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JAN FAIKS
SENATE OFFICE

MEMORANDUM

April 3, 1989

SUBJECT: Arbitration of Valdez disaster claims
(Work Order No. 6-1164)

TO: Senator Tim Kelly

FROM: Terri Lauterbach *TL*
Legislative Counsel

Enclosed is your bill establishing a special arbitration commission for Valdez oil spill claims.

As you have probably heard, there is a federal law that has set up a special fund for claims based on oil discharges from vessels carrying crude oil that flowed through the Trans-Alaska Pipeline System. Strict liability, up to a maximum of \$100 million per incident, is imposed under the federal law unless the owner or operator of the vessel or the fund administrator can prove the damages were caused by negligence of a government entity or the damaged party. If claims exceed that amount, each claim is reduced proportionately. The unpaid portion of a claim may be pursued under other applicable law, which may or may not require proof of negligence.

I do not know if a claim must be pursued under federal law before other remedies are pursued. So, I do not know precisely when arbitration by your special commission would be appropriate. However, since it seems likely that total claims arising from the Valdez disaster will exceed \$100 million, arbitration by the special commission will eventually be appropriate even if a claim must be pursued under the federal law first. As a practical matter, Exxon will probably not agree to arbitration until the \$100 million federal fund is depleted.

Senator Tim Kelly
Page 2
April 3, 1989

I have enclosed a copy of the entire chapter of federal law related to the pipeline. The most pertinent section begins on page 509. If I can be of further assistance, please let me know.

TL:gc
WKG8/105

Enclosure

CHAPTER 34—TRANS-ALASKA PIPELINE

Sec.

1651. Congressional findings and declaration.
1652. Authorizations for construction.
- (a) Congressional declaration of purpose.
 - (b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations.
 - (c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorizations for construction.
 - (d) National Environmental Policy Act of 1969 by-passed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review.
 - (e) Amendment or modification of rights-of-way, permits, leases, or other authorizations.
1653. Liability for damages.
- (a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska.
 - (b) Control and removal of pollutants at expense of right-of-way holder.
 - (c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund.
1654. Antitrust laws.
1655. Roads and airports.

§ 1651. Congressional findings and declaration

The Congress finds and declares that:

(a) The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources.

(b) The Department of the Interior and other Federal agencies, have, over a long period of time, conducted extensive studies of the technical aspects and of the environmental, social, and economic impacts of the proposed trans-Alaska oil pipeline, including consideration of a trans-Canada pipeline.

(c) The earliest possible construction of a trans-Alaska oil pipeline from the North Slope of Alaska to Port Valdez in that State will make the extensive proven and potential reserves of low-sulfur oil available for domestic use and will best serve the national interest.

(d) A supplemental pipeline to connect the North Slope with a trans-Canada pipeline may be needed later and it should be studied now, but it should not be regarded as an alternative for a trans-Alaska pipeline that does not traverse a foreign country.

(Pub.L. 93-153, Title II, § 202, Nov. 16, 1973, 87 Stat. 584.)

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Historical Note

Short Title. Section 201 of Pub.L. 93-153 provided that: "This title [which enacted this chapter] may be cited as the 'Trans-Alaska Pipeline Authorization Act'."

Separability of Provisions. Section 411 of Pub.L. 93-153 provided that: "If any provision of this Act [enacting this chapter, section 1456a of this title, and section 3512 of Title 44, Public Printing and Documents, amending section 1608 of this title, sections 45, 46, 53, and 56 of Title 15, Commerce and Trade, section 185 of Title 30, Mineral Lands and Mining, section 3502 of Title 44, and section 391a of Title 46, Shipping, and enacting provisions set out as notes under sections 1608 and 1651 of this title, section 1904 of Title 12, Banks and Banking, section 45 of Title 15, section 791a of Title 16, Conservation, and section 1221 of Title 33, Navigation and Navigable Waters] or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby."

North Slope Crude Oil; Report on Equitable Allocation. Pub.L. 94-586, § 18, Oct. 22, 1976, 90 Stat. 2916, directed that the President, within 6 months of Oct. 22, 1976, determine special expediting procedures necessary to insure the equitable allocation of North Slope crude oil to the Northern Tier States of Washington, Oregon, Idaho, Montana, Illinois, Indiana, and Idaho to carry out the provisions of section 410 of Pub.L. 93-153 [set out below], and to report his findings to Congress, such report to include a statement demonstrating the impact that the delivery system would have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports.

Trans-Canada Pipeline; Negotiations With Canada; Feasibility Study. Title III (sections 301 to 303) of Pub.L. 93-153 authorized the President to enter into negotiations with the Government of Canada to determine Canadian willingness to permit construction of pipelines or other transportation systems across its territory to bring gas and oil from Alaska's North Slope to the United States; the need for intergovernmental agreements to protect interests of any parties involved with construction, operation, and maintenance of such natural gas or oil transportation systems; terms and conditions for construction across Canadian territory; desirability of joint studies to insure environmental protection, reduce regulatory uncertainty, and insure meeting energy requirements; quantity of oil and gas for which Canada would guarantee

transit; and acquisition of other energy sources so as to make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area. The President was to report to Congress on actions taken and recommendations for further action. In addition, the Secretary of the Interior was to investigate, and to report to Congress within 2 years of Nov. 16, 1973, as to the feasibility of oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that would deliver gas to United States markets. Nothing in Title III was to limit the authority of the Secretary or any other Federal official to grant a gas or oil pipeline right-of-way or permit, which that official was otherwise authorized by law to grant.

Exclusion of Persons From Trans-Alaska Pipeline Activities on Basis of Race, Creed, Color, National Origin, or Sex Prohibited. Section 403 of Pub.L. 93-153 provided that: "The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II [this chapter]. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42]."

Equitable Allocation of North Slope Crude Oil. Section 410 of Pub.L. 93-153 provided that: "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.] and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following November 16, 1973, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this chapter, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after November 16, 1973. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

(e) Amendment or modification of rights-of-way, permits, leases, or other authorizations

The Secretary of the Interior and the other Federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify any right-of-way, permit, lease, or other authorization issued under this chapter.

(Pub.L. 93-153, Title II, § 203, Nov. 16, 1973, 87 Stat. 584; Pub.L. 98-620, Title IV, § 402(46), Nov. 8, 1984, 98 Stat. 3360.)

Historical Note

References in Text. The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

1984 Amendment. Subsec. (d). Pub.L. 98-620 struck out provision that any such proceeding had to be assigned for hearing at the earliest possible date, had to take precedence over all other matters pending on the docket of the district court at that time, and

had to be expedited in every way by such court.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-620 not to apply to cases pending on Nov. 8, 1984, see section 403 of Pub.L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417. See also, Pub.L. 98-620, 1984 U.S. Code Cong. and Adm. News, p. 5708.

Cross References

Roads and airports, see section 1655 of this title.

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Environmental Policy Act

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Short supply controls, domestically produced crude oil, see section 2406 of the Appendix to Title 50, War and National Defense

Federal Practice and Procedure

Relationship to lower federal court jurisdiction, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

West's Federal Forms

Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq.

Supreme Court jurisdiction on appeal, see § 121 et seq

West's Federal Practice Manual

Rights-of-way, see § 5449.

Notes of Decisions

1. Purpose

The intent of this section which vests exclusive jurisdiction over certain disputes in the United States district courts was to limit

litigation that would delay construction of the pipeline. *Alyeska Pipeline Service Co. v. U.S.*, 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

§ 1653. Liability for damages

(a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska

(1) Except when the holder of the pipeline right-of-way granted pursuant to this chapter can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to \$50,000,000 for any one incident and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of \$50,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

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(5) Where the State of Alaska is the holder of a right-of-way or permit under this chapter, the State shall not be subject to the provisions of this subsection, but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to this subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

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(b) Control and removal of pollutants at expense of right-of-way holder

If any area within or without the right-of-way or permit area granted under this chapter is polluted by any activities conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

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(c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund

(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

(3) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. Financial responsibility for \$14,000,000 shall be demonstrated in accordance with the provisions of section 1321(p) of Title 33 before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If the total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

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(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when \$100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below \$100,000,000.

(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

(11) For purposes of this subsection only, the term "affiliate" includes—

(A) Any person owned or effectively controlled by the vessel owner or operator; or

(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

(i) stock interest, or

(ii) representation on a board of directors or similar body, or

(iii) contract or other agreement with other stockholders, or

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(iv) otherwise; or

(C) Any person which is under common ownership or control with the vessel owner or operator.

(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(Pub.L. 93-153, Title II, § 204, Nov. 16, 1973, 87 Stat. 586.)

Historical Note

Delegation of Functions. Functions of the President under section 1321(p)(1) to (2) of Title 33, Navigation and Navigable Waters, as incorporated by reference in subsec. (c)(3) of this section, relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline, delegated to the Secretary of the Department

in which the Coast Guard is operating, see Ex.Ord. No. 12418, § 4, May 3, 1983, 48 F.R. 20891, set out as a note under section 1321 of Title 33.

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm.News, p 2417.

West's Federal Practice Manual

Rights-of-way, see § 5449.

Code of Federal Regulations

Liability fund, see 43 CFR 29.1 et seq.

Oil pollution, financial responsibility, see 33 CFR 131.1 et seq.

Library References

Health and Environment ⇨25.5(3).

C.J.S. Health and Environment §§ 91 et seq., 106 et seq., 129 et seq.

Notes of Decisions

- Claims within section 1
- Strict liability
- Generally 2
- Construction accidents 3
- Pollution clean-up 4

1. Claims within section

This section was intended to deal with environmental risks of the pipeline but did not cover ordinary personal injury and wrongful death claims unconnected with any environmental injury, in view of fact that, although literal interpretation indicated contrary result, overwhelming evidence of legislative history indicated that chapter was intended to deal with environmental accidents rather than ordinary torts. Heppner v. Alyeska Pipeline Service Co., C.A.Alaska 1981, 665 F.2d 868.

2. Strict liability—Generally

Provisions of this chapter were designed to establish the permit holders of the pipeline right-of-way as strictly liable for a broad

range of damages to the land, fish, wildlife, air, water, and the subsistence lifestyle of the Alaskan Native. Jordan v. Amerada Hess Corp., D.C.Alaska 1979, 479 F.Supp. 573.

3. — Construction accidents

This section was intended to render permit holders strictly liable for environmental harm, but was not intended to hold permit holders strictly liable for all damages of any kind that occurred "in connection with" or "in the vicinity of the proposed trans-Alaska pipeline right-of-way," and, hence, was not a basis for holding defendant oil companies strictly liable in action arising from injuries allegedly sustained in an automobile accident that occurred in vicinity of Alaska pipeline or in wrongful death action arising as a result of a construction accident in Alaska pipeline right-of-way. Jordan v. Amerada Hess Corp., D.C.Alaska 1979, 479 F.Supp. 573.

4. — Pollution clean-up

This chapter barred pipeline service company from recovering from the United States for



Parlati's

43 § 1653

Note 4

the cost of cleaning up oil discharged from the pipeline into navigable waters due to the fault of a party; this chapter made the pipeline company absolutely liable for any pollution resulting from operation of the pipeline and prevailed over the earlier enacted Water Pollution Control Act, section 1321(i)(1) of Title 33, which provides that the owner or

operator of the facility that caused pollution may recover its cleanup costs from the United States if the oil discharged was caused by a third party and did not involve any fault of the owner or operator. Alyeska Pipeline Service Co. v. U.S., 1981, 649 F.2d 831, 227 Ct.Cl. 297, certiorari denied 102 S.Ct. 505, 454 U.S. 964, 70 L.Ed.2d 380

§ 1654. Antitrust laws

The grant of a right-of-way, permit, lease, or other authorization pursuant to this chapter shall grant no immunity from the operation of the Federal anti-trust laws.

(Pub.L. 93-153, Title II, § 205, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

References in Text. The Federal antitrust laws, referred to in text, are classified generally to chapter 1 (section 1 et seq.) of Title 15, Commerce and Trade

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

§ 1655. Roads and airports

A right-of-way, permit, lease, or other authorization granted under section 1652(b) of this title for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip.

(Pub.L. 93-153, Title II, § 206, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

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Sec. 09.40.310. Third party claims. If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in *First Nat'l Bank v. Zawodny*,
Sup. Ct. Op. No. 1976 (File No. 4188), 602
P.2d 1254 (1979).

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

Article 1. Uniform Arbitration Act.

Section	Section
10. Arbitration agreements valid; application of article	100. Fees and expenses of arbitration
20. Proceedings to compel or stay arbitration	110. Confirmation of an award
30. Appointment of arbitrators by court	120. Vacating an award
40. Majority action by arbitrators	130. Modification or correction of award by court
50. Hearing	140. Judgment or decree on award
60. Representation by attorney	150. Applications to court
70. Witnesses, subpoenas, depositions	160. Appeals
80. Award	170. Court, jurisdiction
90. Modification of award by arbitrators	180. Short title

Cross references. — For court rule provision on arbitration and award as an affirmative defense, see Civ. R. 8(c).

NOTES TO DECISIONS

Public policy in Alaska favors arbitration as a means of resolving disputes without court interference. *Arctic Contractors v. State*, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977), *aff'd* on other grounds. Sup. Ct. Op. No. 1557, 573 P.2d 1385 (1978).

And is demonstrated by adoption of this article. — Alaska's strong public policy in favor of arbitration is demonstrated by the adoption of this article. *Modern Constr., Inc. v. Barce, Inc.*, Sup. Ct. Op. No. 1336 (File No. 3060), 556 P.2d 528 (1976).

Freedom to contract for arbitration terms. — In the absence of statutory restrictions, parties are free to contract for

the terms of arbitration they desire. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Collateral references. — 5 Am. Jur. 2d, *Arbitration and Award*, § 1 et seq.

6 C.J.S., *Arbitration*, § 1 et seq.

Resolving real estate disputes through arbitration, 27 Am. Jur. *Trials*, pp. 621-678.

Validity of state statutory provisions for arbitration of labor disputes, as against the objection of delegation of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Laches or statute of limitations as bar to arbitration under agreement, 37 ALR2d 1125.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provision that, upon one party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before as revocation or termination of submission, 65 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 91 ALR2d 936.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award: appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 654.

Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration award must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications

made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 528.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 98 ALR3d 767.

Appealability of state court's order or decree compelling or refusing to compel arbitration, 6 ALR4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

Sec. 09.43.010. Arbitration agreements valid; application of article. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

Cross references. — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

Legislative history reports. — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

NOTES TO DECISIONS

Section applicable to option to arbitrate. — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978); *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978); *City of Fairbanks v. Rice*, Sup. Ct. Op. No. 2354 (File No. 4951), 628 P.2d 565 (1981); *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.020. Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Arbitrability to be determined prior to rendition of award. — This section provides for court determination of the issue of arbitrability prior to rendition of

an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. *University of Alaska v. Modern*

Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Possibility of waiver or estoppel where party fails to seek court review of the arbitrators' decision on arbitrability until after rendition of award. — See University of Alaska v.

Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Applied in Anchorage Daily News, Inc. v. Anchorage Times Publishing Co., Sup. Ct. Op. No. 2393 (File No. 4966), 631 P.2d 500 (1981).

Sec. 09.43.030. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.040. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

Sec. 09.43.050. Hearing. Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

Sec. 09.43.060. Representation by attorney. A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

Sec. 09.43.070. Witnesses, subpoenas, depositions. (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

Sec. 09.43.080. Award. (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Subsection (a) sets out the minimum requirements as to the form of an

award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Sec. 09.43.090. Modification of award by arbitrators. On application to the arbitrators by a party or, if an application to the court by

a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification.

University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Sec. 09.43.100. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in

the arbitration process. Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Award of attorney's fees held proper. — See Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Sec. 09.43.110. Confirmation of an award. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Applied in Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.,

Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Sec. 09.43.120. Vacating an award. (a) On application of a party, the court shall vacate an award if

- (1) the award was procured by fraud or other undue means;
- (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
- (3) the arbitrators exceeded their powers;
- (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or
- (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review,

except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

No review for gross errors. — The "fraud or other undue means" standard of this section does not authorize review for gross errors. *Alaska State Hous. Auth. v.*

Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

This article evinces a strong public policy in favor of arbitration. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The power of arbitrators are confined to those conferred upon them by the arbitration agreement, subject, of course, to further limitations imposed by the law of the jurisdiction. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

A particular claim may be arbitrable although it is not so designated by "clear and unequivocal" contract language. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Ambiguous contract terms may be construed in favor of arbitrability where such construction is not obviously contrary to the parties' intent, especially where the party contesting arbitrability drafted the contract. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Claim not arbitrable. — Where the parties have clearly agreed to arbitrate only those "disputes arising in connection with this contract" a particular claim is not arbitrable if it is nowhere mentioned in the contract. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The question of whether the arbitrator exceeded his power in ordering monetary damages can be appealed. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Question on review. — When an award is attacked under this article on the grounds that the arbitrators exceeded their powers through erroneous interpretation of the contract, the reviewing court should determine whether the construction of the contract made by the arbitrators is a reasonably possible one that can seriously be made in the context in which the contract was made. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Stated affirmatively, if all fair and reasonable minds would agree that the construction of the contract made by the arbitrators was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators generally need not follow applicable law when deciding issues. — The general rule in both statutory and common-law arbitration is that arbitrators need not follow otherwise applicable law when deciding issues properly before them, unless they are commanded to do so by the terms of the arbitration agreement. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Arbitrators held not to have exceeded their powers by awarding compensation based upon the claims of a party's subcontractors, who were not parties to the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Right to object to the alleged bias of an arbitrator was waived where the objecting party did not raise the matter at

the arbitration hearing. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Cited in *Kodiak Oilfield Haulers, Inc. v. Local 879, Hotel Union*, Sup. Ct. Op. No. 2471 (File No. 5758), 641 P.2d 11 (1982).

Applied in *Musden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.130. Modification or correction of award by court.

(a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.120 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct.

Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Error calling for modification or correction must be manifestly clear. — Given the presumption that arbitration awards rendered in proper form are valid and the "evident mistake" prerequisite language of subsection (a), it follows that the error which calls for modification or correction of an arbitration award must be manifestly clear. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Sec. 09.43.140. Judgment or decree on award. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Award of attorney's fees held proper. — See *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976). Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1125 (1978).

Sec. 09.43.150. Applications to court. An application to the court under AS 09.43.010 — 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (§ 1 ch 232 SLA 1968)

Cross references. — For court rules on service of motions and service procedures, see Civ. R. 77(a) and Civ. R. 5.

Sec. 09.43.160. Appeals. (a) An appeal may be taken from

- (1) an order denying an application to compel arbitration made under AS 09.43.020;
- (2) an order granting an application to stay arbitration made under AS 09.43.020(b);
- (3) an order conforming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on an award under the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.180. Short title. AS 09.43.010 — 09.43.180 may be cited as the Uniform Arbitration Act. (§ 1 ch 232 SLA 1968; am § 1 ch 94 SLA 1972)

subsequent recording. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of an order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged. (§ 7.05 ch 101 SLA 1962)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 because of the enactment of ch. 161, SLA 1988.

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.160, 09.43.170)

NOTES TO DECISIONS

Cited in *City of Valdez v. 18.99 acres*,
Sup. Ct. Op. No. 2834 (File No. 6940), 686
P.2d 682 (1984).

Article 1. Uniform Arbitration Act.

Section

160. Appeals

170. Court, jurisdiction

Sec. 09.43.160. Appeals. (a) An appeal may be taken from

- (1) an order denying an application to compel arbitration made under AS 09.43.020;
- (2) an order granting an application to stay arbitration made under AS 09.43.020(b);
- (3) an order confirming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on

an award under the agreement. (§ 1 ch 232 SLA 1968; am § 4 ch 38 SLA 1987; am § 4 ch 38 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "court with jurisdiction in" for "superior court of" in the first sentence and deleted "superior" preceding "court" in the second sentence.

Chapter 45. Actions Relating to Real Property.

Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010, 09.45.015)
2. Forcible Entry and Detainer (§ 09.45.090)
4. Nuisances (§ 09.45.235)
5. Partition (§ 09.45.480)
6. Recovery of Possession (§ 09.45.720)
7. Trespass (§§ 09.45.730 — 09.45.735)
9. Miscellaneous Provisions (§§ 09.45.790 — 09.45.795)
10. Earthslide Relief Act (§§ 09.45.840, 09.45.845)

Article 1. Adverse Claims and Boundary Disputes.

Section

10. Action to quiet title
15. Presumption in certain cases

Sec. 09.45.010. Action to quiet title. A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim. (§ 6.01 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.45.015. Presumption in certain cases. (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (§ 2 ch 141 SLA 1986)

Article 2. Arbitration of Small Claims.

Section

190. Arbitration under court rules
200. Appointment and compensation of arbitrator

Section

210. Practice and procedure
220. Judgments and appeals

Cross references. — For small claims actions in district courts, see AS 22.15.040; for district court rules providing for practice and procedure in small claims actions, see DCR 8-22.

Editor's notes. — To date, the supreme court has not adopted rules under this article.

Sec. 09.43.190. Arbitration under court rules. The supreme court may provide by rule for compulsory arbitration of a cause of action filed in a superior or district court, demanding only a money judgment, when it appears that the demand on the cause of action is for \$3,000 or less, exclusive of costs, or when it appears to the trial court as a result of a pretrial conference that the amount which will be recovered on the cause is not likely to exceed \$3,000. (§ 2 ch 94 SLA 1972)

Sec. 09.43.200. Appointment and compensation of arbitrator. Arbitration of actions shall be by either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court as provided by its rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.210. Practice and procedure. The practice and procedure for conducting arbitration, the powers of the arbitrators and the assessment of costs shall be prescribed by the court rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.220. Judgments and appeals. Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules. (§ 2 ch 94 SLA 1972)

Chapter 45. Actions Relating to Real Property.

Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010 — 09.45.050)
2. Forcible Entry and Detainer (§§ 09.45.060 — 09.45.160)
3. Foreclosure of Liens (§§ 09.45.170 — 09.45.220)
4. Nuisances (§§ 09.45.230 — 09.45.250)
5. Partition (§§ 09.45.260 — 09.45.620)
6. Recovery of Possession (§§ 09.45.630 — 09.45.720)
7. Trespass (§ 09.45.730)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 12, 1989

SUBJECT: Arbitration under the TAPS
liability fund, SB 255

TO: Senator Tim Kelly
President of the Senate

FROM: Terri Lauterbach *TL*
Legislative Counsel

I have discovered some new information that might be relevant as you consider your options in relation to SB 255, a bill that would establish a special arbitration commission for Valdez disaster claims.

That new information relates to the federal Trans-Alaska Pipeline Liability Fund, the \$100,000,000 fund that may be sued for claims arising from discharges of oil that was carried through the pipeline and later carried by tankers. The Fund regulations provide for binding arbitration of claims if the parties to a claim agree.

The time line for claims filed against the Fund might also interest you. According to regulations in the Code of Federal Regulations, the Fund is supposed to be currently advertising its claims procedures (15 - 20 days after the incident). After a person presents a claim, the claim is sent to the responsible company where it is supposed to be paid within 90 days. If it is not paid, the claimant can file against the Fund or go to court. If a claim is presented to the Fund, the Fund must decide the claim within 120 days. 43 C.F.R. 29.1 - 29.13.

It is during the time the claim is being considered by the responsible company that arbitration is an option. So, it appears to me that arbitration is available to claimants under federal law without a special commission. Of course, arbitration is also available under state law without a special commission, by submission of a dispute to an

Senator Tim Kelly
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arbitrator under AS 09.43 (Uniform Arbitration Act),
referred to in SB 255.

If, in your judgment, you believe a special arbitration
commission would better serve the interests of the people of
the state than either the federally authorized arbitration
or the procedures already available under AS 09.43, then SB
255 is an appropriate vehicle. But I thought you would want
to know that binding arbitration is authorized under the
federal law.

If I can be of further assistance, please let me know.

TL:gc
WKG9/052

relationship of an employer and an employee) in any way related to the performance of any one or more contracts as defined above.

(f) The Authorized Officer means the employee of the Department, designated to act on behalf of the Secretary pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline or such other person to whom the Authorized Officer delegates his authority pursuant to the delegation of authority to the Authorized Officer from the Secretary.

(g) The Department Compliance Officer means that officer of the Department of the Interior so designated by the Secretary.

PART 28—FIRE PROTECTION EMERGENCY ASSISTANCE

Secs.

- 28.1 Purpose.
28.2 Definitions.
28.3 Emergency assistance.

AUTHORITY: Act of May 27, 1955 (42 U.S.C. 1856, 1856b).

SOURCE: 41 FR 51794, Nov. 24, 1976, unless otherwise noted.

§ 28.1 Purpose.

The purpose of this part is to provide criteria for agencies in the Department to render fire protection emergency assistance to fire organizations not within the Department.

§ 28.2 Definitions.

As used in this part:

(a) The term "agency head" means the Secretary of the Interior or an official of the Department of the Interior who exercises authority delegated by the Secretary of the Interior.

(b) The term "fire protection" includes personnel services and equipment required for fire prevention, the protection of life and property, and firefighting; and

§ 28.3 Emergency assistance.

In the absence of a reciprocal fire protection agreement, each agency head may provide emergency fire protection will not jeopardize the property of the United States by making it impossible for the agency head to protect the property of the United States

43 CFR Subtitle A (10-1-87 Edition)

and such assistance is determined to be in the best interest of the United States. The providing of emergency assistance shall not be in the best interest of the United States and may not be granted by an agency head if:

(a) Persons other than those currently employed by the agency at the time of the emergency and trained in the type of emergency assistance being provided would be used in the providing of the emergency assistance.

(b) Assistance is provided to a place more than an hour's travel from where the agency maintains fire protection facilities. Assistance which requires more than an hour's travel may be given for those fire emergencies threatening to last more than 12 hours, or endangering human life.

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.

- 29.1 Definitions
29.2 Creation of the Fund.
29.3 Fund administration.
29.4 General powers.
29.5 Officers and employees.
29.6 Financing, accounting and audit.
29.7 Imposition of strict liability.
29.8 Notification and advertisement.
29.9 Claims, settlement and adjudication.
29.10 Subrogation.
29.11 Investment.
29.12 Borrowing.
29.13 Termination.

AUTHORITY: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653 (c); Secs. 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p) (1), (2).

SOURCE: 42 FR 31789, June 23, 1977, unless otherwise noted.

§ 29.1 Definitions.

As used in this part:

(a) Act means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Secs. 1651 *et seq.*

(b) "Affiliated" means:

(1) Any person owned or effectively controlled by the vessel owner or operators; or

(2) Any person that effectively controls or has the power to effectively control the vessel owner or operator by—

Office of the Secretary of the Interior

- (i) Stock interest, or
(ii) Representation on a board of directors or similar body, or
(iii) Contract or other agreement with other stockholders, or
(iv) Otherwise, or

(3) Any person which is under common ownership or control with the vessel owner or operator.

(c) "Claim" means a demand in writing for damages recoverable under this Part.

(d) "Damage" or "damages" means any economic loss, arising out of or directly resulting from an incident, including but not limited to:

- (1) Removal costs.
(2) Injury to, or destruction of, real or personal property.
(3) Loss of use of real or personal property.
(4) Injury to, or destruction of, natural resources.

(5) Loss of use of natural resources.

(6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, including loss of subsistence hunting, fishing and gathering opportunities.

(7) Loss of tax revenue for a period of one year due to injury to real or personal property.

(e) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act.

(f) "Guarantor" means the person, other than the owner or operator who provides evidence of financial responsibility for an owner or operator, and includes an underwriter, insurer or surety company.

(g) "Incident" means a discharge of oil from a vessel that:

- (1) Violates applicable water quality standards, or
(2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(h) "Oil" means petroleum in any form.

(i) "Operator of the pipeline" means the person or persons to whom payments are made for the costs of trans-

portation of oil through the Trans-Alaska Pipeline System.

(j) "Owner" means, in the case of oil, the owner of the oil at the time that such oil is loaded on a vessel at the terminal facilities of the pipeline.

(k) "Owner or Operator" means, in the case of a vessel, any person owning, operating, or chartering by demise such vessel.

(l) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(m) "Person in Charge" means the individual immediately responsible for the operations of a vessel.

(n) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System and includes the Amerada Hess Pipeline Company, ARCO Pipe Line Company, BP Pipelines Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipe Line Company, Union Alaska Pipeline Company, and successors in interest to any one or more of the aforementioned companies.

(o) "Pipeline" means any pipeline in the Trans-Alaska Pipeline System.

(p) "Secretary" means the Secretary of the Interior or his authorized representatives.

(q) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels.

(r) "Trans-Alaska Pipeline System" or "System" means any pipeline or terminal facilities constructed by the Permittees under the authority of the Act.

(s) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, the Trust Territory of the Pacific Islands.

(t) "Vessel" means any type of water-craft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the pipeline and ports

under the jurisdiction of the United States, and which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27840, June 27, 1978]

§ 29.2 Creation of the Fund.

(a) The Trans-Alaska Pipeline Liability Fund was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary.

(b) The Fund shall take all steps necessary to carry out its responsibilities under the Act, including registering or otherwise qualifying to do business in all states and territories of the United States that it may reasonably be expected to do business in.

(c) The Fund shall be subject to the provisions of the Act, these implementing regulations, and, to the extent consistent with the Act and regulations, to the laws and regulations of the states in which it is registered to do business.

(d) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in paragraph (b) of this section.

(b)(1) The Board of Trustees shall be comprised of one member designated by each Permittee and three members designated by the Secretary. At least one member designated by the Secretary shall be chosen from persons nominated by the Governor of the State of Alaska. Each member shall serve for a period of three years and may succeed himself. Each member shall have the right to one vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a trustee, and if any holder of right-of-way, such holder's designated trustee shall resign from the Board. The Board shall elect by a

majority vote a Chairman and a Secretary annually.

(2) Where any activity of the Fund creates a conflict of interest, or the appearance of a conflict of interest, on the part of any member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such activity by the Board of Trustees.

(c) If at any time there is a tie vote in the consideration of any matter by the Board of Trustees, the member designated by the Secretary with longest service on the Board shall break the tie by voting twice.

(d) The Board of Trustees by a majority vote shall select an Administrator to direct the day-to-day operations of the Fund.

(e) The Board of Trustees shall hold meetings every six months, or more frequently when necessary to consider pressing matters, including pending claims under § 29.9.

(f)(1) Each Board Member and officer of the Fund now or hereafter serving as such, shall be indemnified by the Fund against any and all claims and liabilities to which he has or shall become subject by reason of serving or having served as such Board Member or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him as such Board Member or officer; and the Fund shall reimburse each such person for all legal expenses reasonably incurred by him in connection with any such claim or liability; *Provided, however,* That no such person shall be indemnified against, or be reimbursed for any expenses incurred in connection with, any claim or liability arising out of his own willful misconduct or gross negligence.

(2) The amount paid to any officer or Board Member by way of indemnification shall not exceed his actual liabilities and actual, reasonable, and necessary expenses incurred in connection with the matter involved. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Fund in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on

behalf of the Board Member or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Fund as authorized herein.

(3) The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.

[42 FR 31789, June 23, 1977, as amended at 45 FR 1026, Jan. 4, 1980]

§ 29.4 General powers.

The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(a) By resolution of the Board of Trustees, the Fund shall adopt a corporate seal.

(b) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(c) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(d) In any civil action for the recovery of damages resulting from an incident the Fund shall waive personal jurisdiction upon being furnished with a copy of the summons and complaint in the action.

(e) The Board of Trustees of the Fund, by a majority of those present and voting, shall adopt and may amend and repeal by-laws governing the performance of its statutory duties.

(f) The Fund shall do all things necessary and proper in conducting its activities as Trustee including

(1) Receipt of fee collections pursuant to section 204(c)(6) of the act;

(2) Payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund;

(3) Investment of all sums not needed for administration and the satisfaction of claims in income producing securities as hereinafter provided; and

(4) Seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in section 204(c)(8) of the act.

(g) The Fund shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid. The Board of Trustees shall establish an annual budget, subject to the approval of the Secretary.

(h) All costs and expenses reasonably necessary to the administration of the Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.5 Officers and employees.

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administration functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of oil pursuant to § 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees and the Secretary, and the disbursement of such assets in payment of expenses and approved claims.

(b) The Fund may employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing, accounting, and audit.

(a)(1) The Operator of the pipeline shall collect a fee of five cents per barrel from the Owner of the oil at the time it is loaded on a vessel at the terminal facilities of the pipeline.

Such fees shall be transferred forthwith to the Fund for receipt and verification by the Administrator. Collection of fees shall cease at the end of the month following the month in which \$100,000,000 has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below \$100,000,000. The Administrator shall notify the pipeline carriers by the fifteenth of the month whether fees are to be collected during the following month.

(2) The value of the Fund shall be the current market value of the Fund on the day at the end of each month or other agreed upon accounting period, when the value is to be determined.

(b) Costs of administration shall be paid from the money received by the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with § 29.11. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month, or other agreed upon accounting period, the Operator of the pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners from whom such fees were collected. The Administrator shall provide a copy of the statement to the Owners, and to the State of Alaska.

(d) The Fund shall undertake an annual accounting.

(e) The Fund shall be audited annually by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities

for verifying among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, and is carrying oil which has been transported through the Trans-Alaska Pipeline System, the owner and operator of the vessel (jointly and severally), and the Fund established by section 204(c) of the act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of oil from such vessel. Strict liability under this section shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the act with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If three total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be as-

serted and adjudicated under other applicable Federal or State law.

(d)(1) Each owner or operator of a vessel shall obtain from the Federal Maritime Commission a "Certificate of Financial Responsibility (Alaska Pipeline)" demonstrating compliance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)), and regulations promulgated pursuant to such act (46 CFR Part 543). Notwithstanding inconsistent language in such act, financial responsibility in the amount of \$14,000,000 for all such vessels must be established.

(2) The certificate obtained in accordance with this subsection shall be carried on board the vessel, and a copy shall be filed with the Fund. No oil may be loaded on any vessel which has not been issued a valid certificate which is still in effect at the time of loading.

§ 29.8 Notification and advertisement.

(a) The person in charge of a vessel, as soon as he has knowledge of an incident in which the vessel is involved, shall immediately notify the Fund of the incident using the fastest available method of communication. Notification under this section is in addition to any notification required of the owner or operator of the vessel under section 311 (b)(5) of the Federal Water Pollution Control Act Amendments of 1972 and the regulations of the U.S. Coast Guard promulgated pursuant to such Act (33 CFR 153.203).

(b) When the Fund receives information pursuant to paragraph (a) of this section or otherwise of an incident, the Fund shall, where possible, designate the source or sources of oil pollution and shall immediately notify the owner and operator of such source designation. In making the designation, the Fund may ask the assistance and cooperation of the U.S. Coast Guard.

(c)(1) In all cases where there is any likelihood of damages from an incident, the Fund shall advertise the designation, if such designation has been made, the procedures by which claims may be processed, and the information which must be included in such claims.

(2) The Fund shall establish, subject to the approval of the Secretary, uniform procedures and forms for advertisement under this section.

(d) Advertisement under this section shall commence no later than fifteen days from the date of the designation under paragraph (b) of this section, and in any event no later than twenty days from the date the Fund learns of the incident. The advertisement shall continue for a period of not less than thirty days.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.9 Claims, settlement and adjudication.

(a)(1) Claims in accordance with this section may be submitted by any damaged party, his duly authorized agent, or his successor in interest.

(2) Claims submitted in accordance with this section must contain the following information:

(i) A detailed statement of the circumstances, if known, by which the claimed loss occurred.

(ii) A detailed listing of damages incurred, categorized according to the type of damage involved (§ 29.1(d)), and including a monetary claim for each type of damage listed.

(iii) Where documentation, where available, of all monetary claims asserted.

(c)(1) All claims arising out of an incident shall be initially presented to the Fund.

(2) Where designation under § 29.8(b)(1) has been accomplished and where the owner or operator does not deny the designation, the Fund shall transmit all related claims to the owner or operator. The Fund shall transmit such claims within 5 days after their receipt by the Fund.

(3) Where the Fund is unable to designate the source or sources of discharge under § 29.8(b), all related claims shall be processed and adjudicated by the Fund.

(c) In the case of a claim transmitted under paragraph (b)(2) of this section not submitted to arbitration under paragraph (h) of this section, and in which:

(1) The owner, operator or guarantor to whom the claim is presented denies all liability for the claim, for any reason, or

(2) The claim is not settled by any person by payment to the claimant within ninety days of the date upon which the claim was presented to the owner or operator or upon which advertising was commenced, whichever is later, the claimant may elect to commence an action in court against the owner or operator or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, any person intending to pay or settle any such claim shall notify the Fund of such intention, and of all terms of the intended settlement, at least twenty days before such payment or settlement is made final. Whenever the Fund objects, for any reason, to the intended payment or settlement, it may request modification of such payment or settlement, or it may seek appropriate relief in Federal District Court in order to halt or modify such payment or settlement.

(e) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, where full and adequate compensation is unavailable, either because the claim exceeds the \$14,000,000 limit of liability, or because the owner, operator, or guarantor is financially incapable of meeting his obligations in full, a claim for the amount not compensated may be presented to the Fund.

(f) Where any part of the first \$14,000,000 of claims arising from an incident is paid by the Fund, for any reason, the owner and operator of the vessel involved shall be liable to the Fund for such amount paid in accordance with section 204(c)(3) of the Act. The Fund shall commence an action in court or pursue any other reasonable means to recover such amount from the owner, operator, and guarantor. Where the owner, operator and guarantor all deny liability for a claim without any reasonable basis for doing so, the Fund may request that the Federal Maritime Commission revoke the applicable Certificate of Financial Responsibility and prohibit the guar-

antor from providing evidence of financial responsibility in the future.

(g) The Fund may settle or compromise any claim presented to it for adjudication in accordance with paragraphs (b)(3) and (c) of this section, provided that all claims not submitted to arbitration under paragraph (b) of this section shall be settled and paid within 120 days of the date upon which the claim was so presented to the Fund, or upon which advertising was commenced, whichever is later.

(h) A disputed claim may be submitted to binding arbitration, if the parties to the dispute so agree, under terms and procedures agreed to by the parties. The Fund shall be afforded an opportunity to participate as a party in the arbitration, and if it does so it shall be bound by the results of the arbitration.

(i) No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against, the owner, operator, or guarantor, or against the Fund, as to their respective liabilities, within three years from the date of discovery of the damages caused by an incident, or within six years of the date of the incident causing the damages, whichever is earlier.

(j)(1) The Board of Trustees, by a majority vote, shall decide to allow or deny claims or settlements presented to the Fund in accordance with this section. In its discretion the Board may delegate the authority to settle classes of claims to the Administrator.

(2)(i) Where a claim is presented to the Fund by or on behalf of any person having a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of such conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(ii) Where a claim presented to the Fund has previously been presented to an owner or operator pursuant to § 29.9(b)(2), and such owner or operator has a close business, personal or governmental association with any member of the Board of Trustees,

such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(k) The Fund, subject to the approval of the Secretary, shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(l) The Fund may use the facilities and services of private insurance and claims adjusting organizations in administering this part and may contract to pay compensation for those facilities and services.

(m) Any claimant aggrieved by the Fund's decision on a claim under this section may appeal the decision in the appropriate Federal District Court.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights claims and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in the following types of income-producing obligations having a high degree of reliability and security, or in such other obligations as the Secretary may approve:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations having a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA". *Provided, however,*

That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either A1 or P1 or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time. *Provided, however,* That this restriction shall not apply to obligations of the United States or any of its agencies.

[42 FR 31789, June 23, 1977, as amended at 43 FR 33721, Aug. 1, 1978]

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, or is in need of money with which to initiate the operation of the Fund, the Fund may borrow the money needed from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is \$500,000 or less, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds \$500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the pipeline, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all assets remaining in the Fund shall be placed in a temporary trust fund account within the State of Alaska. The terms of the trust arrangement shall be determined by the Secretary. During the next succeeding session of Congress, the Secretary shall request that Congress provide for final disposition of the Fund. If Congress at any time establishes a comprehensive oil pollution liability fund which supersedes or repeals the Fund, the Fund

assets and any pending claims shall be disposed of as Congress or the Secretary shall direct.

EDITORIAL NOTE: For the Table of Public Land Orders formerly appearing in this volume, see the Appendix to Title 43 CFR Chapter II.

PART 32—GRANTS TO STATES FOR ESTABLISHING YOUNG ADULT CONSERVATION CORPS (YACC) PROGRAM

Sec.

- 32.1 Introduction.
- 32.2 Definitions.
- 32.3 Program purpose and objectives.
- 32.4 Program operation requirements.
- 32.5 Administrative requirements.
- 32.6 Request for grant.
- 32.7 Application format, instructions, and guidelines.
- 32.8 Program reporting requirements.
- 32.9 Consideration and criteria for awarding grants.

AUTHORITY: Pub. L. 95-93, sec. 806, 91 Stat. 630 (29 U.S.C. 801).

SOURCE: 43 FR 12266, Mar. 23, 1978, unless otherwise noted.

§ 32.1 Introduction.

(a) The Young Adult Conservation Corps (YACC) is authorized by Title I of the Youth Employment and Demonstration Projects Act of 1977 (Pub. L. 95-93), which amends the Comprehensive Employment and Training Act (CETA) of 1973 by adding a new Title VIII.

(b) The Young Adult Conservation Corps (YACC) is a year-round employment program for young men and women aged 16 through 23 inclusive. Financial assistance is available through grants-in-aid for employment and work to be performed on projects affecting both Federal and non-Federal public lands and waters or projects limited to non-Federal public lands and waters. YACC grants do not require matching.

(c) The YACC grant program is jointly managed by the Secretaries of the Interior and Agriculture under an interagency agreement with the Secretary of Labor.

(d) Thirty percent of the sums appropriated to carry out the YACC program for any fiscal year will be available for grants during such year.

Grant funds will be allocated on the basis of the total youth population within each State. State YACC programs must consist of both residential and nonresidential projects. At least 25 percent of the State YACC program must be residential by September 30, 1978.

§ 32.2 Definitions.

The terms used in these regulations are defined as follows:

(a) *Act.* The Comprehensive Employment and Training Act of 1973, as amended.

(b) *YACC.* Young Adult Conservation Corps.

(c) *Secretaries.* The Secretaries of the Interior and Agriculture or their designated representatives. The YACC program is managed within Interior by the Office of Youth Programs, and within Agriculture, by the Forest Service.

(d) *State.* Any of the several States of the United States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and The Trust Territories of the Pacific Islands and the Northern Marianas.

(e) *Refugee/parolee.* An alien who is admitted into the United States under the Immigration and Nationality Act, and who is legally authorized to take permanent employment in the United States.

(f) *Enrollee.* An individual enrolled in the YACC grant program.

(g) *Grant.* Funding furnished by the Secretaries to a State pursuant to the Act in order to carry out the YACC program.

(h) *Grantee.* Any State recipient of a grant for the operation of a YACC program affecting both Federal and non-Federal public lands and waters, or projects limited to non-Federal public lands and waters as designated by the Governor in each State.

(i) *Subgrantee.* Any unit of general local government or any public agency or organization or any private non-profit agency or organization which has been in existence at least 2 years which has successfully applied to a State for funds to operate a YACC project affecting both Federal and

non-Federal public lands and waters within that State or projects limited to non-Federal public lands and waters.

(j) *Contractor.* Any public agency or organization, or any private non-profit agency or organization which has been in existence for at least 2 years and is under contract with the grantee or sub-grantee for the conduct of a YACC project affecting both Federal and non-Federal public lands or waters, or projects limited to non-Federal public lands and waters.

(k) *State grant program.* The YACC program consisting of one or more projects operated by a State with Federal Funding.

(l) *Project.* A YACC residential camp operation or nonresidential project:

(1) *Residential camp.* A YACC facility established and maintained to provide 7 days-per-week, 24 hours-per-day residential support services for enrollees.

(2) *Nonresidential project.* A designated area from which daily work activities are assigned and to/from which nonresidential enrollees commute daily.

(m) *In consultation with.* Advance discussion shall occur on the matter under consideration.

(n) *Non-Federal public lands and waters.* Any lands or waters within the territorial limits of a State owned either in fee simple by a State or political subdivision thereof or over which a State or political subdivision thereof has, as determined by the Secretaries, sufficient long-term jurisdiction so that improvements made as the result of a grant will accrue primarily to the benefit of the public as a whole. Federally owned public lands and waters administered by a State or political subdivision thereof under agreements with a Department or Agency of the Federal Government are eligible under such definition if the Secretaries determine that the State or political subdivision thereof is entitled or is likely to retain administrative responsibility for an extended period of time sufficient to justify treatment as non-Federal public lands or waters.

(o) *Total youth population.* Number of youth in a State ages 16 through 23,

consistent with the most current Bureau of Census estimate.

(p) *Labor.* U.S. Department of Labor.

(q) *Interior.* U.S. Department of the Interior.

(r) *Forest Service.* Agency within the U.S. Department of Agriculture.

§ 32.3 Program purpose and objectives.

It is the purpose of the Young Adult Conservation Corps to provide employment and other benefits to youths of both sexes from all social, economic and racial classifications who would not otherwise be currently productively employed. The youths will be employed for a period of service during which they engage in useful conservation work which would otherwise be accomplished if adequate funding were made available.

§ 32.1 Program operation requirements.

(a) The State agencies cooperating with Interior and Forest Service having natural resource management responsibilities should be involved in the planning and implementation of the program.

(b) Grantees shall be responsible for the management of each Corps camp and project, final selection of enrollees, determination of enrollee work assignments, training, discipline and termination, and camp operations in accordance with this part and guidelines issued by Interior and Forest Service.

(1) Grantees shall assure that YACC program activities will not result in the displacement of employed workers (including partial displacement such as reduction in the hours of non-over-time work or wages or employment benefits), or impair existing contracts for services, or result in the substitution of YACC funds for other funds in connection with work that would otherwise be performed, or substitute jobs assisted under YACC for existing Federally-assisted jobs, or result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

(2) Grantees shall assure that the activities in which the YACC enrollees are employed will result in an increase in employment opportunities over

relationship of an employer and an employee) in any way related to the performance of any one or more contracts as defined above.

(f) The Authorized Officer means the employee of the Department, designated to act on behalf of the Secretary pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline or such other person to whom the Authorized Officer redelegates his authority pursuant to the delegation of authority to the Authorized Officer from the Secretary.

(g) The Department Compliance Officer means that officer of the Department of the Interior so designated by the Secretary.

PART 28—FIRE PROTECTION EMERGENCY ASSISTANCE

Secs.

- 28.1 Purpose.
28.2 Definitions.
28.3 Emergency assistance.

AUTHORITY: Act of May 27, 1955 (42 U.S.C. 1856, 1856b).

SOURCE: 41 FR 51794, Nov. 24, 1976, unless otherwise noted.

§ 28.1 Purpose.

The purpose of this part is to provide criteria for agencies in the Department to render fire protection emergency assistance to fire organizations not within the Department.

§ 28.2 Definitions.

As used in this part:

(a) The term "agency head" means the Secretary of the Interior or an official of the Department of the Interior who exercises authority delegated by the Secretary of the Interior.

(b) The term "fire protection; includes personnel services and equipment required for fire prevention, the protection of life and property, and firefighting; and

§ 28.3 Emergency assistance.

In the absence of a reciprocal fire protection agreement, each agency head may provide emergency fire protection will not jeopardize the property of the United States by making it impossible for the agency head to protect the property of the United States

and such assistance is determined to be in the best interest of the United States. The providing of emergency assistance shall not be in the best interest of the United States and may not be granted by an agency head if:

(a) Persons other than those currently employed by the agency at the time of the emergency and trained in the type of emergency assistance being provided would be used in the providing of the emergency assistance.

(b) Assistance is provided to a place more than an hour's travel from where the agency maintains fire protection facilities. Assistance which requires more than an hour's travel may be given for those fire emergencies threatening to last more than 12 hours, or endangering human life.

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.

- 29.1 Definitions
29.2 Creation of the Fund
29.3 Fund administration.
29.4 General powers.
29.5 Officers and employees.
29.6 Financing, accounting and audit.
29.7 Imposition of strict liability.
29.8 Notification and advertisement.
29.9 Claims, settlement and adjudication.
29.10 Subrogation.
29.11 Investment.
29.12 Borrowing.
29.13 Termination.

AUTHORITY: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653 (c); Secs. 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p) (1), (2).

SOURCE: 42 FR 31789, June 23, 1977, unless otherwise noted.

§ 29.1 Definitions.

As used in this part:

(a) Act means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Secs. 1651 *et seq.*

(b) "Affiliated" means:

(1) Any person owned or effectively controlled by the vessel owner or operators; or

(2) Any person that effectively controls or has the power to effectively control the vessel owner or operator by—

- (i) Stock interest, or
(ii) Representation on a board of directors or similar body, or
(iii) Contract or other agreement with other stockholders, or
(iv) Otherwise, or
(3) Any person which is under common ownership or control with the vessel owner or operator.
(c) "Claim" means a demand in writing for damages recoverable under this Part.

(d) "Damage" or "damages" means any economic loss, arising out of or directly resulting from an incident, including but not limited to:

- (1) Removal costs.
(2) Injury to, or destruction of, real or personal property.
(3) Loss of use of real or personal property.
(4) Injury to, or destruction of, natural resources.

(5) Loss of use of natural resources.
(6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, including loss of subsistence hunting, fishing and gathering opportunities.

(7) Loss of tax revenue for a period of one year due to injury to real or personal property.

(e) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act.

(f) "Guarantor" means the person, other than the owner or operator who provides evidence of financial responsibility for an owner or operator, and includes an underwriter, insurer or surety company.

(g) "Incident" means a discharge of oil from a vessel that:

- (1) Violates applicable water quality standards, or
(2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(h) "Oil" means petroleum in any form.

(i) "Operator of the pipeline" means the person or persons to whom payments are made for the costs of trans-

portation of oil through the Trans-Alaska Pipeline System.

(j) "Owner" means, in the case of oil, the owner of the oil at the time that such oil is loaded on a vessel at the terminal facilities of the pipeline.

(k) "Owner or Operator" means, in the case of a vessel, any person owning, operating, or chartering by demise such vessel.

(l) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(m) "Person in Charge" means the individual immediately responsible for the operations of a vessel.

(n) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System and includes the Amerada Hess Pipeline Company, ARCO Pipe Line Company, BP Pipelines Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipe Line Company, Union Alaska Pipeline Company, and successors in interest to any one or more of the aforementioned companies.

(o) "Pipeline" means any pipeline in the Trans-Alaska Pipeline System.

(p) "Secretary" means the Secretary of the Interior or his authorized representatives.

(q) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels.

(r) "Trans-Alaska Pipeline System" or "System" means any pipeline or terminal facilities constructed by the Permittees under the authority of the Act.

(s) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, the Trust Territory of the Pacific Islands.

(t) "Vessel" means any type of water-craft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the pipeline and ports

under the jurisdiction of the United States, and which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

(42 FR 31789, June 23, 1977, as amended at 43 FR 27840, June 27, 1978)

§ 29.2 Creation of the Fund.

(a) The Trans-Alaska Pipeline Liability Fund was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary.

(b) The Fund shall take all steps necessary to carry out its responsibilities under the Act, including registering or otherwise qualifying to do business in all states and territories of the United States that it may reasonably be expected to do business in.

(c) The Fund shall be subject to the provisions of the Act, these implementing regulations, and, to the extent consistent with the Act and regulations, to the laws and regulations of the states in which it is registered to do business.

(d) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in paragraph (b) of this section.

(b)(1) The Board of Trustees shall be comprised of one member designated by each Permittee and three members designated by the Secretary. At least one member designated by the Secretary shall be chosen from persons nominated by the Governor of the State of Alaska. Each member shall serve for a period of three years and may succeed himself. Each member shall have the right to one vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a trustee, and if any holder of right-of-way sells his interest in such right-of-way, such holder's designated trustee shall resign from the Board. The Board shall elect by a

majority vote a Chairman and a Secretary annually.

(2) Where any activity of the Fund creates a conflict of interest, or the appearance of a conflict of interest, on the part of any member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such activity by the Board of Trustees.

(c) If at any time there is a tie vote in the consideration of any matter by the Board of Trustees, the member designated by the Secretary with longest service on the Board shall break the tie by voting twice.

(d) The Board of Trustees by a majority vote shall select an Administrator to direct the day-to-day operations of the Fund.

(e) The Board of Trustees shall hold meetings every six months, or more frequently when necessary to consider pressing matters, including pending claims under § 29.9.

(f)(1) Each Board Member and officer of the Fund now or hereafter serving as such, shall be indemnified by the Fund against any and all claims and liabilities to which he has or shall become subject by reason of serving or having served as such Board Member or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him as such Board Member or officer; and the Fund shall reimburse each such person for all legal expenses reasonably incurred by him in connection with any such claim or liability: *Provided, however,* That no such person shall be indemnified against, or be reimbursed for any expenses incurred in connection with, any claim or liability arising out of his own willful misconduct or gross negligence.

(2) The amount paid to any officer or Board Member by way of indemnification shall not exceed his actual liabilities and actual, reasonable, and necessary expenses incurred in connection with the matter involved. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Fund in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on

behalf of the Board Member or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Fund as authorized herein.

(3) The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.

(42 FR 31789, June 23, 1977, as amended at 45 FR 1026, Jan. 4, 1980)

§ 29.4 General powers.

The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(a) By resolution of the Board of Trustees, the Fund shall adopt a corporate seal.

(b) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(c) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(d) In any civil action for the recovery of damages resulting from an incident the Fund shall waive personal jurisdiction upon being furnished with a copy of the summons and complaint in the action.

(e) The Board of Trustees of the Fund, by a majority of those present and voting, shall adopt and may amend and repeal by-laws governing the performance of its statutory duties.

(f) The Fund shall do all things necessary and proper in conducting its activities as Trustee including

(1) Receipt of fee collections pursuant to section 204(c)(6) of the act;

(2) Payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund;

(3) Investment of all sums not needed for administration and the satisfaction of claims in income producing securities as hereinafter provided; and

(4) Seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in section 204(c)(8) of the act.

(g) The Fund shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid. The Board of Trustees shall establish an annual budget, subject to the approval of the Secretary.

(h) All costs and expenses reasonably necessary to the administration of the Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

(42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978)

§ 29.5 Officers and employees.

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administration functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of oil pursuant to § 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees and the Secretary, and the disbursement of such assets in payment of expenses and approved claims.

(b) The Fund may employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing, accounting, and audit.

(a)(1) The Operator of the pipeline shall collect a fee of five cents per barrel from the Owner of the oil at the time it is loaded on a vessel at the terminal facilities of the pipeline.

Such fees shall be transferred forthwith to the Fund for receipt and verification by the Administrator. Collection of fees shall cease at the end of the month following the month in which \$100,000,000 has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below \$100,000,000. The Administrator shall notify the pipeline carriers by the fifteenth of the month whether fees are to be collected during the following month.

(2) The value of the Fund shall be the current market value of the Fund on the day at the end of each month or other agreed upon accounting period, when the value is to be determined.

(b) Costs of administration shall be paid from the money received by the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with § 29.11. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month, or other agreed upon accounting period, the Operator of the pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners from whom such fees were collected. The Administrator shall provide a copy of the statement to the Owners, and to the State of Alaska.

(d) The Fund shall undertake an annual accounting.

(e) The Fund shall be audited annually by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities

for verifying among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, and is carrying oil which has been transported through the Trans-Alaska Pipeline System, the owner and operator of the vessel (jointly and severally), and the Fund established by section 204(c) of the act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of oil from such vessel. Strict liability under this section shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the act with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If the total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be as-

serted and adjudicated under other applicable Federal or State law.

(d)(1) Each owner or operator of a vessel shall obtain from the Federal Maritime Commission a "Certificate of Financial Responsibility (Alaska Pipeline)" demonstrating compliance with the provisions of section 211(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)), and regulations promulgated pursuant to such act (46 CFR Part 543). Notwithstanding inconsistent language in such act, financial responsibility in the amount of \$14,000,000 for all such vessels must be established.

(2) The certificate obtained in accordance with this subsection shall be carried on board the vessel, and a copy shall be filed with the Fund. No oil may be loaded on any vessel which has not been issued a valid certificate which is still in effect at the time of loading.

§ 29.8 Notification and advertisement.

(a) The person in charge of a vessel, as soon as he has knowledge of an incident in which the vessel is involved, shall immediately notify the Fund of the incident using the fastest available method of communication. Notification under this section is in addition to any notification required of the owner or operator of the vessel under section 311 (b)(5) of the Federal Water Pollution Control Act Amendments of 1972 and the regulations of the U.S. Coast Guard promulgated pursuant to such Act (33 CFR 153.203).

(b) When the Fund receives information pursuant to paragraph (a) of this section or otherwise of an incident, the Fund shall, where possible, designate the source or sources of oil pollution and shall immediately notify the owner and operator of such source designation. In making the designation, the Fund may ask the assistance and cooperation of the U.S. Coast Guard.

(c)(1) In all cases where there is any likelihood of damages from an incident, the Fund shall advertise the designation, if such designation has been made, the procedures by which claims may be presented, and the information which must be included in such claims.

(2) The Fund shall establish, subject to the approval of the Secretary, uniform procedures and forms for advertisement under this section.

(d) Advertisement under this section shall commence no later than fifteen days from the date of the designation under paragraph (b) of this section, and in any event no later than twenty days from the date the Fund learns of the incident. The advertisement shall continue for a period of not less than thirty days.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.9 Claims, settlement and adjudication.

(a)(1) Claims in accordance with this section may be submitted by any damaged party, his duly authorized agent, or his successor in interest.

(2) Claims submitted in accordance with this section must contain the following information:

(i) A detailed statement of the circumstances, if known, by which the claimed loss occurred.

(ii) A detailed listing of damages incurred, categorized according to the type of damage involved (§ 29.1(d)), and including a monetary claim for each type of damage listed.

(iii) Where documentation, where available, of all monetary claims asserted.

(b)(1) All claims arising out of an incident shall be initially presented to the Fund.

(2) Where designation under § 29.8(b)(1) has been accomplished and where the owner or operator does not deny the designation, the Fund shall transmit all related claims to the owner or operator. The Fund shall transmit such claims within 5 days after their receipt by the Fund.

(3) Where the Fund is unable to designate the source or sources of discharge under § 29.8(b), all related claims shall be processed and adjudicated by the Fund.

(c) In the case of a claim transmitted under paragraph (b)(2) of this section not submitted to arbitration under paragraph (h) of this section, and in which:

(1) The owner, operator or guarantor to whom the claim is presented denies all liability for the claim, for any reason, or

(2) The claim is not settled by any person by payment to the claimant within ninety days of the date upon which the claim was presented to the owner or operator or upon which advertising was commenced, whichever is later, the claimant may elect to commence an action in court against the owner or operator or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, any person intending to pay or settle any such claim shall notify the Fund of such intention, and of all terms of the intended settlement, at least twenty days before such payment or settlement is made final. Whenever the Fund objects, for any reason, to the intended payment or settlement, it may request modification of such payment or settlement, or it may seek appropriate relief in Federal District Court in order to halt or modify such payment or settlement.

(e) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, where full and adequate compensation is unavailable, either because the claim exceeds the \$14,000,000 limit of liability, or because the owner, operator, or guarantor is financially incapable of meeting his obligations in full, a claim for the amount not compensated may be presented to the Fund.

(f) Where any part of the first \$14,000,000 of claims arising from an incident is paid by the Fund, for any reason, the owner and operator of the vessel involved shall be liable to the Fund for such amount paid in accordance with section 204(c)(3) of the Act. The Fund shall commence an action in court or pursue any other reasonable means to recover such amount from the owner, operator, and guarantor. Where the owner, operator and guarantor all deny liability for a claim without any reasonable basis for doing so, the Fund may request that the Federal Maritime Commission revoke the applicable Certificate of Financial Responsibility and prohibit the guar-

antor from providing evidence of financial responsibility in the future.

(g) The Fund may settle or compromise any claim presented to it for adjudication in accordance with paragraphs (b)(3) and (c) of this section, provided that all claims not submitted to arbitration under paragraph (h) of this section shall be settled and paid within 120 days of the date upon which the claim was so presented to the Fund, or upon which advertising was commenced, whichever is later.

(h) A disputed claim may be submitted to binding arbitration, if the parties to the dispute so agree, under terms and procedures agreed to by the parties. The Fund shall be afforded an opportunity to participate as a party in the arbitration, and if it does so it shall be bound by the results of the arbitration.

(i) No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against, the owner, operator, or guarantor, or against the Fund, as to their respective liabilities, within three years from the date of discovery of the damages caused by an incident, or within six years of the date of the incident causing the damages, whichever is earlier.

(j)(1) The Board of Trustees, by a majority vote, shall decide to allow or deny claims or settlements presented to the Fund in accordance with this section. In its discretion the Board may delegate the authority to settle classes of claims to the Administrator.

(2)(i) Where a claim is presented to the Fund by or on behalf of any person having a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of such conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(ii) Where a claim presented to the Fund has previously been presented to an owner or operator pursuant to § 29.9(b)(2), and such owner or operator has a close business, personal or governmental association with any member of the Board of Trustees,

such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(k) The Fund, subject to the approval of the Secretary, shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(l) The Fund may use the facilities and services of private insurance and claims adjusting organizations in administering this part and may contract to pay compensation for those facilities and services.

(m) Any claimant aggrieved by the Fund's decision on a claim under this section may appeal the decision in the appropriate Federal District Court.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights claims and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in the following types of income-producing obligations having a high degree of reliability and security, or in such other obligations as the Secretary may approve:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations having a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA". *Provided, however,*

That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either A1 or P1 or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time, *Provided, however,* That this restriction shall not apply to obligations of the United States or any of its agencies.

[42 FR 31789, June 23, 1977, as amended at 43 FR 33721, Aug. 1, 1978]

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, or is in need of money with which to initiate the operation of the Fund, the Fund may borrow the money needed from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is \$500,000 or less, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds \$500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the pipeline, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all assets remaining in the Fund shall be placed in a temporary trust fund account within the State of Alaska. The terms of the trust arrangement shall be determined by the Secretary. During the next succeeding session of Congress, the Secretary shall request that Congress provide for final disposition of the Fund. If Congress at any time establishes a comprehensive oil pollution liability fund which supersedes or repeals the Fund, the Fund

assets and any pending claims shall be disposed of as Congress or the Secretary shall direct.

EDITORIAL NOTE: For the Table of Public Land Orders formerly appearing in this volume, see the Appendix to title 43 CFR Chapter II.

PART 32—GRANTS TO STATES FOR ESTABLISHING YOUNG ADULT CONSERVATION CORPS (YACC) PROGRAM

Sec.

- 32.1 Introduction.
- 32.2 Definitions.
- 32.3 Program purpose and objectives.
- 32.4 Program operation requirements.
- 32.5 Administrative requirements.
- 32.6 Request for grant.
- 32.7 Application format, instructions, and guidelines.
- 32.8 Program reporting requirements.
- 32.9 Consideration and criteria for awarding grants.

AUTHORITY: Pub. L. 95-93, sec. 808, 91 Stat. 630 (29 U.S.C. 801).

SOURCE: 43 FR 12266, Mar. 23, 1978, unless otherwise noted.

§ 32.1 Introduction.

(a) The Young Adult Conservation Corps (YACC) is authorized by Title I of the Youth Employment and Demonstration Projects Act of 1977 (Pub. L. 95-93), which amends the Comprehensive Employment and Training Act (CETA) of 1973 by adding a new Title VIII.

(b) The Young Adult Conservation Corps (YACC) is a year-round employment program for young men and women aged 16 through 23 inclusive. Financial assistance is available through grants-in-aid for employment and work to be performed on projects affecting both Federal and non-Federal public lands and waters or projects limited to non-Federal public lands and waters. YACC grants do not require matching.

(c) The YACC grant program is jointly managed by the Secretaries of the Interior and Agriculture under an interagency agreement with the Secretary of Labor.

(d) Thirty percent of the sums appropriated to carry out the YACC program for any fiscal year will be available for grants during such year.

Grant funds will be allocated on the basis of the total youth population within each State. State YACC programs must consist of both residential and nonresidential projects. At least 25 percent of the State YACC program must be residential by September 30, 1978.

§ 32.2 Definitions.

The terms used in these regulations are defined as follows:

(a) *Act*. The Comprehensive Employment and Training Act of 1973, as amended.

(b) *YACC*. Young Adult Conservation Corps.

(c) *Secretaries*. The Secretaries of the Interior and Agriculture or their designated representatives. The YACC program is managed within Interior by the Office of Youth Programs, and within Agriculture, by the Forest Service.

(d) *State*. Any of the several States of the United States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and The Trust Territories of the Pacific Islands and the Northern Marianas.

(e) *Refugee/parolee*. An alien who is admitted into the United States under the Immigration and Nationality Act, and who is legally authorized to take permanent employment in the United States.

(f) *Enrollee*. An individual enrolled in the YACC grant program.

(g) *Grant*. Funding furnished by the Secretaries to a State pursuant to the Act in order to carry out the YACC program.

(h) *Grantee*. Any State recipient of a grant for the operation of a YACC program affecting both Federal and non-Federal public lands and waters, or projects limited to non-Federal public lands and waters as designated by the Governor in each State.

(i) *Subgrantee*. Any unit of general local government or any public agency or organization or any private non-profit agency or organization which has been in existence at least 2 years which has successfully applied to a State for funds to operate a YACC project affecting both Federal and

non-Federal public lands and waters within that State or projects limited to non-Federal public lands and waters.

(j) *Contractor*. Any public agency or organization, or any private non-profit agency or organization which has been in existence for at least 2 years and is under contract with the grantee or sub-grantee for the conduct of a YACC project affecting both Federal and non-Federal public lands or waters, or projects limited to non-Federal public lands and waters.

(k) *State grant program*. The YACC program consisting of one or more projects operated by a State with Federal Funding.

(l) *Project*. A YACC residential camp operation or nonresidential project:

(1) *Residential camp*. A YACC facility established and maintained to provide 7 days-per-week, 24 hours-per-day residential support services for enrollees.

(2) *Nonresidential project*. A designated area from which daily work activities are assigned and to/from which nonresidential enrollees commute daily.

(m) *In consultation with*. Advance discussion shall occur on the matter under consideration.

(n) *Non-Federal public lands and waters*. Any lands or waters within the territorial limits of a State owned either in fee simple by a State or political subdivision thereof or over which a State or political subdivision thereof has, as determined by the Secretaries, sufficient long-term jurisdiction so that improvements made as the result of a grant will accrue primarily to the benefit of the public as a whole. Federally owned public lands and waters administered by a State or political subdivision thereof under agreements with a Department or Agency of the Federal Government are eligible under such definition if the Secretaries determine that the State or political subdivision thereof is entitled or is likely to retain administrative responsibility for an extended period of time sufficient to justify treatment as non-Federal public lands or waters.

(o) *Total youth population*. Number of youth in a State ages 16 through 23,

consistent with the most current Bureau of Census estimate.

(p) *Labor*. U.S. Department of Labor.

(q) *Interior*. U.S. Department of the Interior.

(r) *Forest Service*. Agency within the U.S. Department of Agriculture.

§ 32.3 Program purpose and objectives.

It is the purpose of the Young Adult Conservation Corps to provide employment and other benefits to youths of both sexes from all social, economic and racial classifications who would not otherwise be currently productively employed. The youths will be employed for a period of service during which they engage in useful conservation work which would otherwise be accomplished if adequate funding were made available.

§ 32.4 Program operation requirements.

(a) The State agencies cooperating with Interior and Forest Service having natural resource management responsibilities should be involved in the planning and implementation of the program.

(b) Grantees shall be responsible for the management of each Corps camp and project, final selection of enrollees, determination of enrollee work assignments, training, discipline and termination, and camp operations in accordance with this part and guidelines issued by Interior and Forest Service.

(1) Grantees shall assure that YACC program activities will not result in the displacement of employed workers (including partial displacement such as reduction in the hours of non-over-time work or wages or employment benefits), or impair existing contracts for services, or result in the substitution of YACC funds for other funds in connection with work that would otherwise be performed, or substitute jobs assisted under YACC for existing Federally-assisted jobs, or result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

(2) Grantees shall assure that the activities in which the YACC enrollees are employed will result in an increase in employment opportunities over

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CHARLOTTE (28226-8297) • MARK SHOLANDER •
 7301 Carmel Executive Park, Suite 110 • (704) 541-1367
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 162 Fourth Avenue North, Suite 103 • (615) 256-5857
NEW JERSEY (SOMERSET 08873-4002) • RICHARD NAIMARK •
 265 Davidson Avenue, Suite 149 • (201) 560-9560
NEW ORLEANS (70130-6101) • ANN PETERSON •
 650 Poydras Street, Suite 2035 • (504) 522-6181
NEW YORK (10020-1203) • CAROLYN M. PENNA •
 140 West 51st Street • (212) 484-4000
PHILADELPHIA (19102-4121) • ARTHUR R. MEHR •
 230 South Broad Street • (215) 732-5260
PHOENIX (85012-2803) • DEBORAH A. KRELL •
 3033 North Central Avenue, Suite 608 • (602) 234-0950
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 Four Gateway Center, Room 221 • (412) 261-3617
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SAN DIEGO (92101-5278) • DENNIS SHARP •
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 445 Bush Street • (415) 981-3901
SAN JOSE (95110-7409) • WALTER A. MERLINO •
 50 Airport Parkway, Suite 64 • (408) 293-7993
SAN JUAN (00918-3628) • JACINTO A. JIMENEZ-CARLO •
 Esquire Building, Suite 800 • (809) 764-8515
SEATTLE (98104-1455) • NEAL M. BLACKER •
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SYRACUSE (13202-1838) • DEBORAH A. BROWN •
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WASHINGTON, DC (20036-3169) • GARYLEE COX •
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 34 South Broadway • (914) 946-1119

AAA-20M-1/88



RULES

Commercial Arbitration Rules

As amended and in effect January 1, 1988

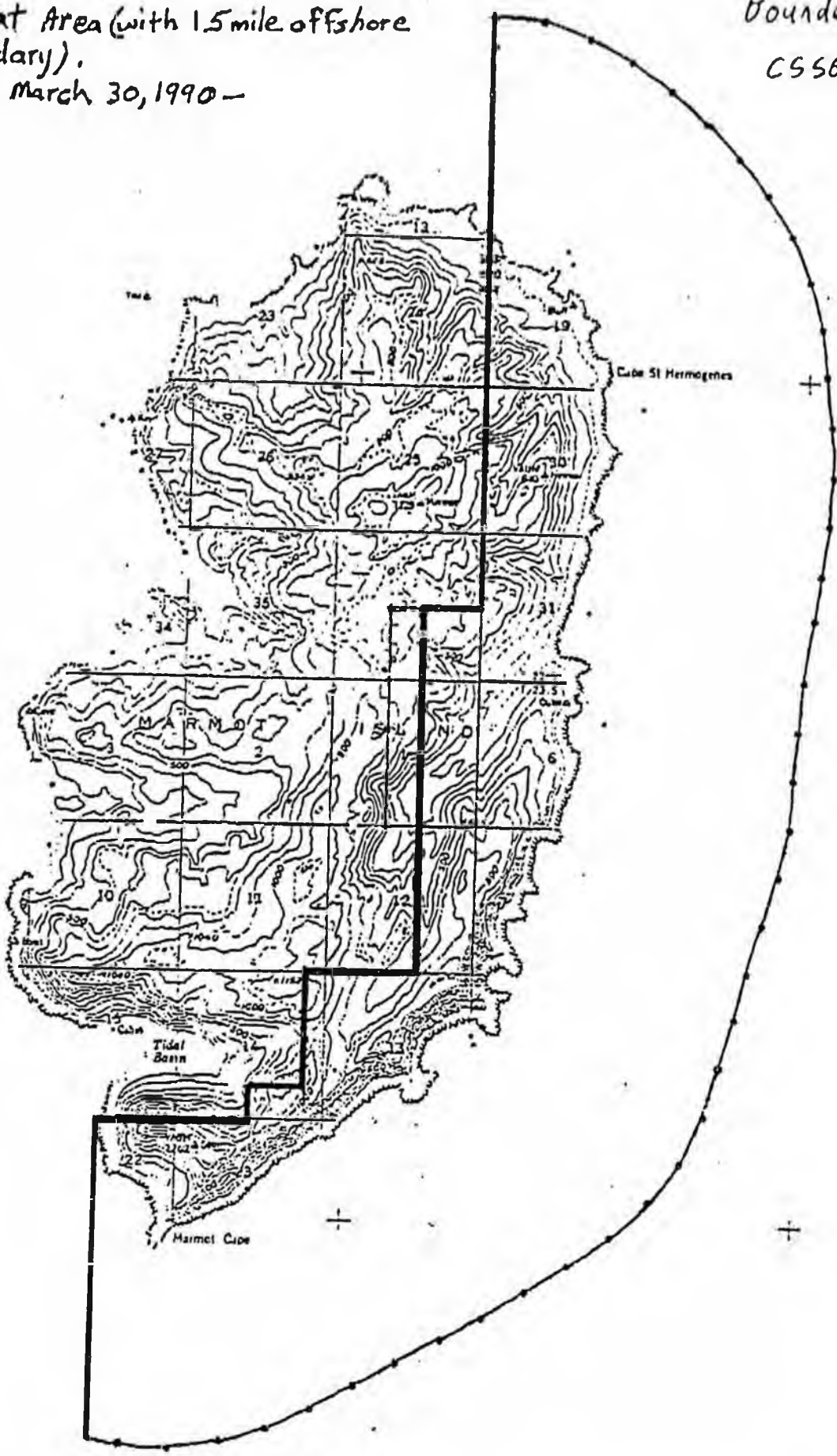


American Arbitration Association
 140 West 51st Street, New York, NY 10020-1203
 Telephone: (212) 484-4000
 Fax: (212) 765-4874

3

Proposed Marmot Island Critical
Habitat Area (with 1.5 mile offshore
boundary).
- as of March 30, 1990 -

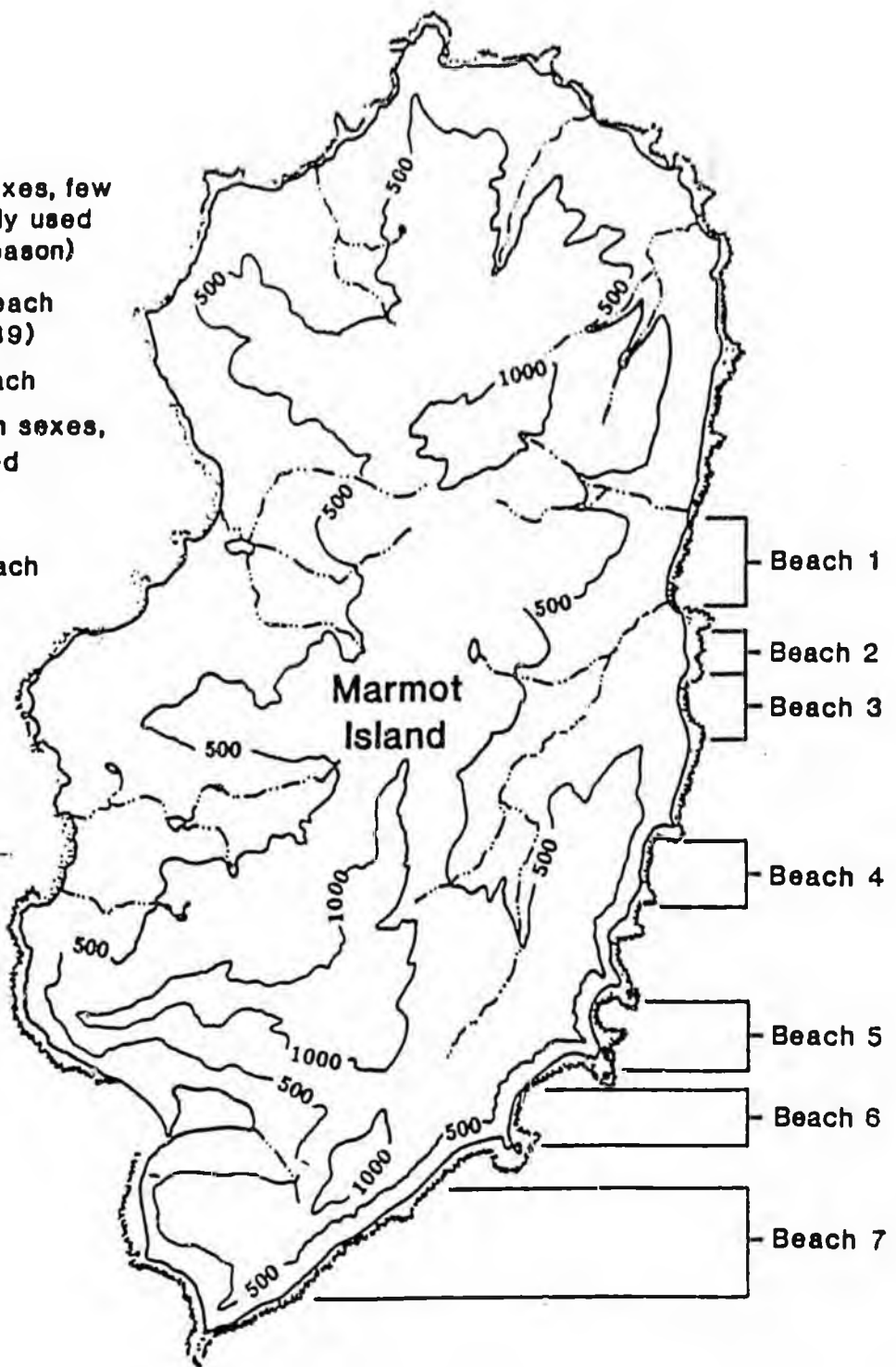
Boundary For
CSSB 545



Location of Marmot Island Northern Sea Lion Rookeries

LEGEND

- Beach 1. Males only
- Beach 2. All ages, both sexes, few pups, not currently used (1987 pupping season)
- Beach 3. Major pupping beach (Not used in 1989)
- Beach 4. Major pupping beach
- Beach 5. All ages and both sexes, not currently used
- Beach 6. Same as 5
- Beach 7. Major pupping beach



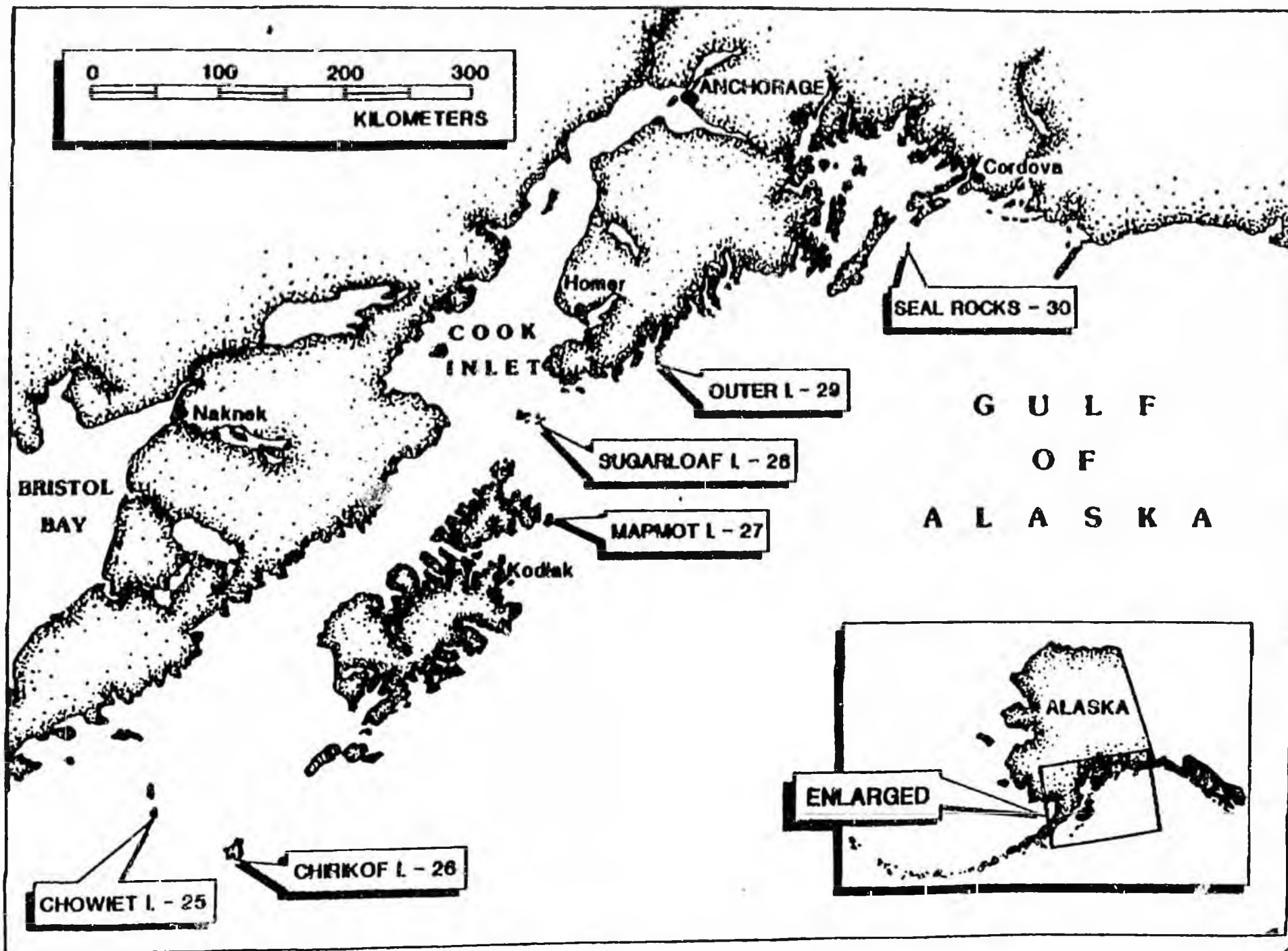
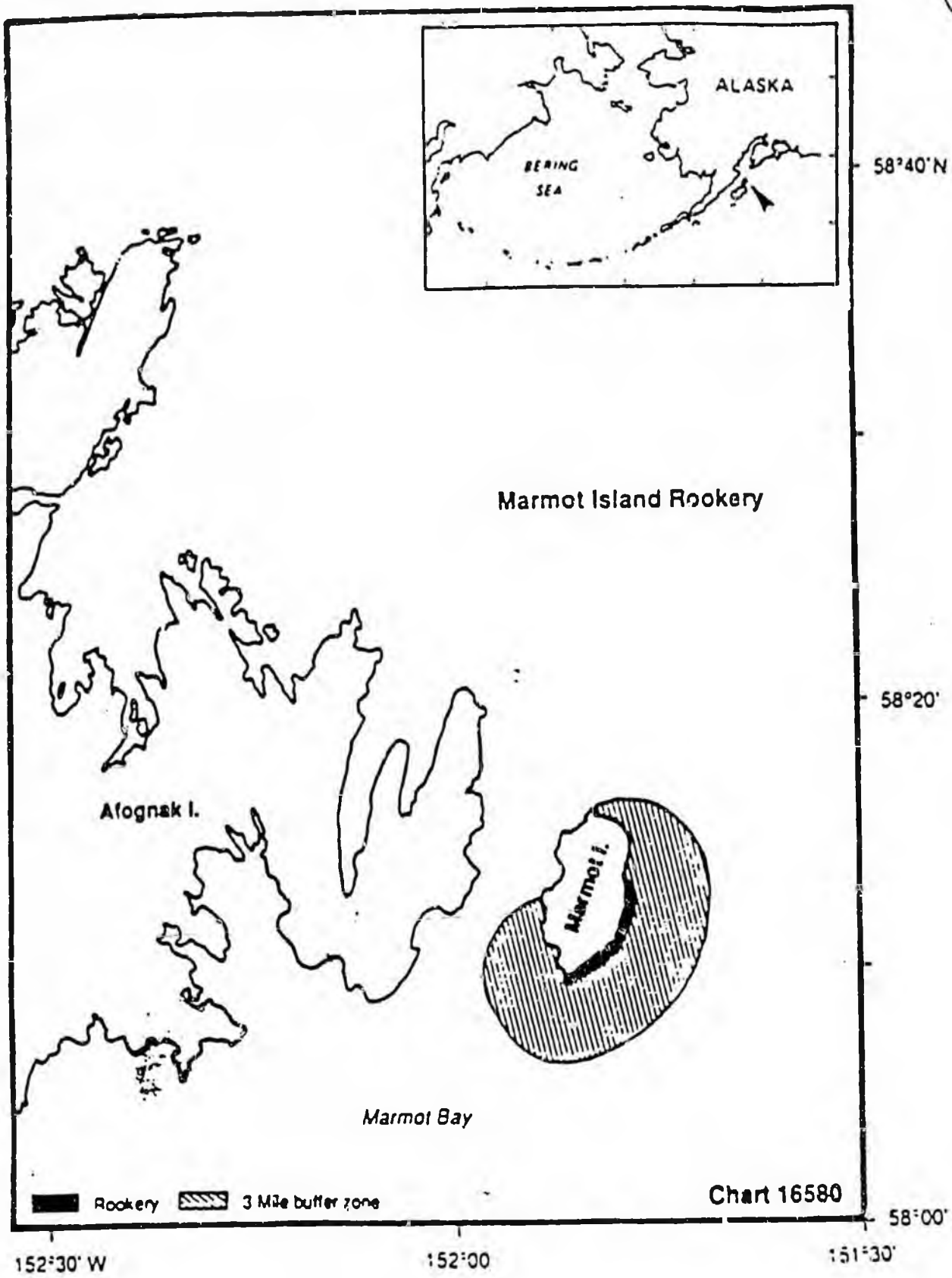


Figure 3 --- DRAFT ---

6





STATE OF ALASKA
OFFICE OF THE GOVERNOR

7

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB 545	SPONSOR Resources Committee
SHORT TITLE OF BILL Marmot Island Critical Habitat Area			
DEPARTMENT POSITION Support with Amendments			
PREPARED BY Frank Rue, Director	DATE 4/17/90	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 4/17/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUPS AFFECTED BY BILL Kodiak Island Residents, Wildlife Enthusiasts, Commercial Fisherman
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of the bill is to establish the Marmot Island Critical Habitat Area and provide for an effective date.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill achieves the following:

1. Establishes the Marmot Island Critical Habitat Area for the purpose of protection and enhancement of fish and wildlife habitat and populations, especially marine mammals, and seabirds.
2. Directs the Commissioner of Fish and Game to report biennially on the status of Stellar sea lions and the Marmot Island rookery.
3. Closes the area to mineral entry until the Steller sea lion population is removed from the threatened, endangered, and depleted species status under 16 USC 1531-1543.
4. Repeals the critical habitat area July 1, 2005.

AMENDMENTS PROPOSED

The Department of Fish and Game supports the bill with the following amendments.
(See attached)

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Attachment to Bill Analysis for SB 545
Amendments Proposed
Amend AS 16.20.630(a) as follows:

(a) The following land and water is designated as the Marmot Island Critical Habitat Area:

- (1) Township 22 South, Range 15 West Seward Meridian
Section 19
Sections 30-31
- (2) Township 22 South, Range 16 West, Seward Meridian
[SECTION 36: E1/2 E1/2 SE1/4 , E1/2 W1/2 E1/2 SE1/4]
Section 36: SE/4 , E1/2 E1/2 SW1/4
- (3) Township 23 South, Range 15 West, Seward Meridian
Sections 6-7
Section 18
- (4) Township 23 South, Range 16 West, Seward Meridian
[SECTION 1: E1/2 E1/2 , E1/2 W1/2 E1/2]
Section 1: E1/2 , E1/2 E1/2 W1/2
Section 12: E1/2 E1/2 , E1/2 W1/2 E1/2
Section 13
Section 14: E1/2 E1/2 E1/2 NE1/4 , E1/2 E1/2 E1/2 N1/2
SE1/4, S1/2 SE1/4
[SECTION 23]
Sections 22-24
- (5) The State tideland, [AND] submerged land and water for a distance of one and one-half miles from the mean high tide line of the shoreline found on state land that is described in (1), (3), and (4) of this subsection; the boundary lines of the water described in this paragraph include the water of the state on the eastern shores of Marmot Island between lines extending
 - (A) one and one-half miles from the shoreline on a line extended northward from the boundary between Section 24, Township 22 South, Range 16 West, Seward Meridian and Section 19, Township 22 South, Range 15 West, Seward Meridian; and
 - (B) one and one-half miles from the shoreline on a line extended [SOUTHWARD] westward from the boundary between Sections 15 and 22 AND 23, Township 23 South, Range 16 West, Seward Meridian.

These changes are necessary to correct an error in the legal description (Section 7, Township 23 South, Range 15 West, Seward Meridian, and Section 24, Township 23 South, Range 16 West, Seward Meridian, were inadvertantly omitted); to include important sea

lion haulouts on the southern tip of the island; and to include a critical access point along the boundary of the critical habitat area.

Amend AS 16.20.630(c) as follows:

- (c) The commissioner shall report biennially to the legislature on the status of the Steller sea lions and the Marmot Island rookeries. The land and water described in (a) of this section is closed to mineral entry under AS 38.05.185-38.05.275 [UNTIL THE STELLER SEA LION POPULATION IS REMOVED FROM THREATENED, ENDANGERED, AND DEPLETED SPECIES STATUS UNDER 16 U.S.C. 1531-1543].

Proper protection and management of the Steller sea lions and their rookeries requires the closing of Marmot Island Critical Habitat Area to mineral entry to prevent surface disturbance and displacement of animals. These closures are essential for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.

Omit Sec. 2. AS 16.20.630, [AS ENACTED IN SEC. 1 OF THIS ACT, IS REPEALED JULY 1, 2005].

Proper protection and management of the Steller sea lions and their rookeries requires critical habitat area status for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.



For the arbitration of future disputes:

The American Arbitration Association recommends the following arbitration clause for insertion in all commercial contracts:

Standard Arbitration Clause

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

For the submission of existing disputes:

We, the undersigned parties, hereby agree to submit to arbitration under the Commercial Arbitration Rules of the American Arbitration Association the following controversy: (cite briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s) selected from the panels of arbitrators of the American Arbitration Association. We further agree that we will faithfully observe this agreement and the rules, and that we will abide by and perform any award rendered by the arbitrator(s) and that a judgment of the court having jurisdiction may be entered on the award.

If either party is from a country other than the United States, be sure to request a copy of the Supplementary Procedures for International Commercial Arbitration.

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Commercial Arbitration Rules

1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association or under its rules. These rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

2. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Commercial Arbitration Tribunal.

3. Administrator

When parties agree to arbitrate under these rules, or when they provide for arbitration by the American Arbitration Association and an arbitration is initiated thereunder, they thereby constitute the AAA the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these rules.

4. Delegation of Duties

The duties of the AAA under these rules may be carried out through tribunal administrators or such other officers or committees as the AAA may direct.

5. National Panel of Arbitrators

The AAA shall establish and maintain a National Panel of Commercial Arbitrators and shall appoint arbitrators therefrom as hereinafter provided.

6. Office of Tribunal

The general office of a tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its regional offices.

7. Initiation under an Arbitration Provision in a Contract

Arbitration under an arbitration provision in a contract may be initiated in the following manner:

(a) The initiating party shall give notice to the other party of its intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and

(b) Shall file at any regional office of the AAA three copies of said notice and three copies of the arbitration provisions of the contract, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

The AAA shall give notice of the filing to the other party. If so desired, the party on whom the Demand for arbitration is made may file an answering statement in duplicate with the AAA within seven days after notice from the AAA, in which event that party shall simultaneously send a copy of the answer to the other party. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a monetary claim is made in the answer, the appropriate fee provided in the Administrative Fee Schedule shall be forwarded to the AAA with the answer. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

Unless the AAA in its discretion determines otherwise, the Expedited Procedures of the Commercial Arbitration Rules shall be applied in any case where the total claim of any party does not exceed \$15,000, exclusive of interest and arbitration costs. Parties may also agree to the Expedited Procedures in cases involving claims in excess of \$15,000. The Expedited Procedures shall be applied as described in Sections 54 through 58 of these rules.

8. Changes of Claim

After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the AAA, and a copy thereof shall be mailed to the other party, who shall have a period of seven days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

9. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any regional office two copies of a written agreement to arbitrate under these rules (Submission), signed by the parties. It shall contain a statement of the

matter in dispute, the amount of money involved, if any, and the remedy sought, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

10. Administrative Conference and Preliminary Hearing

At the request of the parties or at the discretion of the AAA, an administrative conference with the administrator and the parties will be scheduled in appropriate cases to arrange for an exchange of information and the stipulation of uncontested facts to expedite the arbitration proceedings.

In large or complex cases, at the discretion of the arbitrator(s) or the AAA, a preliminary hearing will be scheduled with the arbitrator(s) and the parties to arrange for the production of relevant documents and other evidence, to identify witnesses to be called, to schedule further hearings, and to consider any other matters that will expedite the arbitration proceedings.

11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If the locale is not designated within seven days from the date of filing the Demand or Submission, the AAA shall have the power to determine the locale. Its decision shall be final and binding. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within seven days after notice of the request, the locale shall be the one requested.

12. Qualifications of Arbitrator

Any arbitrator appointed pursuant to Section 13 or Section 15 shall be neutral, subject to disqualification for the reasons specified in Section 19. If the agreement of the parties names an arbitrator or specifies any other method of appointing an arbitrator, or if the parties specifically so agree in writing, such arbitrator shall not be subject to disqualification for said reasons.

13. Appointment from Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: Immediately after the filing of the Demand or Submission, the AAA

shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date within which to cross off any names objected to, number the remaining names to indicate the order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of any additional list.

14. Direct Appointment by Parties

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any such appointing party, the AAA shall submit a list of members of the panel from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make such appointment within that period, the AAA shall make the appointment.

If no period of time is specified in the agreement, the AAA shall notify the parties to make the appointment and if within seven days thereafter the arbitrator has not been so appointed, the AAA shall make the appointment.

15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators

If the parties have appointed their arbitrators, or if either or both of them have been appointed as provided in Section 14, and have authorized such arbitrators to appoint a neutral arbitrator within a specified time and no appointment is made within such time or any agreed extension thereof, the

AAA shall appoint a neutral arbitrator, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the parties do not make the appointment within seven days from the date of the appointment of the last party-appointed arbitrator, the AAA shall appoint the neutral arbitrator who shall act as chairperson.

If the parties have agreed that their arbitrators shall appoint the neutral arbitrator from the panel, the AAA shall furnish to the party-appointed arbitrators, in the manner prescribed in Section 13, a list selected from the panel, and the appointment of the neutral arbitrator shall be made as prescribed in that section.

16. Nationality of Arbitrator in International Arbitration

If one of the parties is a national or resident of a country other than the United States, the sole arbitrator or the neutral arbitrator shall, upon the request of either party, be appointed from among the nationals of a country other than that of any of the parties.

17. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.

18. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator, whether appointed by the parties or by the AAA, shall be mailed to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed prior to the opening of the first hearing.

19. Disclosure and Challenge Procedure

A person appointed as neutral arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to

the parties, and, if it deems it appropriate to do so, to the arbitrator and others. Thereafter, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

20. Vacancies

If any arbitrator should resign, die, withdraw, refuse, be disqualified, or be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

In the event of a vacancy in a panel of neutral arbitrators, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

21. Time and Place

The arbitrator shall fix the time and place for each hearing. The AAA shall mail to each party notice thereof at least five days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

22. Representation by Counsel

Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the AAA of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel or when an attorney replies for the other party, such notice is deemed to have been given.

23. Stenographic Record

Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record.

24. Interpreters

Any party wishing an interpreter shall make all arrangements directly with an interpreter and shall assume the costs of the service.

25. Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary.

Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

26. Adjournments

The arbitrator may take an adjournment upon the request of a party or on the arbitrator's own initiative and shall take an adjournment when all of the parties agree thereto.

27. Oaths

Before proceeding with the first hearing or with the examination of the file, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator has discretion to require witnesses to testify under an oath administered by any duly qualified person and, if it is required by law or demanded by either party, shall do so.

28. Majority Decision

Whenever there is more than one arbitrator, all decisions of the arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

29. Order of Proceedings

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the place, time, and date of the hearing, and the presence of the arbitrator, the parties, and counsel, if any; and by the receipt by the arbitrator of the statement of the claim and answer, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present its claim, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defense, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and the exhibits in the order received shall be made a part of the record.

30. Arbitration in the Absence of a Party

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

31. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

32. Evidence by Affidavit and Filing of Documents

The arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

All documents not filed with the arbitrator at the hearing but arranged for at the hearing or subsequently by agreement of the parties shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents.

33. Inspection or Investigation

Whenever the arbitrator deems it necessary to make an inspection or investigation in connection with

the arbitration, the arbitrator shall direct the AAA to advise the parties of that intention. The arbitrator shall set the time and the AAA shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

34. Conservation of Property

The arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

35. Closing of Hearings

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Section 32 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

36. Reopening of Hearings

The hearings may be reopened on the arbitrator's own motion, or upon application of a party, at any time before the award is made. If reopening the hearings would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened unless the parties agree upon the extension of such time. When no specific date is fixed in the contract, the arbitrator may reopen the hearings and shall have thirty days from the closing of the reopened hearings within which to make an award.

37. Waiver of Oral Hearings

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are

unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

38. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objection thereto in writing, shall be deemed to have waived the right to object.

39. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any such extension and its reason therefor.

40. Communication with Arbitrator and Serving of Notice

(a) There shall be no communication between the parties and a neutral arbitrator other than at oral hearings. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

(b) Each party to an agreement that provides for arbitration under these rules shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made thereunder may be served on the party by mail addressed to the party or its attorney at the last known address or by personal service, within or without the state wherein the arbitration is to be held (whether the party be within or without the United States of America), provided that a reasonable opportunity to be heard with regard thereto has been granted such to the party.

41. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearings, or, if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrator.

42. Form of Award

The award shall be in writing and shall be signed either by the sole arbitrator or by at least

a majority if there be more than one. It shall be executed in the manner required by law.

43. Scope of Award

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator, in the award, shall assess arbitration fees and expenses in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

44. Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon their request, set forth the terms of the agreed settlement in an award.

45. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to a party at its last known address or to its attorney; personal service of the award; or the filing of the award in any other manner that may be prescribed by law.

46. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to that party, at its expense, certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

47. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these rules shall be deemed to have consented that judgment on the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

48. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an Administrative Fee Schedule and a Refund Schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

When a matter is withdrawn or settled, the refund shall be made in accordance with the Refund Schedule.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

49. Fees when Oral Hearings Are Waived

When all oral hearings are waived under Section 37, the Administrative Fee Schedule shall apply.

50. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree, and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required traveling and other expenses of the arbitrator and of AAA representatives and the expenses of any witness or the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator, in the award, assesses such expenses or any part thereof against any specified party or parties.

51. Arbitrator's Fee

Members of the National Panel of Commercial Arbitrators who serve as neutral arbitrators do so

In most cases without a fee. In prolonged or special cases, the parties may agree to pay a fee or the AAA may determine that payment of a fee by the parties is appropriate and may establish a reasonable amount, taking into account the extent of service by the arbitrator and other relevant circumstances of the case. When neutral arbitrators are to be paid, the arrangements for compensation shall be made through the AAA and not directly between the parties and the arbitrators.

52. Deposits

The AAA may require the parties to deposit in advance such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance.

53. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of any such rule, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

EXPEDITED PROCEDURES

54. Notice by Telephone

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Notwithstanding the failure to confirm in writing any notice or objection hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

55. Appointment and Qualifications of Arbitrator

The AAA shall submit simultaneously to each party to the dispute an identical list of five members of the National Panel of Commercial Arbitrators, from which one arbitrator shall be appointed. Each party shall have the right to strike two names from the list on a preemptory basis. The list is returnable to the AAA within ten days from the date of mailing.

If for any reason the appointment cannot be made from the list, the AAA shall have the authority to make the appointment from among other members of the panel without the submission of additional lists. The appointment shall be subject to disqualification for the reasons specified in Section 19. The parties shall be given notice by telephone by the AAA of the appointment of the arbitrator. The parties shall notify the AAA, by telephone, within seven days of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party(ies).

56. Time and Place of Hearing

The arbitrator shall fix the date, time, and place of the hearing. The AAA will notify the parties by telephone, seven days in advance of the hearing date. Formal Notice of Hearing will be sent by the AAA to the parties.

57. The Hearing

Generally, the hearing shall be completed within one day. The arbitrator may, for good cause shown, schedule an additional hearing to be held within five days.

58. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than five business days from the date of the closing of the hearing.

ADMINISTRATIVE FEE SCHEDULE

A filing fee of \$300 will be paid at the time a case is filed. The balance of the administrative fee is based on the amount of each claim and counterclaim as disclosed when the claim or counterclaim is filed. This balance is due and payable ninety days after the AAA's commencement of administration, or prior to the date of the first hearing, whichever occurs first. If a case is settled or withdrawn, the Refund Schedule shall apply. When oral hearings are waived under Section 37, the Administrative Fee Schedule shall still apply.

Amount of Claim	Fee
\$1 to \$25,000	3% (\$300 minimum)
\$25,000 to \$50,000	\$750, plus 2% of excess over \$25,000
\$50,000 to \$100,000	\$1,250, plus 1% of excess over \$50,000
\$100,000 to \$200,000	\$1,750, plus ½% of excess over \$100,000
\$200,000 to \$5,000,000	\$2,250, plus ¼% of excess over \$200,000
\$5,000,000 to \$50,000,000	\$14,250, plus ¼% of excess over \$5,000,000

Where the claim or counterclaim exceeds \$50 million, there is no additional administrative fee.

When no amount can be stated at the time of filing, the administrative fee is \$750, subject to adjustment in accordance with the above schedule as soon as an amount can be disclosed.

In those claims and counterclaims which are not for a monetary amount, an appropriate administrative fee will be determined by the AAA.

If there are more than two parties represented in the arbitration, an additional 10% of the administrative fee will be due for each additional represented party.

ADJOURNMENT FEES

Sole-Arbitrator Cases

\$50 is payable by a party first causing an adjournment of any scheduled hearing.

\$100 is payable by a party causing its second or subsequent adjournment of any scheduled hearing.

Three-Arbitrator Cases

\$75 is payable by a party first causing an adjournment of any scheduled hearing.

\$150 is payable by a party causing its second or subsequent adjournment of any scheduled hearing.

ADDITIONAL HEARING FEES

\$75 is payable by each party for each hearing after the first hearing that is either clerked by the AAA or held in a hearing room provided by the AAA.

REFUND SCHEDULE

The Refund Schedule is based on the administrative fee due on a claim or counterclaim asserted by a party.

If the AAA is notified that a case has been settled or withdrawn before a list of arbitrators has been sent out, all of the fee in excess of \$300 will be refunded.

If the AAA is notified that a case has been settled or withdrawn before the original due date for the return of the first list, two thirds of the fee in excess of \$300 will be refunded.

If the AAA is notified that a case has been settled or withdrawn during or following an administrative conference or at least two business days before the initial date and time set for the first hearing, one third of the fee in excess of \$300 will be refunded.

There will be no refund after a preliminary hearing or mediation conference has been held; where a claim or counterclaim was filed as an undetermined claim and remained so at the time of settlement or withdrawal; or where a consent award was issued by the arbitrators.

Sec. 09.40.310. Third party claims. If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in *First Nat'l Bank v. Zawodny*,
Sup. Ct. Op. No. 1976 (File No. 4188), 602
P.2d 1254 (1979).

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

Article 1. Uniform Arbitration Act.

Section

10. Arbitration agreements valid; application of article
20. Proceedings to compel or stay arbitration
30. Appointment of arbitrators by court
40. Majority action by arbitrators
50. Hearing
60. Representation by attorney
70. Witnesses, subpoenas, depositions
80. Award
90. Modification of award by arbitrators

Section

100. Fees and expenses of arbitration
110. Confirmation of an award
120. Vacating an award
130. Modification or correction of award by court
140. Judgment or decree on award
150. Applications to court
160. Appeals
170. Court, jurisdiction
180. Short title

Cross references. — For court rule provision on arbitration and award as an affirmative defense, see Civ. R. 8(c).

NOTES TO DECISIONS

Public policy in Alaska favors arbitration as a means of resolving disputes without court interference. *Arctic Contractors v. State*, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977), aff'd on other grounds, Sup. Ct. Op. No. 1557, 573 P.2d 1385 (1978).

And is demonstrated by adoption of this article. — Alaska's strong public policy in favor of arbitration is demonstrated by the adoption of this article. *Modern Constr., Inc. v. Barce, Inc.*, Sup. Ct. Op. No. 1336 (File No. 3060), 556 P.2d 528 (1976).

Freedom to contract for arbitration terms. — In the absence of statutory restrictions, parties are free to contract for

the terms of arbitration they desire. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Collateral references. — 5 Am. Jur. 2d, Arbitration and Award, § 1 et seq. 6 C.J.S., Arbitration, § 1 et seq.

Resolving real estate disputes through arbitration, 27 Am. Jur. Trials, pp. 621-678.

Validity of state statutory provisions for arbitration of labor disputes, as against the objection of delegation of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Laches or statute of limitations as bar to arbitration under agreement, 37 ALR2d 1125.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provision that, upon one party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before award as revocation or termination of submission, 63 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 91 ALR2d 936.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award: appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 854.

Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration award must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications

made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 528.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 98 ALR3d 767.

Appealability of state court's order or decree compelling or refusing to compel arbitration, 6 ALR4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

Sec. 09.43.010. Arbitration agreements valid; application of article. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

Cross references. — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

Legislative history reports. — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

NOTES TO DECISIONS

Section applicable to option to arbitrate. — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978); *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978); *City of Fairbanks v. Rice*, Sup. Ct. Op. No. 2354 (File No. 4951), 628 P.2d 565 (1981); *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.020. Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Arbitrability to be determined prior to rendition of award. — This section provides for court determination of the issue of arbitrability prior to rendition of

an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. *University of Alaska v. Modern*

Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974)

Possibility of waiver or estoppel where party fails to seek court review of the arbitrators' decision on arbitrability until after rendition of award. — See University of Alaska v.

Applied in Anchorage Daily News, Inc. v. Anchorage Times Publishing Co., Sup. Ct. Op. No. 2393 (File No. 4966), 631 P.2d 500 (1981).

*Successor
State
Idem*

Sec. 09.43.030. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.040. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

Sec. 09.43.050. Hearing. Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

Sec. 09.43.060. Representation by attorney. A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

Sec. 09.43.070. Witnesses, subpoenas, depositions. (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

Sec. 09.43.080. Award. (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Subsection (a) sets out the minimum requirements as to the form of an

award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Sec. 09.43.090. Modification of award by arbitrators. On application to the arbitrators by a party or, if an application to the court by

a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Sec. 09.43.100. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in the arbitration process. *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).
Award of attorney's fees held proper. — See *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Sec. 09.43.110. Confirmation of an award. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Applied in *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Sec. 09.43.120. Vacating an award. (a) On application of a party, the court shall vacate an award if

- (1) the award was procured by fraud or other undue means;
- (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
- (3) the arbitrators exceeded their powers;
- (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or
- (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review,

except on questions of arbitrability. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

No review for gross errors. — The "fraud or other undue means" standard of this section does not authorize review for gross errors. Alaska State Hous. Auth. v.

Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

This article evinces a strong public policy in favor of arbitration. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The power of arbitrators are confined to those conferred upon them by the arbitration agreement, subject, of course, to further limitations imposed by the law of the jurisdiction. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

A particular claim may be arbitrable although it is not so designated by "clear and unequivocal" contract language. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Ambiguous contract terms may be construed in favor of arbitrability where such construction is not obviously contrary to the parties' intent, especially where the party contesting arbitrability drafted the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Claim not arbitrable. — Where the parties have clearly agreed to arbitrate only those "disputes arising in connection with this contract" a particular claim is not arbitrable if it is nowhere mentioned in the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The question of whether the arbitrator exceeded his power in ordering monetary damages can be appealed. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Question on review. — When an award is attacked under this article on the grounds that the arbitrators exceeded their powers through erroneous interpretation of the contract, the reviewing court should determine whether the construction of the contract made by the arbitrators is a reasonably possible one that can seriously be made in the context in which the contract was made. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Stated affirmatively, if all fair and reasonable minds would agree that the construction of the contract made by the arbitrators was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators generally need not follow applicable law when deciding issues. — The general rule in both statutory and common-law arbitration is that arbitrators need not follow otherwise applicable law when deciding issues properly before them, unless they are commanded to do so by the terms of the arbitration agreement. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Arbitrators held not to have exceeded their powers by awarding compensation based upon the claims of a party's subcontractors, who were not parties to the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Right to object to the alleged bias of an arbitrator was waived where the objecting party did not raise the matter at

the arbitration hearing. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Cited in *Kodiak Oilfield Haulers, Inc. v. Local 879, Hotel Union*, Sup. Ct. Op. No. 2471 (File No. 5758), 641 P.2d 11 (1982).

Applied in *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.130. Modification or correction of award by court.

(a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.120 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct.

Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Error calling for modification or correction must be manifestly clear. — Given the presumption that arbitration awards rendered in proper form are valid and the "evident mistake" prerequisite language of subsection (a), it follows that the error which calls for modification or correction of an arbitration award must be manifestly clear. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Sec. 09.43.140. Judgment or decree on award. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Award of attorney's fees held proper. — See *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1125 (1978).

Sec. 09.43.150. Applications to court. An application to the court under AS 09.43.010 — 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (§ 1 ch 232 SLA 1968)

Cross references. — For court rules on service of motions and service procedures, see Civ. R. 77(a) and Civ. R. 5.

Sec. 09.43.160. Appeals. (a) An appeal may be taken from

- (1) an order denying an application to compel arbitration made under AS 09.43.020;
- (2) an order granting an application to stay arbitration made under AS 09.43.020(b);
- (3) an order conforming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on an award under the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.180. Short title. AS 09.43.010 — 09.43.180 may be cited as the Uniform Arbitration Act. (§ 1 ch 232 SLA 1968; am § 1 ch 94 SLA 1972)

subsequent recording. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of an order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged. (§ 7.05 ch 101 SLA 1962)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 because of the enactment of ch. 161, SLA 1988.

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.160, 09.43.170)

NOTES TO DECISIONS

Cited in *City of Valdez v. 18.99 acres*,
Sup. Ct. Op. No. 2834 (File No. 6940), 688
P.2d 682 (1984).

Article 1. Uniform Arbitration Act.

Section

160. Appeals

170. Court, jurisdiction

Sec. 09.43.160. Appeals. (a) An appeal may be taken from
(1) an order denying an application to compel arbitration made under AS 09.43.020;

(2) an order granting an application to stay arbitration made under AS 09.43.020(b);

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on

an award under the agreement. (§ 1 ch 232 SLA 1968; am § 4 ch 38 SLA 1987; am § 4 ch 38 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "court with jurisdiction in" for "superior court of" in the first sentence and deleted "superior" preceding "court" in the second sentence.

Chapter 45. Actions Relating to Real Property.

Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010, 09.45.015)
2. Forcible Entry and Detainer (§ 09.45.090)
4. Nuisances (§ 09.45.235)
5. Partition (§ 09.45.480)
6. Recovery of Possession (§ 09.45.720)
7. Trespass (§§ 09.45.730 — 09.45.735)
9. Miscellaneous Provisions (§§ 09.45.790 — 09.45.795)
10. Earthslide Relief Act (§§ 09.45.840, 09.45.845)

Article 1. Adverse Claims and Boundary Disputes.

Section

10. Action to quiet title
15. Presumption in certain cases

Sec. 09.45.010. Action to quiet title. A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim. (§ 6.01 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.45.015. Presumption in certain cases. (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (§ 2 ch 141 SLA 1986)

Article 2. Arbitration of Small Claims.

Section	Section
190. Arbitration under court rules	210. Practice and procedure
200. Appointment and compensation of arbitrator	220. Judgments and appeals

Cross references. — For small claims actions in district courts, see AS 22.15.040; for district court rules providing for practice and procedure in small claims actions, see DCR 8-22.

Editor's notes. — To date, the supreme court has not adopted rules under this article.

Sec. 09.43.190. Arbitration under court rules. The supreme court may provide by rule for compulsory arbitration of a cause of action filed in a superior or district court, demanding only a money judgment, when it appears that the demand on the cause of action is for \$3,000 or less, exclusive of costs, or when it appears to the trial court as a result of a pretrial conference that the amount which will be recovered on the cause is not likely to exceed \$3,000. (§ 2 ch 94 SLA 1972)

Sec. 09.43.200. Appointment and compensation of arbitrator. Arbitration of actions shall be by either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court as provided by its rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.210. Practice and procedure. The practice and procedure for conducting arbitration, the powers of the arbitrators and the assessment of costs shall be prescribed by the court rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.220. Judgments and appeals. Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules. (§ 2 ch 94 SLA 1972)

Chapter 45. Actions Relating to Real Property.

Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010 — 09.45.050)
2. Forcible Entry and Detainer (§§ 09.45.060 — 09.45.160)
3. Foreclosure of Liens (§§ 09.45.170 — 09.45.220)
4. Nuisances (§§ 09.45.230 — 09.45.250)
5. Partition (§§ 09.45.260 — 09.45.620)
6. Recovery of Possession (§§ 09.45.630 — 09.45.720)
7. Trespass (§ 09.45.730)

Original sponsors: Kelly, Kerttula,
Szymanski, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS. FOR SENATE BILL NO. 255 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special arbitration commission
7 for claims related to the ^{Exxon} Valdez oil discharge disas-
8 ter; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. ^{EXXON} VALDEZ DISASTER ARBITRATION COMMISSION. (a) There is
11 established the ^{EXXON} Valdez Disaster Arbitration Commission consisting ~~of panels~~
12 of ~~five~~ ^{Sup Ct. panel designated by the Chief Justice} members ~~each~~. ~~The governor shall determine how many panels shall~~
13 ~~be appointed.~~

14 (b) Two members ~~of each panel~~ shall be appointed by the governor, and
15 two shall be appointed by the Exxon Corporation. The fifth member shall be
16 selected by a majority vote of the other four members. If the members fail
17 to select a fifth member within 15 days after the appointment of the fourth
18 member, the fifth member shall be designated by the American Arbitration
19 Association.

20 ~~(c) If all parties to an arbitration agree, a panel of fewer than~~
21 ~~five members may be appointed in a manner approved by the parties consis-~~
22 ~~tent with (d) of this section.~~

23 ~~(d) A member of a panel must, at the time of appointment, be a member~~
24 ~~of the National Panel of Commercial Arbitrators of the American Arbitration~~
25 ~~Association.~~

26 * Sec. 2. DUTIES OF THE ^{COMMISSION} ~~PANELS~~. Upon a properly presented request
27 under sec. 3 of this Act, ~~the panel shall~~ ^{the commission shall appoint a panel of three or four members to} hold hearings and make awards for
28 claims arising from the Valdez oil discharge disaster.

29 * Sec. 3. PRESENTATION OF CLAIMS. (a) A person who has a claim for

1 damages arising from the Valdez oil discharge disaster may apply to the
2 commission in writing for arbitration of the claim.

3 (b) If ~~a panel to which a claim is assigned~~ ^{to} determines that the
4 person from whom damages are sought agrees to arbitration ~~by the panel~~, the
5 panel shall proceed under sec. 4 of this Act.

6 (c) If ~~a panel to which a claim is assigned~~ ^{to} determines that the
7 person from whom damages are sought does not agree to arbitration by the
8 panel, the panel shall promptly notify the claimant.

9 * Sec. 4. ARBITRATION PROCEDURES. (a) Arbitration by a panel is
10 governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except as
11 provided in this Act.

12 (b) If an award for damages is made to a claimant by a panel in an
13 amount equal to or greater than the amount of damages initially requested
14 by the claimant, the award must provide that the arbitrators' expenses and
15 fees, together with expenses of the claimant, including reasonable attorney
16 fees, incurred in the conduct of the arbitration, shall be paid by the
17 person against whom the claim was brought.

18 (c) If a panel makes an award of damages to a claimant that is less
19 than the amount initially requested by the claimant, the award must provide
20 that the portion of expenses and fees described in (b) of this section that
21 shall be paid by the person against whom the claim was brought shall bear
22 the same relationship to total expenses and fees described in (b) of this
23 section that the claimant shall pay the the damages awarded bears to the
24 amount of the damages initially requested.

25 (d) The panel shall provide in an award made under (c) of this sec-
26 tion that the claimant shall pay the expenses and fees described in (b) of
27 this section that are not assessed against the person against whom the
28 claim was brought.

29 (e) The panel may not provide that the claimant pay any expenses or
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1 fees of the person against whom the claim was brought.

2 * Sec. 5. FUTURE CLAIMS. If a person presents a claim to the commis-
3 sion under this Act and the commission arbitrates the claim, the person may
4 not present another claim for damages that arises from the Valdez oil
5 discharge disaster to the commission or in another forum unless the person
6 demonstrates that the new claim is based on evidence that could not have
7 been ascertained with reasonable effort at the time the prior claim was
8 arbitrated.

9 * Sec. 6. DEFINITIONS. In this Act

10 (1) "commission" means the Valdez Disaster Arbitration Commis-
11 sion;

12 (2) "damages" means any personal injury or property damage,
13 including economic and noneconomic damages, arising out of or resulting
14 from the Valdez oil discharge disaster, including but not limited to:

15 (A) containment, cleanup, and removal costs;

16 (B) injury to, or destruction of, natural resources or real
17 or personal property;

18 (C) loss of use of natural resources or real or personal
19 property;

20 (D) loss of profits or impairment of earning capacity due
21 to injury or destruction of natural resources or real or personal
22 property, including loss of subsistence hunting, fishing, and gather-
23 ing opportunities;

24 (E) loss of tax revenue for a period of one year due to
25 injury to natural resources or real or personal property;

26 (F) costs required to restock injured land or water, to
27 replenish a damaged or degraded resource, or to otherwise restore the
28 environment of the state to its condition before the injury;

29 (3) "panel" means a panel created as part of the Valdez Disaster

1 Arbitration Commission;

2 (4) "Exxon Valdez oil discharge disaster" means the incident involving
3 the discharge of crude oil after the grounding of the Exxon Valdez south of
4 Valdez on March 24, 1989; the discharge of ballast water from another
5 tanker on the subsequent weekend in order to accommodate the transfer of
6 crude oil from the Exxon Valdez to the second tanker; and attendant con-
7 tainment and cleanup actions.

8 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsors: Kelly, Kerttula,
Szymanski, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 255 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special arbitration commission
7 for claims related to the Valdez oil discharge disas-
8 ter; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. VALDEZ DISASTER ARBITRATION COMMISSION. (a) There is
11 established the Valdez Disaster Arbitration Commission consisting of panels
12 of five members each. The governor shall determine how many panels shall
13 be appointed.

14 (b) Two members of each panel shall be appointed by the governor, and
15 two shall be appointed by the Exxon Corporation. The fifth member shall be
16 selected by a majority vote of the other four members. If the members fail
17 to select a fifth member within 15 days after the appointment of the fourth
18 member, the fifth member shall be designated by the American Arbitration
19 Association.

20 (c) If all parties to an arbitration agree, a panel of fewer than
21 five members may be appointed in a manner approved by the parties consis-
22 tent with (d) of this section.

23 (d) A member of a panel must, at the time of appointment, be a member
24 of the National Panel of Commercial Arbitrators of the American Arbitration
25 Association.

26 * Sec. 2. DUTIES OF THE PANELS. Upon a properly presented request
27 under sec. 3 of this Act, a panel shall hold hearings and make awards for
28 claims arising from the Valdez oil discharge disaster.

29 * Sec. 3. PRESENTATION OF CLAIMS. (a) A person who has a claim for

1 damages arising from the Valdez oil discharge disaster may apply to the
2 commission in writing for arbitration of the claim.

3 (b) If a panel to which a claim is assigned determines that the
4 person from whom damages are sought agrees to arbitration by the panel, the
5 panel shall proceed under sec. 4 of this Act.

6 (c) If a panel to which a claim is assigned determines that the
7 person from whom damages are sought does not agree to arbitration by the
8 panel, the panel shall promptly notify the claimant.

9 * Sec. 4. ARBITRATION PROCEDURES. (a) Arbitration by a panel is
10 governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except as
11 provided in this Act.

12 (b) If an award for damages is made to a claimant by a panel in an
13 amount equal to or greater than the amount of damages initially requested
14 by the claimant, the award must provide that the arbitrators' expenses and
15 fees, together with expenses of the claimant, including reasonable attorney
16 fees, incurred in the conduct of the arbitration, shall be paid by the
17 person against whom the claim was brought.

18 (c) If a panel makes an award of damages to a claimant that is less
19 than the amount initially requested by the claimant, the award must provide
20 that the portion of expenses and fees described in (b) of this section that
21 shall be paid by the person against whom the claim was brought shall bear
22 the same relationship to total expenses and fees described in (b) of this
23 section that the claimant shall pay the the damages awarded bears to the
24 amount of the damages initially requested.

25 (d) The panel shall provide in an award made under (c) of this sec-
26 tion that the claimant shall pay the expenses and fees described in (b) of
27 this section that are not assessed against the person against whom the
28 claim was brought.

29 (e) The panel may not provide that the claimant pay any expenses or
CSSB 255(Jud)

1 fees of the person against whom the claim was brought.

2 * Sec. 5. FUTURE CLAIMS. If a person presents a claim to the commis-
3 sion under this Act and the commission arbitrates the claim, the person may
4 not present another claim for damages that arises from the Valdez oil
5 discharge disaster to the commission or in another forum unless the person
6 demonstrates that the new claim is based on evidence that could not have
7 been ascertained with reasonable effort at the time the prior claim was
8 arbitrated.

9 * Sec. 6. DEFINITIONS. In this Act

10 (1) "commission" means the Valdez Disaster Arbitration Commis-
11 sion;

12 (2) "damages" means any personal injury or property damage,
13 including economic and noneconomic damages, arising out of or resulting
14 from the Valdez oil discharge disaster, including but not limited to:

15 (A) containment, cleanup, and removal costs;

16 (B) injury to, or destruction of, natural resources or real
17 or personal property;

18 (C) loss of use of natural resources or real or personal
19 property;

20 (D) loss of profits or impairment of earning capacity due
21 to injury or destruction of natural resources or real or personal
22 property, including loss of subsistence hunting, fishing, and gather-
23 ing opportunities;

24 (E) loss of tax revenue for a period of one year due to
25 injury to natural resources or real or personal property;

26 (F) costs required to restock injured land or water, to
27 replenish a damaged or degraded resource, or to otherwise restore the
28 environment of the state to its condition before the injury;

29 (3) "panel" means a panel created as part of the Valdez Disaster

1 Arbitration Commission;

2 (4) "Valdez oil discharge disaster" means the incident involving
3 the discharge of crude oil after the grounding of the Exxon Valdez south of
4 Valdez on March 24, 1989; the discharge of ballast water from another
5 tanker on the subsequent weekend in order to accommodate the transfer of
6 crude oil from the Exxon Valdez to the second tanker; and attendant con-
7 tainment and cleanup actions.

8 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environmental Conservation
 Title: An Act Establishing a Special BRU: Environmental Quality
arbitration commission for claims related
to the Valdez oil discharge disaster
 Sponsor: Kelly, et. al. Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This act will not have a fiscal impact on the Department.

Prepared by: Dan Easton Phone: 465-2640
 Division: Environmental Quality Date: April 10, 1989

Approved by Commissioner: AD/66 Date: 4/11/89
 Agency: Alaska Department of Environmental Conservation

Distribution (by preparer):

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

IN THE SENATE

BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 255 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a special arbitration commission for claims related to the Valdez oil spill and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE SENATE OF ALASKA:

Section 1. VALDEZ OIL SPILL ARBITRATION COMMISSION.

(a) There is established the Valdez Oil Spill Arbitration Commission consisting of three (3) panels of three (3) members each.

(b) The members of the Commission shall be appointed by the Governor and Exxon Corporation. The Governor and Exxon Corporation shall select one member of each panel to act as chairperson of the panel and shall select one of the chairpersons of the panels to act as chairperson of the Commission. If the Governor and Exxon Corporation fail to select the members of the Commission or the chairpersons of the panels or the chairperson of the Commission within ninety (90) days after the effective date of this Act, the American Arbitration Association shall make the selections that have not been made within that time.

(c) Should any member of the Commission resign, die, withdraw, be disqualified or fail to perform the duties of the

office, the vacancy shall be filled within forty-five (45) days of the position becoming vacant in the same manner as described in Section 1(b).

(d) Should a single vacancy occur after hearings on a particular claim have begun, but before the panel has issued an award, the two remaining members of the panel may continue hearing the case and may issue the award, unless the parties agree otherwise.

(e) In circumstances that the Commission deems appropriate, the Commission may temporarily fill vacancies on a panel with members from other panels, so that hearings and the issuance of awards need not be delayed.

(f) The members of the Commission shall serve full time at an annual salary to be determined by the Governor. The Governor may provide for additional annual compensation for the chairpersons of the panels and the chairperson of the Commission.

(g) A member of a panel must, at the time of appointment, be a member of the National Panel of Commercial Arbitrators of the American Arbitration Association.

(h) The Commission's administrative offices shall be located at _____. The Commission can establish branch offices at other locations within the State of Alaska as the Commission deems appropriate.

Section 2. DUTIES OF THE PANELS. (a) Upon completion of the presentation of claims procedures in Section 3 of this Act, a panel -- or, in the case of a claim falling within the scope of Section 2(b), a single Commission member -- shall hold

hearings and shall make awards for claims and counterclaims arising from the Valdez oil spill.

(b) Unless the parties agree otherwise, any claim for under fifty thousand dollars (\$50,000), exclusive of interest and costs, shall be heard and determined by a single member of the Commission.

Section 3. PRESENTATION OF CLAIMS. (a) A Claimant who has a claim arising from the Valdez oil spill may serve upon each Respondent against whom the Claimant is asserting a claim a written Request for arbitration and may file four (4) copies of the Request with the Commission.

(b) The Request for arbitration shall contain:

- (i) A request that the claim be referred to arbitration,
- (ii) The names and addresses of the parties,
- (iii) A statement of the facts supporting the claim, and
- (iv) The amount of damages being sought.

(c) If a Respondent is willing to arbitrate the claims set forth in the Request for arbitration, the Respondent shall: (i) Within thirty (30) days of receipt the Request for arbitration, serve on each Claimant a written Response setting forth any defenses and asserting any counterclaims related to the claims in the Request for arbitration and (ii) promptly after serving the Response, file four (4) copies thereof with the Commission.

(d) If a Claimant or Claimants assert claims against more than one Respondent and one or more, but not all, of those Respondents serve and file Responses, the parties who have filed Requests for arbitration and Responses will have 10 days after the filing of the last Response to serve on each other and to file with the Commission a written notice stating whether or not they are willing to proceed with the arbitration in spite of the refusal of some of the parties to participate.

(e) Once the Commission has received the Requests for arbitration and Responses from parties and any notices under Section 3(d), the Commission shall request the parties to pay the appropriate filing fee for the claims and counterclaims asserted as provided for in the administrative fee schedule referred to in Section 4(b).

(f) Once the Commission has received the filing fees, it shall assign the case to a panel, and the panel to which the case is assigned shall proceed under Section 4 of this Act to determine the claims and counterclaims asserted by the parties remaining in the arbitration.

Section 4. ARBITRATION PROCEDURES. (a) Except as prohibited by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), and except as otherwise provided in this Act, the proceedings under this Act shall be governed by the Commercial Arbitration Rules of the American Arbitration Association, as modified by the Commission pursuant to Section 4(b).

(b) Within ninety (90) days of the selection of the chairman of the Commission and from time to time thereafter, the

Commission shall issue any modifications to the Commercial Rules of the American Arbitration Association it deems appropriate for proceedings before the Commission, except that the Commission shall not have authority to modify the administrative fee schedule set forth in these Rules.

Section 5. AMERICAN ARBITRATION ASSOCIATION TO ACT AS ADMINISTRATIVE AGENCY FOR THE COMMISSION. (a) The American Arbitration Association shall act as the administrative agency for the Commission on terms to be agreed upon among the Governor, Exxon Corporation and the American Arbitration Association.

(b) The American Arbitration Association's duties shall include handling the filing of claims, assigning claims to various panels, providing administrative and clerical staff, acting as intermediary between the parties and the members of the Commission, and performing other administrative tasks that the Commission assigns to it to assist in carrying out the Commission's duties.

(c) The Commission shall have authority to establish administrative rules to facilitate the internal functioning of the Commission.

Section 6. LOCATION OF ARBITRATIONS. Arbitrations may take place at the administrative or branch offices of the Commission or, if requested by the parties and approved by the panel or member of the Commission hearing the case, at other locations within the State of Alaska.

Section 7. MEDIATION OR OTHER ALTERNATE DISPUTE

RESOLUTION. (a) If at any time after the filing of a claim, the parties should request assistance in settling their differences by mediation or some other method of alternate dispute resolution other than arbitration, the Commission, through its administrative agency, shall assist the parties in obtaining qualified mediators or other persons to assist the parties.

(b) No one while serving as a member of the Commission shall act as a mediator or in any other capacity to assist the parties in resolving their differences, except as an arbitrator performing his or her duties under this Act.

(c) The Commission, through its administrative agency may suggest appropriate rates of compensation for the mediators or other non-members of the Commission who assist the parties in resolving their disputes, but payment of any fee is the responsibility of the parties and is not covered by the filing fee paid to the Commission for arbitrating claims.

(d) The Commission may establish and publish a reasonable fee schedule for assisting parties with mediation or other forms of dispute resolution not performed by the members of the Commission.

Section 8. FUTURE CLAIMS. If a Claimant presents a claim to the Commission under this Act and the Commission arbitrates the claim, the Claimant may not present the same or substantially similar claim in another forum. Nothing in this Act shall be construed to prevent a Claimant from presenting more

than one different claim to the Commission or from filing different claims in different forums.

Section 9. DEFINITIONS. In this Act

(1) "Commission" means the Valdez Oil Spill Arbitration Commission, or, in certain contexts, a panel or member of the Commission;

(2) "damages" means any personal injury or property damage, including economic and non-economic damages, arising out of or resulting from the Valdez oil spill that would be recoverable by the Claimant or Respondent under applicable law, if the claim or counterclaim had been brought in a state or federal court within the State of Alaska.

(3) "panel" means a panel created as part of the Valdez Oil Spill Arbitration Commission;

(4) "Valdez oil spill" means the incident involving the discharge of crude oil after the grounding of the Exxon Valdez south of Valdez, Alaska on March 24, 1989; the discharge of ballast water from the _____ on the subsequent weekend in order to accommodate the transfer of crude oil from the Exxon Valdez to the _____; and attendant containment and cleanup actions.

Section 10. NO NEW CAUSE OF ACTION. Nothing in this Act shall be construed to create a new cause of action or to give standing to bring claims to persons who would not have standing under applicable state and federal law to bring their claims in the state and federal courts within the State of Alaska.

Section 11. EFFECTIVE DATE. This Act takes effect immediately under AS 01.10.070(c).

than one different claim to the Commission or from filing different claims in different forums.

Section 9. DEFINITIONS. In this Act

(1) "Commission" means the Valdez Oil Spill Arbitration Commission, or, in certain contexts, a panel or member of the Commission;

(2) "damages" means any personal injury or property damage, including economic and non-economic damages, arising out of or resulting from the Valdez oil spill that would be recoverable by the Claimant or Respondent under applicable law, if the claim or counterclaim had been brought in a state or federal court within the State of Alaska.

(3) "panel" means a panel created as part of the Valdez Oil Spill Arbitration Commission;

(4) "Valdez oil spill" means the incident involving the discharge of crude oil after the grounding of the Exxon Valdez south of Valdez, Alaska on March 24, 1989; the discharge of ballast water from the _____ on the subsequent weekend in order to accommodate the transfer of crude oil from the Exxon Valdez to the _____; and attendant containment and cleanup actions.

Section 10. NO NEW CAUSE OF ACTION. Nothing in this Act shall be construed to create a new cause of action or to give standing to bring claims to persons who would not have standing under applicable state and federal law to bring their claims in the state and federal courts within the State of Alaska.

Section 7. MEDIATION OR OTHER ALTERNATE DISPUTE

RESOLUTION. (a) If at any time after the filing of a claim, the parties should request assistance in settling their differences by mediation or some other method of alternate dispute resolution other than arbitration, the Commission, through its administrative agency, shall assist the parties in obtaining qualified mediators or other persons to assist the parties.

(b) No one while serving as a member of the Commission shall act as a mediator or in any other capacity to assist the parties in resolving their differences, except as an arbitrator performing his or her duties under this Act.

(c) The Commission, through its administrative agency may suggest appropriate rates of compensation for the mediators or other non-members of the Commission who assist the parties in resolving their disputes, but payment of any fee is the responsibility of the parties and is not covered by the filing fee paid to the Commission for arbitrating claims.

(d) The Commission may establish and publish a reasonable fee schedule for assisting parties with mediation or other forms of dispute resolution not performed by the members of the Commission.

Section 8. FUTURE CLAIMS. If a Claimant presents a claim to the Commission under this Act and the Commission arbitrates the claim, the Claimant may not present the same or substantially similar claim in another forum. Nothing in this Act shall be construed to prevent a Claimant from presenting more