

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10163 ADMINISTRATIVE REGULATION REVIEW

Mr. Steven LaCroix
April 5, 2001
Page 3

Before submitting applications for aquatic farm permits, ADF&G's Commissioner wrote that shellfish farmers could harvest shellfish resources as part of their operations and that "property rights to 'standing stocks' pass to the permittee with the lease, operations permit and stock acquisition permit." Earlier correspondence by ADF&G personnel indicate that "brethren in Com Fish are doing all they can to try and kill all the farm applications we got for things like geoducks . . . I guess they just don't accept that the Legislature passed the Aquatic Farm Act and the AG's Office says its all legal and constitutional."

Earlier the department said that the "amount of resource that would be lost to the 'public' was miniscule, so let them have the standing crop as part of the act of 'farming'..." The department was quite certain in its position:

Acquisition permits allow harvest and direct sale of wild stock, if that wild stock is within the boundaries of a permitted aquatic farm site. We have discussed the legality of this at length with the AG's office and within the mariculture program at HQ. Having established a precedent ... in Southeast, it would be difficult for the department to significantly change its permitting practices at this point in the permit review process. Simply put, the standing stock (pre-existing wild stock) on a leased and permitted aquatic farm site becomes the property of the aquatic farm site operator, to be disposed of in any legal manner. This includes commercial harvest and sale. (Emphasis added.)¹

¹ The quotations and citations to department statements that are in this letter have all been taken from documents that have been admitted into the record of this case, and are direct quotes from ADF&G staff.

Mr. Steven LaCroix
April 5, 2001
Page 4

ADF&G is alluding to other aquatic farms that harvest and sell all of the littleneck clam resource on the aquatic farm site.

At oral argument, the state assistant attorney general referenced Article 8, section 3 (common use), and section 15 (exclusive right of fishery prohibited except for limited entry and aquaculture). The assistant attorney general stated in part:

In the state's view, if the department were to authorize an aquatic farmer to make any use they chose of a wild resource on a farm site, merely by issuing an aquatic farm operating permit, or a stock acquisition permit, the department would be violating both these clauses of the constitution. That is because the appellants would be given the right to occupy a parcel of land and everything on the land including these sedentary geoduck clams, and those wild resources would be privatized. Then they would be able to exclude all other and have the exclusive right to harvest geoduck clams that are on their farm site.

You correctly have observed that ADF&G is already giving at least one on bottom aquatic farmer unfettered access to littleneck clams to do what ever the farmer wants with them (i.e. sell them). Apparently, the Department of Law and ADF&G do not have a problem with arguing that you cannot use wild geoduck stock on your sites, but already-authorized littleneck clam farmers can.

The assistant attorney general went on to say at oral argument:

However, if you say for the sake of argument, that the Aquatic Farm Act is the statutory scheme that provides for limited entry into aquaculture, the state again argues

that it hasn't been done in such a way to insure that it has the least possible impact on the common use clause and other open access values in the constitution. In [citing cases], the Alaska Supreme Court said that in reviewing legislation that burdens the equal access clause of article 8, the purpose of the burden must be at least important and the means used to accomplish the purpose must be divined the least possible infringement on article 8's open access values.

Frankly, the state doesn't believe that the exclusive right to fishery clause were probably contemplated by the legislature when it passed the aquatic farm act. And the reason for this is that the aquatic farm act, if you read the legislative history, talks about suspended culture, it doesn't talk about on bottom farming. In fact, in the appellants' brief they talk about the fact that the aquatic farm act basically took provisions out of the department's regulations and put them into statute to provide the frame work for issuing an operating permit for aquatic farming. I think that that's good evidence that they probably weren't considering all these interesting constitutional impacts that on bottom farming presents.

The appellants have offered no explanation of how their proposed use of wild stock on a farm site can be done in a way that is consistent with the open access values of article 8 in the constitution and how the statutes if read in the way they are proposed can be distinguished with other similar statutes that have been struck down by the Alaska Supreme court as violating the common use or exclusive rights clauses.

This position by the Department of law at oral argument seems to directly contradict its earlier positions. It certainly raises at least the question of whether the argument by this one assistant attorney general had been reviewed internally in the Department of Law before it was made.

Statutes enacted by the legislature have a presumption of constitutionality, according to the Department of Law. Moreover, when the Alaska legislature passed the Aquatic Farm Act, the Department of Law conducted an extensive review of the bill and found only policy questions, but no legal problems.

In a 1986 opinion (663-86-0453), the attorney general's office wrote that when "examining whether a state statute is constitutional, the first step is an acknowledgement of the presumption followed with virtual uniformity by the courts that favors the validity of an act of the legislature and that dictates that all doubts must be resolved in support of an act." Id. (citing 2A N. Singer, Sutherland Statutory Construction § 45.11 (4th ed. 1984)).

The opinion went on to state that the "Alaska Supreme Court has recognized the 'well-established rule of statutory construction' that if possible courts should construe statutes to avoid unconstitutionality." Id., quoting Kimoktoak v. State, 584 P.2d 25, 31 (Alaska 1978). "That rule recognizes that the legislature, like the courts, is pledged to support the state and federal constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits." Id.

The Department of Law stated that when examining a statute, "any doubts about the validity of the statute must be resolved in favor of its constitutionality." Id.

Mr. Steven LaCroix
April 5, 2001
Page 7

In another earlier opinion, the Office of the Attorney General wrote that there "is a heavy presumption in favor of the constitutionality of any statute. (No. J-66-829-81, Sept. 1981, citing Sutherland Statutory Construction § 45.11.) "The law strongly favors the construction of statutes to be consistent with constitutional requirements." Id., citing State v. Sundberg, 611 P.2d 44 (Alaska 1980); Summers v. Anchorage, 589 P.2d 863 (Alaska 1979). "According to Sutherland: It has even been said that 'a strained construction is not only permissible, but desirable if it is the only construction that will save constitutionality.'" Id., quoting Sutherland Statutory Construction § 45.11 at 34 (footnote omitted).²

Department of Law's Duties

AS 44.23.020(b) sets for the duties and powers of the Department of Law and provides, in part, that the attorney general shall:

(2) represent the state in all civil actions in which the state is a party;

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

² It should also be noted that the Attorney General, in Opinion A66-411-81 (June 1981), advised ADF&G: "When 'shall' is construed to be directory, the idea of permission is not involved. The legislature directs the course of action to be taken and the person or body undertaking to proceed under the statute is vested with no discretion to vary or omit parts or all of the designated procedure." Id., citing D. Sutton, 'Use of 'Shall' in Statutes', Sutherland Statutory Construction, Vol. 1A at 504 (4th ed. C.D. Sands 1975). In this case, AS 16.40.105 states "the commissioner shall issue permits under AS 16.40.100." ADF&G has specifically not followed this directive, and again the Department of Law is not supporting or defending the legislature's directive.

(4) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature. ...

There is not a great deal of interpretation of this broad statute by the courts. In State v. Breeze, 873 P.2d 627, 632 (Alaska App. 1994), the court found it appropriate for the attorney general, in his discretion, to disqualify himself from pursuing a violation of law, and appoint a special prosecutor. There, the attorney general believed that a special prosecutor was necessary because a conflict existed if the attorney general pursued a claim. Id. (special prosecutor necessary to "maintain public confidence in the judicial process" and assure prosecution is "without bias or any appearance of impropriety.")

In Alaskans for a Common Language, Inc. v. Kritz, 2000 WL 772905 (Alaska 2000), sponsors of an initiative that required the government to use English, sought to intervene to a challenge to the initiative. The Governor politically opposed the initiative and the Department of law questioned the constitutionality of the initiative.

The court stated the rule that the governor has a duty to defend a law enacted by initiative, which duty is executed by the attorney general. The court, however, cited to circumstances that could raise questions in the public's mind as to whether the executive branch is committed to defending the constitutionality of the initiative with conviction and vigor.

The court wrote, "based on the presumption of adequate government representation, we presume that the Attorney General's

Mr. Steven LaCroix
April 5, 2001
Page 9

Office would not fail to defend the constitutionality of the initiative energetically and capably." Id. at 5.

The court found that the initiative's sponsors could intervene to argue their interests in court after writing that "the Attorney General's Office's questions about the [initiative], could create an appearance of adversity. Every strategic decision made by the Attorney General's Office in defending the legislation might be publicly questioned and second-guessed by the initiative's sympathizers." Id. "That this suspicion may be unfounded does not make it less inevitable." Id.

In this case, there is no other intervenor as an Appellee (on the state's side) to take over argument that the state is making here. The state warmly welcomed an amicus brief by SARDFSA, which represents a small group of divers in Southeast Alaska dive fisheries.

The attorneys at the Legislative Affairs Agency would only be notified that the attorney general's office pronounced a statute unconstitutional if notified by a court's published decision or by the attorney general's office by way of a written opinion. Therefore, the LAA has no apparent knowledge of the Department of Law's position on its constitutional concerns about the Aquatic Farm Act in this case.

I attach a portion of the Department of Law's Civil Manual ("DOL Manual"). This manual sets forth the internal policies and procedures that Department of Law attorneys apparently must adhere to. Several portions of this manual are relevant to its statutory duties and how the Department interprets those duties.

"If a prior opinion or memorandum of advice is overruled, the reason for that action must be expressly stated and the opinion or memorandum of advice being superseded must be identified clearly." Id. at page 15. As indicated above, prior opinions of the Department of law

were superceded in this case, and this provision of the DOL Manual do not appear to have been followed in this case.

The Department of Law is to apply "the presumption of constitutionality" of a statute and assistant attorney generals "should not lightly opine that an existing statute or regulation is unconstitutional." DOL Manual page 19. It appears that this policy was not followed in this case.

"All opinions in which we say a statute or regulation 'is' unconstitutional must be 'formal' opinions and must be signed by the attorney general or deputy attorney general. We should not advise the client agency that it need not implement the statute, unless we conclude that the statute "is" unconstitutional." DOL Manual page 20.

The assistant attorney general in this case, at best, strongly suggests that the Aquatic Farm Statutes are unconstitutional, and that the ADF&G's advice if followed, would be unconstitutional. It is not clear that the attorney general or deputy attorney general agrees or has signed off on this position; that would take an audit or internal investigation. It would also be important to determine if the assistant attorney general in this case advised ADF&G in writing that its actions were unconstitutional if it followed through on its public advice to aquatic farmers regarding standing stock on aquatic farm sites.

Remedies

It appears that the Department of Law has selected to change its policies, and not defend a statute passed by the Legislature. It also appears that the Department of Law has chosen to ignore precedent of its office, and authorities that its office has relied upon before, in arguing in this case that the Aquatic Farm Act, that you are attempting to get ADF&G to follow, is unconstitutional.

Mr. Steven LaCroix
April 5, 2001
Page 11

If that is indeed the position that the Department of Law has chosen to take against you in this case, what remedies do you have? It appears that there is little you can do except to have the Attorney General change its position, have the Governor intervene, or redress this problem to the Legislature. It may be possible to have the Attorney General investigate the actions of the assistant attorney general in this case to determine if they are consistent with state and Department policies.

In Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975), the public defender agency appealed a superior court's decision ordering the attorney general's office to prosecute a father for nonpayment of child support. The court addressed the duties of the attorney general under AS 44.23.020.

The court wrote that "an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best." Id. at 950 citing State v. Finch, 280 P. 910 (Kansas 1929). "This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases." Id.

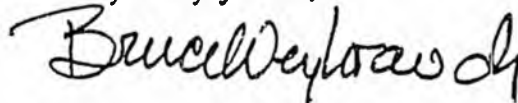
"When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers. ... Both federal and state courts have ... held that the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding." Id. (citations omitted).

Mr. Steven LaCroix
April 5, 2001
Page 12

The court held that it did not have the "power to control the exercise of the Attorney General's discretion as to whether the will take action in any particular cases of contempt for non-support." Id. at 951.

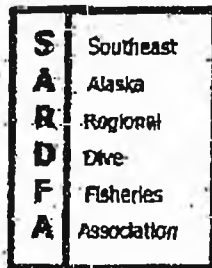
This means that you would not have much success in attempting to have a court order the Department of Law to take or not take a certain position. The Public Defender case would prevent a court from doing that. Please call me to discuss this letter, and your possible options, at your convenience.

Very truly yours,

A handwritten signature in cursive script that reads "Bruce B. Weyhrauch". The signature is written in black ink and is positioned above the printed name.

Bruce B. Weyhrauch

Enclosure



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
Gig Decker, Executive Director's Assistant
Box 2138, Wrangell, AK 99929
Ph: 907-874-3110; Fax: 907-874-4270
gigjulk@aptsalaska.net

Governor Knowles
Office of the Governor
P.O. Box 110001
Juneau, AK 99811-0001

January 8th, 2000

Dear Governor Knowles;

On behalf of the Southeast Alaska Regional Dive Fisheries Association, or SARDFFA, the Board of Directors would like to request that the application period for aquatic farming (Jan. 1st - April 30th, 2001) be stayed until the litigation Alaska Trademark Shellfish vs. State of Alaska is settled. The Board of Directors met on January 5th, 2000, and unanimously approved this request.

SARDFFA does not believe it is proper to hold an aquatic farm application period at this time for two reasons: (1) there is pending litigation which may seriously alter the future of aquatic farming, (2) ADF&G has not adopted regulations clarifying the Aquatic Farm Act (AS 16.40.100-199).

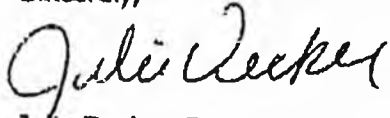
SARDFFA is participating in the above litigation in support of the State's denial of geoduck farm permits which would give the wild geoduck stocks to potential farmers for harvest and sale. ADF&G has estimated the amount of wild stocks on these stiles is 891,000 pounds. The commercial harvest for all of Southeast Alaska in 2000 was 400,000 pounds.

ADF&G now has draft regulations regarding aquatic farming out for public review. ADF&G plans to have the regulations in place by April 15th, 2001. However, this time frame could easily be off, allowing potential aquatic farmers to apply for permits without regulations being in place to guide this process. This would leave the State open for further litigation in the future.

Please fully consider this request. If you have any questions regarding this request, please contact SARDFFA's President, Dennis Watson (907-826-3275), as I will be out of the office between Jan. 9th and 27th.

**SARDFFA REQUEST TO EXTEND
APPLICATION PERIOD & RESPONSE**

Sincerely,



Julie Decker, Executive Director

Cc: Frank Rue, Commissioner, ADF&G (hard copy & email)
Pat Pourchot, Commissioner, ADNR (hard copy & email)
Kevin Duffy, Deputy Commissioner, ADF&G (via email)
John Sisk, Governor's Aid (via email)
Steve White, Assistant Attorney General (via email)
Shannon O'Fallon, Assistant Attorney General (via email)
Doug Mecum, Director of Commercial Fisheries, ADF&G (via email)
Guyla McGady, Aquatic Farm Coordinator, ADNR (via email)
Ken Imamura, Mariculture Coordinator, ADF&G (via email)
Paul Grant, Attorney (via email)
SARDFA Board of Directors (via email)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

550 W 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-8431
FAX: (907) 269-8918

February 9, 2001

Ms. Julie Decker, Executive Director
SARDFA
Box 2138
Wrangell, AK 99929

Subject: Aquatic Farm Application Opening, January 1, 2001 through April 30, 2001

Dear Ms. Decker:

The Governor has asked me to respond to your letter of January 8, 2001 concerning the Aquatic Farm Application Opening now underway. I appreciate your concern that the opening conflicts with pending litigation as well as the Department of Fish and Game draft regulations on the subject that are out for public review.

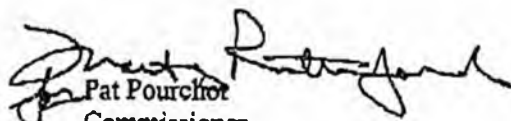
The conflict you point out is real. Unfortunately, the Department of Natural Resources is required by regulation to schedule an opening every two years between January 1 and April 30 and therefore the current opening is necessary to comply with those regulations.

I would note that the litigation you reference is specifically directed at on-bottom fisheries like geoduck, and suspended culture, such as oysters, is not involved. Therefore it could be argued that it would not be appropriate to delay or extend the entire application period when only a part of the industry is in question.

However, our regulations do involve the entire industry. The Department of Fish and Game hopes to have the regulations in effect by April 15. As you point out, that date could slip. The Department of Fish and Game held a workshop on February 7, to address the draft regulations and the final schedule for the regulations may be affected by the workshop discussions. Once we know the final schedule for the Department of Fish and Game's regulations the Department of Natural Resources may extend or modify the dates of the Aquatic Farm Application Opening.

I hope this addresses some of your concern. I appreciate your interest.

Sincerely,


Pat Pourchot
Commissioner

cc: Governor Tony Knowles
Commissioner Frank Rue, Department of Fish and Game
Bob Loeffler, Director, Division of Mining, Land and Water

Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans.

Online Public Notice

State of Alaska Online

[Home Page](#) / [Go Back](#)

Submitted by	Date Modified	Ak Admin Journal	Attachments	Public (Web edit)
Mary Stone/OOC/ADFG	on 02/26/2001 at 03:46 PM	[not printed]	No files attached	

Aquatic Farming And Shellfish Hatcheries

Category: Notices of Proposed Regulations**Publish Date: 02/26/2001****Department: Fish & Game****Location: Statewide****Region: Statewide****Body of Notice:**

Aquatic Farming And Shellfish Hatcheries

THIRD SUPPLEMENTAL NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF FISH AND GAME

The Commissioner of the Alaska Department of Fish and Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code, dealing with aquatic farming and shellfish hatcheries, including the following:

The following regulations in chapter 41 are proposed to be changed:

- (1) 5 AAC 41.200 - clarifies the applicability of the regulations;
- (2) 5 AAC 41.220 - clarifies and makes specific the requirements for applying for an aquatic farm or shellfish hatchery operating permit;
- (3) 5 AAC 41.230 - clarifies and makes specific when the department can request additional information from an applicant, and the consequences of an applicant's failure to provide the additional information;
- (4) 5 AAC 41.240 - clarifies and makes specific the department's process for the review of applications, the criteria that will be applied when reviewing applications, decision deadlines, and requests for reconsideration;
- (5) 5 AAC 41.250 - clarifies and makes specific the conditions that may be imposed in an aquatic farm or shellfish hatchery operating permit;
- (6) 5 AAC 41.260 - clarifies the rules that govern inspection of an aquatic farm or shellfish hatchery;
- (7) 5 AAC 41.270 - clarifies the annual reporting duties of an aquatic farm or shellfish hatchery permit holder;
- (8) 5 AAC 41.280 - clarifies and makes specific the rules that govern permit renewal and permit transfer;
- (9) 5 AAC 41.290 - clarifies and makes specific the process for applying for a stock acquisition permit, the criteria for issuing a stock acquisition permit, the purposes for which a stock acquisition permit will be issued, and the permit conditions that may be placed on a stock acquisition permit;
- (10) 5 AAC 41.400 - defines needed terms.

Chapter 41 is proposed to be changed by adding the following new sections:

- (11) 5 AAC 41.245 - governs when and under what circumstances an aquatic farmer can have access to wild resources on the farm site;
- (12) 5 AAC 41.275 - governs an annual shellfish hatchery management plan;
- (13) 5 AAC 41.295 - governs the transfer of aquatic plants and shellfish from or between an aquatic farm or shellfish hatchery;
- (14) 5 AAC 41.210 and 5 AAC 41.300 are proposed to be repealed. The intended effect of the repeal of 5 AAC 41.210 is to do away with an unnecessary regulation. The repeal of 5 AAC 41.300 is being proposed because the substance of the regulation has been incorporated into another section which is intended to make the process of the transfer of stock clearer.

This is the THIRD SUPPLEMENTAL NOTICE adding to the SECOND NOTICE OF PROPOSED CHANGES that was issued on January 26, 2001, the SUPPLEMENT NOTICE OF PROPOSED CHANGES that was issued on January 3, 2001, and the NOTICE OF PROPOSED CHANGES that was issued on December 15, 2000 concerning these proposed regulation changes. This THIRD SUPPLEMENTAL NOTICE is being issued to allow a public comment period on the new draft regulations, that were revised by the department after reviewing the public comments received during the previous public comment period, and to announce another public hearing.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Kenneth Imamura, Mariculture Coordinator for the Alaska Department of Fish and Game at ADF&G, Division of Commercial Fisheries, Capital Office Park, 1255 W. 8th St., P.O. Box 25526, Juneau, Alaska 99802-5526; or by email to ken_imamura@fishgame.state.ak.us; or by fax to (907) 465-4168. The comments must be received no later than 5:00 p.m. on March 27, 2001.

A public hearing will be held in Juneau, Alaska on March 15, 2001 from 9:00 a.m. to 5:00 p.m. in the Commissioner's conference room at the Alaska Department of Fish and Game Headquarters building at 1255 West 8th Street, and teleconferenced to the Department of Fish and Game field offices in Kodiak, Homer, Soldotna, Anchorage, Cordova, Sitka, Petersburg, Wrangell, Ketchikan, and Craig. At the March 15th hearing, the department will take public testimony and chair a panel of invited representatives of groups who are interested in the proposed regulatory changes to discuss the proposed changes. Persons interested in participating by phone at one of the above Fish and Game field offices should appear in person at the office location.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kenneth Imamura at the above mailing or e-mail address, or fax number, or by calling (907) 465-6150 no later than March 12, 2001 to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Kenneth Imamura at the above mail or e-mail address, or by fax number, or by calling (907) 465-6150, or go to the department's website at www.state.ak.us/local/akpages/FISH.GAME/adfghome.htm.

After the public comment period ends, the Alaska Department of Fish and Game will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 16.05.050; AS 16.05.092; AS 16.40.100; AS 16.05.340; AS 16.05.160.

For more information contact Kerri Tonkin, phone (907)465-6124, fax (907) 465-2604, e-mail kerri_tonkin@fishgame.state.ak.us.

ADDITIONAL REGULATIONS NOTICE INFORMATION (AS 44.62.190(d):

1. Adopting agency: Alaska Department of Fish and Game.

2. General subject of regulation: Aquatic Farming.

3. Citation of regulation: 5 AAC 41.200 - 5 AAC 41.400.

4. Reason for the proposed action:

compliance with federal law

compliance with new or changed state statute

compliance with court order

development of program standards

other: Re-write of regulations.

5. Program category and BRU affected: Department Programs

6. Cost of implementation to the state agency and available funding (in thousands of dollars)

Initial Year Subsequent

FY -01 Years 02

Cost \$ 50 \$ 10

General fund \$ 50 \$ 10

Federal funds \$ \$

Other funds

Permit Fees \$ 25 \$ -0-

7. The name of the contact person for the regulations:

Name Ken Imamura

Title Mariculture Coordinator

Alaska Department of Fish and Game

Address 1255 West 8th Street

Juneau, Alaska 99802

Telephone 907-465-6150

8. The origin of the proposed action:

staff of state agency

federal government

general public

petition for regulation change

other Commissioner of Alaska Department of Fish and Game

9. Date: December 15, 2000 Prepared by: _____

Name (typed) Ken Imamura

Title (typed) Mariculture Coordinator

Telephone: 907-465-6150

(10) 5 AAC 41.245. govern when and under what circumstances an aquatic farmer can have access to wild resources on the farm site;

(11) 5 AAC 41.295. govern the transfer of aquatic plants and shellfish from or between an aquatic farm or shellfish hatchery.

(12) 5 AAC 41.210 and 5 AAC 41.300. are proposed to be repealed. The intended effect of the repeal of 5 AAC 41.210 is to do away with an unnecessary regulation. The repeal of 5 AAC 41.300 is being proposed because the substance of the regulation has been incorporated into another section which is intended to make the process of the transfer of stock clearer.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Kenneth Imamura, Mariculture Coordinator for the Alaska Department of Fish and Game at ADF&G, Division of Commercial Fisheries, Capital Office Park, 1255 W. 8th St., P.O. Box 25526, Juneau, Alaska 99802-5526; or by email to ken_imamura@fishgame.state.ak.us; or by fax to (907) 465-4168. The comments must be received no later than 5:00 p.m. on January 18, 2001.

Oral or written comments also may be submitted at hearings to be held on January 4, 2001 in Ketchikan, Alaska at the Alaska Department of Fish and Game conference room, at 2030 Sea Level Drive, from 6:30 p.m. to 10:00 p.m. and on January 8, 2001 in Anchorage, Alaska at the Alaska Department of Fish and Game Aerie conference room at 333 Raspberry Road from 6:30 p.m. to 10:00 p.m.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kenneth Imamura at the above mailing or e-mail address, or fax number, or by calling (907) 465-6150 no later than December 28, 2000 ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Kenneth Imamura at the above mail or e-mail address, or by fax number, or by calling (907) 465-6150, or go to the department's website at www.state.ak.us/local/akpages/FISH.GAME/adfghome.htm.

After the public comment period ends, the Alaska Department of Fish and Game will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 16.05.050; AS 16.05.092; AS 16.40.100; AS 16.05.340; AS 16.05.160.

Statutes Being Implemented, Interpreted, or Made Specific: AS 16.40.100 - 16.40.199.

Fiscal Information: It is estimated that the proposed regulation changes will require increased appropriations as follows: FY 01, \$25K; FY 02, \$10K; FY 03, \$50K; FY 04, \$0-.

DATE: _____ Ken Imamura
Mariculture Coordinator

Online Public Notice

State of Alaska Online

[Home Page](#) | [Go Back](#)

Submitted by	Date Modified	Ak Admin Journal	Attachments	Public (Web edit)
Mary Stone/OOC/ADFG on 12/19/2000 at 08:53 AM	12/19/2000 08:54:39 AM	[not printed]	No files attached	

Title 5 Of The Alaska Administrative Code, Aquatic Farming

Category: Notices of Proposed Regulations
Publish Date: 12/19/2000

Department: Fish & Game
Location: Statewide
Region: Statewide

Body of Notice:

The Commissioner of the Alaska Department of Fish and Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code, dealing with aquatic farming, including the following:

The following regulations in chapter 41 are proposed to be changed to

- (1) 5 AAC 41.200. clarify the applicability of the regulations;
- (2) 5 AAC 41.220. clarify and make specific the requirements for applying for an aquatic farm operating permit;
- (3) 5 AAC 41. 230. clarify and make specific when the department can request additional information from an applicant, and the consequences of an applicant's failure to provide the additional information;
- (4) 5 AAC 41.240. clarify and make specific the department's process for the review of applications, the criteria that will be applied when reviewing applications, decision deadlines, and requests for reconsideration;
- (5) 5 AAC 41.250. clarify and make specific the conditions that may be imposed in an aquatic farm operating permit;
- (6) 5 AAC 41.260. clarify the rules that govern inspection of an aquatic farm;
- (7) 5 AAC 41.270. clarify the annual reporting duties of an aquatic farm permit holder;
- (8) 5 AAC 41.280. clarify and make specific the rules that govern permit renewal and permit transfer;
- (9) 5 AAC 41.290, 5 AAC 41.300, and 5 AAC 41.400. clarify and make specific the process for applying for a stock acquisition permit, the criteria for issuing a stock acquisition permit, the purposes for which a stock acquisition permit will be issued, and the permit conditions that may be placed on a stock acquisition permit; and define needed terms.

Chapter 41 is proposed to be changed by adding the following new sections that would

Statutes Being Implemented, Interpreted, or Made Specific: AS 16.40.100 - 16.40.199.

Fiscal Information: It is estimated that the proposed regulation changes will require increased appropriations as follows: FY 01, \$25K; FY 02, \$10K; FY 03, \$50K; FY 04, \$-0-.

Steven G. McGee, Fishery Biologist IV

Revision History:

02/26/2001 03:46:15 PM by Mary Stone/OOC/ADFG/State/Alaska/US

Home Page Notices by: **Department** | **Location** | **Category** | **Title** | **Publish Date**

FISCAL NOTE

1. Regulation-adopting agency: Alaska Department of Fish and Game.
2. General subject of regulation: Aquatic Farming
3. Citation of regulation: 5 AAC 41.200 - 5 AAC 41.400.
4. Program category and BRU requiring appropriations: Mariculture/Aquatic Farming.
5. Estimated appropriations required (in thousands of dollars): Fifty.

Current FY_01__ Next FY_02__ Next FY_03__ Next FY_04__
 100 PERSONAL SERVICES
 200 TRAVEL 37 2 30
 300 CONTRACTUAL 5 5
 400 COMMODITIES 4 8 4
 500 EQUIPMENT 11 11
 600 LAND AND STRUCTURES
 700 GRANTS, CLAIMS, ETC.
 TOTAL 50 10 50 -0-

6. Funding (in thousands of dollars): Fifty.

GENERAL FUND 25 10 50 -0-
 FEDERAL FUNDS
 OTHER (specific source) Permitting Fees 25 25
 TOTAL 50 10 50 25

7. Positions:

PERMANENT FULL-TIME
 PART-TIME/SEASONAL
 TOTAL NO. OF STAFF MONTHS

8. Description: Estimated operating costs for Mariculture Program that will be incurred applying new regulations.

9. Date: _____ Prepared by: _____

Ken Imamura
 Telephone: (907) 465-6150

Revision History:

12/19/2000 08:53:17 AM by Mary Stone/OOC/ADFG/State/Alaska/US
 12/19/2000 08:54:40 AM by Mary Stone/OOC/ADFG/State/Alaska/US

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF ALASKA LONGEVITY PROGRAMS

*Pioneers' Homes & Advisory Board
Longevity Bonus*

Tony Knowles, Governor

PO Box 110211
Juneau, AK 99811-0211
Phone (907)465-4400
FAX (907)465-4108
(907)465-8886

April 5, 2001

The Honorable Lesil McGuire
Alaska State House of Representatives
Alaska State Capitol
Room 418
Juneau, AK 99801-1182

Dear Representative McGuire,

At the Regulations Review Committee hearing last week you requested through your aide, Jim Pound, a copy of the Pioneers' Home rate increase history and proposed schedule for future rate increases. The schedule is attached.

Also, Mr. David Pree, Anchorage Pioneers' Home (APH) resident, testified at the hearing about the funding of the APH heating, ventilation, and air conditioning (HVAC) upgrade project. Mr. Pree is a member of the APH HVAC residents' committee and has attended numerous meetings and received complete documentation regarding the project. I have enclosed a copy of a letter from Dan Smith, Department of Transportation (DOT) project manager to Mr. Pree which indicates Mr. Pree's involvement and access to the HVAC documentation.

Mr. Pree has apparently been unable to fully appreciate the approach the legislature took to fund the HVAC project. In fact, there have been a number of factors which have impacted the initial funding sources.

The division submitted a \$1,488.1 supplemental budget request for the APH HVAC upgrade in early 2000. It was approved for \$1,130.0 (\$250.0 AHFC; \$440.0 FY00 Pioneers' Home program receipts; \$440.0 FY01 program receipts). This plan under funded the division's request by \$358.1. Only \$300.0 was available in FY00 program receipts. No excess program receipts are anticipated for FY01. In the meanwhile the cost of the project was estimated at \$1,550.0 leaving the project short funded by \$1,000.0. The shortfall of \$1,000.0 has been requested in the capital supplemental budget.

I hope that this information is helpful. Please contact me if you need additional information.

Sincerely,


James L. Kohn

Director

Pioneers' Homes Rate History

Pioneers' Home Effective Date	Residential	Assisted Living	Skilled Nursing
1954	\$150		\$195
July 1966	\$180		\$225
July 1976	\$225		\$275
October 1983	\$425		\$525
December 1989	\$525	\$630	\$800
February 1993	\$600	\$700	\$880
February 1994	\$665	\$780	\$975
February 1995	\$735	\$860	\$1,100

Effective Date	Coordinated Services	Basic Assisted Living	Enhanced Assisted Living	Alzheimer's & Dementia Related Disorders	Comprehensive Services
July 1996	\$934	\$1,289	\$1,553	\$1,579	\$1,864
July 1997	\$1,140	\$1,720	\$2,140	\$2,200	\$2,630
July 1998	\$1,340	\$2,150	\$2,730	\$2,815	\$3,395
July 1999	\$1,540	\$2,580	\$3,315	\$3,430	\$4,160
July 2000	\$1,735	\$3,005	\$3,905	\$4,040	\$4,920

Notes : July 1996 was the first rate increase in the Pioneers' Homes Advisory Boards seven year plan to move charging Pioneers' Homes resident the full cost of care.

A payment assistance program is available for residents who cannot afford to pay the monthly rates.

Pioneers' Homes Proposed Rate Increases

Effective Date	Coordinated Services	Basic Assisted Living	Enhanced Assisted Living	Alzheimer's & Dementia Related Disorders	Comprehensive Services
July 2001	\$1,935	\$3,435	\$4,490	\$4,655	\$5,685
July 2002	\$2,135	\$3,865	\$5,080	\$5,270	\$6,450

FACSIMILE

State of Alaska

PAGE 1 of 1

Department of Transportation and Public Facilities
Central Region - Division of Construction & Operations
Public Facilities Branch

TO: **David Pree**
Anch. Pioneers' Home Resident
TEL: (907) 247-6175
FAX NO: (907) 343-7272

DATE: February 13, 2001
FILE NO:

FROM: **Dan Smith**
Project Manager
TEL: (907) 269-0809
FAX NO: (907) 269-0806

SUBJECT: Anch. Pioneer's Home Ventilation
Project 54854

Request for Information

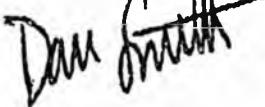
Hello David,

Thank you for your interest in this project. We appreciate your valuable input as well as that of the other residents and the Resident Committee.

Rather than fax the documents that you requested, I will bring a copy of the Professional Service Agreement and Statement of Services that the Department has with MBA Consulting Engineers, Inc. to the Resident Meeting scheduled for tomorrow at 1:00pm. In addition to the document that you have requested we will have a copy of the Schematic Design and Cost Estimate that has been produced for the initial phase of this project. In the Schematic Design submittal you can get a good idea of the solutions that have been developed to address all of the known Humidification and Ventilation problems with the facility.

I look forward to discussing these solutions with you tomorrow.

Thanks,



Dan Smith

Xc: Gary Sheridan, DOA/DALP

FACT SHEET
For
ANCHORAGE PIONEERS' HOME
VENTILATION/HUMIDIFICATION SYSTEM UPGRADES
November 2000

General:

The Division has determined that the ventilation/humidification system at the Anchorage Pioneers' Home is in serious need of major upgrades and repairs. The identified problems are varied and complex, however, in general, the overall air quality of the building is not adequate to meet health needs of both residents and staff. In specific areas, air quality is well below standards and has caused complaints ranging from dizziness, headaches, and vomiting to doctor's excuses prohibiting some employees from working in certain areas. Based on known conditions the Division believes that it is imperative that this project be funded through the Fiscal Year 2001 budget process to ensure timely resolution of these conditions.

Justification:

- 1) A 1992 Building Condition Survey identified a broad variety of air quality issues and need for resolution. These conditions included:
 - Exhaust systems throughout facility (both Main Bldg.-South and the North Addition) are insufficient to meet air quality requirements of residents and staff. Upgrade.
 - Ventilation system in the Main Bldg.-South is inadequate and does not meet required codes. Upgrade.
 - Existing humidification system in Main Bldg.-South is totally nonfunctional; and, nonexistent in the North Addition. Upgrade existing on South and add new on North.
 - Short-circuiting of boiler exhaust is occurring between boiler exhaust stacks and some office windows at 2nd floor level. Relocate stacks.
 - Kitchen Hood exhaust fan not adequate, ducting does not meet code. Replace fans, reroute duct through roof as required. An independent air quality study of the kitchen hood exhaust system was performed in 1998, confirmed system was not adequate, and airflow through the hood needed to be increased.
 - Kitchen and laundry areas overheat in summer. Provide ventilation and cooling.
 - Oxygen storage room does not contain exhaust fan and ducting. Provide.
 - Physical Therapy room in North Addition has inadequate airflow. Increase air circulation.

- 2) Dishwashing room overheats and has lack of air circulation.
 - 50% of dishwashing employee physicians have issued work restrictions directing that they not be directed to work in dishwashing room due to poor air quality conditions.
 - Actual inspection during operations reveals exhausting of steam from dishwasher is very poor with inadequate fresh air make up.

3) Parkview & Gardenview Neighborhoods, North Addition, lacks ventilation, exhausting and humidification.

- In summer 1999 employees working in these areas complained of dizziness, headaches, vomiting, etc., and had loss of time. They felt it was due to air quality.
- The Department of Environmental Conservation (DEC) was engaged and conducted a voluntary testing in May-June 1999.
- DEC's findings were limited, however, their testing confirmed a lack of adequate fresh outdoor air supply and problems associated with inadequate humidity levels. Such conditions could lead to increased discomfort and drying of mucous membranes, etc.

4) Complaints related to Main Bldg. South Ventilation.

- Numerous complaints of lack of fresh air and overheating were received throughout the summer in the Main Bldg. South.
- There is an excessive use of portable fans throughout facility to improve air quality conditions. Little is gained as fans usually circulate existing air that is already stale and overheated. Many are placed in door openings and on tables leading to tripping and falling hazards.

5) Complaints related to odors.

- While the bldg. is well maintained by housekeeping staff, odor control is almost impossible due to the lack of adequate exhausting of the building. This condition sheds negativity during visits by family and friends as well as creates an unpleasant atmosphere for residents and employees.

6) Bathing Rooms.

- Temperatures in bathing rooms reach and exceed 100 degrees during use that is unacceptable for resident and employee health.
- Fresh air supply and exhausting is inadequate.

Update:

The Division submitted a \$1,488,100 supplemental budget request for the APH Ventilation/Humidification System Upgrade in early 2000. It was approved for \$1,130,000 (\$250,000 AHFC; \$440,000 FY2000 program receipts; \$440,000 FY2001 program receipts). This reduced our request by \$358,100. We took immediate action to begin the project with a Reimbursable Services Agreement to the Department of Transportation in 2000 (\$250,000 AHFC; \$300,000 FY2000 program receipts). It was determined that we would not be able to collect additional program receipts in FY2000 and that there would be shortfall in FY2001 program receipts. This in effect, leaves the project short approximately \$1,000,000 to complete it (\$1,488,100 original cost estimate minus \$550,000 available funds). The project is presently in design stage. A more definitive cost estimate will be made available by December 30, 2000.

Action Required:

The Division is seeking Capital Improvement Project funding in a Supplemental Budget Request for \$1,000,000 to complete the project. It is evident the air quality problems are significant and pose serious health problems to residents and employees of the Home. Public relations are also jeopardized due to lack of ability to control unappealing odors that linger throughout the facility. It is not a question of better or more cleaning, it is a matter of a proper air exchange system that presently does not exist.

Gary Sheridan, Consulting Manager, DALP

Natural Resources

11 AAC 05. makes changes in fees for different types of plat copies. New technology allows for copies from microfilm to CD-ROM. Changes fees for various formats for obtaining digital images of recorded documents. Fees will also be changed for Uniform Commercial Code changes and search requests.

11 AAC 06 includes legibility and use of English as well as requirements for the documentation needed to file and record plats. It also makes changes to language including deleting the words "as prescribed by statute" in section .030 (b) (1) Cited Statutes: **AS 34.65.030, .040, AS 40.15.010, AS 45.29.102, .501-.525, .702-.709** Public Comment **N/A** Written Comment by: **05/15/01**

Proposed Regulations

Department of Administration

2 AAC 41.015-Pioneer Home Fees-This is an increase of fees for the Pioneer Homes. The increase is between 12 and 15 percent. The change is designed to meet a gradual goal of having the residents cover all costs of the Pioneer Homes by FY 2003. Implemented statute AS 47.55.030. Public hearing 3/23/01 Written comments by 4/13/01

7 AAC 42-Changes will bring DOA Assisted Living Regulations up to H&SS regulations 7 AAC 75, 47-will increase asst. living rates, clarify services, eligibility etc. 75-add "barrier crimes" conviction as an employment bar, improve safety, change liability insurance and professional liability insurance requirements, require additional training for staff add fees for non-compliance inspections clarify requirements edit regulations to bring up to date. Cited Statutes-AS 47.05.010, AS 47.24.017, AS 47.25.130, .170, .195, AS 47.33.005, .040, .070, .100, .400, .410, .540, .910, .920 Public Hearings 4/25, 5/2, 5/10, 5/11 Written Comment by 5/15/01

Community & Economic Development

Notice or Inquiry

Regulatory Commission of Alaska

Long Distance Access Rate Differences. The RCA is seeking information on potential reform of the rules governing interstate and intrastate long distance access rules. Presently the interstate access charge is about 1.9 cents per minute and intrastate access charge in 13 cents per minute. This intrastate access charge may go up. The RCA believes that may be prevented with reform at the state level. Details can be found at <http://www.state.ak.us/rca> Order R-01-1 (1) Written Comments with details by 06/13/01. Those comments will be reviewed and additional comments must be submitted by 07/16/01. Public hearing on submitted comments: 08/01/01

3 AAC 52.200 makes certain Commission regulations applicable to all telephone utilities

3 AAC 52.333-.334 procedures for intrastate inter-exchange equal access and repealing current procedures for changing a subscribers intrastate inter-exchange carrier

3 AAC 53.260 repealing procedures for a subscriber to change local exchange telecommunications carrier

3 AAC 53.290- new procedures for changing a subscribers local exchange telecommunications carrier

3 AAC 53.190-new procedures for local and intra and interstate telecommunications carriers based on Federal Communications Commission regulations.

3 AAC 53.199 Defines terms and changes in 3 AAC 53.190
Cited Statutes: AS 42.05.141, .151 Public Hearing 05/25/01 Written Comment by 05/04/01

Division of Insurance

3 AAC 31.060-adds a \$1,000 initial application fee and a \$600 annual continuation fee for a certificate of authority for a joint title plant company. When two or more title companies work together. Cited Statutes: AS 21.06.250 & AS 21.66.210 Public Hearing N/A Written Comments by: 05/21/01

Board of Barbers

12 AAC 09.003-Transitional Licensure for Practitioners of body piercing and tattooing and permanent cosmetic coloring-The Board will issue the license to individuals who meet the requirements and pay the fee. Implemented Statute AS 08.13.030; Sec. 31, Ch. 93, SLA 2000 Public Hearing N/A Written comments by 4/06/01

Board of Public Accountancy

12 AAC 44.300 changes in the amount of continuing education required for licensing renewal.

12 AAC 04.400 changes in what must be reported when renewing a license about continuing education participation

12 AAC 04.430 changes in the continuing education requirements necessary to reinstate an inactive license.

12 AAC 04.440 changes in the requirements for reinstatement of a lapsed license.
Cited Statutes: AS 08.04.425 & .440 Public Hearing N/A Written Comment by 05/01/01

3 AAC 134.060 & .150(a) Shared Fisheries Business Tax Program-distribution of funds will be changed to one-half of apportionment rather than proportionate to per capita. Only on half of the one half will be distributed to applicants in the beginning the remainder to be held until all appeals are resolved. Implemented Statute AS 29.60.450 Public Hearing N/A Written Comments 03/15/01

3 AAC 151.010- Safe Communications Program- New, additional reporting requirements for municipalities requesting payments under the safe communities program. Implemented Statute AS 29.60.350-.375 Public Comment N/A Written Comments by 03/15/01

3 AAC 130.042, .043, .044-State Revenue Sharing Program- Replace the current local head count census and housing unit method population estimates with Dept. of Labor estimates. There are also proposed changes relating to deadlines. Implemented Statute AS 29.060.010-.310 Public Hearing N/A Written Comments by 03/15/01

Board of Dental Examiners

12 AAC 28.080-Filing Reports- report requirements by dentists and anesthesia team following a death in a dental office.

12 AAC 28.420- Report of continuing education-The board will alter the reporting on continuing education for dental hygienists

12 AAC 28.640-Mandatory Reporting-dentist will be required to report problems associated with a death of medical complications that occur after parenteral sedation has been used.
Implemented Statutes AS 08.32.071, 0832.160, 08.36.070, 08.36.248, 08.36.250, 08.36.315
Public Comments N/A Written Comments 3/8/01

12 AAC 28.500-Dental Hygienist Examinations-will alter examination requirements for dental hygienists.

12 AAC 28.610-Parenteral Sedation Permit-will alter the education and training requirements

12 AAC 28.620-Education, training and Certification-will comply with section .610

12 AAC 28.960 Registration of Dental Radiological Equipment-corrects date by which equipment must be registered and details on seal.

12 AAC 28.965-Inspection of Dental Radiological Equipment-approval of inspection forms and issuance of seals

12 AAC 28.970-Review of Application-adopts forms for registration and inspection of dental radiological equipment.

Cited Statutes AS 08.32.020, .060, AS 08.36.070, .075, .248, .315 **Public Comment N/A**
Written Comment by: 05/14/01

12 AAC 02.150- Board of Chiropractic Examiners- establishing a specialty designation fee.

12 AAC 02.200- Board of Dispensing Opticians- changes in license and renewal fees

12 AAC 02.330- Board of Psychologist & Psych. Assoc. changes in license and renewal fees.

12 AAC 02.330- Board of Veterinary examiners- changes in license and renewal fees

12 AAC 02.370- Board of Certified Real estate Appraisers- changes in license and renewal fees

Cited Statutes- AS 08.20.180, .185, AS 08.71.120, .160, As 08.86.135, .140, AS 08.87.110, .120, .310, AS 08.98.190 **Public Hearings N/A Written Comment by 04/09/01**

Board of Nursing

12 AAC 44.705-Grounds for denial of nursing license based criminal history. Changes will create a new section that establishes specific crimes that may result in a denial of license of registered and practical nurses and certified nurse aides. Cited Statutes AS 08.68.100, .270, .331, .334 Public Comment N/A, Written Comment by: 04/30/01

State Medical Board

12 AAC 40.033- establishes requirements for inactive physician license

12 AAC 40.352- changes requirements for reinstating a lapsed paramedic license

12 AAC 40.473- changes requirements for reinstating a lapsed Physician Asst. license

12 AAC 40.963- establishes an expiration date for certain supporting documents submitted with an application for license.

Cited Statutes AS 08.64.100, .107, .313 Public Hearings N/A Written Comment by 04/07/01

Education & Early Development

4 AAC 62 changes that will correct or clarify the rules governing the health and safety of children in child care by revising provider qualifications and by lowering the adult/child ratio. Cited Statutes AS 14.07.020, .060, AS 14.37.020 Public Hearing: 06-07-01, Written Comment by: 05/18/01

4 AAC 12.010 changes in the costs of criminal background checks for teachers seeking certification bringing the cost in line with the Department of Public Safety charges. Cited Statutes: AS 14.07.020 & .060 Public Hearing: 06/07/01 Written Comments by: 05/18/01

Environmental Conservation

Extension Notice Public Workshop 03/13/01 Written comments by 03/16/01

18 AAC 50. These regulations involve air quality for companies that are by design or location away from the mainstream parts of the state. They establish when public comment on air quality is required. Statute reference AS 44.46.025, AS 46.03.020 AS 46.14 ~~Written Comment 02/20/01~~ ~~Public Hearing closed~~

18 AAC 90 (supplemental notice) -changes will require administrators of public and private schools to notify parents or guardians that pesticides are about to be used at the school. The regulations do not apply to antimicrobial pesticides and those that the children will be inaccessible to the children. Also requires that a notice is to be posted at the location and includes certain record keeping. Those applying pesticides must also meet new requirements for certified applicators. Cited Statutes: AS 46.03.330 & .730, Public Comment N/A Written Comment by: 05/29/01

Fish and Game

5 AAC 39.135-Confidential Data Released Form Requirements-Requires Comm. Fish Entry Comm. Permit holder requesting fish ticket information for 3rd parties to use an ADF&G form. Implemented Statute AS 16.05.050 & .815 Public Comment N/A Written Comment 03/19/01

Commercial Fisheries Entry Commission

20 AAC 05.320-places in regulation the maximum number of entry permits in the SE AK and PWS herring purse seine fishery.

20 AAC 05.400-changes in gear codes for diving gear from the list of exceptions regarding interim use permit holder

20 AAC 05.425-allows interim use permit holders to file a renewal form electronically

20 AAC 05.560-allows interim use permit holders to sign and submit forms electronically

20 AAC 05.690-extinguishes a non-useable portion of a pot crab use permit when the permit is transferred.

20 AAC 05.1750- clarifies procedures with a permanent transfer of a permit upon death of permit holder.

20 AAC 05.1910-updates charges for staff time and for shipping and handling. Cited Statutes: AS 16.43.100, .110, .150, 170, 210, .220, .240 Public Comment: 04/20/01, Written Comment by: 05/01/01

Health & Social Services

2 AAC 42, 7 AAC 47, 7 AAC 75-changes to assisted living regulations to make current and consistent with DOA regulations (*See Administration*)

7 AAC 07.045- this will establish and implement review standards for Certificate of need for nursing home beds. Review standards will also be established for seniors wishing to stay at home by increasing in home and community based services. Cited Statutes AS 18.07.031, .041, .043, .071, .081, .111 Public Hearing N/A Written Comment by 04/20/01

7 AAC 43-changes medicaid regulations to create a consumer directed care service program. Cited Statutes AS 43.07.030 Public Hearings 03/28/01, 04/05/01 Written comment by 04/12/01

Filed Regulations

Community & Economic Development

Regulatory Commission of Alaska

3 AAC 52.355- Construction of facilities by intrastate interexchange telecommunications carriers for the origination and termination of service. Effective **3/9/01**

Board of Occupational Licensing

12 AAC 02.965- Failure of a professional to meet continuing education requirements and how to reinstate license upon requirement completed. Effective **3/14/01**

3 AAC 28 charges under the division of insurance for consumer credit insurance including disability, unemployment, and death Effective **07/02/01**

3 AAC 99 changes to regulations referencing Alaska Industrial Development and Export Authority loans and leases Effective **02/08/01**

12 AAC 75- changes to Occupational licensing requirements for Registered Guides and Transporters Effective **04/06/01**

Board of Dental Examiners

12 AAC 28- Renewal and reinstatement of Professional licenses. Effective **03/14/01**

12 AAC 28- changes to local anesthetics, professions dental issues and definitions Effective **03/30/01**

Education

4 AAC 12.060 New requirements for teacher certification in French and German. Effective **04/01/01**

4 AAC 12.010 lowering teacher certificate fees to \$90- Effective **03/02/01**

4 AAC 06.740 Required scores on elementary school standardized tests Effective **03/16/01**

20 AAC 15.945 Emergency Regulations made permanent- This continues the lower loan origination fee associated with Postsecondary Education student loans. Emergency Regulations took effect 12/18/00. Cited Statute: AS 14.43.120 Effective: **12/18/00**

4 AAC 06- Chart of Accounts and Accounting Codes- Annual revision of Chart of Accounts and accounting codes for uniform accounting system statewide. Filed **04/17/01**, effective **05/17/01**

Education (Cont.)

20 AAC 15- Student Loan Disbursements and Authorizations of Institutions- Provisions to establish new loan awards and how that money is distributed. It further clarified appeal procedures and institution complaint procedures **Filed: 04/18/10 Effective 04/27/01**

Environmental Conservation

18 AAC 72 & 18 AAC 80-environmental concerns over smaller wastewater and public water systems regarding distance, inspections and monitoring **Effective 03/25/01**

Fish & Game

5 AAC 95-closure of Kachemak Bay and Fox River area to on bottom mariculture. **Effective 04/12/01**

Board of Game

5 AAC 85- Notice of spring meeting in Interior **3/02/01-3/16/01**

Board of Fish

5 AAC 01.570- 5 AAC 75.076-Technical corrections, corrections and corrections to the sport fishing logbook. **Effective 3/11/01**

5 AAC 93.320-Hatchery Salmon use Authorization-repealed **Effective 3/09/01**

5 AAC 01-5 AAC 77 Conversion of Latitude and Longitude-Technical corrections regarding conversion of latitude and longitude **Effective 3/11/01**

5 AAC 28.537-Opens a seven-day state season in Chignik (area L) for Pacific Cod immediately following the closure of the federal season. **Effective 3/17/01**

5 AAC 27.605-.965 Board of Fish regulations for Western Alaska Areas Herring Fishery. **Effective 04/04/01**

Fish & Game

5 AAC 01, 28,35,47,75- Commercial and Sport Groundfish Fisheries technical regulations that includes Charter, and commercial. New log book procedures, b' Cook Inlet clarification of the boards intent. **Filed 04/19/01 Effective: 05/19/01**

20 AAC 05-Chatham Blackcod Longline Fishery Limits. Establishes the number of area blackcod longline limited entry permits. **Filed 04/17/01 Ef.**

Fish & Game and Natural Resources

5 AAC 95 & 11 AAC 20-closes the use of Personal Watercraft (jet skies, a certain motorized boats) in the Kachemak Bay, and the Fox River critical habitat Areas. Cited Statutes: AS 16.05.020, AS 16.20.500 AS 41.20.020 Effective: 05/03/01

Health & Social Services

7 AAC 71.145 & 7 ACC 72.010, .210, .290, .400-.900- Standards for the operation of a community mental health facility. Effective 3/16/01

7 AAC 43. 104, .108, .395, .453, .642, .830, .921, .922, .923, .926, .927, .942 Medical procedure coding and Relative Value units for 2001 in order to bill and for terminology Effective 2/5/01

7 AAC 43.040, .075, .550, 552, .555, .557, .558, .560,. 1990- Establishes criteria for inpatient mental health treatment by updating Medicaid payment regulations and allows for a review and appeal to those payments based on the facility and the need. Cited Statutes As 47.05.010, AS 47.07.030, .040 Filed 03/20/01 Effective 04/19/01

Labor and Workforce Development

8 AAC 85.225- permits department to collect unemployment overpayments by claim against the Permanent fund Dividend. Effective 3/3/01

Natural Resources

11 AAC 80.065, .075, .085-Renewal requirements for pipeline right-of-way leasing. Effective 1/11/01

11 AAC 05.010-eliminates fee for nominating RS-2477s

11 AAC 51 & .53 -repeals existing and establishes new regulations for the management of all public easements and RS-2477s including width and reservation standards. Also includes new rules for nominating and reviewing RS-2477s. Regulations also include give the Department the ability to restrict access in certain situations. Cited Statutes: AS 19.10.010, AS 19.30.400-.420, AS 38.04.058, .200, AS 38.05.127, AS 40.15.305 Filed: 04/03/01 Effective 05/03/01

Public Safety

13 AAC 85- amendments to the requirements for police and corrections officers. Effective 04/12/01

Revenue

15 AAC 40 Motor Fuel Tax Regulations-Various changes to existing regulations designed to make the process easier for taxpayers. Effective 04/1/01



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original documents after microfilm reproductions have been made.

William J. Carter

Signature of Camera Operator

10/14/2003

Date

5-04-01

CHILD

CARE

LICENSE

04 AAC 62

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Sen. Robin Taylor, Vice-Chair
Sen. Lyda Green
Sen. Georgianna Lincoln
Rep. Jeannette James
Rep. Joe Hayes



State Capitol, Room 116
Juneau, AK 99801-1182
(907) 465-5446 fax: 465-6592
Interim
716 W. 4th Ave. Suite 430
Anchorage, AK 99501
(907) 269-0250 fax: 269-0249

Administrative Regulation Review Committee

AGENDA

Friday, May 04, 2001 4:00-5:00pm, State House Affairs, Room 102

- I. Review of Proposed changes to 4 AAC 62 Child Care Licensing Requirements

This hearing will be teleconferenced

SITE: Mat-Su LIO

COMMITTEE: JARR

DATE: 05-04-01

SUBJECT OF MEETING:

4AAC62

Changes Child Care Licensing

UPDATE #:

PLEASE SIGN IN

PLEASE PRINT:

NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

**DO YOU WANT
TO TESTIFY?
Y or N**

NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
Carol Jensen			Y
Verna Euwer			Y
Marlene Wright			Y
Arlie Reed Lewis			Y
Natalie Ray			Y

SITE: OFF-NETS

COMMITTEE: JARR

DATE: 5/4/01

SUBJECT OF MEETING:

UPDATE #: Final Stats



PLEASE SIGN IN

PLEASE PRINT:

NAME

ADDRESS (MAILING & ZIP)

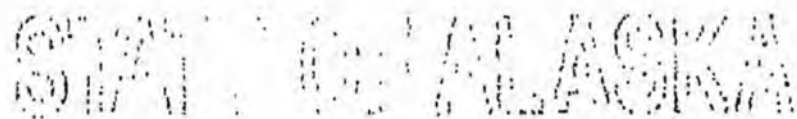
REPRESENTING

DO YOU WANT

TO TESTIFY?

Y or N

NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
Yvonne Schenker			Y



TONY KNOWLES, GOVERNOR

Department of Education & Early Development

Division of Early Development

333 West 4th Avenue, Suite 320
Anchorage, Alaska 99501-2341
(907) 269-4667
(007) 269-4520 Fax
kimberly_oshea@ood.state.ak.us

April 25, 2001

Dear Childcare Provider:

The State Board of Education & Early Development has opened a period of public comment on proposed changes to the childcare licensing regulations. That period extends through May 18th and I urge you to review the changes and comment. The enclosed attachment provides information on ways to submit your comments (in writing, via the Web, by fax, or in person).

In addition, the Division of Early Development has scheduled a series of community discussions throughout the state in an effort to assure providers an opportunity to ask questions, clarify any items, and for my staff and I to hear your issues and recommendations. These meetings are not for the purpose of taking public testimony and will not replace your written comments to the State Board. However, if you are available and there is a meeting scheduled in your community, I hope you will consider attending.

Below is a list of the locations in your region where community meetings have been scheduled. My staff and I hope to see you there!

Southcentral Region:

Kenai

Tuesday, May 1st
Kenai Peninsula Borough
144 Binkley Street
Soldotna
3:00 - 4:30 p.m. and 6:00 - 8:00 p.m.

Anchorage

Wednesday, May 2nd
United Way Conference Room
701 West 7th, Suite 230
2:00 - 4:30 p.m.

Central Middle School of Science
1405 "F" Street
6:00 - 8:00 p.m.

LICENSED CHILD CARE FACILITIES

FACILITY TYPE	TOTAL FACILITIES 12/1/00	CAPACITY* 12/1/00	NUMBER OF CHILDREN IN CARE 12/01/00	NUMBER OF CHILDREN SUBSIDIZED 12/2000
HOME	295	1 928	1,715	1,870
GROUP HOME	49	578	362	"
CENTER	234	13,251	6,136	2,332
TOTALS	578	15,757	10,213	4,202

*Capacity has increased to 16,238 as of 1/31/01

**Total number of children served in the Group Home is combined with Home category

REGISTERED CHILD CARE FACILITIES

FACILITY TYPE	TOTAL FACILITIES 12/1/00	CAPACITY 12/1/00	NUMBER OF CHILDREN SUBSIDIZED 12/2000
HOME	1631	6524	587



Department of Education & Early Development

**Proposed Changes to Regulation 4 AAC 62
Child Care Licensing**

The following are ways to comment on this regulation:

In Writing:

Commissioner of Education & Early Development
Attn: Regulations Review
801 West Tenth Street, Suite 200
Juneau, AK 99801-1894

Via the Web:

www.eed.state.ak.us
click on Comment on Proposed Regulations.
A copy of the regulations and a comment form is available.

By Fax:

(907) 465-4156

In Person:

State Board Meeting
June 7, 2001 at 9:00 a.m.
Alaska Vocational Technical Center (AVTEC)
Student Service Center, 519 Fourth Avenue
Seward, Alaska

Comments must be received no later than 4:30pm, May 18, 2001.

If you have questions on how to comment, please call
Sheila Box, 465-2801

ALASKA STATE LEGISLATURE



Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
(907) 465-3805 Fax

SENATOR LYDA GREEN SENATE DISTRICT N

June 6, 2001

Deputy Commissioner Yvonne Chase
Department of Education & Early Development
333 West 4th Avenue Suite 320
Anchorage, Alaska 99501-2341

TRANSMITTED VIA EMAIL, ORIGINAL TO FOLLOW

Dear Deputy *Yvonne* Commissioner Chase,

I am writing in regards to the proposed amendments to 4 AAC 62, Child Care Licensing Requirements.

I have been contacted by both constituents and non-constituents opposing sections of the proposed changes. There is particular concern about the over-all financial ramifications for facilities and loss of available spaces for children. The expressed fear is that these costs will have to be absorbed by parents. It is possible that parents will not be able to afford the raised costs and therefore will remove their children from licensed facilities and place them in registered or even unregistered and unregulated homes.

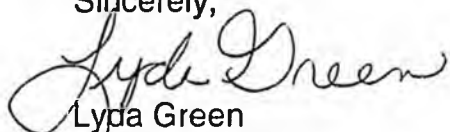
There is particularly a concern about lowering child-to-caregiver ratios. The general consensus is that the current ratios have worked well for some time now. If these ratios were changed, it seems facilities would be faced with having to hire more employees or lower the number of children they provide care for. Facilities that were built with the current ratios in mind would be under-utilized and result in a loss of available spaces for children.

Concern is also expressed regarding the proposed requirement of one Child Care Specialist for every thirty children in care at a facility. I have been told that there is a lack of qualified persons to fill these positions and a shortage of educational opportunities to produce qualified persons. When coupled with the relatively low wages facilities are able to offer, filling the currently required upper-level child care provider positions is already difficult. Facilities are afraid that more required positions will be impossible to fill.

I understand that there have been some suggested amendments to the proposed regulations. However, I have not had the chance to review these amendments and am not sure if they address the concerns outlined above.

In light of these concerns, I believe that it would be in the best interests of the Department of Education and Early Development and the State Board of Education and Early Development to delay adoption of these regulations until these issues can be addressed with the people who are most affected by the regulations.

Sincerely,



Lyda Green
Senate District N

cc: Members of the Senate HESS Committee
Senator Loren Leman
Senator Jerry Ward
Senator Gary Wilken
Senator Bettye Davis
Chairman of the House HESS Committee
Representative Fred Dyson
Members of the Regulation Review Committee
Representative Lesil McGuire
Senator Robin Taylor
Senator Georgianna Lincoln
Representative Jeannette James
Representative Joe Hayes

Online Public Notice

State of Alaska Online

Home Page		Go Back		
Submitted by	Date Modified	Ak Admin Journal	Attachments	Public (Web edit)
Sheila Box/OOC/EED on 04/10/2001 at 10:25 AM	04/10/2001 10:27:57 AM	[not printed]	supp 10 - 4 AAC 62 Child Care with selections.pdf	

Proposed Changes to 4 AAC 62, Child Care Licensing Requirements

Category: Notices of Proposed Regulations

Department: Education & Early Development

Publish Date: 04/10/2001

Location: Statewide
Region: Statewide

Body of Notice:

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE STATE BOARD OF EDUCATION & EARLY DEVELOPMENT

Notice is given that the State Board of Education & Early Development, under the authority of AS 14.07.020, AS 14.07.060, and AS 14.37.020, proposes to amend regulations in 4 AAC 62, Child Care Licensing Requirements, to implement and make specific AS 14.37 by:

- Making changes which correct or clarify items.
- Changes made as a result of legislation that has recently passed into law.
- Changes that represent an effort to increase the health and safety of children in childcare settings, as well as the qualifications of care providers.
- Lowering the provider to child ratio as part of an ongoing effort to improve quality of care in early development.

Notice is also given that interested persons may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to:

Commissioner's Office
Department of Education & Early Development
Attn: Regulations Review
801 West Tenth Street, Suite 200
Juneau, Alaska, 99801-1894

so that your comments are received no later than 4:30 p.m. on May 18, 2001. Additionally, any person may present oral comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, at an oral hearing during the next regularly scheduled meeting of the Alaska State Board of Education & Early Development, June 7, 2001, at the Alaska Vocational Technical Center (AVTEC), Student Service Center 519 Fourth Avenue, Seward, Alaska. The oral

hearing will begin at 9:00 a.m., and will continue until 10:00 a.m., or until those persons present and signed up in advance to testify have spoken, whichever is sooner. **Written comments will not be accepted at the oral hearing.**

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Sheila Box at 907-465-2801, or e-mail sheila_box@eed.state.ak.us, no later than May 30, 2001, to ensure any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the Commissioner's Office at the address above, e-mailing sheila_box@eed.state.ak.us, or calling 907-465-2801, and they can be found on the Department of Education & Early Development's web site <http://www.eed.state.ak.us/regs>.

The State Board of Education & Early Development, after the oral hearing mentioned above, will either adopt these or other proposals dealing with the same subject without further notice or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

April 9, 2001

/s/ Shirley J. Holloway, Ph.D., Commissioner
Department of Education & Early Development

**ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))**

Alaska Department of Education & Early Development

Subject: Child Care Licensing Requirements

Citation: 4 AAC 62

Reason for Proposed Action:

The responsibility for Child Care Licensing was transferred to the Department of Education & Early Development on July 1, 2000. The childcare licensing sections of the Department of Health and Social Services regulations were transferred to title four of the Administrative Code at that point, but no substantive changes occurred. The proposed regulations represent minor corrections or clarifications of these regulations, changes made as a result of legislation that has recently passed into law, and changes that represent the Department of Education & Early Development's effort to increase the health and safety of children in childcare settings, as well as the qualifications of care providers.

Program Category and BRU: State Board of Education & Early Development.

Cost of implementation to EED and available funding (in thousands of dollars)

Initial Year (FY01)

General Fund -0-
Federal Funds -0-
Other Funds (specify) -0-*

Subsequent Years

General Fund -0-
Federal Funds -0-
Other Funds (specify) -0-*

** Changes to the number of children to staff ratios in these regulations, along with FY2002 changes to the income eligibility scale and implementation of the market rate survey, which increases provider payments, will result in increased costs for the child care subsidy program. These costs are reflected in the FY2002 budget request for the subsidy program.*

Contact: Yvonne Chase, Deputy Commissioner of Early Development, Department of Education & Early Development, 333 West Fourth Avenue, Suite 320, Anchorage, Alaska, 99501.

Origin of Proposed Action: At the direction of the State Board of Education & Early Development at its meeting in Juneau, Alaska, March 30, 2001.

April 9, 2001

Prepared by: Sheila Box, Executive Secretary to the
State Board of Education & Early Development
(907) 465-2801

Revision History:

04/10/2001 10:25:17 AM by Sheila Box/OOC/EED/State/Alaska/US
04/10/2001 10:27:57 AM by Sheila Box/OOC/EED/State/Alaska/US

[Home Page](#) Notices by: [Department](#) | [Location](#) | [Category](#) | [Title](#) | [Publish Date](#)



[supp 10 - 4 AAC 62 Child Care with selections.pdf](#)

4 AAC 62.200

QUALIFICATIONS OF ADMINISTRATOR.

(a) The administrator of a child care home must be at least 18 years of age. The administrator of a child care center or a child care group home must be at least 21 years of age.

(b) An administrator must be of good character and reputation, have an understanding of the development of children, the ability to care for children, and the skills to work with children, family members, department staff, community agencies, and, where applicable staff of the child care facility.

(c) The administrator of a child care center must have management and supervisory skills necessary to plan and evaluate programs, select and supervise personnel, including delegation of responsibility and motivation of staff, and handle finances.

(d) The administrator of a child care center must have 12 semester hours of college credit in early childhood development, child development, child psychology, or the equivalent, such as a CDA credential. College credit in management may substitute for three of the 12 required hours. The administrator of a child care center for school-aged children may substitute relevant college courses, such as recreation courses, to meet the requirements of this subsection.

(e) In addition to the requirements of this section, an administrator must meet the applicable caregiver qualifications for the type of child care facility set out in 4 AAC 62.210 .

(f) The designated administrator shall submit to the licensing representative the names, addresses, and telephone numbers of four individuals, at least three of whom are unrelated to the person, who can provide references attesting to the person's good character, reputation, and interpersonal skills and, if applicable, professional skills.

(g) The licensing representative will assess the qualifications of the designated administrator. If the review shows that the person is not qualified under this section, the licensing representative will inform the child care facility that the person may not serve as an administrator and that the child care facility's license is subject to denial or revocation unless a qualified administrator is designated within 30 days.

History -

Eff. 1/1/96, Register 136; am 3/1/98, Register 145

Authority -

AS 14.37.020

(2) attest to the person's ability to work successfully with children, act as a positive role model for children, and meet the requirements of this section; and

(3) if taken by telephone, be recorded immediately by written notes, signed, and dated.

(i) In this section,

(1) "adult member of the licensee's household" means a person 18 years or older who remains or intends to remain in the child care facility for more than 45 days, but does not include

(A) a person 18 or 19 years of age who is in the custody of the state; or

(B) who is a runaway sheltered in a child care facility or an adult client of a maternity home;

(2) "child abuse or neglect" has the same meaning as in AS 47.17.290 ;

(3) "indictment" includes presentment or charging by information;

(4) "person having regular contact with children in a child care facility" means a caregiver, a member of the licensee's household, and a person residing in any part of the child care facility, if that person has direct access from the person's residence to the part of the child care facility where child care is provided.

History -

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Dear Parent,

New Child Care regulations have been proposed by the Dept. of Education and Early Development. They comprise major changes in many areas. Several of these changes will impact you and definitely raise rates.

The first change is the reduced child to caregiver ratio. The new ratio requirements will effectively remove 10% or more of the children in each age group. For example, in a group of ten 4 year olds now, we have one teacher. The new code will allow only 9 children with one teacher. One child will have to go, and the spaces remaining will have to absorb the revenue loss with increased tuition. For smaller centers, the impact will most likely cause them to close. Parents simply will not be able to pay the much higher pro-rata increase in fees.

The second change is that each center have a qualified administrator for every 30 children. If it were possible to find this qualified staff, the salary cost would be unaffordable for any center. This would again increase the cost of day care.

The third change is the demand for more record keeping and reporting. This will be reflected in increased fees to parents.

This is the most serious threat to the future of private child care in Alaska to date. To our knowledge, the proposed State Regulations are more stringent than that used in any other state. If there is not a public outcry, these regulations will become law. Many children will no longer have centers to attend and there will be fewer spaces in those centers that remain. Increased fees to the parents will result.

As the private child care industry has exploded across America in the last 15 years, very few privately owned centers have been built in Alaska and many have closed. If there is a shortage of child care now, what will it be like when the new requirements take effect? Once private care is not available, justification for state operated care will be clear.

The Dept. of Education and Early Development has not scheduled any oral hearings to be held in the Valley or Anchorage. Written comments are accepted only until May 18. Most operators had no knowledge of these proposed regulations until a week or so ago. The only oral hearing scheduled is in Seward on June 7th and then only for 1 hour.

We urge you to write the Commissioner of Education, send a POM to your legislators, or write articles to the newspaper, and any other influential parties known to you. There is little time, and your child's space may be the one you save by expressing your opinion strongly against this proposed regulation.

Chapter 14.37. LICENSURE OF CHILD CARE FACILITIES

Sec. 14.37.010. Purpose; applicability.

(a) The purpose of this chapter is to establish and maintain standard levels for services offered to children in child care facilities. The legislature recognizes the responsibility of parents to select and monitor caregivers for their children in order to ensure a reasonably safe and developmentally appropriate child care environment. The child care licensing procedures in this chapter are intended to reduce predictable risk of harm to children and to provide support services to those providing child care services.

(b) This chapter and regulations adopted under this chapter apply to facilities

(1) for which licensure is required by or under AS 14.37.030 ; or

(2) that are exempt under AS 14.37.030 from licensure but for which a license is issued under AS 14.37.030 (c).

Sec. 14.37.020. Powers of department.

(a) The department may

(1) license and supervise child care facilities;

(2) investigate applicants, licensees, and persons that the department reasonably believes are operating a facility without a license or certification in violation of this chapter;

(3) adopt regulations to implement the provisions of this chapter, including regulations establishing certification and licensure procedures, standards, and fees; establishing requirements for operation of facilities licensed under this chapter; and distinguishing between types of child care facilities;

(4) enter into agreements with private entities, municipalities, or individuals to investigate and make recommendations to the department for the licensing and supervision of child care facilities under procedures and standards of operation established by the department.

(b) The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to child care facilities under this chapter to a municipality that has adopted an ordinance providing for child care licensing under home rule powers under AS 29.10.010 or as authorized under AS 29.35.200 - 29.35.210. A municipality to which these powers have been delegated may adopt, by ordinance, additional requirements for child care facilities operating within its boundaries if the requirements meet or exceed the requirements adopted by the department.

Sec. 14.37.030. License required; exemptions.

(a) A person may not operate a child care facility without a license issued under this chapter unless that facility is exempt from licensure. The following facilities are exempt:

(1) a facility in which child care is regularly provided and each child's parent is on the premises within reasonable proximity and accessibility to the child;

(2) a facility located on a United States Department of Defense or United States Coast Guard installation that is located on federal property;

(3) a recreational program that children are allowed to attend and in which the program assumes no responsibility for care of the children;

(4) a daytime therapeutic program of supervised, educational, and rehabilitative services for children with special needs or behavioral problems;

(5) a program that is primarily educational and that

(A) is certified as a pre-elementary school under department regulations adopted under AS 14.07.020 ;

(B) serves children three years of age or older and is exempt from the department pre-elementary school regulations; or

(C) is operated as a headstart preschool that is required to meet the standards established under 42 U.S.C. 9836a;

(6) a temporary facility providing care for less than five continuous weeks;

(7) a facility regularly providing child care to four or fewer children unrelated to the caregiver;

(8) a facility in which the caregiver is a relative of all of the children.

(b) In addition to facilities that, under this section, are exempt from licensure, the department, by regulation, may provide for additional exemptions that the department considers appropriate.

(c) A person may apply for a license for a facility that is exempt from licensure under this section. The department may issue a license to an applicant under this subsection if the applicant meets the requirements of this chapter and regulations adopted under this chapter.

Sec. 14.37.040. Application for license.

(a) Application for a license to operate a child care facility must be made to the department on a form provided by the department and must be accompanied by all applicable fees established by the department under AS 14.37.020 (a)(3).

(b) An application submitted under this section must contain at least the following information:

(1) the name and address of the applicant and, if the applicant is a corporation, partnership, association, or another form of organization, the name, address, and title of each individual who has an ownership or management interest in the facility; if the applicant is an individual, the application must include the name, age, and driver's license number, if any, of each member of the individual's household;

(c) Before expiration of a provisional license, the department shall issue a biennial license for the facility if

(1) after inspection and investigation under (b) of this section, the department finds that the facility is operating in compliance with and meets the licensure requirements of this chapter and regulations adopted under this chapter;

(2) none of the grounds for revocation set out in AS 14.37.180(a)(2) exist; and (3) all applicable fees have been paid. The department shall prepare a summary report of its findings and recommendations for issuance of a biennial license.

(d) The issuance of a license by the department does not obligate the department to support the facility financially.

Sec. 14.37.060. Denial of license; right to appeal.

(a) If the department denies an application for a license or decides not to issue a biennial license, the department shall hand deliver to the prospective licensee, or mail to the prospective licensee by certified mail, return receipt requested, a notice of denial of licensure. The notice must contain a summary of the department's reasons for denial of the license and a form for requesting a hearing under (b) of this section.

(b) A prospective licensee who was denied licensure may appeal the department's decision by requesting a hearing, on the form provided by the department, within 15 days after receipt of the notice of denial of licensure.

Sec. 14.37.070. Variances.

(a) The department may grant to an applicant for a license under this chapter, or to a licensee, a variance from a requirement of this chapter or a regulation adopted under this chapter if that person submits to the department, on a form provided by the department, a complete variance request as required by this section. A variance may be granted if

(1) the applicant or licensee proposes an alternative means, acceptable to the department, to satisfy the intent of the requirement for which the variance is requested; and

(2) the health and safety of children is adequately protected.

(b) A request for a variance must contain the following information:

(1) the statute or regulation from which the variance is sought;

(2) the reasons why the variance is needed;

(3) the period of time for which the variance is requested;

(4) the proposed alternative means of satisfying the intent of the requirement for which the variance is requested;

(5) a statement as to how the health and safety of children will be protected during the period of the variance;
and

(6) assurance that the conditions of the facility do not present an imminent danger to the health or safety of individuals served by the facility.

(c) To evaluate a request for a variance, the department shall take one or more of the following actions:

(1) investigate the statements in the request;

(2) inspect the facility;

(3) schedule a conference with the applicant or licensee regarding the variance request.

(d) The department's decision approving or denying a variance must be in writing, and the department shall provide a copy of the decision to the person requesting the variance. If the department grants the variance, the decision must state the term of and conditions of the variance.

(e) If an applicant or licensee violates a condition of a variance granted under this section, the variance is terminated.

Sec. 14.37.080. Content of license; posting.

(a) A license issued under this chapter must state

(1) the period of time during which the license is in effect;

(2) the name of the facility;

(3) the type of facility;

(4) the name of the licensee;

(5) the location and mailing address of the facility;

(6) the number and age range of children that the facility may have in care at any time;

(7) all conditions set by the department;

(8) variances approved by the department for the duration of the license; and

(9) the address and phone number of the nearest department office that is responsible for administering this chapter or of the department representative responsible for evaluating that facility under AS 14.37.020(a)(4).

(b) A licensee shall post the license in a conspicuous place in the facility, visible to individuals in care and their families and to facility staff. If the department has approved a variance that is not stated on the license, the licensee shall post a copy of the variance near the license.

Sec. 14.37.090. Licenses not transferable.

A license may be issued under this chapter only for the location and person named in the application. A license issued under this chapter may not be transferred to another person or location.

Sec. 14.37.100. Orientation and training.

The department, by regulation, may require that an applicant or licensee complete orientation or training to assist that person in operating under the license.

Sec. 14.37.110. Records required.

(a) In accordance with regulations adopted by the department, a licensee shall keep the records regarding each individual in its care that are necessary to show compliance with this chapter and regulations adopted under this chapter.

(b) The department's licensing records, with the names of all individuals in care and parents of minors in care deleted to protect the confidentiality of those individuals, are available for public inspection, except for

(1) material made confidential by state or federal statutes or regulations;

(2) material that is part of an uncompleted licensing or complaint investigation;

(3) records that would deprive an applicant, licensee, or other person of a fair and impartial hearing; and

(4) records for which the department determines that disclosure would constitute an unwarranted invasion of personal privacy.

(c) A government agency that provides funding to a facility licensed under this chapter may have access to that facility's records in order to conduct an audit.

Sec. 14.37.120. Monitoring; investigation.

(a) By the first anniversary of the effective date of a biennial license, including a renewed biennial license, the licensee shall submit an annual self-monitoring report to the department. The department shall specify, by regulation, the contents of the report.

(b) To encourage parents of children in child care facilities to become involved in day-to-day monitoring of the care provided by the facilities, the department shall require licensees to give to parents of children in child care in the licensee's facility a summary of the regulatory

requirements that apply to the facility and the department's or department representative's telephone contact number for reporting a concern regarding child care. The department also may provide notice of the telephone contact numbers for reporting child care concerns.

(c) The department may conduct an investigation, including announced or unannounced on-site inspections, for ongoing monitoring or to assist in its review of an annual self-monitoring report.

Sec. 14.37.130. Biennial license renewal.

(a) At least 90 days before the expiration date of a biennial license, a licensee who wishes to remain licensed shall submit, on a form provided by the department, an application for renewal of the license and any associated variances.

(b) Before expiration of a biennial license, the department or its representative shall inspect a facility that is the subject of a renewal application.

(c) The department shall renew a biennial license if the department finds that

(1) the licensee

(A) either is in compliance with this chapter and regulations adopted under this chapter or is substantially in compliance and has implemented a plan of correction, approved by the department, that is designed to bring the facility into full compliance; and

(B) has maintained the facility in good repair and is in compliance with all state fire safety and environmental health and safety code requirements;

(2) the ground for revocation set out in AS 14.37.180 (a)(2) does not exist; and

(3) all applicable fees have been paid.

(d) If the licensee submits a renewal application within the time period required by the department by regulation, but the department is unable to complete its review before the expiration date of the biennial license, the license is automatically extended for six months or until the department completes its review and either approves or denies the application, whichever occurs first.

(e) If the department decides to approve an application for renewal, but finds that the applicant is not in compliance with a provision of this chapter, a regulation adopted under this chapter, or a condition on the license, the department, as a condition on the renewed biennial license, shall require the applicant to correct any violations and provide the department with verification of compliance.

(f) If the department denies an application for renewal, it shall provide the applicant with a notice of denial of application. The notice must contain a written statement of the reasons for denial and a form for requesting a hearing under (g) of this section.

(g) An applicant whose application is denied may appeal the department's decision, on the form provided by the department, by requesting a hearing within 15 days after receipt of the notice of denial of application.

Sec. 14.37.140. Notice of changes.

(a) A licensee shall provide the department with written notice of a change of mailing address at least 14 days before the effective date of the change.

(b) A licensee shall notify the department within 24 hours after having knowledge of a conviction or indictment, presentment, or charging by information or complaint of an administrator, regular volunteer, staff person, or member of the licensee's household for a violation of the following laws or the laws of another jurisdiction with similar elements:

(1) offenses against the family and vulnerable adults under AS 11.51;

(2) perjury under AS 11.56.200 ;

(3) offenses included in the definition of "serious offense" under AS 12.62.900.

(c) A licensee shall notify the department at least 20 days before the effective date of a decision to relinquish the license.

(d) A licensee shall notify the department at least 20 days before the date on which the licensee wishes to change the number of children in care or hours of operation.

(e) A licensee shall notify the department no later than one day after signing a contract for sale of the licensed facility.

(f) A licensee shall notify the department at least 30 days before the licensee wishes to change the location of the facility.

Sec. 14.37.150. Complaints.

(a) A person who believes that a provision of this chapter, a regulation adopted under this chapter, or a condition of a license issued under this chapter has been violated may file a verbal or written complaint with the department.

(b) The department shall investigate all complaints filed under this section unless the department reasonably concludes that the complaint is without merit.

(c) After an investigation under this section, the department shall prepare a written report of investigation and shall mail a copy to the licensee or other person who is the subject of the complaint, and to the complainant if requested. If the department determines that a violation of this chapter, a regulation adopted under this chapter, or a condition of a license issued under this chapter has occurred, the department's report of investigation must contain the following:

(1) a description of the violation;

(2) a citation to the provision of this chapter or the regulation that has been violated, if applicable; and

(3) either

(A) a date by which the violation must be corrected and a verification of compliance submitted to the department; or

(B) a plan of correction.

(d) A licensee may submit to the department a written response regarding a report of investigation relating to that facility. The department shall retain the written response in the licensing file.

(e) A licensee may not take retaliatory action against a person who files a complaint. A complainant against whom retaliatory action has been taken may recover treble damages in a civil action upon a showing that the action was taken in retaliation for the filing of a complaint.

Sec. 14.37.160. Investigations; search warrants.

(a) An applicant for a license, or a licensee, shall cooperate with the department for purposes of licensing investigations, investigations relating to ongoing monitoring of the facility, or investigations under AS 14.37.150 by

(1) permitting representatives of the department to inspect the facility, review records, interview staff, and interview individuals in care; and

(2) providing to the department information and documentation requested by the department to determine compliance with this chapter and regulations adopted under this chapter.

(b) Following an investigation relating to ongoing monitoring of a facility or relating to a facility that the department believes is operating without a license in violation of this chapter, the department shall prepare and distribute a written report of investigation as described in AS 14.37.150 (c), and the facility may submit a response as described in AS 14.37.150 (d).

(c) The department may seek a search warrant to inspect a facility if

(1) the department has probable cause to believe that the facility is operating without a license in violation of this chapter and the facility operator refuses to allow an inspection by the department; or

(2) the licensee refuses to allow an inspection of the facility by the department.

Sec. 14.37.170. Enforcement actions.

(a) During an investigation under this chapter, the department may, by written notice, suspend operations of the facility if the department has reasonable cause to believe that a violation is occurring that presents an imminent danger to the health or safety of the individuals in care. A suspension under this subsection continues for the time period set by the department

and may continue until the department issues a report of investigation under AS 14.37.150 (c) or 14.37.160(b).

(b) If, after an investigation under this chapter, the department has determined that a violation of this chapter or a regulation adopted under this chapter has occurred or a ground for revocation or nonrenewal set out in AS 14.37.180 exists, has issued a report of investigation under AS 14.37.150 (c) or 14.37.160(b), and has determined that voluntary compliance or a plan of correction is not appropriate, the department may take one or more of the following enforcement actions as the department considers appropriate:

(1) delivery of a warning notice to the licensee or other person who is the subject of the investigation;

(2) modification of the term of an existing license or reduction of the number of children for whom care can be provided;

(3) suspension of operations of the facility for a period of time set by the department;

(4) suspension of new enrollment in the facility for a period of time set by the department;

(5) nonrenewal of the license;

(6) revocation of the license;

(7) issuance of an order requiring immediate closure of the facility;

(8) assessment of an administrative fine of up to \$500 for each day a violation continues, not to exceed a total of \$5,000 for a violation.

(c) The department shall provide the licensee or other person who is the subject of an investigation with written notice of the department's decision under (b) of this section to take enforcement action. The notice must contain a form for requesting a hearing under (d) of this section and must describe

(1) the condition, if any, in the facility that constitutes a violation of this chapter or a regulation adopted under this chapter;

(2) each enforcement action that will be taken;

(3) the licensee's or other person's right to appeal the department's decision to take an enforcement action described in (b)(2) - (8) of this section.

(d) A licensee or other person to whom a notice has been provided under (a) or (c) of this section may appeal the department's decision to impose an enforcement action described in (a) or (b)(2) - (8) of this section by filing a written request for a hearing, on the form provided by the department, within 15 days after receipt of the notice of enforcement action.

(e) Unless the violation that prompted enforcement action under (b) of this section presents an imminent danger to the health or safety of the individuals in care, an enforcement action described in a notice provided under (c) of this section may not be imposed until

(1) the time period for requesting a hearing under (d) of this section has passed without a hearing being requested; or

(2) the department makes a final decision following a hearing requested under (d) of this section.

(f) If a hearing is requested under (d) of this section, the department's decision following the hearing is a final administrative order.

(g) If a hearing is not requested under (d) of this section, the department's notice of enforcement action constitutes a final administrative order, which the department may seek the court's assistance in enforcing.

(h) A licensee whose license was revoked or not renewed under this section may not reapply for licensure under this chapter until after the time period, if any, set by the department in its final administrative order. If a time period is not set by the department, the revocation or nonrenewal is permanent, and the former licensee may not again apply for licensure under this chapter.

(i) Assessment of an administrative fine under this section does not preclude imposition of a criminal penalty under AS 14.37.210 .

Sec. 14.37.180. Grounds for license revocation or nonrenewal.

(a) In addition to the ground of violation of this chapter or a regulation adopted under this chapter, the department may revoke or decline to renew a license issued under this chapter on one or more of the following grounds:

(1) failure to submit a timely and complete renewal application;

(2) the indictment or charging by information or complaint, or a criminal conviction within the last 10 years, of the licensee or administrator, member of the licensee's household who is present in the facility at any time the facility is in operation, regular volunteer, or staff person for

(A) a felony;

(B) a misdemeanor crime of assault, reckless endangerment, contributing to the delinquency of a minor, or misconduct involving a controlled substance; or

(C) the crime of perjury, as defined in AS 11 or the laws of another jurisdiction;

(3) the conviction, indictment, presentment, or charging of the licensee or an administrator, member of the licensee's household who is present in the facility at any time the facility is in operation, regular volunteer, or staff person at any time for a violation or attempted violation of an offense included in the definitions of "serious offense" under AS 12.62.900 ;

(4) obtaining or attempting to obtain or retain a license under this chapter by fraudulent means, misrepresentation, or by submitting false information;

(5) failure to correct a violation noted in a report of investigation provided under AS 14.37.150 (c) or 14.37.160(b);

(6) failure to comply with a final administrative order issued by the department under AS 14.37.170 .

(b) A licensee may voluntarily relinquish the license or withdraw an application for renewal.

Sec. 14.37.190. Administrative procedure.

The administrative adjudication provisions of AS 44.62 (Administrative Procedure Act) apply to an appeal from a department decision under this chapter relating to denial, involuntary conditioning, or revocation of a license, suspension of operations or admissions, or assessment of an administrative fine.

Sec. 14.37.200. Immunity from liability.

(a) A person operating under agreement with the department under AS 14.37.020(a)(4) is immune from civil liability that might otherwise be incurred or imposed for acts or omissions that occurred during the performance of the person's duties on behalf of the department if the person was operating within the scope of the duties delegated to the person under the agreement.

(b) The department and its employees are not liable for civil damages as a result of an act or omission in the licensing, monitoring, or supervision of a facility licensed under this chapter. This subsection does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

Sec. 14.37.210. Penalty.

A person who violates a provision of this chapter or a regulation adopted under this chapter is guilty of a class B misdemeanor.

Sec. 14.37.299. Definitions.

In this chapter,

(1) "administrator" means an individual who has general administrative charge and oversight of a facility;

(2) "child" means an individual under 18 years of age, and includes an individual who is a relative of a care provider or administrator;

(3) "child care" means, care, supervision, and provision of developmental opportunities, with or without compensation, to a child who does not have a parent present;

(4) "child care facility" means a place where child care is regularly provided for children under 12 years of age for periods of time that are less than 24 hours in duration unless nighttime care is authorized by the department;

(5) "criminal justice information" has the meaning given in AS 12.62.900;

(6) "department" means the Department of Education and Early Development;

(7) "facility" means the administration, program, and physical plant of a child care facility;

(8) "licensee" means a person to whom a license has been issued under this chapter;

(9) "parent" means a birth or adoptive parent or a legal guardian;

(10) "relative" means an individual who is related to another through any of the following relationships, by blood, adoption, or marriage: parent, grandparent, great grandparent, brother, sister, stepparent, stepsister, stepbrother, cousin, aunt, uncle, great-aunt, great-uncle or step-grandparent;

(11) "serious offense" has the meaning given in AS 12.62.900 .

Register __, ____ 2001 EDUCATION & EARLY DEVELOPMENT

4 AAC 62.010 (a) is amended to read:

4 AAC 62.010. EXEMPTIONS FROM LICENSURE REQUIREMENTS. In addition to those facilities[PERSONS WHO ARE] exempt from the requirements of this chapter under AS 14.37.030, the following facilities[PERSONS] are exempt from the licensure requirements of AS 14.37.010 - 14.37.299:

(1) a facility in which the caregiver [PERSON] caring for a child in the child's own home, whether the caregiver is related to the child or not;

(2) a facility in which child care is provided [PERSON CARING] for a child on an irregular basis of less than one day a week for fewer than five consecutive weeks;

(3) a public or private elementary school program, kindergarten through grade six, during normal school hours, but not before or after school child care provided at the school site;

(4) a facility[PERSON] that is certified as a family child care provider by the United States Coast Guard. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020 AS 14.37.030

4 AAC 62.015 is amended to read:

4 AAC 62.015. VOLUNTARY CHILD CARE LICENSURE; NO LICENSE ISSUED FOR CERTAIN EXEMPT FACILITIES. The department will not issue a license to child care facilities that are exempt under AS 14.37.030(a)(2)[(1)] - (a)(4), or 4

Register _____, _____ 2001 EDUCATION & EARLY DEVELOPMENT

AAC 62.010(a)(1) - (a)(4). (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / ,

Register)

Authority: AS 14.37.020 AS 14.37.030

4 AAC 62.020 is amended to read:

4 AAC 62.020. IMPLEMENTATION(a) Unless extended by the department in its discretion, a child care facility licensed before effective date, 2001[MARCH 1, 1998] has until six months after the effective date, 2001[SEPTEMBER 1, 1998] or the date by which its license must be renewed or converted from provisional to biennial status, whichever is sooner, in which to make any changes to the physical environment of the child care facility or obtain any new documentation required under the effective date, 2001 amendmentsto this chapter.

(b) The licensing representative will not assess compliance with the effective date, 2001 amendedrequirements of this chapter by a child care facility licensed before the effective date, 2001[MARCH 1, 1998] until the child care facility's license is renewed or converted from provisional to biennial status, or until an investigation of an allegation of noncompliance with a requirement of AS 14.37 or this chapter, whichever occurs first. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020

4 AAC 62.025 (a) is amended to read:

4AAC 62.025 TIMEFRAMES(a) A self-monitoring report by a child care facility under **AS 14.37.120**[AS 14.37.050] must be submitted no later than 30 days before the first anniversary date of the child care facility's biennial license and as part of the child care facility's biennial license renewal application under AS 14.37.130. (Eff. 1/1/96, Register 136; am / / , Register)

Authority: AS 14.37.020

4 AAC 62.030 (a) and (b) are amended and (c) is repealed and readopted to read:

4 AAC 62.030. APPLICATION FOR LICENSE(a) **If an orientation and pre service training program is available in the community, the licensing representative may require an**[AN] applicant for a license to operate a child care facility under this chapter **to** [SHALL] attend **the program. If the applicant does not complete any required program, the licensing representative will suspend processing the application, until the requirement is met**[ORIENTATION AND PRE-SERVICE TRAINING AS REQUIRED BY A LICENSING REPRESENTATIVE, IN THE DISCRETION OF THE REPRESENTATIVE].

(b) An applicant for a license to operate a child care facility under this chapter shall

- (1) submit the application on forms provided by the department;
- (2) comply with department procedures; **and**
- (3) initiate the application in the name of the **individual**[PERSON], or legal entity responsible for the operation of the child care facility[;AND

(4) INCLUDE WITH THE APPLICATION RELEASE FORMS COMPLETED BY THE ADMINISTRATOR, ALL ADULT MEMBERS OF THE HOUSEHOLD, AND ANY ADULT WHO RESIDES IN ANY PART OF THE CHILD CARE FACILITY, IF THAT ADULT HAS DIRECT ACCESS FROM THE ADULT'S RESIDENCE TO THE PART OF THE CHILD CARE FACILITY WHERE CHILD CARE IS PROVIDED; THE RELEASE FORMS SHALL AUTHORIZE THE LICENSING REPRESENTATIVE TO

- (A) REVIEW CRIMINAL JUSTICE INFORMATION;
- (B) REVIEW PROTECTIVE SERVICE RECORDS;
- (C) REVIEW LICENSING RECORDS;
- (D) REQUEST A HEALTH, PROBATION, OR MENTAL HEALTH EVALUATION, IF CONSIDERED NECESSARY BY THE DEPARTMENT; AND
- (E) SHARE THIS INFORMATION WITH THE APPLICANT OR LICENSEE, TO THE EXTENT PERMITTED BY STATE OR FEDERAL LAW].

(c) An applicant for a provisional or biennial license under AS 14.37 shall file a completed application on a form or forms provided by the department and provide the following information as applicable to the type of child care facility:

- (1) information required by AS 14.37.040(b);
- (2) a copy of enabling legislation, charter, partnership agreement, or articles of incorporation for the applicant, if the applicant is a legal entity;

(3) the phone number, fax number, and electronic mail address, if any, of the facility and of the applicant, including each individual who has an ownership or management interest in the facility;

(4) the name, address, phone number, electronic mail address, if any, and title of the chief executive officer of the unit or subunit of government, if the applicant is a government unit;

(5) the name, address, phone number, and electronic mail address, if any, of the owner of the property housing the child care facility;

(6) names, phone numbers, electronic mail addresses, if any, and mailing addresses of four references for the applicant;

(7) for each individual, age 16 and older, having regular contact with children in a child care facility:

(A) a notarized clearance for licensing form including identifying information such as date of birth, driver's license number and background information and

(B) a notarized release of information that will authorize the licensing representative to

(i) review criminal justice information, including juvenile justice information for juveniles age 16 to age 20 under the authority of AS 47.12.310(e);

(ii) review protective service records for adults; in this subparagraph, "protective services records" means records of the

department of health and social services developed under the authority of AS 47.10; 47.14; and 47.17;

(iii) review licensing records;

(iv) request a health, probation, or mental health evaluation, if considered necessary by the department to evaluate whether the individual meets the requirements of AS 14.37 and this chapter; and

(v) share this information with the applicant for a license or licensee, to the extent permitted by state or federal law; and

(C) fingerprint cards as required in 4 AAC 62.210(f).

(8) ages of children to be cared for;

(9) hours and days of operation;

(10) a request for a variance from a requirement of AS 14.37 or a regulation of this chapter, if applicable;

(11) any specializations for which approval is sought under 4 AAC 62.600 - 4 AAC 62.610 of this chapter;

(12) water test results, if applicable;

(13) a current plan of operation for the child care facility, including an organizational chart, staffing chart, other plans, policies, rules, program descriptions, schedules, and forms, and materials unless previously submitted to the department and no changes have occurred; and

(14) other information required by the department to enable the department to determine if the applicant meets the requirements of AS 14.37 and this chapter. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020 AS 14.57.040

4 AAC 62.045 (e) is amended to read:

4 AAC 62.045. DELEGATION AND WITHDRAWAL OF AUTHORITY TO LICENSE CHILD CARE FACILITIES.

(e) A municipality to which child care licensing authority has been delegated shall maintain individual facility records documenting facility compliance or noncompliance with the applicable requirements of AS 14.37 and this chapter. If requested by the department, the municipality shall allow the department to review the municipality's facility records and conduct on-site compliance[STANDARD-BY-STANDARD] evaluations of facilities licensed by the municipality. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020

4 AAC 62 is amended by adding a new section to read:

4 AAC 62.065. DISCLOSURE OF LICENSING RECORDS) Department records on a licensed childcare facility are public unless otherwise declared confidential by state or federal law and except information:

(1) made confidential by AS 14.37.110 including child abuse and neglect records under AS 14.17, criminal justice information under AS 12.62 and medical and psychological records;

(2) protected by a privilege or principal recognized by the courts;

(3) that is part of an incomplete licensing or complaint investigation; and

(4) any other records if their disclosure would;

(A) deprive an applicant or licensee of a fair and impartial hearing;

or

(B) interfere with law enforcement proceedings.

(b) The department will ensure the security of confidential records by

(1) providing adequate procedures and facilities to protect confidential information from unauthorized access and from accidental or deliberate damage;

(2) providing procedures for screening, supervising, and disciplining agency personnel in order to minimize the risk of security violations;

(3) providing training to employees working with or having access to confidential information, and

(4) providing systems for and encouraging the public to review licensing records that are legally open, without disclosing confidential material.

(c) The procedure for disclosure, denial, reconsideration, and appeal regarding agency records contained in 6 AAC 96.010 - 6 AAC 96.900 will be followed when an individual makes a verbal or written request for licensing records. (Eff. / / , Register)

Authority: AS 14.37.020 AS 14.37.110

4 AAC 62.110 is repealed and re-adopted to read:

4 AAC 62.110. ADMINISTRATOR(a) A child care facility shall designate an administrator who is qualified under 4 AAC 62.200. The administrator may be the same person who owns or is otherwise legally responsible for operating the child care facility.

(b) A child care facility with one or more employees shall designate an adult caregiver who meets the age and qualification requirements of 4 AAC 62.200 (a) and (b), and who has at least one year of child care experience, to act on behalf of the administrator in the absence of the administrator from the child care facility. The designated adult caregiver may be a child development specialist who is qualified under 4 AAC 62.230.

(c) Unless the child care facility has previously designated an on-site child development specialist who is qualified under 4 AAC 62.230 the administrator of a child care facility shall be

(1) on-site at least one half of the time that the child care facility is providing care between the hours of 6:00 a.m. and 10:00 p.m. or at least 20 hours per week for a full-day or 24 hour child care facility or 10 hours per week for a half-day or less; and

(2) responsible for not more than two child care facilities.

(d) If the administrator is absent for a period exceeding three consecutive weeks, the child care facility shall designate a child development specialist who is qualified under 4 AAC 62.230 to act on behalf of the administrator. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020

4 AAC 62.120 (a), (b), (c) and (e) are amended to read:

4 AAC 62.120. CHILD CARE FACILITY OPERATION AND MANAGEMENT.

(a) A child care facility with one or more employees[CENTER] shall provide[ADOPT] personnel policies [THAT ARE GIVEN] to employees and regular volunteerat the time they start work with children. The personnel policies must [AND THAT] include, as applicable,

(1) personnel qualifications;

(2) the job description applicable to the employee or regular volunteer

and

(3) procedures for annual evaluation.

(b) A child care facility with one or more employees or regular volunteersshall either directly or by delegation to the administrator

(1) provide for screening, scheduling, and supervising of all employees, volunteers, and others who provide services in the child care facility;

(2) remove an employee or volunteer from contact with children when the administrator has[THERE IS] reason to believe that the employee or volunteer has

physically or sexually abused a child or furnished a child with alcohol, tobacco or a controlled substance; and

(3) remove an employee or volunteer from contact with children when the administrator has reason to believe that the employee or volunteer violation of 4 AAC 62.210(b)(1) 4 AAC 62.210 (b)(5); and

(4) ensure that an employee's or volunteer's ability to perform assigned duties is not impaired by alcohol or controlled substances while in contact with children or while performing other job responsibilities.

(c) If the department requests a child care facility to remove an employee or volunteer from contact with children on the grounds set out in **(b)(2) - (b)(4)** [(b)(2) AND (b)(3)] of this section, the department will inform the employee or volunteer of the grounds for removal and provide the employee or volunteer with an opportunity to bring to the department's attention any facts that the employee or volunteer believes pertinent to the matter. The department will excuse or delay notification to the employee or volunteer if the department determines, in its discretion, that notification may put children at risk of harm or compromise a police investigation. The department will not provide the employee or volunteer with any information that is confidential under law or that may put children at risk of harm or compromise a police investigation.

(d) A child care center shall adopt and compile facility policies, procedures, program descriptions, and forms, as applicable, into an operational manual that must

Register __, ____ 2001 EDUCATION & EARLY DEVELOPMENT

be made available to employees and volunteers and to the licensing representative upon request.

(e) A child care facility's practices and the practices of the facility employees or volunteers shall[MUST] conform to statutes, this chapter, and the facility's[ITS] policies. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020

4 AAC 62.130 (a)(2) and (3), are amended to read:

4 AAC 62.130. RECORDS(a) A child care facility shall

(1) establish written records necessary to demonstrate compliance with the applicable requirements of AS 14.37 and this chapter;

(2) retain records demonstrating compliance for at least three years from the record's creationand

(3) permit a licensing representative to review records, including personnel and evaluation records and applicable portions of board or other governing body minutes, to determine compliance with AS 14.37 and this chapter. (Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020 AS 14.37.100 AS 14.37.160

4 AAC 62. 140 (a)(5), (6), and (7) are amended and (a)(8) is added to read:

4 AAC 62.140. REPORTS(a) In addition to the notice of changes required by AS 14.37.140, a child care facility shall report the following planned changes to the licensing

Register __, ____ 2001 EDUCATION & EARLY DEVELOPMENT

representative as soon as possible, but not later than 30 days before they are expected to occur:

- (1) change in the person operating the child care facility;
- (2) change in the name of the person operating the child care facility;
- (3) change in the name of the child care facility;
- (4) change of administrator;
- (5) change in the age [OR SEX] of children served;
- (6) deletion or addition of a specialization under 4 AAC 62.600- 4 AAC

62.610 [OR]

(7) addition and departure of an individual, age 16 and older, having regular contact with children in the child care facility in compliance with 4 AAC 62.210(g)(3) and (4)[OF AN ADULT MEMBER TO THE LICENSEE'S HOUSEHOLD FOR 45 DAYS OR LONGER]

(8) changes in the plan of operation and other information included in the initial application as required by 4 AAC 62.03 Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020

Note to Publisher Please amend Section title 210 and 240 in the contents list following

ARTICLE 3. PERSONNEL to read:

210. Qualifications and responsibilities of individuals [PERSONS] having regular contact with children in a child care facility

240. Supervision of employees

4 AAC 62.200 (d) is amended and a new (h) is added to read:

4 AAC 62.200. QUALIFICATIONS OF ADMINISTRATOR

(a) The administrator of a child care home must be at least 18 years of age. The administrator of a child care center or a child care group home must be at least 21 years of age.

(b) An administrator must be of good character and reputation, have an understanding of the development of children, the ability to care for children, and the skills to work with children, family members, department staff, community agencies, and, where applicable staff of the child care facility.

(c) The administrator of a child care center must have management and supervisory skills necessary to plan and evaluate programs, select and supervise personnel, including delegation of responsibility and motivation of staff, and handle finances.

(d) The administrator of a child care center must have 12 semester hours of college credit in early childhood development, child development, child psychology, or the equivalent, such as a CDA credential. College credit in management may substitute for three of the 12 required hours. The administrator of a child care center for school-aged children may substitute relevant college courses, except that three semester hours of college credit in child development are required [SUCH AS RECREATION COURSES, TO MEET THE REQUIREMENTS OF THIS SUBSECTION].

(e) In addition to the requirements of this section, an administrator must meet the applicable caregiver qualifications for the type of child care facility set out in 7 AAC 50.210.

(f) The designated administrator shall submit to the licensing representative the names, addresses, and telephone numbers of four individuals, at least three of whom are unrelated to the person, who can provide references attesting to the person's good character, reputation, and interpersonal skills and, if applicable, professional skills.

(g) The licensing representative will assess the qualifications of the designated administrator. If the review shows that the person is not qualified under this section, the licensing representative will inform the child care facility that the person may not serve as an administrator and that the child care facility's license is subject to denial or revocation unless a qualified administrator is designated within 30 days.

(h) Unless the administrator has a bachelor's degree in child development or the equivalent, the administrator of a child care center shall participate in continuing education in addition to the semester hours required by of this section, by obtaining at least three semester hours of college credit in courses relevant to children's care and development every two years. An administrator with a bachelor's degree in child development or the equivalent shall participate in continuing education by obtaining at least three semester hours of college credit in courses relevant to children's care and development every five years.

(Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am / / , Register)

Authority: AS 14.37.020

4 AAC 62.210 is repealed and readopted to read:

4 AAC 62. 210. QUALIFICATIONS AND RESPONSIBILITIES OF INDIVIDUALS HAVING REGULAR CONTACT WITH CHILDREN IN A CHILD

CARE FACILITY.(a) An adult having regular contact with children in a child care facility and a caregiver of any age must be a responsible individual of reputable character who exercises sound judgment.

(b) An individual may not work, volunteer, or reside in the part of the facility where child care is provided or in any other part of the facility with direct access to the part of the facility where child care is provided if the individual

(1) is the alleged perpetrator of an incident of child abuse or neglect in which the department found the evidence available substantiates the allegation or the evidence demonstrates the individual's inability to adequately provide care and supervision to children and to meet the requirements of this section;

(2) has a physical, health, mental health, or behavioral problem to an extent that the problem poses a significant risk to the health, safety, or well-being of children in care;

(3) has a domestic violence or alcohol or other substance abuse problem to an extent that the problem poses a significant risk to the health, safety, or well-being of children in care;

(4) was the subject of prior adverse licensing action of the kind described in AS 14.37.170(b)(1) - (8); or

(5) was at any time under indictment, charged by information or complaint, or convicted for the following laws or similar laws of another jurisdiction:

(A) offenses against the family and vulnerable adults under AS 11.51;

(B) perjury under AS 11.56.200;

(C) offenses included in the definition of "serious offense" under AS 12.62.900.

(c) A child care facility and the department may require that an individual having regular contact with children in a child care facility provide an evaluation from a probation, health, or mental health professional affirming that the individual is free from problems that pose a significant risk to the health, safety, or well-being of a child in the child care facility.

(d) An individual having regular contact with children in a child care facility may not abuse a child or engage in any exploitive or sexual act with a child.

(e) The licensing representative will review the following available records of all caregivers, employees and individuals age 16 and older having regular contact with children in a child care facility:

(1) child protection records;

(2) federal, state and municipal criminal justice information;

(3) medical records; and

(4) licensing records.