet and dry side”. At all other times the recreational sites were open to minors and no alcohol was on site. Technically, the entire site represented in the diagram on file with the board is a licenses premises and there is no legal mechanism to allow unaccompanied minors on the premises.

The language in the proposed regulation already exists in regulation adopted sometime between 1981-1998. 3 AAC 304.305(f) provides an alternating premises allowance for Restaurant/Eating place licenses only. The intent behind the current project is to expand the alternating premises concept to a few other license types that have challenges where minors might have a reason to be on the premises without parent or guardians present. This regulation change would give the other license types the same ability to alternate the premises that Restaurant/Eating place licenses already have under the current regulation.

The language in the proposed regulation comes directly from existing regulation in 3 AAC 304.305(f). This project simply expands the number of license types to which the alternating premises concept could apply.

**QUESTION 2:** Does this mean only a full BDL license “AS 04.11.090” as stated in proposed regulation can cater on Alternating Areas proposed in this regulation? Or does it mean a BDL licensed issued under AS 04.11.090 is the ONLY license type that can use a caterer permit in the Alternating Licensed Area of a license issued under AS 04.11.090?

**ANSWER TO QUESTION 2:** The language of the existing regulation and the proposed regulation limits catering to permits issued under AS 04.11.090.

**QUESTION 3:** Who is going to enforce this? More importantly how will you enforce this once you allow alcohol back into the temporarily unlicensed portion of a licensed premises with a catering permit, enforcement staff will no longer be able to tell the difference between alcohol served in the licensed or unlicensed areas of the premise?

**ANSWER TO QUESTION 3:** The language of the proposed regulation provides that the licensee will make a written request with a detailed premises diagram. A catering permit application also requires a diagram prior to approval. The board might approve the requests itself or delegate approval to the director. The regulation will be enforced as all other regulations are enforced.

**QUESTION 4:** Does this include BDL's I am thinking for example roadhouses in rural areas and If not why not?

**ANSWER TO QUESTION 4:** This change does not include BDL's because the process of de-designating a BDL licensed premises is covered extensively in 3 AAC 304.660.

**QUESTION 5:** If these proposed regulations are allowed how many times will it be allowed at a premises?

**ANSWER TO QUESTION 5:** The regulation itself does not have a limit. As in other regulations, the board can determine by policy at what number of requests for an individual license it will ask the director to bring the request to the board rather than grant or deny the request with delegation.

**QUESTION 6:** Why would this option not be available for a private event or convention?

**ANSWER TO QUESTION 6:** Under current statute and regulation, other than a Restaurant/Eating place that has had a portion of its premises approved as an alternating licensed premises under 3 AAC 304.305(f) or a BDL that has been de-designated under 3 AAC 304.660, a licensed premises is a licensed premises at all times, for all events. There is no legal mechanism for the licensee to decide that there are times when it is not a licensed premises and the rules do not apply.

**QUESTION 7:** Does Section 5 conflict with section 4? Please explain.

**ANSWER TO QUESTION 7:** The sections do not conflict for two reasons. First, under a caterer's permit, the area of alcohol sales and service is defined in the permit diagram, not the more general area that has been designated an alternate premises. Second, the regulation was reviewed by the Department of Law at the time it was adopted (between 1981-1998) and the determination was made that the sections are not in conflict. If they had been in conflict, they would have been disapproved by law and not adopted.

**QUESTIONS FOR ALTERNATING PREMISES THAT HAVE BEEN DETERMINED TO BE SUBSTANTIALLY SIMILAR TO OTHER QUESTIONS THAT HAVE BEEN ANSWERED.**

**PLEASE REFER TO ANSWER TO QUESTIONS 1-7 ABOVE.**

What is the Section (1) attempting to limit out of the proposed regulation?

What is the purpose of creating an unlicensed area in a licensed premises if you are just going to allow alcohol to be served there?

What is this aimed at, prevention or clarifying?

Why have the wording that this must stimulate tourism?

What is the reason this is needed?

Can only a caterer's permit under a AS 04.11.090 (BDL) cater to a premises that has altered its license?  
When would this be used?

Would an example be a Restaurant Eating Place License wanting to have a wedding with full alcohol so then unlicensed their premise and then have a BDL cater? Or is a better example a licensed premise wants to have underage people come to a concert.

What is the intent of this change in regulation? Allow under age events on BDL premises? Allow Restaurant Eating Place Licensees to have a BDL caterers permit?

Why would an operator designate their premise as unlicensed and then set up a catering operation in the formerly licensed area?

Why does this provision not cover all license types?

### **Common Carrier Regulation Project**

**QUESTION 1:** I am confused as to what an uninspected vessel is? I don't know of any boats that are for hire or carry passengers that are not inspected.

**ANSWER TO QUESTION 1:** The United States Coast Guard has designated some vessels that carry passengers as "uninspected vessels". They still perform basic safety inspections, but will not certify to AMCO that the vessel has been "inspected" because their definition of "inspected" is their own. They do permit 12-pack (PAX) uninspected vessels to transport passengers, which creates difficulty for our staff to determine if a vessel is an authorized "boat" for purposes of qualifying for a common carrier license under AS 04.11.180.

**QUESTION 2:** Why isn't something like "The Vessel must be in motion" or "Actively transporting persons on a given route" used here to simply and effectively make it possible for enforcement to stop unintended exploitation of this license type as we have seen recently?

**ANSWER TO QUESTION 2:** The statute (AS 04.11.180) requires that the vehicle be licensed "for passenger travel." AS 04.16.125(c)(1) defines "common carrier" to include a "watercraft. . . available for public hire to transport. . .passengers". The Office of Administrative Hearings has interpreted those statutes together to require that the licensee be transporting passengers from Point A to Point B as contemplated by the question.

**QUESTION 3:** Should this be written as 100 ton vessel instead of 12 pack?

**ANSWER TO QUESTION 3:** The draft language tracks the same terms as used by the Coast Guard to avoid confusion.

**QUESTION 4:** Why is a 3 stateroom requirement proposed?

**ANSWER TO QUESTION 4:** The draft language brought to the board requiring staterooms was to ensure that the common carrier license would not be used for a “floating bar” versus a vessel outfitted to transport passengers from Point A to Point B. Because the vessel in question is relatively small, the board discussed requiring 3, 4 or 5 staterooms and settled on 3.

**QUESTION 5:** Why does this common carrier license regulation change not address problems like those in Kodiak?

**ANSWER TO QUESTION 5:** The matter referred to in the question has been appealed. The opinion of the OAH was that statutes adequately require all vessels to be engaged in transporting passengers to qualify for a common carrier license. The proposed regulation addresses an aspect raised by that situation that was not addressed in the legal opinion, namely that the same type of vessel could be outfitted to genuine passenger travel and the Coast Guard would not provide a certificate of inspection.

**QUESTION 6:** Do these regulations allow my legally registered boat to provide alcohol beverage service if my boat is not moving, or traveling?

**ANSWER TO QUESTION 6:** This regulations project does not specifically address that issue because we have an OAH opinion that says the statutes as written require that vessels, boats or watercraft actually transport passengers from Point A to Point B. Nothing in the statutes or regulations requires that alcohol service stops when the vessel, boat or watercraft stops moving. There is no statutory or regulatory requirement that any certain distance be traveled for any type of common carrier vehicle.

**QUESTIONS FOR COMMON CARRIER THAT HAVE BEEN DETERMINED TO BE SUBSTANTIALLY SIMILAR TO OTHER QUESTIONS THAT HAVE BEEN ANSWERED.**

**PLEASE REFER TO ANSWER TO QUESTIONS 1-6 ABOVE.**

Why don't we define common carrier as a vessel that actually transports people?

If I meet all the requirements for a registered boat for passenger travel to get a common carrier dispensary license do I have to register any nautical miles on the boat or can I just leave it docked at the same location?

Do these regulations allow my legally registered boat to travel a specific distance from the dock location to an anchor point?

Do these regulations allow my legally registered boat to provide alcohol beverage service if my boat is not moving, or traveling?

Why does the Board deem it necessary to seek an amendment of the above as reflected in the public comment process now under way?

## Distillery Regulation Project

**QUESTION 1:** What is the intent of this change in regulation? Allow a distillery to sell alcohol not made on the premises?

Is the intent to stop the flavoring of alcohol from off site producers and make distillers really be distillers? How will this stop that? If this is not the Intent, then what is?

**ANSWER TO QUESTION 1:** Currently there are less than ten distilleries operating in the State of Alaska. It has come to the board's attention that while most distill alcohol according to the dictionary definition of "distill", there is at least one distillery that is simply flavoring imported ethanol, though the flavorings may be "Alaskan" such as blueberries, salmon flavor, etc.

Title 4 does not currently contain a definition of the term distill. The AAG assigned to the board advised that the board could simply interpret the term "distilled" in AS 04.11.170 as its dictionary definition, or it could create a regulation that address the importing/flavoring activities as not being distilling for purposes of receiving a distillery license.

As the craft distillery industry continues to develop, the board chose to create a regulation project to assure that liquor billing itself as "distilled" in Alaska is actually distilled in Alaska, rather than imported and flavored.

**QUESTION 2:** Is there a minimum size operation in terms of number of gallons for a distillery?

Is there a minimum size operation in terms of number of gallons for a distillery?

**ANSWER TO QUESTION 2:** There are no minimum operating requirements either in the Distillery statute (AS 04.11.170) or in the proposed regulation.

Wouldn't allowing a flavor to be added to outside spirits kill the local distillery businesses?

**QUESTION 3:** If Alaskan Blueberries were added to a distilled spirit from outside would the resulting product be Alaskan made?

**ANSWER TO QUESTION 3:** The product might be considered Alaskan "made" but the question before the board is whether the resulting alcoholic beverage was "distilled" by a person or entity possessing a valid Alaska distillery license issued AS 04.11.170.

**QUESTION 4:** Do these proposed regulations prevent EXISTING licenses from bringing in bulk distilled spirits made at other distilleries for the purpose of flavoring or any other application for sale or samples on the licensed distillery premises or wholesale sales to distributors?

**ANSWER TO QUESTION 4:** The proposed regulations do not specify what would happen to active licenses whose activities would be prohibited were the regulations to be adopted. The board has at least two choices: to grandfather existing licenses in with any method they are already using or to require that existing licenses become compliant with the new regulation

upon renewal. The board may inquire of its AAG whether there are other options relating to existing licenses whose current method of operation would violate the new regulation were it adopted and effective.

**QUESTION 5:** Why would a distillery be allowed to alter alcohol (infusing, changing the bottle, perhaps adding an Alaskan label) which a BDL or package store cannot?

**ANSWER TO QUESTION 5:** If the regulation is adopted as proposed, they would not be allowed to do so.

### **Prohibited Financial Interest**

**QUESTION 1:** Are these agreements open to public inspection?

**ANSWER TO QUESTION 1:** Yes. Anything required to be on file with AMCO is subject to the open records provisions of state law.

**QUESTION 2:** Why would we not tie the Hotel Tourism license to the hotel, so that debts on the license would be paid before a transfer to a new operator?

**ANSWER TO QUESTION 2:** This project only addresses what staff is looking for in reviewing a management agreement to ascertain that a liquor license is not being leased in violation of the prohibition against that in AS 04.11.450.

**QUESTION 3:** What is the intent of this change in regulation? Does the language allow management agreements known as upside down leases to be approved for a license transfer or new application at a hotel property?

**ANSWER TO QUESTION 3:** This project is intended to assist staff in determining whether or not a management agreement violates AS 04.11.450 by creating an illegal lease of the liquor license. The proposed regulation is intended to bring consistency to staff's review of management agreements and to provide guidance for licensees and attorneys in crafting management agreements.

**QUESTION 4:** Why doesn't this rewrite address the real problems of lease backs? Why is this change needed? Does this stop the Upside Down Leases which in the last couple of years have happened with Tourism (hotel) licenses?

**ANSWER TO QUESTION 4:** This project only addresses what staff is looking for in reviewing a management agreement to ascertain that a liquor license is not being leased in violation of the prohibition against that in AS 04.11.450.

**QUESTION 5:** Could any one of the 3 officers sign on behalf of the business? Maybe this regulation could be modified to include "managing member or officer of a LLC license"?

**ANSWER TO QUESTION 5:** The intent of the regulation is not to require that all officers sign but that the management agreement be signed by a licensee as defined in AS 04.11.260.

**QUESTION 6:** Under (b) (4) there is a reference to 3 AAC 302.205. There is no such administrative code. Is this a typo? There is a 3 AAC 304.205.

**ANSWER TO QUESTION 6:** It is a typo. You are correct that it should be 3 AAC 304.205.

**QUESTION 7:** I own a liquor license and am selling it. I have a certified agreement as the seller to sell and the new purchaser to purchase. On the date of this certified agreement I wish to turn over the management of the business to the new purchaser. The new purchaser will be responsible for all profits and all debits/liabilities from the sale of alcoholic beverages under my license until the license has been legally transferred to the purchaser. To allow ample time for the license transfer to take place the management agreement terminates at six months or on the date in which the license is in the name of the purchaser. If the ABC Board rejects the license transfer the profits and debits/liabilities are terminated under the management agreement on the date of formal rejection. Would this be in violation of the proposed regulations and, if so, could language in the administrative code be changed to allow a six month management agreement under these circumstances?

**ANSWER TO QUESTION 7:** The proposed regulation would allow staff to evaluate any agreement against the regulation to see if it is compliant. This is a common scenario for management agreements and an important piece is making sure that the new licensee does not begin profiting from the operation of the liquor license before the transfer is complete. The proposed regulation would assist staff in reviewing these agreements, and as always the board is the ultimate arbiter of whether an agreement would violate statute.

**QUESTION 8:** Is there a standard definition for “management” or “manager”? Is giving a staff person the title of Day Manager or Night Manager going to become a problem for liquor businesses? What happens if the ABC Board decides a licensed premise has a manager and did not submit a contract with the ABC Board? What are the penalties?

**ANSWER TO QUESTION 8:** The proposed regulation does not attempt to provide defined terms or a template for amendment agreements because many situations which create a need for such an agreement are fact-based and differ from one another. Instead, the regulation provides some guidance for staff in reviewing the agreement. If an investigation reveals a violation of AS 04.11.450 with or without an agreement, enforcement proceeds as in all other violations of statute and regulation, starting with an Advisory Notice, and potentially leading to a Notice of Violation, Accusation, Suspension or Revocation.

**NO QUESTIONS WERE RECEIVED FOR THE REGULATIONS PROJECTS FOR REQUIRING SERVER TRAINING FOR CERTAIN PERMITS AND ADDING LICENSE TYPES TO THE RESTAURANT DESIGNATION PERMIT REGULATION.**