

# MEMORANDUM

October 4, 2021

TO: Alcohol Direct-Shipping Compliance Act Drafting Committee and Advisors and Observers

FROM: Steve Frost  
Aaron Gary

RE: **Agenda for Oct 8 & 9 Drafting Session**

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Hello, Everyone,

We have prepared the following agenda for this weekend's drafting meeting. Aaron has compiled comments on our draft from our earlier informal reading and from this summer's formal first reading. We have suggested changes to address many of these points, which we will share during our discussion.

Most of you will be participating by Zoom. I plan on "screen sharing" the agenda on Zoom so people not in the room can easily monitor our discussion in case there are points on which they want to participate. We know there may be other issues we discuss this weekend, but we can't "plan" for when those other issues might be raised or discussed.

We will begin our meeting Friday morning at 9:00 am San Diego time. For those of you who are participating remotely, Scheduling Coordinator Odessa Glaza will circulate the Zoom log-in information late in the afternoon on October 7. If you have any questions, let us know.

Thanks!

## **Agenda**

### Section 2 – Definitions

- 1) Suggestion regarding definition of consumer, par. (5), to change "individual" to "person" so that it covers an entity.
- 2) Question regarding definition of consumer, par. (5) (B), and "local delivery" whether "24 hours" and "50 miles" is too arbitrary – suggestion to at least bracket these. Also question whether we need to consider under the concept of "local delivery" the possibility of delivery across state lines and/or what local law allows - whether delivery across state lines should be treated differently than delivery solely within a state.

- 3) Suggestion regarding definition of consumer, par. (5), that exclusions from definition in (A) and (B) be removed and instead the material be put in a new scope section for the act.
- 4) Question whether the definition of state, par. (14), should include a federally recognized tribe, i.e. adding sentence to end of definition. Suggestion to add comment explaining why (or why not) act includes (or does not include) tribes in this definition.

### Section 3 – Registration of logistics shippers

- 5) Suggestion that we change term “logistics shipper” to “fulfillment provider”.
- 6) Suggestion that, in sub. (d), the phrase “if possible” be removed (from “with the name stated if possible as it appears on the direct-shipper license”) in this provision and throughout the act.
- 7) Suggestion that we create either a period for registration or, if one-time registration is kept, requirements for updating registration if there are material changes or for periodically verifying accuracy of registration information.
- 8) Suggestion that a provision be added expressly stating there is no fee for the one-time registration.
- 9) Question whether the logistics shipper and the direct shipper could be one-and-the-same (could the same entity perform both types of business functions?) - could a direct shipper have a subsidiary or affiliate that is a logistics shipper and could the logistics shipper operate under (piggyback on) the direct shipper license or would each business need to hold a separate license/registration?

### Section 4 – Carrier delivery

- 10) Question regarding last (bracketed) sentence of sub. (b) whether, if there is a delay in processing renewals, Commission should have to give public notice of this delay and/or whether there should be standards for when a carrier can rely on a such a delay.

### Section 5 – Reporting

- 11) Privacy concern expressed about reporting to a government agency the name and address of the consumer receiving each shipment; comment that sub. (f) provision making this information confidential is inadequate.
- 12) Concern expressed about privacy and breadth of the disclosure exceptions in sub. (g) and section 6 (e) and (f) – suggestion to take a harder look at the issue of privacy and maybe tighten these exceptions.
- 13) Suggestion that privacy concerns might be addressed by including a comment explaining that most states already require the direct shipper to report this information (consumer name and address, etc.).

### Section 6 – Jurisdiction and enforcement

- 14) Suggestion to consider whether we should reference or align sub. (d) with the Model Registered Agent Act.
- 15) Suggestion that, in sub. (b), the 10 days should be from the receipt of the request, not the date of the request.

#### Section 7 – Administrative injunction, carrier ban

- 16) Suggestion that many details of section 7 could be deleted or bracketed because existing provisions of the state’s Administrative Procedure Act would be sufficient to govern the process; comment that most of the provisions in this section would be covered by administrative authority under existing law and act could default to that existing authority or process.
- 17) Comment also made questioning whether state agencies typically have this type of administrative authority to issue such orders - whether provision is too unusual and/or goes too far.
- 18) Suggestion that, in sub. (f), judicial review of only “order” is too narrow - clarify the state’s APA governs the entire proceeding.
- 19) Question whether there should be judicial review of Commission’s decision to rescind an order, because sub. (f) doesn’t cover this.
- 20) Suggestion to make explicit throughout section that notices must be in writing.
- 21) Suggestion that, in sub. (d), the 30 days should be from the receipt of the notice, not the date of the notice.

#### Section 8 – Suspension/revocation of license/permit for unlawful shipping into other state

#### Section 9 - penalties

- 22) Question whether, in sub. (b), a separate penalty for each violation might make the overall penalty too large. A violation for not filing a form or for each separate shipment (including not properly marking the container) could aggregate to thousands of violations; suggestion to more closely examine how multiple or repeat violations should be punished.