

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT


The attached four pages of regulations, dealing with investigations by the department of possible violations of 3 AAC 08.305 – 3AAC 08.365, the regulations that govern proxy solicitations for voting by the shareholders of certain corporations organized under 43 U.S.C. 1601 – 1629h (Alaska Native Claims Settlement Act), are adopted and certified to be a correct copy of the regulation changes that the Department of Commerce, Community, and Economic Development adopts under the authority of AS 45.55.139, AS 45.55.905, AS 45.55.950, AS 45.55.160, AS 45.55.910 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 Commerce, Community, and Economic 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: Sept. 30, 2011
Juneau, Alaska


Crystal Koeneman
Legislative Liaison
Office of the Commissioner

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on October 6, 2011, at 10 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor

Effective: November 5, 2011

Register: 200, January, 2011

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.360. Investigations. (a) A shareholder, director, or officer of a corporation subject to AS 45.55.139, aggrieved by an alleged violation of 3 AAC 08.305 - 3 AAC 08.365 may request that the administrator investigate the alleged violation. An aggrieved person is not required to request that the administrator investigate an alleged violation before seeking other remedies, including court action.

(b) Except as provided in this subsection, a request for investigation must be filed with the administrator not later than 90 days after the date of the shareholder vote for which the proxies in question were solicited. If the administrator finds the requester did not discover and reasonably could not have discovered the alleged violation within the time required by this subsection, the deadline for filing the request for investigation is 90 days after the time the requester discovered or reasonably should have discovered the alleged violation.

(c) A request for investigation must be filed with the administrator on a form provided by the administrator or in a separate writing. A request for investigation that is not filed on a form provided by the administrator must include

(1) the full name, mailing address, telephone number, and electronic mail address, if any, for the requester and, if the requester is not a corporation under 3 AAC 08.305, for both the requester and the corporation;

(2) the date of the shareholder meeting for which proxies are solicited, if known;

(3) the full name, mailing address, telephone number, and electronic mail

address, if known, of the alleged violator of 3 AAC 08.305 - 3 AAC 08.365;

(4) each regulation allegedly violated;

(5) a description of the solicitation involving an alleged violation and a copy of any materials relevant to an alleged violation;

(6) the full name, mailing address, telephone number, and electronic mail address, if any, of other persons who may have information regarding the alleged violation;

(7) a written summary of any meetings, communications, or other contacts that the requester has had with the alleged violator of 3 AAC 08.305 - 3 AAC 08.365 regarding the alleged violation;

(8) a description of any court action related to the alleged violation of 3 AAC 08.305 - 3 AAC 08.365 that has been filed; and

(9) the requester's signed acknowledgment that

(A) the information provided

(i) is true and complete to the best of the requester's knowledge;

(ii) must be updated immediately by the requester if other information is discovered, a ruling or decision is issued in a court action, or a court action is filed;

(iii) may be disclosed by the administrator as necessary or appropriate to investigate an allegation, in a public order of the administrator, or at an administrative hearing that could result from an investigation;

(iv) constitutes a request for an investigation under this section;

(v) if the request is filed more than 90 days after the date of the shareholder vote for which the proxies in question were solicited, the reason that the requester did not discover and reasonably could not have discovered the alleged violation within the 90-day period required by (b) of this section.

(d) The administrator

(1) shall return an incomplete request for investigation to the person making the request;

(2) may consolidate multiple requests for investigation; and

(3) may commence an investigation at any time whether or not a request for investigation is filed.

(e) Not later than 10 business days after the administrator's receipt of a complete request for investigation, the administrator shall notify the requester whether the administrator will open or decline to open an investigation. If, within the 10-business-day period specified in this subsection, the administrator is unable to obtain necessary information about the request, the administrator shall notify the requester in writing within the 10-business-day period of the additional time that the administrator needs to decide whether to open or decline to open an investigation. If the administrator opens an investigation, the administrator may limit the scope of the investigation.

(f) If the administrator opens an investigation, the administrator may provide the alleged violator and the corporation written notice of the investigation. The administrator may disclose

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information, including the identity of the requester, if necessary or appropriate to investigate an allegation.

(g) After investigation, the administrator shall notify the requester, the corporation, and the alleged violator in writing of the administrator's decision to take no administrative action or to issue an order under AS 45.55.920.

(h) This section applies to a request for investigation filed with the administrator or an investigation initiated by the administrator on or after the ^{11 / 5 / 2011} ~~effective date of this section.~~

(Eff. 11 / 5 / 2011, Register 200)

Authority:	AS 45.55.139	AS 45.55.905	AS 45.55.950
	AS 45.55.160	AS 45.55.910	