

1977-1978

ADMINISTRATIVE REGULATIONS REVIEW COMMITTEE

LIST OF FILES (PAGE 1)

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NOTEBOOK WITH ADMINISTRATIVE REGULATION REVIEW  
COMMITTEE MEMOS

322

ARRC

NOTEBOOK: ARRC

MEMOS

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ADMIN.

REG.

REVIEW

1977

February 7, 1977

TO: Members of the Administrative Regulations  
and Review Committee

FROM: Al Ose, Chairman  
ARRC

The first meeting of the Administrative Regulations and Review  
Committee will be held on Wednesday, February 9 at 4:30 pm in  
room 647 of the Court Building.

A0/ds

ADM. REG.

REVIEW

Comm.

MEMOS

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

January 20, 1977

Dear Members of the Administrative Regulation Review Committee:

Enclosed you will find summary of and comment on various regulations filed with the Lieutenant Governor between September 1 and December 1 of 1976, i.e., Registers 59 and 60. Not all regulations filed in that period were reviewed due to limitations of time. Instead, Senator Kerttula suggested that I concentrate on regulations promulgated by the following departments and agencies:

Department of Administration - programs concerning the aged;  
Department of Health and Social Services - programs concerning the aged;  
Department of Natural Resources - division of lands;  
Department of Labor;  
Department of Revenue;  
Department of Education - student scholarships and loans;  
Office of the Governor - Police Standards Council.

In the enclosed summaries and comments I tried out various formats, in an effort to find the most effective and workable mode of presentation of the information. Please be patient with the changes in form. I would appreciate any comments you have regarding the desirability of various ways of presenting the information.

Due the volume of regulations which are filed, it seems unlikely that I would have time to review them all. Therefore, I propose that the committee set some priorities in terms of what regulations I should review.

Regulations adopted or amended in Register 59 and 60 which I have yet to review are found in the following chapters:

Department of Fish and Game - Chapter 81. Hunting; Office of the Governor - Chapter 20. State Commission for Human Rights;

Department of Education - Chapter 6. Government of Schools;

Department of Fish and Game - Chapter 34. King Crab Fishery;

Department of Labor - Chapter 85. Employment Security;  
Chapter 2. Banking;

Department of Education - Chapter 18. Employment of Professional Personnel; Chapter 32. Community Schools; Chapter 33. Special Programs;

Department of Health and Social Services - Chapter 29. Uniform Alcoholism and Intoxication Treatment;

Department of Labor - Chapter 30. Public Contracts;

Department of Natural Resources - Chapter 16. Historic, Prehistoric, and Archaeological Resources;

Department of Labor - Chapter 35. Oil and Gas Leases, Local Hire;

Department of Commerce - Chapter 95. Purchasing and New Construction Bidding Procedure; Chapter 52. Operation of Public Utilities;

Department of Fish and Game - Chapter 81. Hunting (feeding of game); Chapter 81. Hunting (small game hunting); Chapter 90. General Provisions (definition of Alyeska pipeline corridor);

Office of the Governor - Part 1. Elections, Chapter 7. Anchorage-Northwest (District 7); Chapter 8. Anchorage-Northeast (District 8); Chapter 9. Anchorage-Spenard (District 9); Chapter 10. Anchorage-East (District 10); Chapter 7. Anchorage-Northwest (District 7); Chapter 11. Anchorage-South (District 11); Chapter 12. Anchorage-West (District 12); Chapter 1. Ketchikan (District 1); Chapter 2. Wrangell-Petersburg (District 2); Chapter 3. Sitka (District 3); Chapter 13. Kenai-Cook Inlet (District 13); Chapter 18. Wade Hampton (District 18); Chapter 20. Fairbanks (District 20);

Department of Education - Chapter 5. Local Education;

Department of Fish and Game - Chapter 81. Hunting (Marine Mammals);

Department of Community and Regional Affairs - Chapter 30. State Aid to Local Governments;

Department of Natural Resources - Chapter 26. Alaska Royalty Oil and Gas Development Advisory Board;

Department of Commerce - Part 9. Alaska State Housing Authority. Chapter 96. Acquisition of Real Property and Improvements; Chapter 97. Disposition of Real Property; Chapter 98, Public Housing;

Of course, I am also available to review any regulations which are brought to the attention of committee members by constituents or the notice of proposed adoption, amendment, or repeal of regulations furnished each legislator pursuant to AS 44.62.190.

I hope the committee can provide me with some guidance concerning what it wishes me to do.

JG:smh

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 17, 1977

SUBJECT: Review of Regulations adopted by the Alaska Public  
Offices Commission in Register 58, July 1976,  
implementing and clarifying AS 15.13 and AS 39.50.

TO Administrative Regulation Review Committee

FROM: Jim McKenzie and Joe Guthrie

Format. This memorandum first summarizes the salient points of a regulation or series of regulations and then comments on possible inconsistencies between the regulation and legislative guidelines. If no comment appears, it is because no inconsistency was found in the regulation just summarized. Regulations of a "housekeeping" nature are not summarized. All italics are mine unless otherwise indicated. "Commission" means the Alaska Public Office Commission.

I. 6AAC 29.010 - 29.090. These regulations implement AS 39.50, the conflict of interest laws pertaining to public officials and candidates. The commission is charged with the duty of administering AS 39.50 under AS 39.50.050. That section also directs the commission to adopt regulations implementing and interpreting AS 39.50. Additional authority to adopt regulations is found under AS 15.13.030, defining the duties of the commission.

6AAC 29.010. Summary. Interprets AS 39.50.030(b)(1), which requires public officials and candidates to report the source of all income over \$100. The regulation provides that the reporting official is not required to list individual customers of a retail business which is conducted on a cash basis, though the business itself must be reported as a source of income. This amends an earlier regulation which required that not only the business be conducted on a cash basis in order to be exempted from the requirement to list individual customers, but also that the business be of a type which typically does not keep records of customers.

6AAC 29.020. Summary. Requires that reports of interests in real property include the nature of the interest held, the location of the property, and the current use of the property.

Comment. AS 39.50.030(b)(4) requires only that the identity and nature of each interest in real property be reported. "Identity"

would certainly include the location of the property, but it is questionable if "identity and nature of the interest" includes the current use of property. The statute might bear this interpretation, however, given the broad statement of purpose in AS 39.50.010(a)(1):

"To discourage public officials from acting upon a private or business interest in the performance of a public duty"

and in AS 39.50.010(b)(2):

"the public has a right to know the financial and business interests of persons who seek or hold public office."

6AAC 29.030. Summary. Interprets the statutory obligation to report information for members of an official's family "to the extent that it is ascertainable" to require an affirmative good faith effort to obtain the information as well as reporting all required information actually known.

6AAC 29.040. Summary. Requires all loans or indebtedness of \$500 or more made during the preceding calendar year to be reported.

6AAC 29.050. Summary. Exempts credit card obligations and retail charge accounts from reporting requirements.

Comment. No intent to distinguish between consumer credit and other loans is discernible in the statutes.

6AAC 29.060. Summary. Makes a public statement by an individual that he will seek public office equivalent to a declaration of candidacy for purposes of having to report financial and business interests.

Comment: This rule seems at variance with the statutory directive in AS 39.50.020, "Candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office." A public statement by a write-in candidate is not a "filing" of any sort. The commission is, in effect, amending the statute to cover a situation which may have been inadvertently neglected.

6AAC 29.070 and 29.080. Summary, Defines "income" in AS 39.50 to include gross income under Section 61 of the Internal Revenue Code. Defines "controlling interest" in a corporation to mean ownership of more than 50% of the outstanding shares at any time during the year for which a report is being filed. Adopts the rules of constructive ownership in Section 318 of the Internal Revenue Code to determine ownership of a corporation's shares.

6AAC 29.090. Summary. Makes "municipalities" "instrumentalities of the state" for purposes of AS 39.50.

Comment: AS 39.50.200(5) defines "instrumentality of the state" as a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska and the Alaska State Housing Authority. If the term had been intended to include local agencies or governments, it seems there would have been some reference to them in the definition or examples given. It appears that the regulation is an unauthorized amendment of the statutory definition.

The term "instrumentality of the state" is used only once in AS 39.50. AS 39.50.030(b) provides:

"Each statement filed by a public official or candidate under this chapter shall include:...

7(a) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding calendar year, held, bid, or offered by him...."

The regulation would probably be a legitimate definition of "instrumentality of the state" if it were not for the rather precise definition in AS 39.50.200(5).

II. 6AAC 29.310 - 29.920. These regulations implement AS 15.13, the laws governing the conduct of state and municipal election campaigns. The commission is authorized to adopt regulations necessary to implement and clarify the provisions of AS 15.13 in AS 15.13.030(10).

6AAC 29.310. Summary. Requires reports to be postmarked by the due date.

6AAC 29.320. Summary. Requires candidates and groups who must report contributions and expenditures to maintain records of all contributions received and expenditures made for a period of four years, to be available for inspection by the commission. Creates an exception to the above regulation for fund-raising events having 25 or more participants in which the price of a ticket does not exceed ten dollars. Directs that reporting of fund-raising events exempted under this regulation must include the number of contributing participants, the date and place of the event, a description of the fund-raising activities, and the cost of the event.

Comment: Such a regulation appears authorized both by the commission's general power to implement AS 15.13 and by AS 15.-

13.030(8), which empowers the commission to investigate reports, statements, and actions required by AS 15.13. The regulation does not appear to change statutory requirements of what must be reported, as distinguished from what must be recorded. One could argue, however, that the commission has no explicit authority to require records to be kept in any greater detail than what must be reported, but this would limit its ability to investigate the accuracy of reports.

6AAC 29.330. Summary. Requires commercial air transportation to be reported at actual cost. Sets mileage rates for reporting non-commercial air transport and transportation by motor vehicle. Exempts personal living expenses of the candidate and campaign workers from reporting requirements.

Comment: It is unclear if this regulation means to exempt the costs of campaign workers' living expenses paid by the candidate. If this is meant, it would seem to be an unauthorized amendment of the requirement in AS 15.13.040(a) that each candidate report all his expenditures. Clarification might be requested.

6AAC 29.340. Summary. Specifies what must be included in a report of an expenditure to an advertising agency.

6AAC 29.350. Summary. Defines "contribution" for purposes of AS 15.13 to include donated services where the services performed are the same kind of service for which the donor has received more than 25% of his income in any one of the three preceding calendar years. Directs that contributed professional services be valued at what the donor receives for that kind of services.

Comment: AS 15.13.130(2) provides in part that "contribution" includes services for which charge is ordinarily made, but does not include "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage."

The regulation might conflict with the statute in that it appears to define "contribution" in such a way as to include some donated services not ordinarily considered to be professional, and to exclude some donated services which ordinarily are considered to be professional. An example of the former would be a person ordinarily employed as a telephone receptionist who answers phones at campaign headquarters for free. This person would be making a contribution under the regulation. The statute would seem to exempt such services because, although they are services "for which charge is ordinarily made," they come under the ex-

clusion for "services provided without compensation by individuals volunteering a portion or all of their time" and are not re-included as "professional services volunteered by individuals for which they ordinarily would be paid a fee or wage." This conflict is resolved if "professional services" is read to mean "whatever one does for a living, no matter how unskilled," but "professional services" usually denotes some level of skill not possessed by the population at large.

An example of the second possible conflict relates to the 25% figure. A licensed attorney might have earned very little income at the practice of law over a three year period. He might be principally employed in some other capacity. Assume that this attorney represents a candidate in litigation involving his candidacy for free. Under the statute this would be a contribution because it is a professional service volunteered by an individual for which he ordinarily would be paid a fee or wage. Such a service would not be a contribution under the regulation, however, because it is not the kind of service for which the donor has received more than 25% of his income in any of the three preceding years.

Another example of the second possible conflict is a person just starting out in a profession who donates professional services to a candidate. A newly admitted member of the bar might not have received any income for legal services in any of the "preceding three calendar years" but might be earning all of his income for legal services in the current calendar year. The statute would make the donation of legal services by such an individual a contribution. The regulation apparently would not.

The second possible conflict is resolved if the regulation is read as saying only which services will be included in the term "contribution" and as not addressing the question of what will not be considered. It seems likely, however, that a person reading the regulation would reasonably conclude that he would not be making a "contribution" so long as the service he was providing was of a kind for which he had not received more than 25% of his income in any of the preceding three years.

6AAC 29.360. Summary. Subsection (a) requires a municipality which seeks to influence the outcome of an election to report under AS 15.13 in the same manner as a group. Subsection (b) provides that all communications which are paid for by a municipality and which are related to an election are considered to be intended to influence the outcome of an election unless they are only notices of the election or are required by statute, charter, or ordinance. Subsection (c) requires the municipality to file with the commission a list of candidates and their

mailing addresses within seven days following the deadline for filing for municipal office.

Comment: Subsections (a) and (b) of this section implement a 1975 amendment to AS 15.13.010 which makes AS 15.13 applicable to "contributions, expenditures, and communications made by a...municipality... for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate." The 1975 amendment neglected to change other sections of AS 15.13 to refer to municipalities, and some of the information required to be reported under that chapter is by its nature inapplicable to municipalities. Subsection (a), therefore, appears to be necessary to make sense of the 1975 amendment. Subsection (b) gives an extremely broad definition of what communications by a municipality will be considered as attempting to influence an election, but such a definition appears to be within the commission's authority given the vagueness of the statute on this point.

Subsection (c) may not be within the commission's authority. Presumably, it does not apply to municipalities which are not seeking to influence the outcome of an election, although subsection (c) refers only to "the municipality." Subsection (a) however, begins "When a municipality seeks to influence the outcome of an election ..."; so one may infer that "the municipality" in subsection (c) means the municipality which is attempting to influence an election. It might be wise, however, to ask the commission for clarification on this point.

If subsection (c) is intended to apply to all municipalities, it would appear to be an unauthorized extension of the commission's powers under AS 15.13. That chapter does not impose any reporting requirements on municipalities which are not seeking to influence the outcome of an election or ballot proposition. One could argue that requiring municipalities to file a list of candidates and their mailing addresses comes within the commission's power to compel the production of books and records in an investigation, AS 15.13.045(b). An unusually broad meaning would have to be given to "investigation," however, to include the routine filing of election information by municipalities.

If subsection (c) is meant to apply only to municipalities intending to influence an election, the commission is on somewhat firmer ground. These municipalities are required to file reports under AS 15.13. Since the statute does not specify what information a municipality must report, the commission has a duty to adopt regulations clarifying the matter. This it did in subsection (a) by directing that municipalities attempting to influence an election report in the same manner as a group. It then re-

phrased some particular items of information which groups must report so that these items would be applicable to municipalities. The information sought and the deadline imposed by subsection (c), however, has no statutory counterpart. It is not a mere translation of a "group" requirement to a "municipal" requirement. It appears to be an entirely new obligation that the commission lacks the authority to impose.

6AAC 29.370. Summary. Creates an exception to the requirement in AS 15.13.090 that campaign communications must be clearly identified by the words "paid for by" followed by the name of the candidate, group, or individual paying for the advertising. Permits small objects such as pens and buttons to omit such information provided that the advertisement is identified in a regular expenditure report to the commission.

Comment: While such an exception as this regulation creates might be desirable, it appears to be an unauthorized amendment to the plain meaning of AS 15.13.090.

6AAC 29.380. Summary. "EARLY CAMPAIGNING. A person shall comply with AS 15.13.100 by notification to the commission of his candidacy for a particular office if the filing period has not opened."

Comment: AS 15.13.100 provides:

"No political campaign expenditure may be made or incurred by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks, except for personal travel expenses or for opinion surveys or polls. These expenditures shall be charged against the spending limitation which applies to the office for which he subsequently files, and shall be included in the first report required under this chapter after filing for office."

The regulation appears to establish procedure for administering AS 15.13.100 by providing that the early campaigner notify the commission before the filing date so that the commission can monitor the candidate's expenditures for travel, opinion surveys and polls.

6AAC 29.450. Summary. Prescribes what information must be contained in a complaint; requires that complaints be in writing and signed by the complainant; and requires that the complainant's signature be notarized.

Comment: The requirement of notarizing the complainant's signature appears to subject the complainant to prosecution for perjury for

any knowing misrepresentations in the complaint. As 15.13.045 does give the commission power to administer oaths. However, the power is granted in a section dealing with the commission's investigatory powers. A complaint is ordinarily filed before an investigation is commenced, and there seems to be no statutory authority for requiring that it be made under oath. Such a requirement seems particularly inapt when one considers that a violation of AS 15.13, including submitting a false report, is a misdemeanor, punishable by imprisonment for no more than one year, or a fine of no more than \$5,000, AS 15.13.120. Perjury committed outside a court of justice is punishable by imprisonment for from one to five years, AS 11.30.020(c).

6AAC 29.460. Summary. Provides for a preliminary investigation if the commission determines that there is cause to credit the allegations in a complaint and for preliminary investigations on the commission's own motion. Requires the executive director to present results of preliminary investigations to the commission for findings.

6AAC 29.910. Summary. Provides that copies of any report required to be filed with the commission may be obtained at cost.

JM:hjd

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Register 58, July 1976

GOVERNOR'S OFFICE

6 AAC 29.010

6 AAC 29.030

PART 1A. ALASKA PUBLIC OFFICES COMMISSION

CHAPTER 29. FINANCIAL AND CAMPAIGN DISCLOSURE

Article 1. Financial Disclosure

Section

- 10. Reporting sources of income for retail businesses
- 20. Reporting interests in real property
- 30. Reporting financial data of family members
- 40. Reporting loans and indebtedness
- 50. Retail charge accounts
- 60. Write-in candidates
- 70. Income
- 80. Controlling interest in corporation
- 90. Municipalities as instrumentalities of the state

6 AAC 29.010. REPORTING SOURCES OF INCOME FOR RETAIL BUSINESSES. For purposes of reporting sources of income over \$100 in accordance with AS 39.50.030(b)(1), the reporting official is not required to list individual customers of a retail business which is conducted on a cash basis. However, the business itself must be reported as a source of income. (Eff. 8/20/75, Reg. 55; am 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 39.50.030(b)(1)

6 AAC 29.020. REPORTING INTERESTS IN REAL PROPERTY. The reporting of interests in real property shall include a description of the nature of interest held in the property, the location of the property, and the current use of the property. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 39.50.030(b)(4)

6 AAC 29.030. REPORTING FINANCIAL DATA OF FAMILY MEMBERS. For purposes of AS 39.50.030(a), reporting of information for members of the official's family "to the extent that it is ascertainable" means an affirmative good faith effort to obtain the information and also requires reporting of all required information actually known. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 39.50.030(a)

Register 58, July 1976

GOVERNOR'S OFFICE

6 AAC 29.040

6 AAC 29.090

6 AAC 29.040. LOANS AND INDEBTEDNESS. AS 39.50.030(b) (6) includes all loans or indebtedness of \$500 or more made during the preceding calendar year. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 39.50.030(b) (6)

6 AAC 29.050. RETAIL CHARGE ACCOUNTS. For purposes of reporting liabilities under AS 39.50.030(a) and 030(b) (6), the reporting official is not required to report retail charge accounts, revolving charge accounts or credit card obligations. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 39.50.030(a)  
AS 39.50.030(b) (6)

6 AAC 29.060. WRITE-IN CANDIDATES. A public statement by an individual that he will seek elective municipal office constitutes a declaration of candidacy under AS 39.50.020. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 39.50.020

6 AAC 29.070. INCOME. In this chapter and in AS 39.50, "income" includes gross income under §61 of the Internal Revenue Code (26 U. S. C. §61) in effect on May 16, 1976. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 39.50.030(b) (1)

6 AAC 29.080. CONTROLLING INTEREST IN A CORPORATION. In AS 39.50.200(8), "controlling interest" in a corporation means ownership of more than 50 percent of the outstanding shares of a corporation at any time during the year for which a report is being filed. In this section, the rules of constructive ownership in §318 of the Internal Revenue Code (26 U. S. C. §318) in effect on May 16, 1976 will be used to determine ownership of a corporation's shares. (Eff. 5/16/76, Reg. 58)

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Asst*

Authority: AS 15.13.030(10)  
AS 39.50.200(8)

6 AAC 29.090. MUNICIPALITIES AS INSTRUMENTALITIES OF THE STATE. In AS 39.50.200(5), "instrumentality of the state" includes municipalities. (Eff. 5/16/76, Reg. 58)

## Chapter 29. Financial and Campaign Disclosure

## Article

2. Campaign Disclosure General Provisions
3. Complaints, Investigations, Accusations, and Hearings

## Article 2. Campaign Disclosure General Provisions

## Section

310. Filing
320. Record keeping requirements for candidates and groups
330. Contributions and expenditures for air travel
340. Expenditures to advertising agencies
350. Contribution of professional services
360. Municipalities
370. Identification of communications in certain instances
380. Early campaigning

6 AAC 29.310. FILING. All reports required to be filed under provisions of AS 15.13 shall be postmarked no later than the date due. All forms will be available at the central office, district offices, and appropriate municipalities. (Eff. 5/16/76, Reg. 58)

Authority AS 15.13.030(10)  
AS 15.13.020(j) and (k)  
AS 15.13.110(a)

6 AAC 29.320. RECORD KEEPING REQUIREMENTS FOR CANDIDATES AND GROUPS.  
(a) Every candidate and group required to report contributions or expenditures under the provisions of AS 15.13 shall maintain detailed records of all contributions received and expenditures made.

(b) The requirement of (a) of this section does not apply to fund raising events which meet the following criteria:

- (1) there are 25 or more contributing participants;
- (2) the price of a ticket for the event does not exceed \$10.

(c) Each sale of three or more tickets for fund raising events exempted under (b) of this section must be recorded as required by (a) of this section.

(d) Reporting of fund raising events exempted under (b) of this section must include the number of contributing participants, the date and place of the event, a description of the fund raising activity, and the costs of the event.

(e) Each record required under this section shall be maintained by the candidate and may not be destroyed for a period of four years from the date of the contribution. They shall be available for inspection by the commission upon request of the commission. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.040

6 AAC 29.330. CONTRIBUTIONS AND EXPENDITURES FOR AIR TRAVEL. (a) Contributions and expenditures for air transportation shall be reported at the actual cost of the commercial fare or charter, or at the rate of 15¢ per mile per passenger if commercial air transportation is not utilized.

(b) Contributions and expenditures for travel by motor vehicle shall be reported at 10¢ per mile.

(c) Personal living expenses of the candidate and campaign workers are not considered either as contributions or expenditures and need not be reported. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.040

6 AAC 29.340. EXPENDITURES TO ADVERTISING AGENCIES. Whenever a required report includes an expenditure to an advertising agency, the report shall be accompanied by a statement detailing all services rendered, including the identity of each business from which advertisements were purchased or placed and the costs of the advertisement purchased. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.040(f)

6 AAC 29.350. CONTRIBUTION OF PROFESSIONAL SERVICES. (a) A contribution as defined by AS 15.13.130(2) includes donated services where the services performed are the same kind of service for which the donor has received more than 25% of his income in any one of the preceding three calendar years.

(b) Contributed professional services shall be valued under AS 15.13-130(2)(A) at the amount which the donor receives for the kind of services contributed. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.130(2)

6 AAC 29.360. MUNICIPALITIES. (a) When a municipality seeks to influence the outcome of an election, it shall report in the same manner as a group. For the purpose of complying with AS 15.13.040(b)(1)'s requirement to list the name and address of each officer and director, the municipality shall list the name and address of its mayor and of its council or assembly members. For the purpose of complying with AS 15.13.040(b)(1)'s requirement to list the name and address of its campaign treasurer, the municipality shall list the name and address of its finance director, controller, treasurer, or equivalent officer. For the source of contributions [AS 15.13.070(h)], the municipality shall list the particular fund from which the appropriation is made.

(b) All communications which are paid for by a municipality and which are related to an election are considered to be intended to influence the outcome of an election unless they are only notices of the election or unless they are required by statute, charter, or ordinance.

(c) The municipality shall file with the commission a list of candidates and their mailing addresses within seven days following the deadline for filing for municipal office. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.010  
AS 15.13.030(10)  
AS 15.13.060  
AS 15.13.090

6 AAC 29.370. IDENTIFICATION OF COMMUNICATIONS IN CERTAIN INSTANCES. If the size of an object utilized for a campaign advertisement is such that it is impractical to print the identification of the candidate, group, or person paying for the advertisement on the object, the advertisement shall instead be identified in a regular expenditure report to the commission. Objects considered too small for full identification include pencils, pens, and buttons. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.090

6 AAC 29.380. EARLY CAMPAIGNING. A person shall comply with AS 15.-13.100 by notification to the commission of his candidacy for a particular office if the filing period has not opened. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.100

### Article 3. Campaign Disclosure Complaints and Investigations

#### Section

- 450. Complaints
- 460. Preliminary investigation

6 AAC 29.450. COMPLAINTS. (a) A complaint filed with the commission shall be in writing and shall contain the following:

- (1) the full name and mailing address of the person making the complaint;
- (2) the name of the person or group alleged to be in violation;
- (3) allegations of specific facts which, if true, would constitute a violation of AS 15.13 or of a provision of secs. 310-460 of this chapter;
- (4) the basis of complainant's knowledge of the alleged facts.

(b) The complaint shall be signed by the complainant and the signature shall be verified by a notary public, municipal clerk, court clerk, postmaster, or any person authorized to administer oaths. Notarial service

will be provided by the commission without cost. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.045  
AS 15.13.120(d)

6 AAC 29.460. PRELIMINARY INVESTIGATION. (a) If the commission determines that there is cause to credit the allegations in the complaint, a preliminary investigation will be conducted.

(b) The commission may, on its own motion, order a preliminary investigation of a possible violation of AS 15.13 or of a provision of secs. 310-460 of this chapter.

(c) The executive director of the commission will present the results of the preliminary investigation to the commission for a finding. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.045(a)  
AS 15.13.120(d)

#### Article 4. General Provisions

##### Section

- 910. Availability of reports filed with the commission
- 920. Definitions

6 AAC 29.910. AVAILABILITY OF REPORTS FILED WITH THE COMMISSION. Copies of any report required to be filed with the commission may be obtained at cost. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)  
AS 15.13.040(f)  
AS 15.13.110(c)  
AS 39.50.020(b)  
AS 39.50.050(c)

6 AAC 29.920. DEFINITIONS. In this chapter, "commission" means the Alaska Public Offices Commission. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.020(a)  
AS 15.13.030(10)

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

January 18, 1977

Dear Member of the Regulation Review Committee:

The Alaska Police Standards Council in the Office of the Governor has amended 6 AAC 70.020, 6 AAC 70.040, and 6 AAC 70.080. These regulations concern certification of police officers.

6 AAC 70.020 is amended so as to permit a police department to employ a person who has not acquired a basic certificate longer than the twelve months otherwise allowed, if the chief of the department states in writing that there is an exceptional lack of personnel.

6 AAC 70.040 is amended by creating standards for the award of intermediate and advanced certificates of police proficiency. Certificates are awarded for experience, education, and training and various combinations of points being sufficient for an award. The value of these intermediate and advanced certificates is not apparent from the regulations or the statutes, but they do not appear to be particularly out of conformity with legislative intent, either.

6 AAC 70.080 adds "sex" to those factors which may not serve as bases for discrimination in the construction or application of 6 AAC 70.

GOVERNOR'S OFFICE

## PART 4. ALASKA POLICE STANDARDS COUNCIL

Register 59, October, 19766 AAC 70.020  
6 AAC 70.040  
~~6 AAC 70.080~~

6 AAC 70.020 is amended by adding a new provision as (b) (3) and renumbering existing (b) (3) as (b) (4).

(3) upon written application of the chief of police due to an exceptional lack of personnel, the council grants an extension of the probationary period for a police officer who cannot meet the requirements of the Act. An extension based on exceptional lack of personnel may not exceed six months at a time. Additional extensions may be granted upon request and proper documentation.  
(Eff. 8/10/73, Register 47, am 9/17/76, Register 59)

Authority: AS 18.65.220  
AS 18.65.240

6 AAC 70.040 is amended as follows: BASIC, INTERMEDIATE AND ADVANCED CERTIFICATES. (a) The council will issue basic, intermediate and advanced certificates to police officers meeting prescribed standards of training, education and experience.

(1) To be eligible for the award of a certificate, each applicant shall:

(A) be a full time paid police officer and a member of a law enforcement unit located within the State of Alaska;

(B) attest that he subscribes to the Law Enforcement Code of Ethics;

(C) meet the minimum standards prescribed by section 10 of this chapter;

(D) meet the additional requirements for the level of certification sought.

(2) In addition to the requirements set forth in subsection (a) (1), each applicant for a basic certificate shall:

(A) have completed a probationary period of not less than 12 months with his present department, and

(B) have successfully completed the required basic training, or the equivalent as determined by the council.

Register 59, October 1976

6 AAC 70.040

(3) In addition to the requirements set forth in subsection (a) (1), each applicant for an intermediate certification shall:

(A) possess or be eligible to possess a basic certificate, and

(B) have acquired the following combination of education and training points in conjunction with the prescribed years of law enforcement experience:

Minimum Training Points, Including APSC Basic Course (Equivalent Hours)	15 (300)	23 (460)	30 (600)	38 (760)	45 (900)	APSC Basic Course	APSC Basic Course
Minimum Education Points, in college Credit Hours	15	23	30	38	45	AA or AS Degree	BA or BS Degree
Years of Law Enforce- ment Experience	8	7	6	5	4	4	2

(4) In addition to the requirements set forth in subsection (a) (1), each applicant for an advanced certificate shall:

(A) possess or be eligible to possess a basic certificate and

(B) have acquired the following combination of education and training points in conjunction with the prescribed years of law enforcement experience:

Minimum Training Points, Including APSC Basic Course (Equivalent Hours)	30 (600)	35 (700)	40 (800)	45 (900)	APSC Basic Course	APSC Basic Course	Basic Course
Minimum Education Points, in college Credit Hours	30	35	40	45	AA or AS Degree	BA or BS Degree	Masters Degree

Years of Law Enforcement	12	11	10	9	9	6	4
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(C) or, in lieu of the requirements in (a) (4) (B), the council may issue an advanced certificate, upon application, to each applicant who has acquired 12 combined education and training points and 20 years of law enforcement experience, or 30 combined education and training points and 15 years experience; provided that the last 5 years of law enforcement experience shall have been in a supervisory position or above. A supervisory position is one occupied by a police officer with supervisory or command responsibilities where he directly supervises or commands full-time employees of a law enforcement unit.

(5) Education points are awarded on the following basis:

(A) One quarter term unit of college credit shall equal one education point.

(B) One semester term unit of college credit shall equal one and one-half education points.

(6) Twenty classroom hours of police approved training shall equal one training point.

(A) Advanced, supervisory, middle management, executive, or specialized courses certified by the council will be approved towards training points.

(B) For the purpose of certification above the basic level, the council may approve in-service training which is recorded and documented by the trainee's department. These records must confirm successful completion and must include the subject, classroom hours, time and date.

(7) When college credit is awarded for law enforcement related subjects, it may be counted for either training points or education points.

(8) Education and training must be supported by copies of transcripts, certificates, diplomas, or other verifying documents attached to the application.

(9) The acceptability of law enforcement experience shall be determined by the council. Law enforcement experience acquired in a police agency whose standards are lower than those required by the provisions of sections (10) and (40) may be rejected.

(b) All applications for the award of the basic, intermediate or advanced certificate shall be completed on the prescribed council form entitled "Application for Award of Certificate".

Register 59, October 1976

6 AAC 70.040  
6 AAC 70.080

(c) The council may revoke the certification of a person, under the Administrative Procedures Act (AS 44.62) upon a finding that the holder falsified information required for eligibility for a certificate or upon a finding that the holder has been discharged for cause from employment as a law enforcement officer by a police agency in this state or any other jurisdiction.

(d) A basic, intermediate or advanced certificate lapses if the holder is not employed as a law enforcement officer with a police agency in this state, or any other jurisdiction, for a period of 12 consecutive months.

(e) The holder of a basic, intermediate or advanced certificate shall return his certificate to the council upon the revocation of his certificate.

(f) A police officer may have a lapsed certificate reinstated upon the satisfactory completion of a probationary period of 12 months employment as a police officer with a participating police department and upon the successful completion of any supplemental and remedial training and education which the council determines is necessary for him to meet current standards of police officers in the state.

(Eff. 8/10/73, Register 47, am<sup>9</sup>/17/76, Register 59 )

Authority: AS 18.65.220  
AS 18.65.240

6 AAC 70.080 is amended as follows; DISCRIMINATION PROHIBITED.  
No regulation in this chapter may be construed or applied in such a manner as to permit the disqualification of or unlawful discrimination against an applicant for a certificate, or for employment as a police officer based on the applicant's race, color, creed, sex, ethnic origin, religious or political affiliation, or religious or political beliefs.

(Eff. 8/10/73, Register 47, am<sup>9</sup>/17/76, Register 59 )

Authority: AS 18.65.220  
AS 18.65.240

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

November 5, 1976

Dear Members of the Regulation Review Committee:

The following is a summary of the attached regulations, with indications of possible lack of conformity with legislative intent where necessary.

The Department of Administration has adopted, or made amendments to those regulations listed below. Possible deviations from legislative intent are indicated with an asterick to the left of the entry, and in such cases the regulation is discussed with reference to the statute being interpreted or implemented. The department held no public hearings before adopting these regulations. Notice of proposed regulations appeared in newspapers in Anchorage, Juneau, and Fairbanks.

2AAC 15.020 This regulation was amended so as to delete material which essentially restated the substance of AS 37.05.230(2).

2AAC 15.030 Amendment changed reference to "division of supply" to "division of general services and supply."

2AAC 15.040 Regulation was amended so as to correct deficences in form. No substantive change was effected.

2AAC 15.050 Amendment changed reference to the "division of supply" to the "division general services and supply;" also effectuated other changes in form.

2AAC 15.070. Amendment to this regulation amounted to a rewriting. No substitutive changes were effected.

2AAC 15.120. Amendment amounted to rewriting. No substantive changes effected. .

ARCO

Attachment "A"

Register 59 October 1976 ADMINISTRATION

2 AAC 15.020  
2 AAC 15.030  
2 AAC 15.040

CHAPTER 15. PURCHASING

Section

- 10. (Repealed)
- 20. Sealed bids
- 30. Bid list
- 40. Rejection of bids
- 50. Late bids
- 60. Awards
- 70. Tie bids
- 80. (Repealed)
- 90. Bid award
- 100. Aggrieved bidder
- 110. (Repealed)
- 120. Definitions

2 AAC 15.010. COMPETITIVE BIDS. Repealed (Eff. 9/24/76, Reg. 59)

2 AAC 15.020. SEALED BIDS. (a) When sealed bids are invited, all invitations for bid will contain information as to where the necessary bid forms or additional information may be obtained.

(b) Sealed bids will be opened in public at the hour stated in the notice. (Eff. 9/24/76, Reg. 59)

12/4/72, Reg. 44; am

Authority: AS 37.05.020  
AS 37.05.230(2)

2 AAC 15.030. BID LIST. (a) Bid lists are maintained by the division of general services and supply according to commodity classifications. The list is continually updated and all vendors are encouraged to make application to have their names included. Bid circulation is usually restricted to vendors within the state if the required goods or services are available through them and adequate competition exists.

(b) This bid list will periodically be purged to remove the names of vendors who continually ignore acknowledgement of the Invitation to Bid. Three successive failures to acknowledge will be reason for removal. (Eff. 9/24/76, Reg. 59)

12/4/72; Reg. 44; am

Authority: AS 37.05.020

2 AAC 15.040. REJECTION OF BIDS. (a) A bid will be rejected when

(1) the bid contains a material alteration or erasure which is not initialed by the signer of the bid;

(2) the bidder qualifies or changes the terms or conditions of the invitation to bid; or

(3) the bid is considered late under Sec. 50 of this chapter, having been received after the time for opening.

(b) A bid will, in the discretion of the department, be rejected when

- (1) the bidder is in arrears on taxes due the state;
- (2) the bidder has failed to perform on a previous contract with the state; :
- (3) the bid is not signed; or .
- (4) the bidder fails to furnish bid or surety bonds, plans, specifications, samples, etc., when such was specifically called for in the Invitation to Bid. (Eff. <sup>9/26/76</sup> 12/14/72, Reg. 59)

*12/14/72, Reg. 44; am'd*

Authority: AS 37.05.020  
AS 37.05.240

2 AAC 15.050. LATE BIDS. (a) It is the responsibility of the bidder to insure that his bid is in the proper office of the division of general services and supply before the scheduled bid opening time.

(b) Bids received after the scheduled opening time are defined as late bids. A postmark, indicating the mailing was in advance of the bid opening time has no bearing except as is provided for in (c) of this section.

(c) A bidder who is concerned that his bid will not be received timely may reserve the right to have his bid read if

(1) in advance of the scheduled opening time, he gives telegraphic or other form of written notice to the office opening the bid that his bid is in the mail;

(2) the envelope containing his bid bears a postmark no later than the morning of the day of opening. (Eff. <sup>9/26/76</sup> 12/14/72, Reg. 59)

*Reg. 44; am 9/26/76*

Authority: AS 37.05.020  
AS 37.05.230

2 AAC 15.070. TIE BIDS. (a) When two or more bidders are tied, each of whom fully meets the bid conditions, awards shall be made as follows, and in the order listed:

(1) tie bids involving Alaska firms with non-Alaska firms, after taking into consideration the five percent Alaska bidders' preference, shall be made to the Alaska firm;

(2) tie bids involving Alaska produced or manufactured products shall be resolved in favor of the local commodity.

(b) If there is no other basis for choosing which bidder should be awarded a contract, lots may be drawn. When feasible, the drawing will be in the presence of the bidders involved. (Eff. 9/26/76, Reg. 59)

12/4/72, Reg. 44; am

Authority: AS 36.15.010  
AS 36.20.010  
AS 37.05.020  
AS 37.05.230

2 AAC 15.080 ALASKA BIDDER PREFERENCE, AS 37.05.230  
A Repealed. (Eff. 9/26/76, Reg. 59)

2 AAC 15.120. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "commissioner" means the Commissioner of Administration;

(2) "department" means the Department of Administration;

(3) "purchasing agent" means the Department of Administration. (Eff. 9/26/76, Reg. 59)

12/4/72, Reg. 44; am

Authority: AS 37.05.020  
AS 37.05.220

2 AAC 15.110 RECORDS. Repealed. (Eff. 9/26/76, Reg. 59)

Commerce

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

November 5, 1976

Dear Member of the Regulation Review Committee:

The Department of Commerce has adopted ~~or made amendments~~ to those regulations listed below. Possible deviations from legislative intent are indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being interpreted or implemented. The department held no public hearing before adopting these regulations. Notice of proposed adoption or amendment of these regulations was published in newspapers in Anchorage, Fairbanks, Juneau, Ketchikan, and in the Tundra Times.

3AAC 80.010 Specifies information which must be supplied by persons applying for loans under the Commercial Fishing Loan Act (AS 16.10.300-16.10.370).

\*3AAC 80.020 Adds to the requirements for eligibility for loans under the Commercial Fishing Loan Act. These additional requirements appear to implement the policy stated in that Act, except 3AAC 80.020(b) which states that no more than 50 per cent of the loan proceeds may be used to re-finance existing debts. There might be some question as to whether this is in conformity with legislative intent although there is no clear evidence of intent with regard to this question in the statutes.

\*3AAC 80.030 Among other things, this regulation requires that a loan not bear a service charge payable to a trustee for the State of Alaska in excess of one half of one per cent per year. There might be some question as to whether this is in conformity with legislative intent, although there is no clear evidence of intent with regard to this question in the statutes.

\* 3AAC 80.040 Subsection (a) of this regulation establishes the criteria used in determining the duration of a loan. Subsection (b) of this regulation states that the applicant for a loan shall bear the cost of processing a loan. This presents a question as to whether Subsection (b) is in conformity with legislative intent, although there is no indication in the statutes to what the legislature may have intended.

3AAC 80.050 Adds as a condition of any loan that borrowers be required to furnish financial information on an annual basis and that they submit to audits.

3AAC 80.060 This regulation makes approval by a loan committee prerequisite to receipt of a loan.

3AAC 80.070 This regulation creates a loan committee and specifies those state executives who shall serve on the committee.

3AAC 80.080 This regulation requires successful applicants for loans to execute those instruments which the department specifies.

3AAC 80.090 This regulation provides that before loan funds may be dispensed, the security interest required by AS 16.10.320 must be perfected, i.e., recorded; and in the case of documented vessels, this regulation specifies the coast guard document which must be supplied to the department to perfect a security interest. This regulation also states that the department must be satisfied that the borrower has complied with provisions pertaining to marine insurance requirements and any other provisions which might be included in the loan documents.

3AAC 80.100 This regulation defines the following terms used in 3AAC 80: acceptable collateral, borrower, commercial fisherman, commercial fishing, commissioner, current, department, division, documented vessel, person, resident.

TITLE 3. COMMERCE AND ~~ECONOMIC DEVELOPMENT~~

PART 7. DIVISION OF BUSINESS LOANS

Chapter

80. Commercial Fishing Loans (~~3 AAC 80.010 - 3 AAC 80.100~~)

Section

- 10. Applications for loans
- 20. Loan eligibility and borrower qualifications
- 30. Amount, interest rates and maturity of loans
- 40. Terms of loan
- 50. Supervision of loans
- 60. Approval of loans
- 70. Loan committee
- 80. Execution of instruments
- 90. Disbursement of loan funds
- 100. Definition of terms

3 AAC 80.010. APPLICATIONS FOR LOANS. (a) Commercial fishing loan applications shall be submitted on an appropriate form prescribed by the commissioner and be accompanied by

- (1) a letter of intent stating the amount requested, a description of how the proposed loan funds will be used, and the plan of repayment of the loan including the setting up of reserves, if any;
- (2) a personal resume including three personal references;
- (3) a business history of the applicant which shall include complete copies of state income tax returns for the preceding three years;
- (4) proof that the applicant has had a commercial fishing license for the last three years and has been engaged in commercial fishing during each of the same three years as evidenced by Alaska Department of Fish and Game records;
- (5) proof that the applicant has been a state resident for the last five years;
- (6) current financial statements consisting of a balance sheet and profit-and-loss statement;
- (7) a schedule of acceptable collateral, which should include collateral now owned and other collateral which is to be acquired with the loan proceeds, stating date of acquisition, cost, location, market value and existing liens;
- (8) proof of unencumbered title to the collateral and in the case of a documented vessel, a Certificate of Ownership for the vessel on Coast Guard Form 1330, dated not more than 20 days prior to the date of application;
- (9) a current marine survey if a vessel is used for collateral including pictures of the vessel and

(10) a pro forma financial statement showing the projected income and expenses for the following year.

(b) Exhibits, whenever applicable, shall accompany the application to show the

- (1) potential growth of the business;
- (2) potential employment;
- (3) potential increase in income;
- (4) potential decrease in operating expenses; and
- (5) potential improvement in operational safety.

(c) Applications shall be submitted to the Division of Business Loans, Department of Commerce and Economic Development, Pouch D, Juneau, Alaska, 99811. (Eff. 9/15/76, Register 59 )

Authority: AS 16.10.310

3 AAC 80.020. LOAN ELIGIBILITY AND BORROWER QUALIFICATIONS. (a) In addition to the requirements of AS 16.10.300 - AS 16.10.370 as amended a loan will not be made unless

(1) the borrower can provide acceptable collateral and an acceptable repayment schedule;

(2) the purpose of the loan is to repair or improve existing vessels or gear, purchase additional gear, construct and purchase vessels, purchase fishing gear or entry permits or construction of hatchery facilities; and

(3) the borrower has extended to the commissioner or his representative the right to conduct a marine survey of a vessel or vessel construction project which is described by the borrower in an application or supporting documents.

(b) No more than 50 percent of the loan proceeds may be used to re-finance existing debts.

(c) A loan will not be made if the proposed use of funds

(1) is of a speculative nature; and

(2) are intended to purchase a commercial fishing vessel, gear or permit that will not be put to use in the commercial fishing industry in the near future. (Eff. 9/16/76, Register 59 )

Authority: AS 16.10.310  
AS 16.10.320

3 AAC 80.030. AMOUNT, INTEREST RATES AND MATURITY OF LOANS. A loan will not exceed \$100,000.00, bear interest at a rate in excess of seven percent a year if not in default, or mature later than 15 years from the date

of the loan. A loan will not bear a service charge payable to a trustee for the State of Alaska in excess of one half of one percent a year. (Eff. 9/26/76, Register 59 )

Authority: AS 16.10.310  
AS 16.10.320

3 AAC 80.040. TERMS OF LOAN. (a) A term of a loan will be fixed in relation to the needs of the borrower and the collateral available to secure repayment of the loan.

(b) All expenses incurred by the department in closing a loan or processing a loan application shall be paid by the applicant, including but not limited to: the cost of credit reports, title reports and insurance, recording fees, appraisals, surveys, out of state travel and other direct costs. (Eff. 9/26/76, Register 59 )

Authority: AS 16.10.310

3 AAC 80.050. SUPERVISION OF LOANS. As a condition of any loan and so long as there is an outstanding loan balance the department may require that a borrower furnish annual financial statements consisting of a balance sheet, profit-and-loss statement, sources and application of all funds received and a schedule of change of owner's equity. A borrower shall also submit to an audit or audits to determine whether the provisions of the loan have been complied with, and that a borrower permit periodic inspection of any collateral securing repayment of the loan. (Eff. 9/26/76, Register 59 )

Authority: AS 16.10.310

3 AAC 80.060. APPROVAL OF LOANS. A loan will not be granted without the approval of a majority of the loan committee established under section 070 of this chapter. (Eff. 9/26/76, Register 59 )

Authority: AS 16.10.310

3 AAC 80.070. LOAN COMMITTEE. (a) A loan committee will consist of the commissioner, the deputy commissioner of commerce and economic development and the director of the division of business loans.

(b) The chairman of the loan committee is the commissioner or in his absence the deputy commissioner of commerce and economic development.

(c) In the absence of any loan committee member, the chairman may appoint an alternate member from among the directors of the following divisions

- (1) the division of insurance;
- (2) the division of banking, securities, small loans, land sales and corporations;
- (3) the division of occupational licensing;
- (4) the division of veterans' affairs; and

(5) the division of economic enterprise.

(d) An action may not be taken at a loan committee meeting unless the chairman or his designee and two members or alternate members are present. (Eff. 9/13/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.080. EXECUTION OF INSTRUMENTS. If a loan is approved by the loan committee, the borrower shall execute the promissory notes, chattel mortgages, security agreements, financing statements, preferred mortgages, assignments, affidavits, insurance pay orders and ~~such~~ other instruments as the department may in its discretion require. (Eff. 9/13/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.090. DISBURSEMENT OF LOAN FUNDS. Loan funds will not be disbursed to the borrower until

(1) a security interest in the collateral has been perfected except that in the case of a mortgage on a documented vessel this requirement shall be satisfied by the establishment of the mortgage as a preferred mortgage pursuant to the provisions of the Ship Mortgage Act, 1920 (46 USC secs. 911 - 984) as evidenced by the delivery to the department of a satisfactory Certificate of Ownership for the vessel on Coast Guard Form 1330, dated after the date on which the mortgage is recorded;

(2) the commissioner or his authorized representative is satisfied that the borrower has complied with the marine insurance requirements contained in any instrument signed by the borrower; and

(3) all other provisions of the loan documents and this chapter have been complied with by the borrower. (Eff. 9/13/76, Register 59)

Authority: AS 16.10.310  
AS 16.10.320

3 AAC 80.100. DEFINITION OF TERMS. Unless the context requires otherwise, in this chapter and in the forms and instructions of the commissioner

(1) "acceptable collateral" means adequate security approved by the commissioner to secure repayment of a loan in the event of default and includes, but is not limited to, a mortgage or other security instrument on real property, buildings, machinery and equipment, fixtures, or commercial fishing vessels together with gear and appurtenances;

(2) "borrower" means a commercial fisherman executing an application for a loan;

(3) "commercial fisherman" means a person engaged in commercial fishing;

(4) "commercial fishing" means the taking, planting or cul-

tivating of fish, shellfish, crabs or other fishery resources with the intent of disposing of those resources for profit, by sale, barter, trade, or in commercial channels;

(5) "commissioner" means the commissioner of commerce and economic development;

(6) "current" means a date not exceeding three months from the date an application is received by the department;

(7) "department" means department of commerce and economic development;

(8) "division" means the division of business loans of the department of commerce and economic development;

(9) "documented vessel" means a vessel registered or enrolled or licensed under the laws of the United States, whether permanently or temporarily;

(10) "person" means any individual and does not mean an association, partnership or corporation; and

(11) "resident" means a person who continuously for the last five years has maintained a permanent place of residence within the State of Alaska. (Eff. 9/12/76, Register 59 )

Authority: AS 16.10.310

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800

November 5, 1976

Dear Members of the Regulation Review Committee:

The Department of Commerce has adopted, or made amendments to those regulations listed below. Possible deviations from legislative intent are indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being implemented and interpreted by the regulation. The department held public hearings before adopting these regulations in Anchorage on June 27 and June 29, 1975. Notice of proposed regulations appeared in newspapers in Cordova, Ketchikan, Nome, Anchorage, Fairbanks, and Juneau:

3AAC 64.010. This regulation has been amended to incorporate the substance of the former 3AAC 64.010-3AAC 64.060, 3AAC 64.080-3AAC 64.100, and 3AAC 64.140, which have been repealed. In addition, the following substantive changes and additions have been made: (1) Prior to amendment, 3AAC 64.040 stated that the duration of a lease between permit holders may be less than 30 days only if the period of time does not amount to more than 14 days within one 60 day period. This has been changed by 3AAC 64.010, which excludes permit holders from application of the 30 day limitation; (2) 3AAC 64.010(4)(A) clarifies the substance of former 3AAC 64.030(4), by stating that the lessee of equipment shall be considered the owner of the equipment for purposes of sub-leasing. 3AAC 64.010(a)(4)(B) limits the application of 3AAC 64.010(4)(A), supra, to that period when the vehicles are operated by or for an authorized carrier of household goods engaged in the transportation of household goods.

(3) 3AAC 64.010(a)(7) Modifies the requirements of former 3AAC 64.090, by allowing the carrier to carry in the vehicle a certificate with specified information, instead of a copy of the lease.

(5) 3AAC 64.010(b) Adds a requirement that a carrier or its employee or agent give the owner a receipt upon taking and relinquishing possession of a vehicle.

(6) 3AAC 64.010(c) Adds a requirement that a carrier make a safety inspection of a vehicle before taking possession of it, and further requires a carrier to certify the results of the inspection on a form prescribed by the commissioner and kept by the carrier.

(7) 3AAC 64.010(d) Adds to the requirements formerly imposed by 3AAC 64.100, by requiring the sign identifying the lessee of a leased vehicle to be of a specific composition and to bear a serial number. This section further requires the carrier to remove the sign from the vehicle upon relinquishing possession of it.

(8) 3AAC 64.010 Adds a requirement that the carrier establish that a person other than a regular employee who is assigned to drive a vehicle is familiar with, and that his employment as a driver will not result in, violation of any provision of the motor carrier safety regulations contained in chapter 62 of 3AAC.

(9) 3AAC 64.010 *New requirements relating to* Specifies information and documents which must be carried with the vehicle or left in its terminal.

*New requirements which*  
3AAC 64.015. ~~This regulation~~ relates to the interchange of vehicles between carriers. It requires commission approval before interchange of vehicles unless enumerated conditions are complied with. The conditions relate to: (1) the elements of the agreement between the carriers who are parties to the interchange; (2) the operating authority of carriers which are participating in the interchange; (3) requirements as to bills of lading, apportionment, and collection of revenues; (4) requirements as to safety inspection at the interchange point; (5) requirements as to devices for identifying the carrier operating the vehicle; (6) a requirement that the vehicle operated in the interchange carry a copy of the interchange agreement or a certificate containing specified information.

3 AAC 64.010. LEASING REQUIREMENTS. (1) Common or contract carriers may lease vehicles, but may not lease any vehicle to any person other than another common or contract carrier and, ~~except for other than~~ vehicles exchanged between authorized motor carriers in interchange service as provided in sec. 15 of this chapter, authorized carriers may perform transportation with vehicles which they do not own only under the following conditions, set out in this section.

(1) ~~Lease Requirements~~ The lease for the use of a vehicle ~~(1) must be made between the carrier and the owner of the vehicle;~~

(2) ~~(A)~~ must be in writing and signed by the carrier and the owner of the vehicle, or their regular employees or agents authorized to act for them in the execution of leases;

(3) ~~(B)~~ must specify the period of time for which it applies, which may not be less than 30 days; however, this subparagraph does not apply to vehicle lease agreements between permit holders;

(4) ~~(A)~~ must provide that the lessee have exclusive possession, control, use and complete responsibility for the vehicle and its operation for the duration of the lease, except that,

(A) ~~(i)~~ provision may be made in the lease for considering the lessee as the owner for the purpose of subleasing under this section to other authorized carriers for the duration of the lease;

(B) ~~(ii)~~ when entered into by carriers of household goods, for the transportation of household goods, as defined by the Interstate Commerce Commission, the provisions of (A) of this subparagraph need only apply during the period the vehicle is operated by or for the authorized carrier;

(5) ~~(A)~~ must specify the compensation to be paid by the lessee for the rental of the leased vehicle;

(6) ~~(A)~~ must specify the time and date upon which the possession and control of the vehicle will be taken by the lessee, ~~on the circumstances under which the lease begins, and the time or the circumstances under which the possession of the vehicle will be returned to the lessor;~~ the duration of the lease shall coincide with the time of giving receipts for the vehicle as required by paragraph (2) of this section;

and the conditions in which the vehicle is to be used

(7) ~~(A)~~ must be executed in quadruplicate; the original must be retained by the carrier in whose service the vehicle is to be operated, one copy must be filed with the commission within seven days

one copy shall be retained by the owner of the vehicle

of the effective date of the lease, and one copy must be carried on the vehicle specified in the lease during the entire period of the lease; *provided that* However, the carrier or its regular employee or agent may prepare a statement certifying that the vehicle is being operated under the terms of *a* written lease filed with the commission. ~~The certificate~~ *which certificate* must ~~list~~ *contain* the names of the lessor and lessee, ~~fully describe~~ *describe* the vehicle, the effective date and duration of the lease, any restrictions that are in the lease as to commodities to be transported and/or area of service and the location of the premises where the original copy of the lease is kept.

(b)(2) Receipts For Vehicle To Be Specific. When possession of the vehicle is taken by the carrier or its regular employee or agent authorized to act for it, the carrier, or that employee or agent ~~must~~ *shall* give to the owner of the vehicle or the owner's employee or agent a receipt specifically identifying the vehicle and stating the date and the time of day possession of it is taken. ~~When the possession by the carrier ends,~~ the carrier or its employee or agent shall obtain from the owner of the vehicle, or its employee or agent authorized to act for it, ~~and stating the date and the time of day possession of the vehicle is taken by the owner of the vehicle or its employee or agent.~~ *a receipt specifically identifying the vehicle and stating*

(c)(3) Safety Inspection Of Vehicle By The Carrier. The carrier shall before ~~taking~~ *having* possession of any vehicle, inspect it or have it inspected by a person who is competent and qualified to make the inspection and has been authorized by the carrier to make the inspection as a representative of the carrier, in order to insure that the vehicle complies with the Motor Carrier Safety Regulations, as set out in 3-AAC-62. *chapter 62 of this title* The person making the inspection ~~must~~ *shall* certify the results of his inspection on a report in the form authorized by the commission, and the report ~~must~~ *shall* be retained and preserved by the authorized carrier. ~~If his inspection discloses that the vehicle does not comply with the requirements of the safety regulations,~~ *the safety regulations,* possession of the vehicle may not be taken by the carrier. After the inspection has been made, the carrier or an officer or partner of the carrier, or a safety director or other supervisory employee responsible for safety compliance, ~~must~~ *shall* certify on the inspection report that the person who made the inspection, whether an employee or person other than an employee, is competent and qualified to make the inspection and has been authorized to do so by the carrier as its representative. When a vehicle other than a power unit is leased, a form of report applicable to such a vehicle may be used.

(d)(4) Identification Of Vehicle As That Of The Authorized Carrier. The authorized carrier acquiring the use of a motor vehicle under this section ~~must~~ *shall* properly and correctly identify the vehicle during the period of the lease in accordance with the requirements of sec. 500 of this chapter. If a removable device is used to identify the acquiring authorized carrier as

the operating carrier, the device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the acquiring carrier's own series so as to keep proper record of each of the identification devices <sup>in</sup> use.

~~(A) Identification To Be Removed When Lease Terminated~~ - The carrier operating a vehicle leased under this chapter must remove its identification before relinquishing possession of the vehicle.

(5)(e) Driver Of Vehicle To Be In Compliance With Safety Regulations. Before any person other than a regular employee of the carrier is assigned to drive a vehicle, the carrier shall make certain that the driver is familiar with, and that his employment as a driver will not result in, violation of any provision of the Motor Carrier Safety Regulations <sup>in contained in</sup> chapter 62 of this title.

(6)(f) Record Of Vehicle To Be Maintained; Shipping Documents To Identify The Authorized Carrier. A carrier utilizing a vehicle operated under this section for periods of less than 30 days must prepare and keep a manifest or other documents covering each trip for which the vehicle is used in its service containing the name and address of the owner of the vehicle, the point of origin, the time and date of departure, the point of final destination, and the carrier's serial number of the identification device affixed to the vehicle. During the time that a vehicle subject to this chapter is operated, there must be carried with the vehicle bills of lading, waybills, freight bills, manifests, or other papers identifying the lading, and containing the foregoing information, which clearly indicates that the transportation of the property carried is under the responsibility of the lessee, carrier. These papers shall be preserved by the authorized carrier. This section also applies to vehicles leased for periods of 30 days or more unless the required information is kept at a terminal or office as a part of the records of the carrier.

(Eff. 7/29/64, Reg. 15; am. 9/26/76, Reg. 57) (Ed. note. The provisions of this section were formerly contained in

3 AAC 64.010 - 3 AAC 64.060,  
3 AAC 64.080 - 3 AAC 64.100,  
3 AAC 64.140)

Authority: AS 42.07.141  
AS 42.10.010  
AS 42.10.070  
AS 42.10.080

3 AAC 64.015. INTERCHANGE OF VEHICLES. (c) Carriers holding permits issued by the commission may, upon prior approval by the commission, interchange any vehicle by lease with one or more other permitted carriers, or one of these carriers may receive from another carrier any of the vehicles in connection with through movement of traffic, under the following conditions set forth in (b) of this section. *(b) of this section. holding permits issued by the commission agreement*

(b) (1) Interchange Agreement To Be Specific. The lease providing for interchange must specifically describe the vehicle to be interchanged, the specific points of interchange, the use to be made of the vehicle and the consideration for such use, and shall be signed by the parties to the lease or their regular employees or agents authorized to act for them in the execution of such leases.

(c) (2) Operating Authority Of Carriers Participating In Interchange. The permits issued under secs. 160-250 of this chapter and held by the carriers participating in the interchange arrangement will authorize the transportation of the commodities proposed to be transported in the through movement and service from and to the point where the physical interchange occurs.

(d) (3) Through Bills Of Lading Required. The traffic transported in interchange service must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of vehicles. Charges for the use of the vehicles must be kept separate and distinct from divisions of the joint rates or the proportions of them accruing to the carriers by the application of local or proportional rates.

(e) (4) Safety Inspection Of Vehicle. The carrier acquiring the use of a vehicle in interchange shall inspect the vehicle, or have it inspected in the manner provided in sec. 10(3) of this section. A vehicle which does not meet the requirements of sec. 10(3) may not be operated in the respective services of the interchange carriers until the defects have been corrected. Where carriers interchanging vehicles for a through movement of traffic are commonly controlled and jointly maintain and administer a uniform safety program, no safety inspection at the point of interchange is required, so long as *you did that* the vehicle interchanged has been inspected immediately before the start of the movement in which the interchange occurs and is found to meet the requirements of sec. 10(3) of this section. *(c)*

(f) (5) Identification Of Vehicle As That Of The Operating Carrier. Authorized carriers operating power units in interchange service shall identify those vehicles in accordance with the commission's requirements in sec. 500 of this chapter. Any removable device used to identify the operating carrier must be on durable materials such as wood, plastic, or metal, and must bear a serial number in the operating carrier's own series and the carrier must keep a proper record of each identification

device in use.

(A) Identification To Be Removed When The Vehicle Is Returned To The Originating Carrier. The carrier operating a vehicle in interchange service under this section must remove its identification before relinquishing possession of the vehicle.

Copies of the Interchange Agreement or a Certificate thereof shall be in the possession of the carriers.

(6) Authorized carriers operating vehicles in interchange service under this section shall carry with each vehicle so operated, except trailers and semi-trailers, a copy of the interchange agreement while the vehicle is being operated by the carrier, fully describing the vehicle, showing the specific point of interchange, the date and time of the assumption of responsibility for the vehicle, and the use to be made of the vehicle while the vehicle is being operated in interchange service. The carriers or their regular employees or agents may prepare a statement certifying that the vehicle is being operated under the terms of a written "interchange of equipment agreement" filed with the commission. The certificate must be signed by an authorized representative of each carrier that will participate in the interline service and shall fully describe the motor vehicle, the name or names of the driver or drivers, the date and time of the assumption of responsibility for the vehicle and the specific interchange point. Such a statement, if issued, may be carried in the vehicle in lieu of a copy of the interchange agreement.

(7) Connecting Carriers Considered As Owners. An authorized carrier receiving a vehicle in connection with a through movement under this section is considered the owner of the vehicle for the purpose of leasing the vehicle to other authorized carriers in furtherance of the movement to the destination or of the return of the vehicle after the movement is completed. (Eff. 9/26/76 Reg. 59 )

Authority: AS 42.07.141  
AS 42.10.010  
AS 42.10.080

- 3 AAC 64.020. Repealed (Eff. 9/26/76, Reg. 59) 1976
- 3 AAC 64.030. Repealed (Eff. 9/26/76, Reg. 59) 1976
- 3 AAC 64.040. Repealed (Eff. 9/26/76, Reg. 59) 1976
- 3 AAC 64.050. Repealed (Eff. 9/26/76, Reg. 59) 1976
- 3 AAC 64.060. Repealed (Eff. 9/26/76, Reg. 59) 1976
- ~~3 AAC 64.070. Repealed \_\_\_\_\_, 1976~~
- 3 AAC 64.080. Repealed (Eff. 9/26/76, Reg. 59) 1976
- 3 AAC 64.090. Repealed (Eff. 9/26/76, Reg. 59) 1976
- 3 AAC 64.100. Repealed (Eff. 9/26/76, Reg. 59) 1976.

AS 42.10.070

delete

3 AAC 64.140. Repealed (Eff. 9/26/76, Reg. 59) 1978

3 AAC 64.550 Definitions is amended by adding new paragraphs to read:

(14) "lease" means any agreement by which the owner of a vehicle transfer it to another person for a specified period or purpose and for a specified rent or other compensation ~~and~~ consideration

(15) "lessee" means a person entitled to possession of a vehicle under a lease, as defined in this section.

(Eff. 11/4/74, Reg. 52; am. 9/26/76, Reg. 59 )

pursuant to

- Authority: AS 42.07.121
- AS 42.07.141
- AS 42.10.070
- AS 42.10.080
- AS 42.10.090
- AS 42.10.110

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

November 5, 1976

Dear Members of the Regulation Review Committee:

The Department of Commerce and Economic Development has amended the regulation discussed below. A possible deviation from legislative intent is indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being interpreted or implemented. The department held a public hearing before adopting this amendment in Anchorage on February 18, 1976. Notice of proposed amendment was published in Anchorage, Fairbanks, Juneau, Cordova, Nome, and Bristol Bay newspapers and in the Tundra Times.

- \* 3AAC 66.010 Amended by adding a new subsection which requires common carriers by bus to obtain a certificate from the Alaska Transportation Commission in order to operate within the boundaries of a municipality unless the carrier has obtained a permit granted by a municipality with requirements relating to the licensure of carriers by bus substantially similar to those of the state. This regulation appears to be out of conformity with legislative intent as expressed in 42.15.061(h), which states that no certificate may be required from the Alaska Transportation Commission in order to operate a bus within a municipality.

Register, 59, October 1976

COMMERCE

3 AAC 66.010

3 AAC 66.010. CERTIFICATES. (a) <sup>A</sup> ~~No~~ common carrier by bus may <sup>101</sup> transport passengers, their baggage or express in the State of Alaska without first obtaining a certificate from the commission.

(b) The certificate required by this section must be prominently displayed in the carrier's place of business at all times, and none of the activities described in (a) of this section may be conducted by the carrier unless the certificate is displayed in this manner.

(c) Common carriers by bus operating under a franchise or permit granted by a municipality are not required to obtain a certificate from the Alaska Transportation Commission for transportation of passengers, their baggage, or express when the transportation is from one point within the municipality to another point within the municipality only, or to municipal property outside the municipal limits only, when that municipality has adopted regulating ordinances requiring substantially the following:

(1) the certificating requirements of AS 42.15.061 (a), (b), (c), (d), (e), (f) and (g);

(2) the filing of rates and rate schedules as provided in ~~Article 3, AS 42.15~~ with the municipal regulating body; <sup>AS 42.15.141 — 42.15.211</sup>

(3) registration of evidence of public protection as provided in ~~Article 4, AS 42.15~~ to be filed with the municipal regulating body;

(4) the adherence to the provisions of ~~Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~ AS 42.15.371, ~~381, 391, 401 and 411~~ with the municipal regulating body.)

(Eff. 12/28/69, Reg. 310; am. 9/19/76, Reg. 59)

- Authority: AS 42.07.121
- AS 42.15.011
- AS 42.15.021
- AS 42.15.061
- AS 42.15.421(5)
- AS 42.15.431

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

November 8, 1976

Dear Member of the Regulation Review Committee:

The Department of Commerce has adopted the regulations listed below. Possible deviations from legislative intent are indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being interpreted or implemented. Notice of proposed adoption of these regulations was published in newspapers in Anchorage, Fairbanks, and Juneau. Public hearings on these regulations were held in Anchorage on March 17, 1976, Fairbanks on February 26, 1976, and Juneau on March 2, 1974.

3AAC 95.010 Enumerates when sealed and competitive bids are required for construction contract entered into by ASHA. Excludes from the provisions of 3AAC 95 coverage of professionals and persons employed by ASHA to perform functions of a general contractor. Subsection defines the following terms: turnkey, design - construct, and new construction.

3AAC 95.020 Specifies minimum requirements relating to publication of notices of soliciting bids. Requires ASHA to maintain bid lists of general and specialty contractors. Requires ASHA to solicit bids for at least 30 days before a bid may be accepted.

3AAC 95.030 It requires bidders to submit an affidavit with their bids declaring whether or not a board member or an employee of ASHA has a financial, business, or familial interest in or with the bidder. Successful bidders are required to file another affidavit reiterating the same information.

3AAC 95.040 Specifies the work to be performed by ASHA in preparation for soliciting bids, specifies information which must be contained in the invitation to bid, and specifies the information which must be supplied in a bid submitted to ASHA.

3AAC 95.050 Specifies times for submission of sealed bids, submission of revised bids, and withdrawal of sealed bids.

3AAC 95.060 Provides that bids received after a closing time are late bids and shall be returned to the bidder without being considered.

3AAC 95.070 Specifies grounds for rejection of bids.

3AAC 95.080 Enumerates criteria which are to be taken into consideration along with the amount of the bid in determining who is to be awarded contract.

3AAC 95.090 An Alaskan bidder will be awarded a bid if it is not more than 5% higher than the lowest non-resident bid, and establishes criteria for determining who is an Alaskan bidder. Does this correctly implement the legislative intent embodied in AS 18.55.460? It states that ASHA shall use Alaskan professional and contractor services as far as practicable.

3AAC 95.100 Provides for award bids when bidders are equal in light of the criteria established by 3AAC 95.040 and 3AAC 95.080.

3AAC 95.110 Provides that a successful bidder will made a tentative award, which shall become final within a specified period of time if other bidders do not petition for review of the award.

3AAC 95.120 Provides that ASHA shall enter into a contract with a successful bidder in 15 days and provides for a course of action if the successful bidder fails to enter into a contract with ASHA.

## Attachment "E"

Register 57 <sup>COMED</sup> 1976

COMMERCE

3 AAC 95.010

## TITLE 3. COMMERCE

## PART 9. ALASKA STATE HOUSING AUTHORITY

CHAPTER 95. PURCHASING AND NEW  
CONSTRUCTION BIDDING  
PROCEDUREARTICLE 1. NEW CONSTRUCTION BIDDING  
PROCEDURESection

- 10. Contract By Sealed Competitive Bids
- 20. Solicitation of Bids
- 30. Conflict of Interest
- 40. Bid Procedure
- 50. Receipt of Bids
- 60. Late Bids
- 70. Rejection of Bids
- 80. Criteria For Awards
- 90. Alaska Bidder Preference
- 100. Tied Bids
- 110. Tentative and Final Awards
- 120. Contract

3 AAC 95.010. CONTRACT BY SEALED COMPETITIVE BIDS. (a)  
A construction contract entered into by ASHA for the purpose of new construction in an amount greater than \$2,500 will be based upon competitive and sealed bids or proposals. In addition, all contracts for a "turnkey" and "design-construct" type development will be entered into by ASHA on the basis of a competitive and sealed bid or proposal. All contracts for the purchase or lease of new construction that has been constructed under a turnkey or design-construct concept shall be governed by this section.

(b) Contracts for professional or technical services shall be excluded from the provisions of secs. 10 - 320 of this chapter. Contracts for "construction management" or "construction manager" shall be excluded from the provisions of secs. 10 - 320 of this chapter. "Construction management" describes the function performed for ASHA by a person, company or partnership that is known as "contract manager" that eliminates the need for a general contractor in a construction project. The contract manager, utilizing contract documents, including designs and specifications, performs the tasks of contracting with contractors, supervising the work of the contractors, and generally insure completion of a project that is in compliance with the contract document. A contract manager shall be ~~deemed~~ <sup>Accounted</sup> to perform professional or technical services.

~~(c) The following terms and phrases shall mean:~~

(c) *In this chapter*  
 (1) "turnkey" describes a type of construction where a bidder designs and builds a facility upon real property that it owns and then (i) conveys the completed facility and real property to ASHA at a predetermined purchase price or (ii) leases to ASHA the completed facility at a predetermined lease cost. ASHA is not viewed as an "owner" during construction. Further, ASHA does not usually provide any interim construction financing.

(d) *In this chapter*  
 (2) "design-construct" describes a type of construction where a bidder designs and builds a facility on real property owned by ASHA. ASHA is viewed as the owner through construction and may have all of the concomitant rights and liabilities of an owner. ASHA may also furnish interim financing.

(e) *In this chapter*  
 (3) "new construction" describes construction of a previously unbuilt facility or building. Rehabilitation on an existing facility or building is not new construction, unless the total cost of such rehabilitation on a particular existing facility or building is in excess of \$250,000. The construction of a previously unbuilt facility or building that utilizes modular or pre-built units is new construction.

(d) This chapter <sup>does</sup> ~~shall~~ not apply to construction of public buildings for lease to the state. (Eff. 1/1/76, Reg. 18.55.420)

Authority: AS 18.55.100(a)(4)  
 AS 18.55.100(a)(5)  
 AS 18.55.100(a)(9)  
 AS 18.55.420

3 AAC 95.020. SOLICITATION OF BIDS. (a) A bid will be solicited by publication in newspapers of general circulation in the state and by posting of the notice of the invitation. The invitation to bid will be published in a newspaper at least once a week for two consecutive weeks and will include publication in a newspaper published in Anchorage, Alaska. Notices will be posted, at least, in the main office of ASHA, Anchorage, Alaska, and at the offices of the Associated General Contractors, Anchorage, Alaska. In addition, notices will be posted in a public area in the municipality or community in which the construction will be located.

(b) Bids will, in ASHA's discretion, also be solicited by publication in trade journals or by sending notices by mail to prospective bidders. Bid lists of general contractors and specialty contractors will be maintained by ASHA and general contractors and specialty contractors, or others, are encouraged to make application to have their names included. The bid list shall periodically be updated to include new names and remove the names of contractors and specialty contractors who have ignored acknowledgement of the invitations to bid on at least two successive instances.

(c) Solicitations will be made for at least 30 days before the last day upon which a bid may be accepted by ASHA. (Eff. 1/1/76, Reg. 1.1)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420  
AS 18.55.460

3 AAC 95.030. CONFLICT OF INTEREST. (a) In addition to other requirements imposed on a bidder by this chapter, a bidder, in submitting his bids, shall declare in an affidavit whether or not a board member or employee of ASHA has a financial, business or familial interest in or with the bidder.

(b) A successful bidder shall execute an affidavit stating whether or not a board member or employee of ASHA has or will have any financial, business or familial interest, direct or indirect, in the contract or the proceeds of the contract. (Eff. 1/1/76, Reg. 1.1)

Authority: AS 18.55.080  
AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.040. BID PROCEDURE. (a) Prior to the issuance of an invitation to bid, ASHA will compile:

- (1) the scope of work and services requested;
- (2) if applicable, a legal, and a metes and bounds description of the real estate upon which the construction will be performed;
- (3) an estimated maximum cost for the construction;
- (4) if applicable, an estimated total purchase price;

- (5) if applicable, the estimated cost of a lease;
  - (6) if applicable, the value that will be placed upon the real property at the time of conveyance to the contractor;
  - (7) a projected time for construction;
  - (8) an estimated completion date for the construction;
  - (9) an analysis of the source of funding for the project, if known; and
  - (10) requirements for payment and performance bonds, as well as the errors and omissions and insurance coverages.
- (b) An invitation to bid will contain:
- (1) the date of the invitation;
  - (2) the last date and time which a bid will be accepted;
  - (3) a description of the general scope of work and services required;
  - (4) the location of the construction project;
  - (5) a description of the construction project on which a bid is being requested;
  - (6) identification of the location where specifications and other relevant information on the bid can be obtained; and
  - (7) any other information or documentation, including a bid bond, as may be required by ASHA for that particular bid.

(c) A bid submitted to ASHA, pursuant to an invitation to bid, must, in addition to any other requirements imposed on that particular bid, contain:

- (1) the name of the bidder;
- (2) if the bidder is a corporation, the name of the state in which the corporation is incorporated;
- (3) a statement as to whether the corporation is registered as a corporation in the state;

(4) a statement as to whether the corporation has paid all fees, taxes and other monetary requirements due to the state;

(5) if the bidder is not a corporation, the exact identity of its business form;

(6) if the bidder is a partnership, the identity of all partners with addresses;

(7) a credit statement of the partnership, or in the case of a corporation, a credit statement of the corporation;

(8) in the event that the bidder is neither a corporation nor a partnership, the credit statement of the bidder;

(9) a clear and unequivocal statement of the bid in specific response to the invitation and any qualifying or modifying provisions must be explicitly set forth;

(10) a brief, but adequate statement as to the bidder's proposal for securing a requisite work force and supplies for the construction and those areas of construction in which the bidder intends to use subcontractors and subcontracts;

(11) as to the "turnkey" or "design-construct" development, the bidder, in addition to all other requirements imposed on a bidder, shall also provide and itemize:

(A) the location of the real estate by legal, and a metes and bounds description;

(B) the ownership of the real estate;

(C) the price of the real estate;

(D) the price of the building construction;

(E) the price of the total completed project, including the real estate;

(F) rough sketches of the type and building plans;

(G) specifications of building materials;

(H) a statement as to zoning; and

(I) any other information that would be relevant under the invitation to bid.

(12) a statement that the bidder will comply with the payment and performance bonds requirements, as well as the errors and omissions and insurance coverages;

(13) an affirmative statement of compliance with Alaska and Federal Civil Rights Act and other equal opportunity provisions;

(14) a statement of similar work performed by the bidder for a period of five years before the bid; and

(15) any other information or documentation, including a bid bond, as may be required by ASHA for that particular bid. (Eff. 1/1/76, Reg. 1/1/76)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(9)  
AS 18.55.420

3 AAC 95.050. RECEIPT OF BIDS. (a) All sealed bids must be received by ASHA on or before the date and time set forth in the invitation to bid. Upon receipt of a sealed bid, ASHA will date and time stamp the bid and place the respective bid in a file of bids until opening. At the time and place specified in the invitation to bid, all sealed bids will be opened in public. The opening of bids, however, will commence within five minutes of the closing time established for receiving bids. A bidder will not be permitted to alter a bid after the scheduled bid opening time. A tentative award or final award will not be made at the time of the bid opening.

(b) Revised bids may be submitted. However, revised bids must be received by ASHA at least 48 hours prior to the date and time set for the receipt of bids. Such revised bids shall be delivered in a sealed container. Additionally, if the modification or revision is not explicit and if in any sense it is subject to misinterpretation, the revised as well as the original bid are subject to rejection.

(c) Sealed bids may be withdrawn on written or telegraphic request dispatched by the bidder in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the bidder is placed in the mail and postmarked prior to the time set for bid opening. Any bid guaranty of any bidder withdrawing its bid in accordance with the foregoing conditions will be promptly returned. (Eff. . / . / . . , Reg. . . )

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(9)  
AS 18.55.420

3 AAC 95.060. LATE BIDS. It is the responsibility of the bidder to insure that his bid is in the proper office of ASHA prior to the closing time established for receiving bids. Bids received after the scheduled closing time are late bids. Late bids will be returned, unopened, to the bidder. (Eff. . / . / . . , Reg. . . )

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.070. REJECTION OF BIDS. ASHA will, in its discretion, reject a bid:

- (1) when a bidder has failed to comply with the invitation requirements;
- (2) when a bidder has failed to perform on a previous contract with ASHA;
- (3) when a bidder qualifies or changes the terms and conditions of the invitation to bid in such a manner that the bid is not responsive to the purpose sought by ASHA in issuing an invitation to bid;
- (4) when the bid contains faulty specifications or insufficient information that, in the opinion of ASHA, makes the bid non-responsive to the invitation to bid;
- (5) when the bid is considered late;
- (6) when the lowest responsible bid received is in excess of funds available for construction;
- (7) when the bid is not signed;

(8) when the bidder has unpaid taxes due to the state or the U.S. Government;

(9) when there is a conflict of interest with the bidder and a board member or employee of ASHA; or

(10) when ASHA determines that the bid is not in the best interest of ASHA. (Eff. 7/1/76, Reg. 51)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.080. CRITERIA FOR AWARDS. An award of contract will be made to the lowest responsible bidder taking into consideration:

- (1) conformity with specifications;
- (2) terms for performance of the construction;
- (3) compliance with conditions imposed in the invitation to bid;
- (4) past performance of the bidder in performing similar projects for ASHA or others during the preceding five years;
- (5) the price offered;
- (6) the reputation for responsibility of the bidder;
- (7) the academic or professional credentials of the bidder;
- (8) in addition to the above criteria, the bid on a "turnkey" or "design-construct" development shall also be considered on the following basis:
  - (A) the location of the site;
  - (B) the price of the site and ASHA's ability to finance, purchase or lease the project;
  - (C) the design of the construction;
  - (D) the price of the buildings or units;

- (E) the total price of the total project;
- (F) the aesthetics of the projects;
- (G) the practicality of the project.
- (Eff. 1/1/76, Reg. 5. )

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.090. ALASKA BIDDER PREFERENCE. A bid will be awarded to an Alaska bidder if the bid is not more than five percent higher than the lowest non-resident bid. An Alaska bidder means a bidder who

- (1) holds a current Alaska business license;
- (2) submits a bid under the name appearing on the current Alaskan business license;
- (3) if a corporation, is registered to do business in the State of Alaska; and
- (4) has maintained a place of business in the state for a period of six months immediately preceding the date of the bid. (Eff. 1/1/76, Reg. 5. )

Authority: AS 18.55.100(a)(4)  
AS 18.55.420  
AS 18.55.460

3 AAC 95.100. TIED BIDS. If two or more bidders are tied, each of whom fully meets the bid conditions and the criteria established in Secs. 40 and 80 of this chapter, an award will be made as provided in this section. Tied bids involving Alaskan firms with non-Alaskan firms, after taking into consideration the five percent Alaska bidder preference, will be made first to the Alaska bidder. If a tie should still remain, the tie will be dissolved by a flip of a coin by the Executive Director of ASHA in the presence of the tied bidders or their designated agents or representatives. (Eff. 1/1/76, Reg. 5. )

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.110. TENTATIVE AND FINAL AWARDS. (a) A tentative award will be made by ASHA within 20 days after opening the bids. Notice of the tentative award will be forwarded to each bidder by certified mail, return receipt requested, on the date the tentative award is made.

(b) If no bidder files a petition for a hearing within the appropriate time as set forth in Sec. 270 of this chapter, the award will become final. If a petition is filed within the appropriate time, but an aggrieved bidder does not appear and participate in the hearing, the petition shall not be considered and the tentative award will become final. If an aggrieved bidder fails to file a notice of appeal to the superior court from the decision of the hearing officer under Sec. 270 of this chapter within the appropriate time, the tentative award will become final. (Eff. 7/1/76, Reg. 5.1)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(5)  
AS 18.55.100(a)(9)  
AS 18.55.420

3 AAC 95.120. CONTRACT. (a) After the tentative award is made final, ASHA and the successful bidder will enter into a contract within 15 calendar days.

(b) Upon the failure or refusal of the successful bidder to enter into a contract with ASHA that complies with the requirements of the invitation to bid, ASHA will, in its discretion, cancel the award. ASHA will then:

(1) make the award to the next lowest responsible bidder if the next lowest bidder does not have any, direct or indirect, financial relationship with the original lowest bidder;

(2) reject all bids; or

(3) submit a new invitation to bid.  
(Eff. 7/1/76, Reg. 5.1)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(5)  
AS 18.55.100(a)(9)  
AS 18.55.420

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

November 8, 1976

Dear Member of the Regulation Review Committee:

The Department of Commerce has adopted the regulations discussed below. The regulations are summarized in the most general terms, with only a few salient points mentioned. Following the summary of each article, regulations which might be out of conformity with legislative intent are described in greater particularity with reference to the statute(s) supposedly being interpreted or implemented. Notice of proposed adoption of these regulations was published in newspapers in Anchorage, Fairbanks, and Juneau. Public hearings on these regulations were held in Anchorage on March 17, 1976, Fairbanks on February 26, 1976, and Juneau on March 2, 1976.

3AAC 95.130 - 3 AAC 95.260 related to ASHA's procedures in the purchase of supplies, materials, equipment, contractual services, and leases of space. Salient points of these regulations are the following:

\*When the value of a purchase exceeds 300 dollars, competitive bids are required to be solicited. (3AAC 95.130)

\*De-centralized purchasing is authorized. (3AAC 95.140)

\*Competitive bidding may be dispensed with in an emergency (3AAC 95.150)

\*When the value of a purchase is between \$300 and \$2,500, ASHA is required to solicit three bids by telephone. (3AAC 95.170)

\*When the value of a purchase exceeds \$2,500, sealed bids are required to be solicited. (3AAC 95.180)

\*Late bids will not be considered (3AAC 95.200)

\*Contracts will be awarded to the lowest responsible bidder. (3AAC 95.200(a)). Characteristics of lowest responsible bidder are defined to include factors other than having submitted the lowest bid. (3AAC 95.220(b)).

\*Awards made to successful bidders are on a tentative basis, and become final on failure of other bidders to overturn the award. (3AAC 95.250)

\*Administrative appeal is afforded aggrieved bidders (3AAC 95.270)

\*The decision of the hearing officer is the final level of administrative review, i.e. exhausts administrative remedies (3AAC 95.270)

\*Aggrieved bidder must post a \$750 bond to get a hearing and if bidder loses, that money will be spent to pay costs of hearing (3AAC 95.280)

One might argue that 3AAC 95.160, along with sections in other chapters of Title 3 which embody a similar approach (3AAC 96.30, 3AAC 96.90, 3AAC 97.70, 3AAC 97.190, 3AAC 97.040(c)(3), 3AAC 97.050(c)(3), 3AAC 95.030, 3AAC 96.040, (c)(3), 3AAC 96.050(c)(3), 3AAC 96.100(c)(3), 3AAC 96.110(c)(3), 3AAC 97.160(c)(3), and 3AAC 97.170(c)(3)), might be out of conformity with the legislative intent of AS 18.55.080, which reads as follows:

MEMBERS OR EMPLOYEES PROHIBITED FROM ACQUIRING INTEREST IN PROJECTS. No member or employee of the authority shall acquire an interest, direct or indirect, in a housing or public project, or in property or a contract for materials or services included or planned to be included in a project. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the authority. Failure to make disclosure constitutes disclosure in office.

The regulations cited above would require persons who are awarded ASHA contracts, or are retained as real estate appraisers or realtors by ASHA, or in certain instances even bid on ASHA contracts, to declare in an affidavit whether or not a board member or employee of ASHA has a financial, business, or familial interest in or with the bidder, appraiser, or realtor.

AS 18.55.080 provides that an ASHA board member or employee must immediately disclose any interest he might have in a contract for materials or services. Was this the sole method the legislature envisioned for implementing its intent that there be no conflicts of interest between ASHA and its suppliers? Or does the intent of this section encompass requiring suppliers to execute such affidavits?

Further, 3AAC 95.230, providing for a preference for Alaskan bidders, might be out of conformity with the legislative intent of AS 18.55.460, which reads as follows:

PREFERENCE FOR STATE PROFESSIONAL AND CONTRACTOR'S SERVICES. In planning, designing, and constructing projects under secs. 300-470 of this chapter, the authority shall use Alaskan professional and contractor services as far as practicable and shall encourage the use of local building materials.

3AAC 95.230 provides that a bid will be awarded to an Alaskan bidder if the bid is not more than five per cent more than the lowest non-Alaskan bid. This regulation defines an Alaska bidder as one who, among other things, has maintained a place of business in the state for a period of six months immediately preceding the bid. Is the provision for an award to an Alaskan whose bid is five percent higher a correct implementation of the intent of the legislature? What about the regulation's definition of who qualifies as an Alaskan under this regulation?

## TITLE 3. COMMERCE

## PART 9. ALASKA STATE HOUSING AUTHORITY

CHAPTER 95. PURCHASING AND NEW  
CONSTRUCTION BIDDING  
PROCEDURE

## ARTICLE 2. PURCHASING

Section

- 130. Competitive Bids
- 140. Purchasing Centralized at ASHA
- 150. Emergency Purchases
- 160. Conflict of Interest
- 170. Purchases Greater than \$300
- 180. Purchases Greater than \$2,500
- 190. Receipt of Bids
- 200. Late Bids
- 210. Rejection of Bids
- 220. Selection of Successful Bidder
- 230. Alaska Bidder Preference
- 240. Tied Bids
- 250. Tentative and Final Awards
- 260. Contract

3 AAC 95.130. COMPETITIVE BIDS. (a) Competitive bids will be solicited by ASHA in the purchase of all supplies, materials, equipment, contractual services and leases of space when the dollar value exceeds \$300, unless:

- (1) there is no competition;
- (2) rates are fixed by law or ordinance; or
- (3) it is for professional services such as consultant engineers, architects, attorneys or appraisers.

(b) The Executive Director of ASHA shall have the discretion and make the decision as to the form, terms and conditions, and the extent of solicitation on any bid, provided that this discretion and decision is consistent with Secs. 130 - 260 of this chapter.

(c) The provisions of this chapter ~~shall~~<sup>will</sup> not be followed if ASHA can purchase, in the opinion of the Executive Director of ASHA, the goods or services at a fair and competitive price through either a United States Department of Housing and Urban

Development Consolidated Supply program/contract or a State of Alaska Consolidated Supply program/contract.  
(Eff. 7/15/76, Reg. 57)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(9)  
AS 18.55.420

3 AAC 95.140. PURCHASING CENTRALIZED AT ASHA. (a) Purchasing under this chapter will be centralized and conducted from the main office of ASHA in Anchorage, Alaska, except as provided in (b) of this section.

(b) The Executive Director of ASHA will, in his discretion, delegate, in writing, to an employee not located at the main office of ASHA, the right to solicit and purchase specified supplies, materials, equipment and services. These goods or services will be solicited and purchased by the employee if, in the opinion of the Executive Director of ASHA, they can be more economically or efficiently purchased through the employee. An employee authorized to solicit and purchase goods and supplies will obtain competitive bids and then award the purchase to the lowest responsible bidder according to the procedures in this chapter. (Eff. 7/15/76, Reg. 57)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.150. EMERGENCY PURCHASES. Under specific written approval from the Executive Director of ASHA, goods and services may be purchased or contracted without following the competitive bid procedures of this chapter, provided the purchase or contract is an emergency. An emergency shall be a situation where life, health and property are threatened with immediate injury, destruction, peril or substantial inconvenience. Upon making an emergency purchase, the facts constituting the emergency and the purchase will be set forth in writing. (Eff. 7/15/76, Reg. 57)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.160. CONFLICT OF INTEREST. (a) On the purchase or contract for goods or services in an amount between \$300 and \$2,500, the successful bidder shall be required to execute an affidavit indicating whether or not a board member or employee of ASHA has a financial, business or familial interest in or with the bidder or the proceeds of the contract.

(b) On the purchase or contract for goods or services in an amount greater than \$2,500, the bidder in submitting his bid shall declare in an affidavit whether or not a board member or employee of ASHA has a financial, business or familial interest in or with the bidder.

(c) The successful bidder shall also execute an affidavit indicating whether or not a board member or employee of ASHA has or will have a financial, business or familial interest, direct or indirect, in the purchase or contract or the proceeds of the contract. (Eff. 7/23/76, Reg. 5.?)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.170. PURCHASES GREATER THAN \$300. (a) Telephonic bids will be solicited if the purchase, including construction, is estimated to be between \$300 and \$2,500. The telephonic solicitation will be directed to at least three suppliers or sellers of the services or goods. The solicitation will be directed to those suppliers, sellers or purveyors located within the area where the services or goods will be used. A written record shall be maintained by ASHA of all suppliers, sellers and purveyors that are telephonically contacted. The record shall indicate, by illustration and not limitation,:

- (1) the name of the supplier, seller or purveyor;
- (2) the name of the person to whom ASHA spoke with;
- (3) the date of the contract;
- (4) the date the bid must be received by ASHA;
- (5) the amount of the bid, if given by telephonic conversation; and
- (6) a summary of the telephonic conversation.

(b) Other than the specific conditions or terms set out in this section, a bid and award made under this section shall be governed by the terms and conditions of Secs. 130 - 260, 270 - 320 of this chapter, except that a bidder may submit its bid by telephonic conversation. (Eff. 7/23/76, Reg. 5.?)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.180. PURCHASES GREATER THAN \$2,500. (a) Sealed bids will be solicited if the purchase is estimated to exceed \$2,500. Bids will be solicited by publication in newspapers of general circulation in the state and by posting of the notice of solicitation in a prominent place.

(b) A solicitation for a bid will be published in a newspaper at least once a week for two consecutive weeks and will include publication in a newspaper that publishes in Anchorage, Alaska. Notice will be posted, at least, in the main office of ASHA, Anchorage, Alaska, or in a public area in the municipality where the goods or services are to be solicited.

(c) Bids will, in ASHA's discretion, also be solicited by publication in trade journals or by mailing of the invitation to bid to prospective bidders. Bid lists of general contractors, specialty contractors, suppliers, etc., shall be maintained by ASHA and general contractors, specialty contractors, suppliers, or others, are encouraged to make application to have their names included. The bid list shall periodically be updated to include new names and remove the names of contractors, specialty contractors, suppliers, or others, who have ignored acknowledgement of the invitations to bid on at least two successive occasions. Solicitations will be made for at least 20 days before the last day upon which a bid may be accepted by ASHA.

(d) The invitation to bid will contain:

- (1) the date of the invitation to bid;
- (2) the date that the contractual services, or items purchased are to be performed or delivered;
- (3) the destination point and the method of transportation;
- (4) the quantity of items to be purchased and the unit of measure of the items to be purchased;
- (5) the description of the type and quality of the item to be purchased, including standard specifications where it is feasible;
- (6) if additional bids are requested for alternative quantities or qualities of the same item, the solicitation will contain the word "alternate" and the specific alternative bids that are requested;
- (7) the time and place of the opening of the bids;

(8) identification of location where the necessary bid forms or additional information may be obtained; and

(9) any other information or documentation, including a bid bond, as may be required by ASHA for that particular bid.

(e) A bid submitted to ASHA, pursuant to an invitation to bid, must, in addition to any other requirements imposed on that particular bid, contain:

(1) the name of the bidder;

(2) if the bidder is a corporation, the name of the state in which the corporation is incorporated;

(3) a statement as to whether the corporation is registered as a corporation in the state;

(4) a statement as to whether the corporation has paid all fees, taxes and other monetary requirements due to the state;

(5) if the bidder is not a corporation, the exact identity of its business form;

(6) if the bidder is a partnership, the identity of all partners with addresses;

(7) a brief, but adequate statement as to the bidder's proposal for securing a requisite work force and supplies for the construction and those areas of construction in which the bidder intends to use subcontractors and sub-contracts; and

(8) a clear and unequivocal statement of the bid in specific response to the invitation to bid and any qualifying or modifying provisions must be explicitly set forth.

(f) In the discretion of ASHA, the bid shall also contain:

(1) a credit statement of the partnership, or in the case of a corporation, a credit statement of the corporation;

(2) in the event that the bidder is neither a corporation nor a partnership, the credit statement of the bidder. (Eff. 7/1/76, Reg. 57)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(9)  
AS 18.55.420

3 AAC 95.190. RECEIPT OF BIDS. (a) All sealed bids must be received by ASHA on or before the date and time set forth in the invitation to bid. Upon receipt of each sealed bid, ASHA will date and time stamp the bid and place the respective bid in a file of bids until opening. At the time and place specified in the invitation to bid, all sealed bids will be opened in public. The opening of bids, however, shall commence within five minutes of the closing time established for receiving bids. A bidder will not be permitted to alter a bid after the scheduled bid opening time. A tentative award or final award will not be made at the time of the bid opening.

(b) Revised bids may be submitted. However, revised bids must be received by ASHA at least 48 hours prior to the date and time set for the receipt of bids. Such revised bids shall be delivered in a sealed container. Additionally, if the modification or revision is not explicit and if in any sense it is subject to misinterpretation, the revised as well as the original bid are subject to rejection.

(c) Sealed bids may be withdrawn on written or telegraphic request dispatched by the bidder in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the bidder is placed in the mail and postmarked prior to the time set for bid opening. Any bid guaranty of any bidder withdrawing its bid in accordance with the foregoing conditions will be promptly returned. (Eff. 7/1/76, Reg. 57)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

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3 AAC 95.200

3 AAC 95.210

3 AAC 95.200. LATE BIDS. It is the responsibility of the bidder to insure that his bid is in the proper office of ASHA prior to the closing time established for receiving bids. Bids received after the scheduled closing time are late bids. Late bids will be returned, unopened, to the bidder. (Eff. 7/13/76, Reg. 59)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.210. REJECTION OF BIDS. ASHA will, in its discretion, reject bids:

(1) when a bidder has failed to comply with the invitation requirements;

(2) when a bidder has failed to perform on a previous contract with ASHA;

(3) when a bidder qualifies or changes the terms and conditions of the invitation to bid in such a manner that it is not responsive to the purpose sought by ASHA in issuing an invitation to bid;

(4) when the bid contains faulty specifications or insufficient information that, in the opinion of ASHA, makes the bid non-responsive to the invitation to bid;

(5) when the bid is late;

(6) when the lowest responsible bid received is in excess of funds available;

(7) when the bid is not signed;

(8) when the bidder has unpaid taxes due to the state or the U.S. Government;

(9) when there is a conflict of interest with the bidder and a board member or employee of ASHA; or

(10) when ASHA determines that the bid is not in the best interest of ASHA. (Eff. 7/13/76, Reg. 59)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

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3 AAC 95.220

3 AAC 95.230

3 AAC 95.220. SELECTION OF SUCCESSFUL BIDDER. (a) Purchases requiring competitive bids under Secs. 130 - 260 of this chapter will be awarded, if at all, to the lowest responsible bidder, taking into consideration:

- (1) conformity with the specifications;
- (2) terms of delivery;
- (3) compliance with conditions imposed in the invitation to bid;
- (4) responsibility of the bidder;
- (5) price offered; and
- (6) compliance with all requirements specified in Secs. 130 - 260 of this chapter.

(b) The lowest responsible bidder is the bidder who submits the lowest price and who has the financial ability, integrity, trustworthiness, skill, judgment, experience, and the necessary facilities and equipment to satisfactorily complete the contract. (Eff. 7/1/76, Reg. 59)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(9)  
AS 18.55.420

3 AAC 95.230. ALASKA BIDDER PREFERENCE. A bid will be awarded to an Alaska bidder if the bid is not more than five percent higher than the lowest non-resident bid. An Alaska bidder is defined as one who:

- (1) holds a current Alaska business license;
- (2) submits a bid under the name appearing on the current Alaskan business license;
- (3) if a corporation, is registered to do business in the state; and
- (4) has maintained a place of business in the state for a period of six months immediately preceding the date of the bid. (Eff. 7/1/76, Reg. 59)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420  
AS 18.55.460

3 AAC 95.240. TIED BIDS. If two or more bidders are tied, each of whom fully meets the bid conditions and the criteria established in Sec. 220 of this chapter, an award will be made as provided in this section. Tied bids involving Alaska resident bidders with non-resident bidders, after taking into consideration the five percent Alaska bidder preference, will be made first to the Alaska bidder. If a tie should still remain, the tie will be dissolved by a flip of a coin by the Executive Director of ASHA in the presence of the tied bidders or their designated agents or representatives. (Eff. 1/1/76, Reg. 1/1/76)

Authority: AS 18.55.100(a)(4)  
AS 18.55.420

3 AAC 95.250. TENTATIVE AND FINAL AWARDS. (a) A tentative award will be made by ASHA within ten days after opening the bids. Notice of the tentative award will be forwarded to each bidder by certified mail, return receipt requested, on the date the tentative award is made.

(b) If no bidder files a petition for a hearing within the appropriate time as set out in Sec. 270 of this chapter, the award shall become final. If a petition is filed within the appropriate time, but an aggrieved bidder does not appear and participate in the hearing, the petition shall not be considered and the tentative award will become final. If an aggrieved bidder fails to file a notice of appeal to the superior court from the decision of the hearing officer under Sec. 290 of this chapter within the appropriate time, the tentative award will become final. (Eff. 1/1/76, Reg. 1/1/76)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(5)  
AS 18.55.100(a)(9)  
AS 18.55.420

3 AAC 95.260. CONTRACT. (a) After the tentative award is made final, ASHA and the successful bidder will enter into a contract within ten days.

(b) Upon the failure or refusal of the successful bidder to enter into a contract with ASHA that complies with the requirements of the invitation to bid, ASHA will, in its discretion, cancel the award. ASHA will then:

(1) make the award to the next lowest responsible bidder that does not have any, direct or indirect, financial relationship with the original lowest bidder;

(2) reject all bids; or

(3) submit a new invitation to bid.  
(Eff. 1/1/76, Reg. 18.55.100)

Authority: AS 18.55.100(a)(4)  
AS 18.55.100(a)(5)  
AS 18.55.100(a)(9)  
AS 18.55.420

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

January 19, 1977

Dear Member of the Regulation Review Committee:

The Board of Pharmacy has adopted regulations relating to the compounding and dispensing of drugs in hospital pharmacies and drug rooms. The salient points of these regulations will be summarized below and possible deviations from legislative intent noted and discussed.

Summary

12 AAC 52.100 - 12 AAC 52.140 develop a procedure whereby "non-controlled legend drugs," meaning drugs bearing on the label the legend "TO BE DISPENSED ONLY ON OR BY THE PRESCRIPTION OF A PHYSICIAN," may be prepared and packaged in advance by the pharmacist, and then dispensed by emergency room personnel on the hospital's staff on the written or telephonic instructions of a physician.

Comment

The authority for these regulations is apparently AS 08.80.390(a), which reads as follows:

"A hospital, clinic, nursing home, infirmary or related facility which dispenses drugs for outpatient treatment shall have a licensed pharmacist in charge of the dispensary, except that prescriptions may be compounded and dispensed by or under the supervision of the prescribing physician." (Underlining supplied)

The aforementioned is apparently an exception to the general rule established by AS 08.80.340, which reads:

"No person except a licensed physician or a licensed intern pharmacist under the direct supervision of a licensed pharmacist may compound and dispense the prescription of a physician. However, this section does not limit the authority of a licensed medical doctor to compound and dispense medicinal preparations."

TO: Regulation Review Committee  
January 19, 1977  
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In short, the Board of Pharmacy is interpreting the language of AS 08.80.390(a), "under the supervision of the prescribing physician," to mean that written or telephonic instructions are sufficient to constitute supervision, and that the physician need not be physically present, at least where the drugs have been compounded and packaged beforehand by a licensed pharmacist. Is this what the Legislature intended?

ARCC

Attachment "H"

Register 60, Jan, 1976 ~~Continued~~ 12 AAC 52.100  
~~Economic Development~~ 12 AAC 52.120

ARTICLE 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 52. BOARD OF PHARMACY

ARTICLE 2. HOSPITAL PHARMACIES

Section

- 100. Preparation of list of non-controlled legend drugs.
- 110. Prepackaging non-controlled legend drugs.
- 120. Labeling prepackaged non-controlled legend drugs.
- 130. Supervision of prescribing physician; procedure for delivery to patient of prepackaged, non-controlled legend drugs.
- 140. Pharmacist in charge of hospital pharmacy, or hospital drug room.

12 AAC 52.100. PREPARATION OF LIST OF NON-CONTROLLED LEGEND DRUGS. The licensed pharmacist or licensed consultant pharmacist in charge of the hospital pharmacy or drug room, in consultation with the hospital's medical staff, shall prepare a list of non-controlled legend drugs which may be delivered to our patients receiving emergency treatment when a licensed pharmacist is not on duty and the prescribing physician is not present. (Eff. 12/17/76, Reg. 63 )

Authority: AS 08.80.030 (4) (8) and  
AS 08.80.390 1

12 AAC 52.110. PREPACKAGING NON-CONTROLLED LEGEND DRUGS. Licensed pharmacists may prepackage non-controlled legend drugs identified on the list prepared under sec. 100 of this chapter. There shall be no more than six doses of the drug in each prepackaged container. (Eff. 12/17/76, Reg. 60 )

Authority: AS 08.80.030 (4) (8) and  
AS 08.80.390 1

12 AAC 52.120. LABELING PREPACKAGED NON-CONTROLLED LEGEND DRUGS. (a) Drugs prepackaged under sec. 110 of this chapter shall be labeled by the pharmacist at the time of packaging.

(b) The prescription label or unit dose package label must contain:

- (1) a blank space for the name of the patient;
- (2) a blank space for the name of the prescribing physician;
- (3) the name of the drug;
- (4) the strength of the drug;
- (5) the expiration date of the drug, if applicable;
- (6) the lot number of the drug;
- (7) the date of prepackaging;
- (8) a blank space for the date of delivery to patient;
- (9) a prescription number;
- (10) initials of the pharmacist who prepackaged the drug;

PROFESSIONAL AND VOCATIONAL REGULATIONS

- (11) the name and address of the hospital;
- (12) directions to the patient or, if not predetermined, a blank space for special instructions of the prescribing physician; and
- (13) a blank space for the name or initials of the person delivering the drug. (Eff. 12/17/76, Reg. 60 )

Authority: AS 08.80.030<sup>(4)</sup> <sup>and</sup> (8);  
AS 08.80.390

12 AAC 52.130. SUPERVISION OF PRESCRIBING PHYSICIAN; PROCEDURE FOR THE DELIVERY TO PATIENT OF PREPACKAGED, NON-CONTROLLED LEGEND DRUGS. (a) If a licensed pharmacist is not on duty, emergency room personnel may deliver non-controlled legend drugs, prepackaged in accordance with sec. 100-120 of this chapter, to a person receiving emergency out-patient treatment on receiving an order from a licensed physician. The physician's order may be by written or telephonic communication. No more than one prepackaged container of the same drug may be delivered to a person receiving emergency out-patient treatment, unless more than one package is required to sustain the patient until the first available pharmacist is on duty in the community.

(b) ~~When~~ When delivering drugs under this section, the person ~~so doing~~ shall

(1) complete the label affixed to the container with all required information except that the name and strength of the drug may be deleted on order of the prescribing physician; and

(2) prepare a record of delivery which shall include all of the information listed in sec. 120 of this chapter.

(c) The record prepared under (b) <sup>of this section</sup> (2) shall be given to the pharmacist in charge of the hospital pharmacy at the beginning of the pharmacist's next duty day.

(d) ~~Nothing in this section shall be construed so as to~~ <sup>This section does not</sup> authorize other than emergency room personnel on the hospital's staff to deliver non-controlled legend drugs to out-patients receiving emergency treatment.

(e) ~~Nothing in this section shall be construed so as to~~ <sup>This section does not</sup> authorize the delivering of controlled legend drugs by any person not authorized by law to dispense controlled legend drugs. (Eff. 12/17/76, Reg. 60 )

Authority: AS 08.80.030<sup>(4)</sup> <sup>and</sup> (8);  
AS 08.80.390

12 AAC 52.140. PHARMACIST IN CHARGE OF HOSPITAL PHARMACY.

(a) The pharmacist in charge of the hospital pharmacy shall within a reasonable time record all drugs delivered to out-

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patients under sec. 130 of this chapter in the pharmacy record book maintained for the recording of all medication delivered from the emergency room under this chapter.

(b) The entry ~~is~~ made, <sup>under (a) of this section must</sup> ~~shall~~ include logging the prescription number and all information required by the record of delivery prepared under sec. 130 (b) (2) of this chapter and ~~shall~~ <sup>must</sup> be shown as a completed prescription. HND

(c) The pharmacist in charge of the hospital pharmacy shall determine what constitutes an adequate supply of pre-packaged, non-controlled legend drugs for use under the provisions of this article. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030 (4) <sup>and</sup> (8)  
AS 08.80.390

ARTICLE 3. GENERAL PROVISIONS

12 AAC 52.900. DEFINITIONS. In this chapter unless the context otherwise requires

Publisher:  
Paragraphs  
(1) and (2)  
remain  
unchanged.

(3) "completed prescription" means the prescribed drug has been delivered to the patient, on a physician's order, that all blank spaces on the label have been filled in, and a record of 60 doing has been given to the pharmacist so he may file the prescription as required by law;

(4) "deliver to patient" means completing the blank spaces on the label of the prepackaged drug and actually handing the package to the patient, or the patient's representative;

(5) "dose" means the amount of medication that is to be given at one specific time, as determined by the physician;

(6) "emergency room personnel" means those employees of the hospital who are designated by the administrator of the hospital, or by the personnel committee of the hospital, to be employed in the emergency room of the hospital for the purpose of administering emergency treatment to patients;

(7) "non-controlled legend drug" means any drug that bears the legend on the label "TO BE DISPENSED ONLY ON OR BY THE PRESCRIPTION OF A PHYSICIAN", but not drugs that have been classified as CONTROLLED SUBSTANCES under the Federal Controlled Substances Act of 1970 <sup>(21 USC § 801 et seq.)</sup>;

(8) "pharmacy record book" means a book kept for the sole purpose of logging all information pertinent to the delivery of non-controlled legend drugs under sec. 100-140 of this chapter;

(9) "physician's order" means an order given to the emergency room personnel by a physician licensed to practice in Alaska or recognized by the hospital as a physician who may practice medicine in the hospital;

(10) "prepackage" means placing in a container that meets federal and state qualifications as a legal container, not more than six doses of a non-controlled legend drug and affixing a label to the container that includes all of the in-

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formation required under section 120 of this chapter;  
(11) "present" means physically present in the  
emergency room of the hospital with the patient. (Eff.  
12/17/76, Reg. 60 )

Authority: AS 08.80.030 (4)  
AS 08.80.390

