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STATE OF ALASKA THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	5/6/86	1:30 pm
" "	5/7/86	1:30 pm
" "	5/13/86	8:00 AM

HOUSE
COMMITTEE REPORT

(7)
Date referred: 4/1/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered CSSB 69(Jud)am

"An Act relating to licensing and regulation of the sale and distribution of alcoholic beverages; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- replace with _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HCS-ESSB-69 (Jud)
 Title: Issuance, renewal, continuation,
 and transfer of liquor licenses.

Sponsor: House Judiciary Comm. (original)
 Requestor: House Judiciary Comm
 Date of Request: April 21, 1986

FISCAL DETAIL

Agency Affected: Department of Revenue
 BRU: Alcoholic Beverage Control Board

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	---	1,278.0	1,300.0	1,300.0	1,300.0	1,300.0
---------	-----	---------	---------	---------	---------	---------

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

General fund revenues realized from increase to wholesale license fees at lines 26-28, page 2.

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: April 23, 1986

Approved by Commissioner: Mary A. Nordale Date: 4/24/86
 Agency: Department of Revenue

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 69 (Jud) am
 Title : Regulating sale of alcoholic beverages

Sponsor : Rules/Request of Governor
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Revenue
 BRU : Consumer Protection

Components : Alcoholic Beverage Control

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
----------------	--	---	---	---	---	---

REVENUE		0	0	0	0	0
----------------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Jan Faiks, Co-chairman Phone : 465-4523
 Division : Senate Finance Committee Date : 2/10/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Proposed "Letter of Intent" to S. 69

It is the intention of the legislature that the Alcohol Beverage Control Board in granting licenses under Section 04.11.400(g) take into consideration not only the population size of the community but the number of existing hotel rooms as well. In communities ~~such as Chicago~~ where there is a small population size but an abundance of hotel rooms, the board shall hold applicants to the maximum requirement of 50 rooms rather than the minimum requirement of 10 rooms.

MEMORANDUM

State of Alaska ¹²⁴

TO: Jim Ayers, Director
Legislative Relations
Office of the Governor

DATE: April 8, 1986

FILE NO:

TELEPHONE NO:

465-4322

FROM: ^{RJS}
Robert J. Sundberg
Commissioner
Department of Public Safety

SUBJECT: Alaska Compliance
with FDOT Published
Rule on National
Drinking Age

It has been brought to my attention that the State of Alaska is not in compliance with federal regulations concerning alcohol beverage content limit. The State's content limit is one percent, AS 04.21.080 (b) (1), in which anything less does not come under the control of the Alcohol Beverage Control Board (ABC). The federal limit is one-half of one percent.

One of the Governor's bills, SB 69, relating to liquor law changes, has passed out of the Senate and is now in the House, and could be amended to incorporate a change of the now one percent limitation to that of one-half of one percent, thus bringing the State under compliance. Failure to comply could result in a withholding of Federal-aid highway funds.

Find attached copy of Federal Register Vol. 51, No. 58, dated March 26, 1986 which contains the new regulations, and a letter to Governor Bill Sheffield dated March 26, 1986 from R.A. Barnhart and Diane K. Steed.

Attachments: a/s

RECEIVED

APR 8 1986

GOVERNOR'S OFFICE



US Department
of Transportation
**National Highway
Traffic Safety
Administration**

The Administrator

400 Seventh St. S.W.
Washington D.C. 20590

3 2 0

RECEIVED

MAR 28 1986

HIGHWAY SAFETY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

The Honorable William J. Sheffield
Governor of Alaska
State Capitol
Juneau, AK 99811

Dear Governor Sheffield:

On July 17, 1984, President Reagan signed legislation which strongly encourages States to have laws prohibiting the purchase and public possession of alcoholic beverages by anyone under 21 years of age by withholding a portion of Federal-aid highway funds from States without such laws (23 U.S.C. 158). In enacting this legislation, both Congress and the President recognized that raising the drinking age results in a decrease in both the number of traffic crashes and in the number of fatalities.

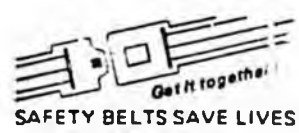
The National Highway Traffic Safety Administration and the Federal Highway Administration ("the Agencies") have issued a final rule (copy enclosed) which implements and clarifies the statute. That rule provides that the Agencies notify each State by March 28, 1986 of their preliminary review of the State's statutes for compliance or non-compliance with the statute for fiscal year 1987. Our review of Alaska's laws reveals that although the State has established 21 as the minimum age for the purchase and public possession of alcoholic beverages, the State's laws do not conform with the Federal statute which defines an alcoholic beverage as having an alcoholic content of "not less than one-half of one percent" by volume.

Based on the above, it appears that Alaska is not in compliance with the statute and its implementing regulation and is, therefore, subject to a withholding of five percent of its apportionment under sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of Title 23 of the United States Code on October 1, 1986.

~~AS 28~~

AS.04.21.080 (b) (1)

\$ 7,650,000



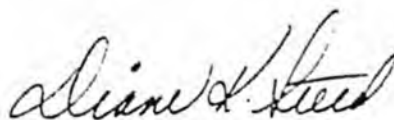
If you disagree with this preliminary finding, you may, within 30 days of your receipt of this letter, submit documentation which demonstrates that Alaska is in compliance with the Federal statute. The Agencies' final determination of compliance or non-compliance will be sent to you by May 30, 1986. Additionally, if at any time Alaska comes into compliance with the Federal statute, you may submit a copy of the applicable State laws and any funds that have not lapsed will be returned.

If we can be of any assistance, please do not hesitate to contact us.

Sincerely,



R.A. Barnhart
Administrator, Federal
Highway Administration



Diane K. Steed
Administrator, National Highway
Traffic Safety Administration

Enclosure

By direction of the Commission.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 86-6559 Filed 3-25-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

Federal Highway Administration

23 CFR Part 1208

[Docket No. 85-12; Notice 2]

National Minimum Drinking Age

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule clarifies the provisions which a State must incorporate or have incorporated into its laws in order to prevent the withholding of a portion of its Federal-aid highway funds for noncompliance with the National Minimum Drinking Age. This rule implements section 6 of Pub. L. 98-363.

EFFECTIVE DATE: This rule becomes effective March 26, 1986.

FOR FURTHER INFORMATION CONTACT:

NHTSA: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0837) or Kathleen C. DeMeter, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1834).

FHWA: Mr. R. Clarke Bennett, Director, Office of Highway Safety, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1153) or Mr. David Oliver, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0825).

SUPPLEMENTARY INFORMATION: On July 17, 1984, the President signed Public Law 98-363, which strongly encourages States to have laws prohibiting the purchase and public possession of alcoholic beverages by anyone under 21 years of age by withholding a portion of Federal-aid highway funds from States without such laws (23 U.S.C. 158, hereinafter called the National Minimum Drinking Age). The statute requires the Secretary of Transportation to withhold

a portion of Federal-aid highway funds from any State whose laws permit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age. If any such State does not enact a new law or amend its existing laws to make age 21 the legal minimum drinking age by October 1, 1986 (fiscal year 1987), five percent of its Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6), which are primary system, secondary system, Interstate system (including resurfacing, restoring, rehabilitating and reconstructing funds) and urban system funds, shall be withheld. If by October 1, 1987 (fiscal year 1988) no such law is adopted or amendments made, ten percent of its fiscal year 1988 Federal-aid highway apportionment under these sections will be withheld. Responsibility for administering the program has been delegated jointly to the National Highway Traffic Safety Administration and the Federal Highway Administration (the "Agencies"). 50 FR 43165 (October 24, 1985).

The Notice of Proposed Rulemaking (NPRM), which was issued on September 24, 1985 (50 FR 39140, September 27, 1985), sought comments on several issues that the Agencies were considering adopting in the final rule. The Agencies received comments from 17 States, State agencies and private organizations. Although most of the commenters support a national minimum drinking age of 21, many of those comments raised serious concerns about the ability of States that already have age 21 statutes to satisfy various particular provisions contained in the NPRM. As a result of these comments, and as a result of the Agencies' preliminary review of existing State minimum drinking age statutes, the Agencies have made several amendments to the proposal as it appeared in the NPRM. The issues which were addressed in the NPRM and additional changes made in the final rule are discussed below.

In analyzing the legislative history of the National Minimum Drinking Age, the Agencies believe that Congress did not intend to cause States, especially those that already had a minimum drinking age of 21, to lose a portion of their Federal-aid highway funds merely because of a technical, non-substantive difference between a State law and the literal language of the Federal law. Indeed, the legislative history of the statute suggests that Congress did not believe that this law would generally have any adverse effect on States which had already enacted 21 drinking age laws.

For example, Representative Howard, the sponsor of the age-21 legislation in the House of Representatives, said "The amendment I am offering would encourage those States *that have not yet done so* to raise their minimum drinking age to 21." (Emphasis supplied). (130 Cong. Rec. H5395, daily ed. June 7, 1984). During the Senate consideration of the age-21 legislation, Senator Danforth, one of the sponsors in the Senate, was engaged in a colloquy with Senator Leahy. Senator Leahy said, "But the Senator's amendment is *not penalizing any State which is already at 21*. It penalizes those below [21]." Senator Danforth responded, "Right." Senator Leahy then stated, "To that extent, the benefit of it, the not being penalized, *goes automatically to any State at 21*." (Emphasis supplied). (130 Cong. Rec. S8219, daily ed., June 26, 1984). This sentiment was echoed several more times during the debates in both Houses of Congress.

Other comments made during the debate in both the House and Senate strongly support the agencies' conclusion that Congress considered it unlikely that the highway fund withholding sanctions would ever need to be applied. For example, Representative Anderson, who chairs the Surface Transportation Subcommittee of the House Public Works and Transportation Committee, discussed the highway funds withholding sanctions provided by the Clean Air Act and the National Maximum Speed Limit law as analogies to the age-21 legislation, and noted, "To date, the sanctioning process has never been used, indicating its effectiveness and the *unlikelyhood that it will have to be employed*." (Emphasis supplied.) (130 Cong. Rec. H5395, daily ed., June 7, 1984). Senator Lautenberg, one of the Senate sponsors of the age-21 legislation, said in response to a question from Senator Baucus, "As the Senator is aware, the Department of Transportation is always most reluctant to impose sanctions upon States whenever it can be reasonably avoided. If in fact, by fiscal year 1987, . . . if the State could not practically comply through the use of its normal and general procedures for amending its constitution and its statutes, *then all evidence would suggest that the Department should take this into account in its imposition of sanctions*." (Emphasis supplied.) (130 Cong. Rec., S8214, daily ed., June 26, 1984). Thus, both House and Senate debates reflect a sense that Congress did not think it likely that the sanctions would need to be imposed and, in any event, that the

Department should administer the sanctions reasonably and flexibly.

Therefore, the Agencies are adopting the position that States which can demonstrate that their non-conformities are technical and non-substantive and which are otherwise in compliance, or that through actual practice provide compliance, will satisfy the requirements of the regulation and not have any of their Federal-aid funds withheld for such non-conformities. The procedure to be followed by States that believe they have technical, non-substantive non-conformities is set forth in Section 1208.6(b) of the final rule and is further described below under the subsection entitled "Technical Non-conformities".

Additionally, several New York State agencies (the Governor's Traffic Safety Committee, the Division of Alcoholism and Alcohol Abuse, the Department of Transportation and the Department of Motor Vehicles) requested an interpretation that any State which adopted a minimum drinking age of 21 prior to the adoption of the final rule be "grandfathered" from its application, without further consideration of the provisions in the rule. The NHTSA and FHWA recognize that a number of States acted promptly and decisively before the issuance of this rule to address the problem of drinking by individuals under age 21, and that others have age 21 laws that predate the Federal statute. Despite the fact that some Congressmen assumed that these States would comply with the Federal statute, the NHTSA and FHWA are constrained by the language of the statute and, where there are substantive non-conformities, cannot exempt from its application those States that do not meet its provisions.

Alcoholic Beverage

As noted in the NPRM, the definition of "alcoholic beverage" is prescribed in the Federal statute itself and that definition is incorporated into the final rule. No commenters addressed the definition; however, a review of existing State statutes revealed that a number of States have variations in their definitions that may not satisfy the Federal statute. Some State statutes are considerably out of compliance, such as those that appear to allow individuals under age 21 to purchase or possess 3.2 beer. Other State laws reflect technical drafting differences, such as defining an alcoholic beverage as having an alcoholic content of "more than one-half of one percent", whereas the Federal statute definition includes those beverages with an alcoholic content of

"not less than one-half of one percent" by volume. (Emphasis added.)

Since the definition is prescribed by Federal statute and not subject to regulatory amendment, the Agencies do not have the authority to change the definition. However, the Agencies believe that certain definitional differences are technical and non-substantive. For example, the Agencies do not believe that a State law that defines alcohol as *more than one-half of one percent* is substantively different from the statutory definition of one-half of one percent *or more*. Therefore, the Agencies will consider a State law that defines alcohol as more than one-half of one percent to be in compliance with the statutory definition of alcohol without any need for further submissions by the State. However, if a State does not define 3.2 beer, for instance, as an alcoholic beverage, and permits individuals under age 21 to purchase or publicly possess 3.2 beer, this difference is substantive and would result in a withholding of Federal-aid highway funds for noncompliance.

However, the Agencies also believe that while some State statutes have substantive definitional differences from the Federal statute, their practices may in fact serve to prohibit the purchase or public possession of all "alcoholic beverages" by persons under age 21. The Agencies will, therefore, accept additional documentation from States to indicate whether their actual practices are in conformance with the Federal statute. Actual practice may be demonstrated by regulation, Attorney General opinions or appropriate evidence, as provided in § 1208.6 of the regulation. It should be noted that any finding of compliance based on actual practice rather than statutory language will be conditioned on that practice being continued.

Public Possession

The phrase "public possession" was not defined in the statute and the Agencies defined it in the NPRM to mean "the possession of any alcoholic beverage for any reason, including consumption, on any street or highway or in any public place or in any place open to the public." The Agencies specifically excluded from that proposed definition the possession of alcohol for an established religious purpose and the selling, transporting, delivering, serving or other handling of an alcoholic beverage in pursuance of a person's employment. No commercial objected to the exemption for employment purposes.

Two commenters, however, expressed concern over the religious exemption.

The Wholesale Beer Distributors of

Texas feared that the exemption would lead to subterfuge applications by allegedly religious institutions, and the Texas Alcoholic Beverage Commission was concerned that the rule contained no definition of "religious purpose." The Agencies are not convinced that individuals or groups would use this exemption to circumvent the statute's application, nor do they believe that the lack of a definition in the rule will defeat the exemption's application. For years States have enforced statutes that define religion for purposes of tax exemption with relatively little difficulty, and the Agencies expect they will apply similar definitions to "established religious purpose" for enforcement of their laws under this rule. Moreover, States concerned about an exemption for an "established religious purpose" are not required by the Federal statute to provide such an exemption and should not feel compelled to adopt such an exemption. The Texas Alcoholic Beverage Commission also asked whether a religious purpose could take place in a public facility. The exemption in the final rule for an "established religious purpose" is a blanket exemption, not limited to private facilities.

Furthermore, the Agencies requested comments on other parameters of the phrase "public possession." For example, they noted that several States have statutes that regulate private clubs similarly to other licensed business establishments and that some States permit minors to drink in public when accompanied by a parent, spouse or legal guardian age 21 or older.

Of the six organizations and individuals that commented on this issue, four (the Governor of Texas, Wholesale Beer Distributors of Texas, Texas Alcoholic Beverage Commission and the National Licensed Beverage Association) indicated their support for a provision exempting minors when accompanied by a parent, spouse or guardian of legal drinking age. The Agencies' preliminary review of State laws indicated that Texas is one of 17 States that have such an exemption. Several of these 17 States had enacted their age-21 laws prior to the enactment of the Federal statute, and, as noted above, the legislative history suggests that Congress did not anticipate sanctions against existing age-21 laws. For example, Senator Evans of Washington stated during the debate on the age-21 legislation, "Now, we will not be affected by either of these proposals in the State of Washington. We already have a 21-year-old drinking law." (130 Cong. Rec. S8220, daily ed., June 28.

1984). Washington has had a 21 drinking age since 1934, which provides an exemption for minors accompanying a parent, guardian or spouse. The National Licensed Beverage Association further asserted that to adopt an exemption for religious purposes but not for this purpose would be arbitrary. Likewise, the Texas Alcoholic Beverage Commission (TABC) stated that the deliberate inclusion of certain exemptions and exclusion of other potential exemptions is capricious and unrelated to the intent of the statute. The TABC stated that strict inflexible adherence to the language of the Federal statute is not necessary to further legislative intent, which was to reduce drunk driving. The State of Florida and Senator Frank Lautenberg of New Jersey, one of the sponsors of the National Minimum Drinking Age, both supported the provision as it appeared in the NPRM.

As noted above, the Agencies have reviewed the legislative history of the National Minimum Drinking Age, and concluded that Congress passed the statute not to withhold funds but rather to reduce the deaths and crippling injuries attributed to drunk driving by individuals under age 21 (130 Cong. Rec. S8206-8248 (daily ed. June 26, 1984) and H5394-5408 (daily ed. June 7, 1984)). Congress clearly envisioned that, with a few exceptions, such as the military exemption, those States which had already established the minimum legal drinking age were complying with the spirit of the Federal law. Therefore, the Agencies are providing certain exemptions that a State may allow under its laws without risking the loss of Federal-aid highway funds.

As proposed in the NPRM, the Agencies are exempting the public possession of alcoholic beverages for religious purposes and for job-related purposes when the selling, transporting, delivery, serving or other handling of an alcoholic beverage is in pursuance of a person's employment by a duly licensed manufacturer, wholesale or retailer of alcoholic beverages. Additionally, the Agencies are exempting the public possession of alcoholic beverages by minors when accompanied by a parent, spouse or legal guardian age 21 or older. Although the agencies had proposed not to adopt such an exemption, they have reconsidered their position in light of the comments and their preliminary review of State statutes. Since the purpose of the Federal statute is to control drunk driving, the Agencies believe that this purpose will continue to be served because those individuals over 21 who have some responsibility toward the

underage individual can ensure that the younger person in their company will not drive. Further, as noted above, many States providing such an exemption enacted their age-21 statutes prior to enactment of the Federal statute, and the Agencies do not believe that Congress intended to apply sanctions to those States because of such an exemption. A preliminary review of State statutes revealed that some States also have an exemption for the use of alcoholic beverage when administered by a licensed physician or pharmacist for medicinal purposes. The Agencies see the validity in allowing such an exemption when medical judgment dictates that the use of an alcoholic beverage is a valid treatment for a medical condition and are, therefore, providing an exemption for "public possession" related to such use.

The Statute's use of the word "public" indicates that Congress chose not to require drinking age restrictions on possession in private settings. Consequently, the Agencies believe that Congress did not intend to extend the provisions of the Federal statute to cover possession in private establishments such as clubs. The Agencies emphasize, however, that any place which is *de facto* open to the public, such as a private club which admits persons upon the sole requirement of payment of a nominal monetary membership fee or other equivalent consideration, is not considered private for purposes of this rule. Furthermore, the Agencies do not encourage such exemptions and remind States that they are not required by the Federal statute to permit a private club exemption (or any other exemption allowed by this rule).

The Agencies note that although Congress used the word "public" to modify the word "possession", it did not use a similar modification for "purchase". The Agencies, therefore, believe that Congress intended to extend the provisions of the Federal statute to include the purchase of alcoholic beverages in private clubs. In support of this, the Agencies preliminary review of State statutes indicates that many States apply their liquor laws to private clubs and these clubs operate much the same as public establishments that serve alcohol. Compliance with this requirement should not, therefore, create any difficulties for the States.

A preliminary review of the State laws also uncovered two States that have exemptions for educational purposes. The Agencies are unclear as to what is encompassed by those statutes; however, the Agencies will

afford those States the opportunity to submit additional justification demonstrating the validity of the exemption. Two additional States have exemptions for the possession and transport for personal use, family and guests. Those States will also be afforded the opportunity to demonstrate the validity of that exemption. This information should be submitted in accordance with the procedures set forth in section 1208.6(b) of the final rule.

The NPRM noted that the legislative debate on this statute in both the House and the Senate included extensive discussions of whether individuals serving in the Armed Forces of the United States should be exempt from the provisions of the National Minimum Drinking Age. As expressed in the NPRM, the legislative history is clear that Congress views both drinking and driving to be privileges which are subject to reasonable regulation in the interests of public health and safety. Furthermore, there was concern that permitting a blanket exclusion within a State for members of the military would continue the problem of "blood borders". Consequently, the final rule, like the NPRM, contains no exemption for military personnel. It should be noted that State drinking age laws do not generally apply to alcohol consumed on premises controlled by the military and the scope of this rule extends only to State laws concerning those jurisdictions within the control of the States. The Agencies are, however, encouraged that the Department of Defense has taken substantial steps toward limiting the consumption of alcoholic beverages on military premises by individuals under age 21.

One commenter opposed excluding homes from the coverage of the regulation, but the Agencies would like to reiterate that homes are not covered by the plain language of the statute itself which refers to "public possession". In response to a concern raised by the Texas Alcoholic Beverage Commission which indicated that Texas law prohibits drinking by minors in private homes when parents are not there, the Agencies would like to point out that the States should not feel limited to the parameters set forth in this rule, but that they may include additional prohibitions.

Purchase

One commenter noted that the definition of "purchase" as used in the NPRM was meaningless because of the use of the word "purchase" in defining the word. The Agencies agree and have

redefined "purchase" in the final rule to mean "to acquire by the payment of money or other consideration."

The American Medical Association indicated that the definition of "purchase" should also include "sale". The Agencies considered the issue of whether the Statute requires that State law prohibit "sale" as well as "purchase." The Agencies also considered whether the statutory requirement that "purchase" be prohibited was satisfied if "sale" of alcoholic beverages to minors was prohibited.

On its face, the Federal statutory phrase does not include "sale" and there is no legislative history suggesting that "sale" must be prohibited. Additionally, the Agencies are aware of no State with 21 as the legal minimum drinking age which has a statute prohibiting the purchase of alcoholic beverages, but not the sale, thus rendering this addition unnecessary. In view of the language and legislative history of the statute, the Agencies have determined that it is neither necessary nor appropriate to require States to prohibit "sale" as well as "purchase and public possession." However, the Agencies will consider a statute that prohibits sale of an alcoholic beverage to an underage person, instead of purchase by such a person, to be in compliance with the Federal statute's requirement to prohibit purchase.

Purchase or Public Possession

As noted by the commenters from New York, section 158(a) of the Federal statute states that funds shall be withheld if the "purchase or public possession" by someone under age 21 is lawful, thus implying that both purchase and public possession must be prohibited in order to be in compliance and avoid a withholding of funds. However, section 158(b) states that any withheld funds are to be returned if a State makes unlawful the "purchase or public possession," which could be read as implying that if a State makes unlawful either the purchase or public possession it will have all withheld funds returned. These commenters support the disjunctive requirements as expressed in section 158(b), stressing that it should be up to each individual State as to how to achieve an acceptable age-21 drinking law. The commenters expressed their belief that Congress did not intend to dictate the specific manner in which States should control access to alcoholic beverages.

In light of Congress' apparent preference for a prohibition on both purchase and public possession, as evidenced by the withholding provisions

of section 158(a), the Agencies believe that Congress did not intend to accept statutes that prohibit only one but not the other. Therefore, the final rule automatically accepts statutes requiring both. However, because of the ambiguity of the statute and the Agencies' desire to be as flexible as possible, the final rule also permits States to submit additional justification of either or laws.

In view of the comments submitted to the NPRM, the Agencies appreciate that some States may be able to effectively control drinking by underage individuals with statutes that prohibit only the possession of alcoholic beverages. An individual cannot purchase an alcoholic beverage without also being in possession of it, therefore, possession appears to reach both aspects of the underage drinking problem that Congress wanted to eliminate. The Agencies are, however, requiring additional justification from those States which regulate possession and not purchase to show that their statutes are interpreted and enforced in such a manner that this limitation does not pose a detriment to controlling underage drinking. Such justification should be submitted in accordance with § 1208.6(b) of the final rule.

As to the converse situation, the Agencies are not convinced that statutes which prohibit only purchase, but not public possession, are sufficient to effectively control underage drinking. An individual in such a State could consume an alcoholic beverage in public, provided he or she did not purchase it. Thus, a major problem which Congress intended to control would still exist. However, the Agencies will entertain additional support for such laws on a State-by-State basis pursuant to the procedure set forth in § 1208.6(b) of the final rule.

Technical Non-conformities

If a State receives an initial notification of non-compliance pursuant to § 1208.6(a) of the final rule and believes that the items identified are technical non-conformities only, the State will have the opportunity to submit documentation demonstrating that the technical non-conformity is non-substantive and has little, if any, impact on the goal of prohibiting purchase and public possession of alcoholic beverages by those under 21. This information should be submitted in accordance with the procedures set forth in § 1208.6(b) of the final rule.

Apportionment of Withheld Funds

In the NPRM the Agencies noted that they sought the advice of the Office of

Management and Budget (OMB) on the issue of how long the withheld funds would remain available for apportionment. OMB interpreted the interaction of the laws governing the National Minimum Drinking Age (23 U.S.C. 158) and the Federal-aid highway program funding (23 U.S.C. 119(b)) to mean that withheld funds would be subject to the standard periods of availability for Federal-aid highway funds. The Florida Department of Community Affairs expressed its belief that section 119(b) should not apply and that Congress intended for the funds to be returned at any time a State came into compliance. The National Licensed Beverage Association stated its belief that legislative intent was to make the funds available for a six-year period (four-year availability subsequent to the two fiscal years during which withholdings can take place). Senator Lautenberg, on the other hand, supported the NPRM's reading of the availability of funds and noted that the Senate on July 31, 1985, approved legislation (S. 1529) clarifying and confirming this interpretation. (The Agencies note, however, that the legislation has not been enacted into law as of the issuance of this rule.) The Agencies are retaining in the final rule the language as it appeared in the NPRM.

Grandfathering

The question was raised whether a State which adopts a minimum drinking age of 21 prior to the adoption of the final rule, but which also provides "grandfather" rights to continue drinking privileges for those persons under age 21, could in turn be "grandfathered" from the absolute age-21 requirement in the Federal statute. The statute provides that the Secretary "shall withhold" funds if the purchase or public possession of alcoholic beverages by a person under age 21 is lawful on October 1, 1986, and October 1, 1987, which would at first indicate that a State with under-21 "grandfather" rights in effect on those dates would be subject to withholding. However, the statute also provides that withheld funds are to be restored to the States as soon as all under-21 drinking is prohibited (i.e., when those "grandfather" rights expire).

The agencies have determined that no useful purpose would be served by withholding funds from an otherwise complying State merely by the presence of such "grandfather" rights, if the scheduled expiration of those rights would automatically trigger the restoration of funds. A preliminary

review of the five States which currently have "grandfather" provisions in the age-21 laws indicates that in all but one State all such rights will have expired—i.e., no further under-21 drinking would be permitted—by October 1, 1987. Since no withheld funds would have lapsed by that date for those four States, any withheld funds would at that point be restored, as long as the State was otherwise in compliance. The Agencies have determined that such withholding and subsequent return of funds would not further the purposes of the statute, and would also result in unnecessary administrative burdens on both the Federal government and the States. The Agencies do not, however, believe that it is consistent with the intent of Congress to allow States to retain funds which would have lapsed prior to the date on which the funds are to be restored.

Accordingly, the Agencies will consider any State which has enacted a grandfather provision whose scheduled expiration would result in full restoration of funds to be in compliance, provided the State is otherwise in compliance with the National Minimum Drinking Age.

Notification of Compliance

The NPRM specified that each State would be notified of the Agencies' preliminary reviews of State statutes by March 1, 1986, and March 1, 1987, and of their final determinations of compliance by May 1, 1986 and May 1, 1987. Three commenters recommended changes in this time schedule to allow States to demonstrate compliance at later dates. The Agencies believe that the request to permit a State to demonstrate compliance at any time is reasonable. However, they also recognize some lead time is needed to review all State laws in the degree of detail necessary to make determinations of compliance. Therefore, States will be notified of the Agencies' preliminary reviews by March 28, 1986, and March 28, 1987, and of their final determinations by May 30, 1986 and May 30, 1987. Any State that has been notified of compliance in 1986 will not again be notified in 1987, provided its statute remains unchanged. Should any State found not to be in compliance subsequently change its laws or regulations such that it feels it is in compliance, that state may submit substantiating documentation at any time.

Every effort will be made to work closely with States that have apparent compliance problems in order that they will have adequate opportunity to

comply with the rule before the withholding of any funds is required to take place.

Regulatory Evaluation

The agencies have determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures. The Agencies have not prepared a regulatory evaluation because the regulatory impact is not greater than \$100 million. In addition, any economic impact that may occur is not attributable to this regulation, but will be instead the result of the Federal statute and of State decisions on whether to conform with the Federal Statute. The Agencies have determined that since this rule will not have an annual impact of \$100 million on the economy, it is not a major rule within the meaning of Executive Order 12291.

Regulatory Flexibility Act

The Texas Alcoholic Beverage Commission requested that the Agencies prepare a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act (Public Law 98-354). The Agencies, however, certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities. Any economic impact on liquor stores or other establishments will be the result of State decisions on whether to enact statutes that conform with the Federal statute. Such decisions are not mandated by this regulation. Therefore, preparation of a Regulatory Flexibility analysis is not necessary.

List of Subjects in 23 CFR Part 1208

Alcohol, Highway safety.
In consideration of the foregoing, a new Part 1208 is added to Title 23 of the Code of Federal Regulations to read as follows:

PART 1208—NATIONAL MINIMUM DRINKING AGE

- Sec.
1208.1 Scope.
1208.2 Purpose.
1208.3 Definitions.
1208.4 Adoption of National Minimum Drinking Age.
1208.5 Apportionment of withheld funds.
1208.6 Notification of compliance.

Authority: 23 U.S.C. 158

§ 1208.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 158, which establishes the National Minimum Drinking Age.

§ 1208.2 Purpose.

The purpose of this part is to clarify the provisions which a State must have incorporated into its laws in order to prevent the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age.

§ 1208.3 Definitions.

As used in this part:

"Alcoholic beverage" means beer, distilled spirits and wine containing one-half of one percent or more of alcohol by volume. Beer includes, but is not limited to, ale, lager, porter, stout, sake, and other similar fermented beverages brewed or produced from malt, wholly or in part or from any substitute therefor. Distilled spirits include alcohol, ethanol or spirits or wine in any form, including all dilutions and mixtures thereof from whatever process produced.

"Public possession" means the possession of any alcoholic beverage for any reason, including consumption on any street or highway or in any public place or in any place open to the public (including a club which is *de facto* open to the public). The term does not apply to the possession of alcohol for an established religious purpose; when accompanied by a parent, spouse or legal guardian age 21 or older; for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital or medical institution; in private clubs or establishments; or to the sale, handling, transport, or service in dispensing of any alcoholic beverage pursuant to lawful employment of a person under the age of twenty-one years by a duly licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

"Purchase" means to acquire by the payment of money or other consideration.

§ 1208.4 Adoption of National Minimum Drinking Age.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of

sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

§ 1208.5 Apportionment of withheld funds.

Funds withheld pursuant to § 1208.4 shall be apportioned to a State, subject to the availability of such funds under 23 U.S.C. 118(b), if such State makes unlawful the purchase and public possession of any alcoholic beverage by a person who is less than twenty-one years of age.

§ 1208.6 Notification of compliance.

(a) Each State will be notified by certified mail of NHTSA's and FHWA's preliminary review of its statutes for compliance or non-compliance with 23 U.S.C. 158 for fiscal year 1987 by March 28, 1986. States with apparent compliance problems for fiscal year 1987 will be notified of NHTSA's and FHWA's preliminary review of their statutes for compliance or non-compliance for fiscal year 1988 by March 28, 1987.

(b) If NHTSA and FHWA initially find the State has apparent compliance problems, the notice shall state the reasons for those problems and shall inform the State that it may, within 30 days of its receipt of the notification, submit documentation showing why it is in compliance. Such documentation shall be submitted to the Director, Office of Alcohol and State Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

(c) Each State will be notified by certified mail of NHTSA's and FHWA's final determination of the State's compliance or non-compliance with 23 U.S.C. 158 for fiscal year 1987 by May 30, 1986. States found in non-compliance for fiscal year 1987 will be notified of NHTSA's and FHWA's final determination of compliance or non-compliance for fiscal year 1988 by May 30, 1987.

Issued on: March 24, 1986.

Diane K. Steed,
National Highway Traffic Safety
Administrator.

R.A. Barnhart,
Federal Highway Administrator.
[FR Doc. 86-6576 Filed 3-24-86; 4:00 pm]

BILLING CODE 4910-58-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

(T.D. 8068)

**Income Taxes; Stock Acquisitions;
Temporary Regulations Under Section
338(h)(10) of the Internal Revenue
Code of 1954 and Extension of Time
To Make Certain Elections**

Correction

In the issue of Thursday, March 13, 1986, on page 8671 in the second column, a correction to FR Doc. 86-60 appeared. Make the following changes in correction 2c. In the third line, "5" should read "7" and in the third and fourth lines, the section symbol should have been a dollar sign.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 252

**Outer Continental Shelf (OCS) Oil and
Gas Information Program**

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the definition of "area adjacent to a State" to deem the States of New York and Rhode Island adjacent to the North Atlantic Planning Area even though the States do not physically border that particular planning area.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 860-7918 or (FTS) 928-7918.

SUPPLEMENTARY INFORMATION: Section 26 of the Outer Continental Shelf Lands Act (OCSLA) permits the Governor of any affected State to designate an official to inspect any privileged data and information received by the Department of the Interior (DOI) regarding activity adjacent to the State. The information is used to evaluate any impacts on the State caused by the offshore activity. The OCSLA does not define the phrase "area adjacent to a State"; therefore, the rule were amended effective April 23, 1984

(published March 22, 1984, 49 FR 10656), to deem a State adjacent to an OCS planning area for the purpose of inspection of privileged data and information within the planning area if the State borders on any portion of the planning area. The 1984 definition also deemed the Navarin Basin Planning Area as adjacent to the State of Alaska even though it does not physically border on Alaska because Alaska is the first State landward of the planning area.

Comments were received in response to the 1984 solicitation and in separate communications to DOI that certain States would be affected by activity in planning areas on which they do not border and, therefore, would not be permitted to inspect data and information from those areas under the 1984 rule. It is anticipated that Rhode Island will be used as an onshore support area for activities in the North Atlantic Planning Area and would be affected, and New York would be affected because of tankering into New York harbor. Therefore, on October 24, 1985 (50 FR 43256), the Minerals Management Service (MMS) proposed to deem them adjacent to the North Atlantic Planning Area as well as the Mid-Atlantic Planning Area on which they do border.

Comments

Three timely comments were received in response to the notice of proposed rulemaking. Two were from the regulated industry, and one was from an affected State.

Difference Between Proposed and Final rule

There is no difference between the proposed rule and the final rule.

Discussion of Comments

The commenters represented opposite views. The industry commenters disagreed with the inclusion of the two States into the definition of area adjacent while the State agreed. The industry expressed the opinion that the provisions of the OCSLA were designed to protect the confidentiality of proprietary and privileged data and information with very circumscribed methods under which they could be disseminated. While DOI agrees that such data and information should only be disseminated under protective conditions, States that might be affected by offshore activities need to be apprised of those activities. States need to be able to prepare for onshore impacts on the community and on public services. The States' need to know and



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 21, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the licensing and regulation of the sale and distribution of alcoholic beverages.

This bill, which was requested by the Alcoholic Beverage Control Board, includes mostly technical, housekeeping amendments to AS 04.11, "Licensing," and a technical amendment to AS 04.16, "Regulation of Sales and Distribution." The most substantive of the amendments made by this bill are at sec. 2 and sec. 12.

Section 2 of the bill increases from 30 days to 90 days the minimum number of days for which all businesses with liquor licenses must operate each year. Businesses that do not operate for the minimum period are denied license renewal unless the premises are under construction or cannot be operated for another reason that is not the fault of the owner.

Section 12 of the bill amends the definition of the term "established village" to allow for ready determination of the boundaries of such a village. Before 1983, the boundaries were determined by drawing a circle, with a five-mile radius, around a U.S. post office. That provision was deleted as part of an extensive revision to the definition in 1983, and under present law there is no clear way of determining village boundaries. The attached bill restores the five-mile-radius method of determining the boundaries, and also makes provision for villages that do not have a U.S. post office. Several provisions of AS 04 cannot be adequately implemented in the absence of readily determinable village boundaries. These provisions include: (1) AS 04.11.480, under which a village council may "protest" the issuance of a liquor license inside the

sk 69

village; (2) AS 04.11.400, under which the number of licenses that may be issued inside a village is based upon the size of the population residing inside the village; and (3) AS 04.11.490 -- 04.11.502, under which established villages may, on the approval of a majority of residents within the village, exercise a "local option" restricting or prohibiting the sale or importation of alcohol inside the village and within a fixed distance beyond the "perimeter" of the village. The selection of five miles as the length of the radius is based on previous law. The substitution of any other reasonable distance would also resolve the problems this section of the bill is intended to resolve.

Section 1 of the attached bill deletes from AS 04.11.240(b) the requirement that requests for special events permits be received by the board 10 days before the event. The 10-day requirement is often impossible to meet and is unnecessary.

Section 9 of the bill amends AS 04.11.506(b)(1) to give the board the option of using certified mail rather than registered mail to notify all package stores in the state of the results of local option elections under AS 04.11.496. The present requirement is too costly and unnecessary.

The other amendments in the bill are more technical in nature and either add or remove cross references to other sections of AS 04.11 and 04.16; eliminate inconsistencies between sections (such as between AS 04.11.330(a) [denial of license renewal] and AS 04.11.320(a) [denial of initial license]); or eliminate unnecessary, confusing, or repetitive language (such as in AS 04.11.500(c), in which the deleted language is covered by AS 04.11.500(b)).

I join with the board in urging passage of this bill.

Sincerely,



Bill Sheffield
Governor

HOUSE

COMMITTEE REPORT

4/1

JUDICIARY

(7)

Date referred: 2/11/86

FURTHER REFERRALS: FINANCE

DATE: _____

The COMMUNITY AND REGIONAL AFFAIRS Committee has considered CSSB 69 (Jud) am

"An Act relating to licensing and regulation of the sale and distribution of alcoholic beverages; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HCS CSSB 69 (CART) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches: letter of intent
- first fiscal note
- new fiscal note
- zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

ALASKA COUNCIL ON PREVENTION OF
ALCOHOL & DRUG ABUSE
APRIL 1986

	DO NEED	DO NOT NEED
Work for:		
Federal government.....	97%	3%
State government.....	93%	7%
Local government.....	92%	5%
Private sector.....	88%	10%
Not working.....	94%	6%
 Time in Community:		
Less than 1 year.....	97%	3%
1 - 4 years.....	89%	11%
5 - 9 years.....	94%	6%
10 - 14 years.....	92%	5%
15 years plus.....	88%	10%

Within the Anchorage Municipality, support is widespread for a 5% sales tax if the proceeds are dedicated to increased police and fire protection and alcohol and drug abuse services...

"Would you support or oppose a five percent Municipal sales tax on alcoholic beverages if the money went to the Department of Public Safety for increased police and fire protection, and alcohol and drug abuse services?"

Support.....82%
Oppose.....18%

Demographically, support is greatest among women, Democrats, younger people, and local government workers, while length of residency would not appear to be a factor...

	SUPPORT	OPPOSE
Region:		
Anchorage.....	82%	18%
 Political Party:		
Democrat.....	88%	10%
Republican.....	76%	24%
Libertarian.....	100%	
Non-partisan.....	76%	24%
Not registered.....	91%	9%

ALASKA COUNCIL ON PREVENTION
OF ALCOHOL & DRUG ABUSE
APRIL 1986

	SUPPORT	OPPOSE
Sex:		
Male.....	75%	24%
Female.....	90%	10%
Age:		
18 - 24 years.....	87%	13%
25 - 40 years.....	86%	13%
41 - 55 years.....	77%	23%
56 years plus.....	70%	30%
Income:		
0 - \$20,000.....	83%	17%
\$20,000 - \$40,000.....	82%	18%
\$40,000 - \$60,000.....	78%	20%
\$60,000 plus.....	88%	12%
Work for:		
Federal government.....	71%	29%
State government.....	82%	18%
Local government.....	100%	
Private sector.....	82%	17%
Not working.....	84%	16%
Time in Community:		
Less than 1 year.....	97%	3%
1 - 4 years.....	89%	11%
5 - 9 years.....	94%	6%
10 - 14 years.....	92%	5%
15 years plus.....	88%	10%

Overall, there is a clear feeling of need related to alcohol and drug abuse prevention services on a state-wide basis, and in Anchorage, the need is demonstrated by strong support for a 5% tax to provide increased funding.

19 general wholesale licenses in the State

- 3 gross below \$100,000
- 2 gross between \$100,000 and \$150,000
- 1 gross between \$150,000 and \$200,000
- 1 gross between \$500,000 and \$600,000
- 12 gross over 1 million dollars.
- 3 gross between 1 and 2 million dollars
- 2 gross between 5 and 6 million dollars
- 1 gross between 7 and 8 million dollars
- 1 gross between 9 and 10 million dollars
- 1 gross between 11 and 12 million dollars
- 1 gross between 14 and 15 million dollars
- 1 gross between 17 and 18 million dollars
- 1 gross between 20 and 21 million dollars
- 1 gross between 42 and 43 million dollars

7 wholesale malt beverage and wine licenses

- 2 gross between \$20,000 and \$50,000
- 4 gross between \$100,000 and \$150,000
- 1 gross between \$200,000 and \$400,000