

Byron Mallott
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Tally Teal
Department of Labor & Workforce Development

FROM: Scott Meriwether, Office of the Lieutenant Governor 
465.4081

DATE: October 31, 2017

RE: Filed Permanent Regulations: Department of Labor & Workforce Development

Department of Labor and Workforce Development regulations re: Occupational Safety and Health (OSHA) Review Board procedures, retaliation compliant reporting, and occupational safety and health standards (8 AAC 61.165 - 8 AAC 61.205; 8 AAC 61.500; 8 AAC 61.1010(c); 8 AAC 61.1050; 8 AAC 61.1100; 8 AAC 61.1110(f); 8 AAC 61.1145)

Attorney General File:	JU2017200341
Regulation Filed:	10/30/2017
Effective Date:	11/29/2017
Print:	224, January 2018

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

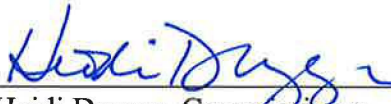
The attached 11 pages of regulations, dealing with Alaska Occupational Safety and Health Review Board Procedures; safety and health discrimination reporting; and workplace safety and health standards, are adopted and certified to be a correct copy of the regulation changes that the Department of Labor and Workforce Development adopts under the authority of AS 08.52.010, AS 08.52.020, AS 08.52.030, AS 08.52.040, AS 08.52.050, AS 18.60.020, AS 18.60.030, AS 18.60.057, AS 18.60.075, AS 18.60.089, and AS 18.60.093 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Department of Labor and Workforce Development paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: August 8, 2017



Heidi Drygas, Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

October 30, 2017, at 3:56p m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: November 29, 2017

Register: 224, January 2018

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8 AAC 61.165(a) is amended to read:

(a) Documents filed with the board must be mailed or **electronically delivered** to the Alaska Occupational Safety and Health Review Board. The date of filing is the date of receipt of the documents by the board.

8 AAC 61.165(b) is amended to read:

(b) When a party files documents with the board, the party shall mail, **electronically deliver** or personally deliver copies of the documents to all parties of record. Documents filed with the board must be accompanied by a statement giving the names of all parties served and the date and manner of service.

8 AAC 61.165(c) is amended to read:

(c) Documents may be filed with the board or served on a party by **electronic** means of facsimile transmission **or by email**. Copies of all documents filed by facsimile transmission **or email** must be concurrently [MAILED OR PERSONALLY] delivered to the board and to all parties of record. The date of filing is the date of receipt [OF THE FACSIMILE TRANSMISSION] by the board. (Eff. 12/2/94, Register 132; am 11/29/2017, Register 224)

Authority: AS 18.60.020

AS 18.60.057

AS 18.60.093

8 AAC 61.175(a) is amended to read:

Not later than ^{(((bold/underline)))} after
(a) Within 30 days ^{of} receipt by the department of a timely notice of contest, if the matter has not been settled or otherwise resolved, the department will file a complaint with the board. The complaint must specify the alleged violations, proposed penalties, and abatement dates that are contested. A copy of the complaint must be mailed, **electronically delivered** or personally delivered to the party filing the notice of contest and to all parties of record. ² ^{(((bold/underline)))}

8 AAC 61.175(b) is amended to read:

Not later than ^{(((bold/underline)))} after
(b) Within 30 days ^{of} receipt of the department's complaint, the party against whom the complaint was issued shall file an answer with the board. The answer must contain a statement responding to the allegations in the department's complaint and must include any affirmative defenses known to the party. A copy of the answer must be mailed, **electronically delivered** or personally delivered to the department and to all parties of record. ² ^{(((bold/underline)))}

8 AAC 61.175(c) is amended to read:

(c) An employer, affected employee, or authorized employee representative, who has not filed a notice of contest, may participate as a party in the proceedings before the board by filing a

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written notice of participation with the board at least 20 days before the hearing. The notice of participation must contain the name, address and telephone number of the employer, affected employee, or authorized employee representative requesting to participate as a party and must be mailed, **electronically delivered** or personally delivered to all parties of record. Failure to give notice of participation as a party does not prevent an employer, affected employee, or authorized employee representative, from attending the hearing or testifying as a witness for a party to the hearing.

(Eff. 12/2/94, Register 132; am 11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.057 AS 18.60.093

8 AAC 61.185(a) is amended to read:

“bold/underline” → may

(a) The department will, in its discretion, withdraw a citation or proposed penalty at any stage in the proceedings in a contested case. If a citation or proposed penalty is withdrawn before the hearing in a contested case, a notice of withdrawal must be submitted in writing to the board and copies must be mailed, **electronically delivered** or personally delivered to all parties of record. In addition, the employer shall mail, **electronically deliver** or personally deliver a copy of the notice of withdrawal to any authorized employee representatives and shall post a copy of the notice of withdrawal, for not less than 10 days, at the place of employment where notices to

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employees are customarily posted. Proof of the mailing or delivery and posting at the place of employment must be made by the employer in an affidavit submitted to the board.

8 AAC 61.185(b) is amended to read:

(b) An employer, affected employee, or authorized employee representative that has filed a notice of contest may withdraw the notice of contest at any stage in the proceedings in a contested case. A notice of withdrawal must be submitted in writing to the board and copies must be mailed, **electronically delivered** or personally delivered to all parties of record.

((bold/underline))) → 2

(Eff. 12/2/94, Register 132; am 11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.057 AS 18.60.093

8 AAC 61.195(b) is amended to read:

(b) A settlement agreement must include: (1) an attached copy of each citation being settled; (2) a statement of the terms of settlement for each citation being settled; (3) evidence or documentation of abatement for each citation affirmed under the settlement agreement; (4) a statement of any contested citations or issues that remain for hearing; (5) a statement that, **unless the abatement date is opposed and a hearing is scheduled under (d) of this section**, the board

shall

will [MAY] enter a final order having the same force and effect as a final order made after a

((bold/underline)))

hearing; (6) an affidavit completed by the employer verifying that a copy of the settlement agreement was mailed ^{or} electronically delivered or personally delivered to any authorized employee representatives and was posted for not less than 10 days at the place of employment where notices to employees are customarily posted; and (7) a waiver of any further proceedings before the board or the department concerning a citation settled under this section.

8 AAC 61.195(c) is amended to read:

(c) A settlement agreement mailed, electronically delivered or personally delivered to an authorized employee representative and posted at the place of employment must include a cover page containing the following language:

NOTICE OF SETTLEMENT OF ALASKA OSH CITATION Attached is a settlement agreement concerning occupational safety and health citations issued by the Alaska Department of Labor and Workforce Development. Any affected employee or authorized employee representative may object to the reasonableness of any abatement dates in the settlement agreement by giving written notice of the objection not later than 15 days after of the receipt or posting of the settlement agreement. Notice of objection to the reasonableness of the abatement date must be mailed, electronically delivered or personally delivered to the Alaska Occupational Safety and Health Review Board, P.O. Box 111149 [21149], Juneau, Alaska 99811-1149 [99802-1149].

2; facsimile transmission (fax) number (907) 269-4950;
electronic mail address osh.review.board@alaska.gov

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Upon receipt of an objection, the board may schedule a conference or hearing **and issue an order regarding the abatement date.**

8 AAC 61.195(d) is amended to read:

(d) Upon receipt of an objection to the reasonableness of an abatement date in a settlement agreement, the board may schedule a conference or hearing **and issue an order regarding the abatement date.** (Eff. 12/2/94, Register 132; am 11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.057 AS 18.60.093

8 AAC 61.205(a) is amended to read:

(a) The board shall **schedule** [CONDUCT] hearings on a quarterly basis, unless upon a motion by a party or on its own motion, the board schedules an expedited hearing.

8 AAC 61.205(n) is amended to read:

(n) A hearing before the board shall be [TAPE] recorded. A person may obtain a duplicate **recording** [AUDIOTAPE] or a **written** [TYPED] transcript of a hearing by submitting a request in writing to the board and paying the cost of **the recording or** [PREPARING THE

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DUPLICATE AUDIOTAPE OR TYPED] transcript. (Eff. 12/2/94, Register 132, am

11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.057 AS 18.60.093

8 AAC 61.500 is amended to read:

8 AAC 61.500. Filing discrimination complaints. An employee, or a representative of an employee, who believes that a violation of AS 18.60.089 has occurred, may file a complaint.

[THE COMPLAINT MUST BE IN WRITING AND MUST BE FILED WITH THE DEPARTMENT WITHIN 30 DAYS AFTER THE DISCRIMINATORY ACTION.] (Eff.

9/21/85, Register 95; am 11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.030 AS 18.60.089

~~AS 08.52.040 AS 08.52.050~~

~~Fee and providing a government-issued identification card containing the individual's photograph. (Eff. 6/14/2006, Register 178, am / / , Register)~~

~~**Authority:** AS 08.52.010 AS 08.52.020 AS 08.52.030~~

~~AS 08.52.040 AS 08.52.050~~

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8 AAC 61.1010(c) is amended to read:

*to both bold and under-
line the
dashes. //*

(c) Under AS 18.60.030, 29 C.F.R. 1926.10 - 1926.29, 1926.31 - 1926.1153,
1926.1200 - 1926.1213, and 1926.1400 - 1926.1442 [AND 1926.31 - 1926.1152] as amended,
are occupational safety and health standards in this state, as revised in this section and except as
provided in 8 AAC 61.1145 - 8 AAC 61.1170.

(Eff. 12/6/95, Register 136; am 3/27/96, Register 137; am 10/4/97, Register 144; am 2/15/2001,
Register 157; am 10/6/2002, Register 164; am 11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.030 AS 18.60.075

8 AAC 61.1050(a) is repealed:

(a) Repealed 11/29/2017. ~~8 AAC 61.1050. ADDITIONAL PERMIT-REQUIRED
CONFINED SPACE STANDARDS~~

~~(a) 29 C.F.R. 1910.146(a), AS AMENDED, IS REVISED TO READ: "THIS
SECTION CONTAINS REQUIREMENTS FOR PRACTICES AND PROCEDURES TO
PROTECT EMPLOYEES IN GENERAL INDUSTRY AND CONSTRUCTION INDUSTRY
FROM THE HAZARDS OF ENTRY INTO PERMIT-REQUIRED CONFINED SPACES."~~

8 AAC 61.1050(c) is amended to read:

(c) The note⁹ provided in 29 C.F.R. 1910.146(d)(6) is revised to read:

^{One 0.5" tab} NOTE: Attendants may not be assigned to monitor more than one permit space. Attendants may be stationed at any location outside the permit space to be monitored as long as the duties described in 29 C.F.R. 1910.146(c)(5)(i) can be effectively performed FOR EACH PERMIT SPACE THAT IS MONITORED BY THE ATTENDANT. The attendant must be in direct and constant communication with the entrants.

(Eff. 12/6/95, Register 136; am 11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.030 AS 18.60.075

^{1/2 bold / underline} The introductory language of

8 AAC 61.1100 is amended to read:

^{sets out} **8 AAC 61.1100. Additional air contaminants standards.** Table Z-1-A of this section

^{are} the standards to test limits for air contaminants in place of Table Z-1 contained in 29 C.F.R. 1910.1000, as amended. Notwithstanding Table Z-1-A, where 29 C.F.R. 1910.1053 applies,

the permissible exposure limit for crystalline silica is 50 $\mu\text{g}/\text{m}^3$. ^{micrograms per cubic meter.} (Eff. 12/6/95, Register 136;

am 10/4/97, Register 144; am 9/27/98, Register 147; am 11/29/2017, Register 224)

Authority: AS 18.60.020 AS 18.60.030 AS 18.60.075

^{1/2 bold / underline} Publisher: Retain existing Table Z-1-A where it is set out in the existing Alaska Administrative Code.

8 AAC 61.1110(f)(2) is amended to read:

One more

0.5" tab

(2) safety data sheets [MATERIAL] SAFETY DATA SHEETS, physical agent data

leave lowercase

sheets, or equivalent information for each toxic or hazardous substance and physical agent to which an employee may be exposed in the work place must be posted;

8 AAC 61.1110(f)(3) is amended to read:

One more

0.5" tab

(3) instead of posting the information required under (2) of this subsection, an

employer may post a list of the chemical name and product name of each toxic or

hazardous substance and physical agent to which an employee may be exposed in the

workplace, together with an identification of a location, in or near the workplace and

accessible to employees, where an employee may inspect the safety data sheets

[MATERIAL] SAFETY DATA SHEETS, physical agent data sheets, or equivalent

information at any time during the work shift;

(Eff. 12/6/95, Register 136; am 11/29/2017, Register 224)

Authority: AS 18.60.020

AS 18.60.030

AS 18.60.075

8 AAC 61.1145 is amended to read:

8 AAC 61.1145. Additional air contaminate standards for construction.

Notwithstanding 29 C.F.R. 1926.55, as amended, Table Z-1-A of 8 AAC 61.1100 sets out the

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«bold/underline» → micrograms per cubic meter.

standards to test limits for air contaminants for construction in place of Appendix A contained in

29 C.F.R. 1926.55(a), as amended. **Notwithstanding Table Z-1-A, where 29 C.F.R. 1926.1153**

applies, the permissible exposure limit for crystalline silica is 50 $\mu\text{g}/\text{m}^3$ (Eff. 2/15/2001,

Register 157; am 11/29/2017, Register 224)

Authority: AS 18.60.020

AS 18.60.030

AS 18.60.075