

Byron Mallott
Lieutenant Governor
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**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: March 27, 2018

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

Department of Labor and Workforce Development regulations re: recommendations from the commissioner of labor and workforce development to the Department of Administration for debarment from public contract eligibility for wilful or aggravated violators of labor laws (8 AAC 100)

Attorney General File:	JU2017200846
Regulation Filed:	3/23/2018
Effective Date:	4/22/2018
Print:	226, July 2018

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

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

The attached 4 pages of regulations, dealing with Recommendations for Debarment from Consideration for Award of Public Contracts 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 23.05.010 and AS 23.05.060 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.

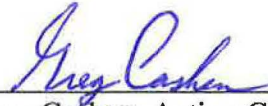
This action is not expected to require an increased appropriation.

In considering public comments, 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: _____

1/31/18



Greg Cashen, Acting Commissioner
Department of Labor and Workforce Development

FILING CERTIFICATION

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

March 23

, 2018, at 145p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: _____

April 22, 2018

Register: _____

226, July 2018

MEMORANDUM

DEPARTMENT OF LABOR AND
WORKFORCE DEVELOPMENT

STATE OF ALASKA

Commissioner's Office

TO: Scott Kendall
Chief of Staff

DATE: December 22, 2017

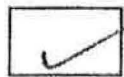
FROM: Heidi Drygas
Commissioner

PHONE: 465-2700

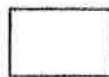
SUBJECT: Acting Commissioner
PCN 07-1001

The Department of Labor and Workforce Development requests that Greg Cashen, Deputy Commissioner, be placed into acting status as the Commissioner for the department while I am out on maternity leave, effective today.

Approval of this request is necessary for the department to effectively manage its programs and accomplish its mission. Maintaining operations is especially critical as we head into the legislative session. Greg has years of service with the department and is best suited to serve in this role.



Approved



Not Approved

Signature: _____



Date: _____

12/22/17

Register 226, July 2018 LABOR AND WORKFORCE DEV.

8 AAC is amended by adding a new chapter to read:

Part 12. Recommendations for Department to the Department of Administration.
Chapter 100. Referrals by the Commissioner to the Department of Administration (8 AAC 100.010 - 8 AAC 100.040)
Chapter 100. Referrals By Commissioner. to the Department of Administration

Section

- 10. Reporting labor violations
- 20. Referral to Department of Administration
- 30. Primary contractor referral
- 40. Applicability

8 AAC 100.010. Reporting labor violations. (a) When, as a result of an investigation or enforcement action conducted under the authority of any statute administered or enforced by the Department of Labor and Workforce Development, the director of the division responsible for enforcing the statute finds that any person has committed a willful or aggravated violation of the statute or any regulation adopted thereunder, under that statute, the director shall make a report of that violation to the commissioner.

(b) The director shall consider the violation to be

(1) A violation will be considered willful for purposes of this section if the person committing the violation

(A) five has been cited for two or more substantially similar violations within the preceding 5 years, and those citations have not been contested or have become final and not appealable;

(2) (B) has been formally adjudicated in a judicial or administrative forum as having committed two or more substantially similar violations within the preceding five years;

(3) (C) had actual knowledge of the statutory or regulatory provision being violated ^{before} committing the violation; or

(4) (D) failed to take reasonable steps to learn of the particular provision violated.

(c) The director shall consider the violation to be aggravated for purposes of this section if
(2) A violation will be considered aggravated under this chapter if

(1) (A) the violation contributed to the injury or death of ^aany person;

(2) death or injury occurs
(B) any person was injured or died during a violation of AS 23.30.075;

(3) (C) the person committing the violation failed to timely make any required report to any governmental agency regarding the violation or injury;

(4) (D) the person committing the violation falsified records, concealed records, or took any other action to conceal the violation; or

(5) (E) the person committing the violation transferred assets to any other person or entity to avoid liability or collection of a fine or debt owed because of a violation.

~~(3) If a statute administered or enforced by the Department contains or incorporates a different definition of "aggravated" or "willful," the definitions sections (1) and (2) above shall be used for purposes of this chapter.~~

Register 226, July 2018 LABOR AND WORKFORCE DEV.

(b) The director of ^(a)any division of the department shall make a report to the commissioner of any instance of a person failing to comply with any stop work order or cease and desist order issued under the authority of any statute administered by the department.

(c) If the director of ^(e)any division ^(a)of the department obtains knowledge that ^(a)any person who conducts business within ^(this)the state of Alaska has been debarred or placed on a debarment list by ^(a)any municipal, state, or federal agency, the director shall make a report to the commissioner of this debarment. (Eff. 4/22/2018, Register 226)

Authority: AS 23.05.010 AS 23.05.060 AS 44.31.020

^(the)
8 AAC 100.020. Referral to Department of Administration. The commissioner may refer ^(a)any person reported under 8 AAC 100.010 to the Department of Administration with the recommendation that the Department of Administration initiate debarment proceedings under The commissioner will make a AS 36.30.635. The recommendation ^(will)shall be in writing, and shall detail the relevant facts and circumstances leading to the recommendation, and to the extent allowed by law ^(will include)be accompanied ^(with the recommendation)by ^(a)any relevant documents. (Eff. 4/22/2018, Register 226)

Authority: AS 23.05.010 AS 23.05.060 AS 44.31.020

8 AAC 100.030. Primary contractor referral. If a subcontractor is eligible for referral for debarment under this chapter, the commissioner may also refer the primary contractor who contracted with the subcontractor if

None more
0.5" Tail))

(1)

(a) the primary contractor knew or should have known the subcontractor had a history of committing violations;

None more
0.5" Tail))

(2)

(b) the primary contractor assisted or abetted the subcontractor in committing the violation;

None more
0.5" Tail))

(3)

(c) the primary contractor knew or should have known about the violation but failed to take any action to abate or report the violation; or

None more
0.5" Tail))

(4)

(d) the statute or regulation violated by the subcontractor places responsibility for compliance on both and makes the primary contractor responsible for the violation as well. (Eff. 4/22/2018, Register 226)

Authority: AS 23.05.010 AS 23.05.060 AS 44.31.020

8 AAC 100.040. Applicability. This chapter does not apply to any violation that could result in debarment under AS 36.05.090 or under AS 23.30.080(e). (Eff. 4/22/2018, Register 226)

Authority: AS 23.05.010 AS 23.05.060 AS 44.31.020

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: March 21, 2018

File No.: 2017200846

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Department of Labor and Workforce
Development regulations re:
recommendations from the
commissioner of labor and workforce
development to the Department of
Administration for debarment from
public contract eligibility for wilful or
aggravated violators of labor laws
(8 AAC 100)

We have reviewed the attached regulations from the Department of Labor and Workforce Development against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated March 20, 2018 from the Regulations Attorney. If the commissioner of labor and workforce development wishes to refer wilful or aggravated violators of labor laws to the Department of Administration, the regulations establish a procedure for referral and for a recommendation that the Department of Administration debar, under AS 36.30.635 (State Procurement Code: authority to debar or suspend), violators from eligibility for public contracts. The regulations do not apply to violations that could result in debarment under AS 23.30.080(e), because the statute already gives the Department of Labor and Workforce Development and the Alaska Workers' Compensation Board the authority to debar; or to violations that could result in debarment under AS 36.05.090, because the statute already gives the Department of Labor and Workforce Development the authority to debar.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The December 20, 2017 public notice and the January 31, 2018 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor
Our file: 2017200846

March 21, 2018
Page 2

We have made some technical corrections to the regulations, in accordance with AS 44.62.125 and as shown on the attached copy.

SCW

cc w/enc: (via email)

Hon. Heidi Drygas, Commissioner
Department of Labor and Workforce Development

Greg Cashen, Deputy Commissioner
Department of Labor and Workforce Development

Natalie "Tally" Teal, Special Assistant and Regulations Contact
Department of Labor and Workforce Development

Deborah Kelly, Director
Division of Labor Standards and Safety
Department of Labor and Workforce Development

Becky Weimer, Regulations Specialist
Division of Labor Standards and Safety
Department of Labor and Workforce Development

Susan R. Pollard, Chief Assistant Attorney General
Legislation and Regulations Section

Rachel L. Witty, Assistant Attorney General
Labor and State Affairs Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: March 20, 2018

FILE NO.: 2017200846

TELEPHONE NO.: (907) 465-3600

FROM: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority
regarding regulations review on
Department of Labor and
Workforce Development
regulations re: recommendations
from the commissioner of labor
and workforce development to the
Department of Administration for
debarment from public contract
eligibility for wilful or aggravated
violators of labor laws (8 AAC
100)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General and
Assistant Regulations Attorney
Legislation/Regulations Section

NOTICE OF PROPOSED CHANGES ON RECOMMENDATIONS FOR DEBARMENT
FROM CONSIDERATION FOR AWARD OF PUBLIC CONTRACTS IN THE
REGULATIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE
DEVELOPMENT

BRIEF DESCRIPTION

The Department of Labor and Workforce Development proposes to change regulations on recommendations by the commissioner of Department of Labor and Workforce Development to the commissioner of the Department of Administration for debarment from consideration for award of public contracts.

The Department of Labor and Workforce Development proposes to adopt regulation changes in Title 8 of the Alaska Administrative Code, dealing with recommendations for debarment from consideration for award of public contracts, including the following:

- (1) 8 AAC is proposed to be changed as follows: add a new chapter requiring division directors to refer persons committing willful or aggravated violations to the commissioner; and create a procedure for the commissioner of the Department of Labor and Workforce Development to recommend persons to the Department of Administration for debarment proceedings under AS 36.30.635.

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 Department of Labor and Workforce Development at 1251 Muldoon Road Suite 113, Anchorage, AK 99504-2098 or by electronic mail at deborah.kelly@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00 p.m. on Thursday, January 25th, 2018.

You may submit written questions relevant to the proposed action to Deborah Kelly at 1251 Muldoon Road Suite 113, Anchorage, AK 99504-2098 or by electronic mail at deborah.kelly@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Department of Labor and Workforce Development will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System on the department's website.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Deborah Kelly at (907) 465-4855 not later than Friday, January 19th, 2018, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Deborah Kelly at deborah.kelly@alaska.gov or (907) 465-4855.

After the public comment period ends, the Department of Labor and Workforce Development will either adopt the proposed regulation changes or other provisions dealing with the same

subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS 23.05.010; AS 23.05.060

Statutes being implemented, interpreted, or made specific: AS 23.05.010; AS 23.05.060

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: 12/19/2017



Heidi Drygas, Commissioner

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Labor and Workforce Development
2. General subject of regulation: Recommendations for debarment from public contracts for willful or aggravated labor law violations
3. Citation of regulation (may be grouped): 8 AAC 100.010 - .040
4. Department of Law file number, if any: _____

5. Reason for the proposed action:

- () Compliance with federal law or action (identify): _____
- () Compliance with new or changed state statute
- () Compliance with federal or state court decision (identify): _____
- (X) Development of program standards
- (X) Other (identify): Implement Administrative Order 286

6. Appropriation/Allocation: Department of Labor and Workforce Development/Commissioner's Office - 340

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0

Another state agency: \$0

A municipality: \$0

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


	Initial Year FY <u>2018</u>	Subsequent Years
Operating Cost	<u>\$ 0</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 0</u>	<u>\$ 0</u>
1005 General fund/ program	<u>\$ 0</u>	<u>\$ 0</u>
Other (identify)	<u>\$ 0</u>	<u>\$ 0</u>

9. The name of the contact person for the regulation:

Name: Deborah Kelly
Title: Director, Labor Standards and Safety
Address: 1251 Muldoon Road, Suite 113, Anchorage, AK 99504
Telephone: (907)269-4961
E-mail address: deborah.kelly@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

11. Date: 12/13/17 Prepared by: 
[signature]

Name (printed): Deborah Kelly
Title (printed): Labor Standards and Safety Director
Telephone: (907)269-4961

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Natalie Teal, Legislative Liaison, of the Alaska Department of Labor and Workforce Development, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to Title 8 of the Alaska Administrative Code, dealing with recommendations for debarment from consideration for award of public contracts, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 10 Jan 2018

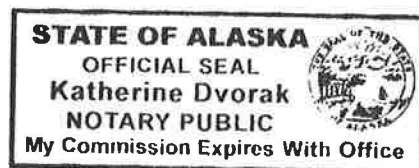
Natalie Teal

Natalie Teal, Legislative Liaison

Subscribed and sworn to before me at POWDER CO office Turnagain on
10 January 2018.

K. Dvorak

Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

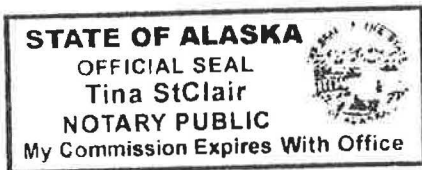
I, Deborah Kelly, Director of Labor Standards and Safety for the Department of Labor and Workforce Development, being duly sworn, state the following:


In compliance with AS 44.62.215, the Department of Labor and Workforce Development has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Labor and Workforce Development regulation on Recommendations for Debarment from Consideration for Award of Public Contracts.

Date: 1/30/18


Deborah Kelly, Labor Standards and Safety Director

Subscribed and sworn to before me at Juneau, Alaska on
January 30, 2018.




Notary Public in and for the State of Alaska
My Commission Expires: with office

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0001414428
\$293.84

RECEIVED
DEC 26 2017
Administrative
Services

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

December 20, 2017

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed

Joleesa Stepetin

Subscribed and sworn to before me
this 20th day of December, 2017

Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

NOTICE OF PROPOSED CHANGES ON RECOMMENDATIONS FOR DEBARMENT FROM CONSIDERATION FOR AWARD OF PUBLIC CONTRACTS IN THE REGULATIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

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affected.

Statutory authority: AS 23.05.010; AS 23.05.060

Statutes being implemented, interpreted, or made specific: AS
23.05.010; AS 23.05.060

Fiscal Information: The proposed regulation changes are not expected
to require an increased appropriation.

Date: 12/19/2017
Heidi Drygas, Commissioner

Published: December 20, 2017

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019