



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Commerce,
Community, and Economic
Development**

ALCOHOL AND MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

MEMORANDUM

TO: The Alcoholic Beverage Control Board

DATE: June 24, 2022

FROM: Joan M. Wilson, Director *Jmw*

RE: Director's Report

INTRODUCTION

This is my inaugural report as AMCO Director to this Board. It is also the first report issued since Governor Dunleavy's signing of SB 9, the Title 4 rewrite, into law. This report provides you a history of actions of AMCO since the last meeting of Alcoholic Beverage Control ("ABC") Board and a blueprint for the future.

STAFF UPDATES/CHANGES:

AMCO's Administration, Licensing, and Enforcement Sections are fully staffed and trained. After training new marijuana licensing examiners, AMCO's Local Government Specialist ("LGS") is positioned to undertake the duties of this position on a full-time basis. In addition, AMCO's Local Government Specialist will be tasked to produce materials and meet with industry, the public, municipalities, rural governments, and other stakeholders. AMCO's Program Coordinator is also tasked to assist the Director on full SB9 implementation.

Under SB9's fiscal note, effective July 1, 2022, AMCO is also positioned to recruit and hire a long-term (2 years), non-permanent Project Assistant to manage SB 9 implementation and prepare the office and licensees for the one-and-one-half year transition to full implementation of SB 9. AMCO will be recruiting and hiring a qualified candidate for this position as quickly as feasible.

Despite full staffing, the queues for both alcoholic beverage and marijuana licensing still requires attention. After consultation with AMCO's Records and Licensing Supervisor and the Department of Commerce, Community, and Economic Development Deputy Commissioner, AMCO is positioned to recruit and hire a non-permanent administrative assistant for a limited period of time to assist licensing examiners on application intake, thereby freeing up examiners to review applications and reduce the queues.

SB9 IMMEDIATE EFFECTIVE DATES

As of the time of this writing, it is expected that Anna Brawley will update the Board on changes in SB9 since it was last presented to the Board and since it was signed into law. As this presentation will outline, eleven sections of SB 9 have immediate effective dates. The significant provisions are as follows.

Section 59 (of SB 9) clarifies that licenses may also be held by government entities and tribal organizations and requires email address contact information for licensees (codifying existing process).

Section 65 repeals public convenience license statutes AS 04.11.400(e) and (g). Related sections repeal Board authority to deny issuance, renewal, or transfer of these licenses for lack of public convenience.

Under Section 169(a), and notwithstanding any population limits under AS 04.11.400(a) or (b), the ABC Board has 90 days to convert: (1) an REPL issued or renewed for public convenience into an REPL issued under AS 04.11.100; (2) a BDL issued under AS 04.11.400(j) (as that section read on June 5, 1985) into a BDL under AS 04.11.090; and (3) an application submitted to the board that meets all the requirements under AS 04.11.400(e) or (g) into an application for an REPL licensed under AS 04.11.100.

Under Section 170, effective immediately, and notwithstanding AS 04.11.080, the ABC Board may issue new seasonal REPL tourism licenses in qualified communities (under 40,000 people with 4000 visitors) to a person who files an application under AS 04.11.260. This license authorizes the seasonal REPL to sell brewed beverages and wine for consumption on licensed premises not to exceed six months each calendar year. The applicant must be a bona fide restaurant or eating place and the premises must be under the sole control of the licensee. The holder of a seasonal REPL may provide entertainment and the Director has some authority to extend hours of entertainment three times in a calendar year.

Relative to other license conversions, Section 169(d)(10) is also effective immediately. This permits the ABC Board to establish an application form and procedure for conversion applications under Section 169(d).

SB9 FISCAL NOTE AND LICENSING WORK FLOW/DATABASE SOFTWARE

The SB9 Fiscal Note is attached to this report. With passage of the bill, AMCO is budgeted to receive an additional \$245,000 in FY 2023 for operating expenses for SB9 implementation. This includes the position identified above, travel, services, and additional commodities.

AMCO is also budgeted to receive an additional \$375,000 in general-fund sourced capital, outlays to create and implement the licensing database. The capital budget includes an additional \$375,000 in general funds program receipts, providing AMCO with an overall budget of \$750,000.00 to design and implement the software. Absent unknown circumstances, this will require a request for proposals through the Office of Information Technology (OIT). Board Chair Walukiewicz has been instrumental in designing, along with prior Director Klinkhart, a scoping document for the project. Numerous vendors continue to contact AMCO regarding their capabilities. Upon return from Nome, the Program Coordinator and Administrative Officer will work with both OIT and the Department of Commerce to develop the RFP. As Director, I would welcome the delegation of two board members to work with our office to ensure the RFP is responsive to the Board's concerns.

ADDITIONAL SB 9 IMPLEMENTATION

I write to ensure this Board, licensees, and the public at large that all hands are on deck to begin immediately SB9 implementation. The Director, Program Coordinator, Administrative Officer, Regulations Specialist, and Local Government Specialist held its first biweekly planning session on June 22, 2022. These meetings will soon include the Records and Licensing Supervisor and Chief Enforcement Officer.

AMCO will develop a public outreach campaign and will work closely with licensee representatives as well as local government, public safety, public health, and tribal organizations to develop the same. As Director, I am also happy to hear from all concerned members of the public.

EXTENSION OF THE ABC BOARD AND AUDIT REMEDIATION

House Bill 306, extending the ABC Board until June 30, 2027, is transmitted to the Governor and is awaiting his signature. AMCO will utilize this extension to respond to and remediate the nine deficiencies identified in September 2021 legislative audit of this Board and AMCO. If this Board requires additional information on those deficiencies, I am happy to brief it and to explain our response plan.

QUEUE REVIEW

Although I have held the Director position for less than two months, I can ensure the ABC Board that during that time I have seen nothing but hard-working licensing examiners and administrative assistants. AMCO is dedicated to treating applicants fairly and equally. That said, licensees may have ideas on how AMCO can better address its backlog in applications and address queue priorities. Upon our return from Nome, the Program Coordinator, Records and Licensing Supervisor, and I will schedule a publicly noticed, listening session to hear concerns from applicants. Any and all practical ideas learned there will be presented to this Board for its consideration. At a minimum, I believe AMCO can look at deadlines for Board meetings and perhaps make them more realistic so that completed applications that are submitted by the deadline will be presented to the Board. I am also in discussions with the Department of Commerce on whether consent agenda items might be presented to the Board for electronic votes

between Board meetings. Currently, the Department of Commerce utilizes an Open-Meetings-Act-compliant program for professional licensing boards that may be applicable to this Board as well. An initial meeting and demonstration of the program is scheduled for July 13, 2022.

ENFORCEMENT DATABASE SOFTWARE

Upon my initial meeting with AMCO's enforcement team, nearly each member discussed the need for Enforcement's own database for its investigations. AMCO has already received a \$200,000 capital budget to implement this request. The Program Coordinator, Chief Enforcement Officer, and I will work with both OIT and the Department of Commerce to contract for this work as soon as possible. The Chief of Enforcement and I will also meet with Department of Commerce to determine whether the professional licensing enforcement program, built by Department of Commerce with outside vendor support, might be compatible or made compatible with AMCO Enforcement's objectives.

COMPLIANCE CHECK POSITIONS

The Program Director and Administrative Officer have worked jointly to develop job descriptions for eight, part-time compliance check personnel, which is expected to be filled by individuals aged 18 to 20.5. As of this writing, Chief Hoelscher and his assigned investigators are tasked to review these descriptions and work with the Program Coordinator, Administrative Officer, the Local Government Specialist and myself to implement this program. I do recommend that significant educational outreach be made to licensees before implementing this program. AMCO will report a timeline for implementation to the ABC Board at its next meeting in September 2022.

FY2023 BUDGET AND CLOSE OF FY 2022 LICENSING FEES REPORT

Unless directed otherwise by this Board and effective at the Board's September 2022 meetings, Board reports will include reports from AMCO's Administrative Officer. Subject matters may include: summaries of collected licensing fees, summaries of projected licensing fees, fiscal year budget closeouts, requested operational and capital appropriations per fiscal year, and additional requests from the Board.

ENFORCEMENT ISSUES FOR REVIEW

Since the last meeting of the Board, AMCO Enforcement, Licensing, and the Director have received numerous questions regarding distilled spirits in kegs and possible bottle clubs. Two individuals with business models are expected to present their concerns on recent interpretation of these rules during public comment. Following receiving additional guidance from this Board and the Department of Law, AMCO intends to issue advisories with reasonable implementation dates for impacted licensees or non-licensees.

LEGISLATIVE PROPOSALS

Legislative proposals for Department of Commerce Division Directors were due to the Commissioner on June 8, 2022. I advanced the following legislative proposal to the Commissioner based on prior discussion of this issue before the ABC Board. This proposal is contingent on this Board's recommendation of the same:

- Amend AS 04.16.049(d) to permit persons ages 18, 19, and 20 to deliver alcoholic beverages to patrons of restaurant eating places under supervision of persons over 21

BOARD PRIORITIES AND IMPLEMENTATION PLAN INCLUSIVE AND BEYOND SB9

I believe it is emphatically important that this Director be responsive to this Board and its requests. One way of doing so is updating the AMCO Director Job Description and providing it to this Board for review. Per Department of Commerce, that job description has not been updated for a period of time. In addition to the job description, and based on my time in private practice, I find it is helpful to have an annual plan with objectives to be achieved during that period of time. I intend to present such a plan to the Board by the December 2022 meeting to guide 2023 performance. I would welcome comments from this Board on what you request based on the sectors you represent. I am happy to meet with each of you individually. Beyond an annual plan, I would love to develop a five-year plan that is useful to the current Director and any future Directors. I believe this, because no one is irreplaceable and transition planning, especially in times of crisis, is important. I welcome your thoughts on the same.

CONCLUSION AND NEXT MEETING

I write this report both energized and humbled to serve as AMCO's Director. I hold my obligations as a public servant close to my heart. My hope is to continue to serve the Board, the Governor, and the people of Alaska with integrity.

The next ABC Board meeting is scheduled for September 20, 2022 in Fairbanks, Alaska. As I am certain this will be a subject of discussion, the ABC Board might also consider holding a meeting before October 16, 2022 to address the 90-day implementation period for the conversion of licenses as required by Section 169(a) of SB9.

Fiscal Note

State of Alaska
2022 Legislative Session

Bill Version:	CSSB 9(FIN)
Fiscal Note Number:	8
(S) Publish Date:	2/4/2022

Identifier: SB009CS(JUD)-DCCED-AMCO-01-14-22
 Title: ALCOHOLIC BEVERAGE CONTROL; ALCOHOL
 REG
 Sponsor: MICCICHE
 Requester: (S) FINANCE

Department: Department of Commerce, Community and
 Economic Development
 Appropriation: Alcohol and Marijuana Control Office
 Allocation: Alcohol and Marijuana Control Office
 OMB Component Number: 3119

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2023 Appropriation Requested	Included in Governor's FY2023 Request	Out-Year Cost Estimates					
			FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
OPERATING EXPENDITURES								
Personal Services	158.1		267.3	190.4	190.4	190.4	190.4	190.4
Travel	8.8		18.8	15.6	15.6	15.6	15.6	15.6
Services	58.0		99.0	30.0	30.0	30.0	30.0	30.0
Commodities	20.0		10.0					
Capital Outlay			25.0					
Grants & Benefits								
Miscellaneous								
Total Operating	244.9	0.0	420.1	236.0	236.0	236.0	236.0	236.0

Fund Source (Operating Only)

1005 GF/Prgm (DGF)	244.9		420.1	236.0	236.0	236.0	236.0	236.0
Total	244.9	0.0	420.1	236.0	236.0	236.0	236.0	236.0

Positions

Full-time	1.0		2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary	1.0		1.0				

Change in Revenues

1004 Gen Fund (UGF)			479.2	395.4	395.4	395.4	395.4
Total	0.0	0.0	479.2	395.4	395.4	395.4	395.4

Estimated SUPPLEMENTAL (FY2022) cost: 0.0 *(separate supplemental appropriation required)*

Estimated CAPITAL (FY2023) cost: 750.0 *(separate capital appropriation required)*

Does the bill create or modify a new fund or account? No
(Supplemental/Capital/New Fund - discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
 If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/24

Why this fiscal note differs from previous version/comments:

Updated with FY23 personal services costs.

Prepared By: Glen Klinkhart, Director
 Division: Alcohol and Marijuana Control Office
 Approved By: Micaela Fowler, DCCED Administrative Services Director
 Agency: Office of Management and Budget

Phone: (907)269-0350
 Date: 01/05/2022 10:00 AM
 Date: 01/14/22

REPORTED OUT OF
SFC 02/03/2022

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2022 LEGISLATIVE SESSION

Analysis

This bill is a result of recommendations from a seven-year process initiated by the Alcoholic Beverage Control (ABC) Board to improve the structure, organization, specific policies, and associated implementation issues in alcohol regulation.

EXPENDITURES (in thousands)

The liquor licensing functions of the Alcohol and Marijuana Control Office (AMCO) are fully funded by program receipts from licensing fees. The agency anticipates that additional receipt authority is needed to accomplish the requirements of this legislation.

Passage of this legislation will give AMCO and the ABC Board a year and half for to prepare for full implementation. The capacity of the current staff is not sufficient to manage the transition. A long-term non-perm Project Assistant (range 16) for two years will be needed to successfully prepare the board, the office, and the licensees for the transition. A new Occupational Licensing Examiner (range 14) is also needed to assist with license transitions and to ensure that normal application review (unrelated to the transition) is not slowed, as that would negatively affect applicants and licensees.

Improved enforcement is a stated goal of this legislation. The addition of a Special Investigator I position (range 19) starting in FY2024 will enable the ABC Board to better fulfill its responsibilities, including limiting youth access to alcohol and reducing the harms of overconsumption. The investigator position will have travel costs and need a vehicle (to be purchased in FY2024).

As a result of this bill, regulations across 3 AAC 304 will need to be rewritten by the ABC Board and adopted by the effective date of: January 1, 2024. AMCO's regulations specialist will coordinate the regulations updates. The ABC Board will add four full days of meetings in the first two years, likely appended to existing planned meetings, to review, propose, and adopt regulations under the Administrative Procedure Act.

SB 9 adds educational outreach responsibility to the ABC Board, which will serve as the lead agency and provide written and web-based publications to various stakeholders across the state. AMCO's existing Local Government Specialist III will coordinate this program, and additional expenditure authority will be needed to produce materials and travel to engage with industry, the public, municipalities, rural governments, and other stakeholders.

The aged alcohol licensing database needs to be replaced with licensing workflow/database software to comply with data collection, research, new endorsements, and reporting requirements. The new database is estimated to cost \$750.0 for initial development, implementation, and support and maintenance. A capital appropriation for the Alcohol and Marijuana Control Office Licensing and Enforcement Solutions Project will allow AMCO to develop an alcohol licensing system that will serve as a comprehensive solution for licensing. In addition to being a fully-functioning licensing software, the alcohol system will interface with or replace the written order database for mail-order alcohol purchases; may interface with the existing marijuana licensing system to provide a comprehensive view of AMCO's licensees; and may interface with or provide for tracking of complaints and enforcement actions related to licensees. The project may be developed in-house or via contract. The capital appropriation is anticipated to be funded by \$375.0 general funds and \$375.0 alcohol licensing receipts, which will be collected from annual revenue collections as they are available and unused.

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2022 LEGISLATIVE SESSION

BILL NO. CSSB 9(JUD)

Analysis

1000 Personal Services

- Long-term non-permanent Project Assistant range 16 to manage implementation: \$76.9/year for the first two years starting in FY2023
- Occupational Licensing Examiner range 14 for licensing transitions: \$81.2/year starting in FY2023
- Special Investigator I range 19: \$109.2/year starting in FY2024

2000 Travel

- Board travel costs for four additional days of meetings: \$3.2/year for the first two years (\$1.6/meeting day)
- Local Government Specialist travel for one two-day trip to each of the four judicial districts per year: \$5.6/year (\$1.4/two-day trip)
- Travel for new Special Investigator I position: \$10.0/year beginning in FY2024

3000 Services

- Attorney review of regulations: \$12.0/year in each of the first two years (75 hours/year)
- Printing, design, and publication costs for education materials: \$10.0/year in FY2023 and \$34.0/year in FY2024
- Public notice advertisements: \$5.0/year for the first two years
- Postage: \$1.0/year in FY2023 and \$3.0/year in FY2024
- Statewide core services and allocated costs: \$15.0/year per position

4000 Supplies:

- Start-up costs for new employees (computer, cubicle): \$10.0 per position (one-time cost)

Capital Outlay:

- Vehicle for new Special Investigator: \$25.0 in FY2024

Capital Project:

- Alcohol and Marijuana Control Office Licensing & Enforcement Solutions Project: \$750.0 (\$375.0 UGF / \$375.0 GFPR)
The Department of Public Safety will provide access to the TRACS mobile citation system at no cost, which will allow enforcement to issue, manage, and transmit citations to defendants and the Alaska Court System.

FEE CHANGES (in whole dollars)

Revenues are anticipated to increase due to a re-evaluation of the fee structure by the Steering Committee along with increased expectations and requirements for administration, education, and enforcement.

Certain biennial license fees have been increased:

- Brewery and distillery manufacturing licenses have been increased to \$1,250 (up from \$1,000); winery manufacturing licenses have been increased to \$1,250 (up from \$500)
- Retail on-site service at manufacturing facilities is made a new license type with a \$1,250 license fee for brewery and distillery retail licenses and \$1,000 for winery retail licenses
- Destination Resort, and Outdoor Recreation Lodge licenses have been standardized at \$2,500 (up from \$1,250)
- Club licenses have been increased to \$1,500 (up from \$600-\$1,200)
- All retail licenses that serve only beer and wine are standardized at \$1,250 (up from \$400-\$800)

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2022 LEGISLATIVE SESSION

BILL NO. CSSB 9(JUD)

Analysis

Certain biennial license fees have been decreased:

- Wholesaler base license fee is unchanged but annual transaction fees are reduced for smaller businesses
- Duplicate Beverage Dispensary Licenses are changed to endorsements, reducing the fee from a biennial \$2,500 fee to an one-time endorsement fee of \$1,250 and a biennial fee of \$200

A new license for direct shipment of wine from wineries in other states to Alaskan consumers is proposed at AS 04.09.360 (Section 10). The biennial fee for this license is \$200. Other states with this license type have issued 600+ licenses. This fiscal note estimates a very conservative number—200—as no data exists upon which to base an estimate.

Endorsements are a new concept in Title 4, created as add-ons to licenses to address specific needs or situations. Each endorsement has a biennial fee of \$200 (the multiple fixed-counter endorsement, which replaces the BDL Duplicate license, also has a one-time issuance fee of \$1,250). This fiscal note assumes a majority of licenses will have one endorsement; in reality, some licenses will have multiple endorsements and some licenses will have no endorsements.

Permit fees are clarified to be a per-day fee of \$50 rather than a per-event fee. The negligible increase resulting from this change is not shown in this fiscal note.

REVENUE SUFFICIENCY (in thousands)

Significant expenditures are necessary to prepare for implementing changes made by this bill. While revenues are anticipated to increase, these expenses will occur prior to AMCO seeing a change in revenue collections. Based on historical revenue collections, receipt collections for alcohol are anticipated to be sufficient to support increased expenditures. However, in FY2021 AMCO saw a slight decrease in revenue due to the impact of the COVID-19 pandemic on alcohol businesses. Thus far in FY2022, AMCO has continued to see a decreased number of permit applications and further impacts on revenue may occur that impact sufficiency. AMCO has carryforward language that could be used, if needed, to support the additional expenditures.

Based on historical revenue collections, revenue is anticipated to be sufficient for the following reasons:

- 1) Alcohol revenue consistently exceeds alcohol expenditures.
- 2) The ABC Board approved a regulations project that increases the application fees for new, transfer, and renewal applications which became effective for FY2019. The increase in fees generated approximately \$185.0 in additional revenue beginning in FY2019.
- 3) The FY2022 budget included language to carryforward alcohol revenue received in excess of expenditures from FY2021 to FY2022.

Except for the one-time capital appropriation that will require some general funds in FY2023, AMCO anticipates sufficient alcohol receipts to support the expenditures should SB009 be enacted.

From: [Wilson, Joan M \(CED\)](#)
To: [Sawyer, Jane Preston \(CED\)](#)
Subject: FW: Advisory Notice
Date: Friday, June 24, 2022 1:38:23 PM

Jane,

This is pertinent to one of the public comments will receive. Could you also add this to the board packet following me report? Thank you.

Joan M. Wilson
Director
Alaska Alcohol & Marijuana Control Office
550 W. Seventh Avenue, Suite 1600
Anchorage, Alaska 99501
(907) 269-0350

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From: Lee Ellis <lee@midnightsunbrewing.com>
Sent: Saturday, May 14, 2022 9:54:11 AM
To: Hoelscher, James C (CED) <james.hoelscher@alaska.gov>
Cc: Johnson, Steven M (CED) <steven.johnson@alaska.gov>; Hamilton, Joe (CED) <joe.hamilton@alaska.gov>; Davies, Jason M (CED) <jason.davies@alaska.gov>; Wilson, Joan M (LAW) <joan.wilson@alaska.gov>; Helms, Rick J (CED) <rick.helms@alaska.gov>; Craig, Carrie D (CED) <carrie.craig@alaska.gov>; Chiesa, Michael R (CED) <michael.chiesa@alaska.gov>; Rukes, Jeffrey B (CED) <jeff.rukes@alaska.gov>; Whiteman, Kendrick J (CED) <kendrick.whiteman@alaska.gov>; Moses, Parrish (CED) <parrish.moses@alaska.gov>; Bankowski, Joe (CED) <joe.bankowski@alaska.gov>
Subject: RE: Fwd: Advisory Notice

Thanks for getting back to me James, for some reason I thought I had addressed you but apparently not, my mistake.

I am very busy at the moment trying to get the Title IV rewrite over the last hill and gearing up for a busy summer. I will have time later next week, Thursday or Friday to chat.

I appreciate you and your department looking into this ice cream situation.

Talk to you soon.

Lee Ellis
President (MSBC) | Board President (BGA)

Logo

T: (907) 748-5427

E: lee@midnightsunbrewing.com | midnightsunbrewing.com

8111 Dimond Hook Dr. | Anchorage, AK 99507



Banner



From: "Hoelscher, James C (CED)" <james.hoelscher@alaska.gov>

Sent: 5/13/22 2:39 PM

To: "lee@midnightsunbrewing.com" <lee@midnightsunbrewing.com>

Cc: "Johnson, Steven M (CED)" <steven.johnson@alaska.gov>, "Hamilton, Joe (CED)" <joe.hamilton@alaska.gov>, "Davies, Jason M (CED)" <jason.davies@alaska.gov>, "Wilson, Joan M (LAW)" <joan.wilson@alaska.gov>, "Helms, Rick J (CED)" <rick.helms@alaska.gov>, "Craig, Carrie D (CED)" <carrie.craig@alaska.gov>, "Chiesa, Michael R (CED)" <michael.chiesa@alaska.gov>, "Rukes, Jeffrey B (CED)" <jeff.rukes@alaska.gov>, "Whiteman, Kendrick J (CED)" <kendrick.whiteman@alaska.gov>, "Moses, Parrish (CED)" <parrish.moses@alaska.gov>, "Bankowski, Joe (CED)" <joe.bankowski@alaska.gov>

Subject: Fwd: Advisory Notice

Mr. Ellis,

I wanted to let you know that Director Wilson's email is not quite set up.

I would recommend you request a meeting, if you are willing, I can meet with you Monday morning. Let me know and Jason Davies can set up a meeting for us between 8 and 9:30.

I do want to ensure you we do not and will not enforce federal law. This would be an area for the TTB to choose to enforce.

The concerns laid out in the advisory was brought to the boards attention during the last meeting and the advisory issued afterwards. We also clarified the advisory to prohibit direct sale of kegs of distilled spirits directly to a customer.

Also, we do have an investigation open regarding the infused ice cream. I appreciate your concern about enforcements focus, however, this concern is regarding health and safety and this is one of the top enforcement priorities the board directed us to follow.

I would hope if the future, you feel comfortable enough to reach out to me with any concerns with enforcement. I am reasonable and could've clarified a few things if I had the chance.

Please let me know if you would like to talk.

Thank you,

James

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From: Lee Ellis <lee@midnightsunbrewing.com>

Sent: Friday, May 13, 2022 1:40 PM

To: Wilson, Joan M (LAW) <joan.wilson@alaska.gov>; Hamilton, Joe (CED) <joe.hamilton@alaska.gov>

Subject: RE: Advisory Notice

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon AMCO folks,

I wanted to reach out today regarding the advisory notices sent in regards to container sizes of distilled spirits in the State of Alaska. I have three concerns that I wish to convey:

1. The advisory notices regarding federal regulations on acceptable container sizes are problematic. AMCO does not have the authority under statute to enforce federal regulation. AMCO is specifically tasked with licensing, permitting and enforcing the State of Alaska AS 04 and that duty is clearly identified under AS 04. There are numerous federal regulations that Alaska manufacturers must follow to remain compliant with federal law that are not requirements under AS 04 and vice versus. It is going to be extraordinarily problematic if AMCO decides to enforce federal regulation without the appropriate expertise or authority.

2. The second concern is the incorrect and inaccurate representation of federal regulations. The advisory notice quoted CFR 27 Sub chapter A, Part 5, Subpart K, 5.203. However, the following

applicable regulations were either omitted or ignored:

Subpart K - Standards of Fill and Authorized Container Sizes.

§ 5.201 General.

*No person engaged in business as a distiller, rectifier (processor), importer, wholesaler, bottler, or warehouseman and bottler, directly or indirectly, or through an affiliate, may sell or ship or deliver for sale or shipment in **interstate or foreign commerce**, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody for consumption, any distilled spirits in containers, unless the distilled spirits are bottled in conformity with [§§ 5.202 and 5.203](#).*

Regulations regarding retailers:

§ 31.36 Sales of 20 wine gallons (75.7 liters) or more.

Any person who sells or offers for sale distilled spirits, wines, or beer, in quantities of 20 wine gallons (75.7 liters) or more, to the same person at the same time, shall be presumed and held to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, unless the seller shows by satisfactory evidence that the sale, or offer for sale, was made to a person other than a dealer.



The CFR's regarding container sizes for distilled spirits are in reference to interstate sales and importation. Intrastate sales are not regulated under federal law. Therefore, any manufacturer packaging alcoholic beverages within the state and retailing in the state are not subject to federal regulatory constraints. It is incumbent on the state to regulate container sizes in intrastate commerce, which the State of Alaska does not, except for beverage sizes during on premise service. The second section presented is in regards to retailers. This is the only regulation in federal regulation that I am aware of regarding the retail volumes of alcoholic beverages.

3. My final concern is a higher level issue that occurs with licensed and permitted alcohol businesses throughout the state. Frequently, it is the businesses that have done everything they are required to do, act responsibly and comply with local, state and federal laws whom are the first to receive warnings and Notices of Violation.

Currently, a distributor in the State of Alaska is retailing alcohol filled ice cream knowingly to a non-licensee in violation of AS 04. The non licensee is in turn retailing the alcoholic ice cream without a license at non licensed events and spaces. This activity continues unabated while AMCO is focused on creating advisory notices that are inaccurate and outside of it's authority.

I kindly request that AMCO consider it's focus and efforts. Thousands of businesses are working hard every day to be responsible members of our communities and we request that AMCO recognize those efforts and enforce the laws as they have been set forth in AS 04.

Thank you for time and please let me know if you have any questions.

Logo 	<p>Lee Ellis</p> <p>President (MSBC) Board President (BGA)</p> <p>T: (907) 748-5427</p> <p>E: lee@midnightsunbrewing.com midnightsunbrewing.com</p> <p>8111 Dimond Hook Dr. Anchorage, AK 99507</p> 
Banner 