

GOVERNOR'S OFFICE

PROPOSED CHANGES TO REGULATIONS



6 AAC 93

**WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA
PROGRAM**



Public Review Draft

November 23, 2005

Notes to Reader:

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined like this**. Because a section heading always appears in bold print, proposed new text in a section heading is merely underlined **like this**.
2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc., is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.
3. Text that is proposed to be deleted [APPEARS IN BRACKETS AND IS CAPITALIZED LIKE THIS]. Text that is proposed to be deleted from a section heading appears [**LIKE THIS**].
4. When the words "includes" and "including" are used, AS 01.10.040(b) provides that they shall be construed as though followed by the phrase "but not limited to."

Title 6. Governor's Office.**Chapter 93. Western Alaska Community Development Quota Program.**

6 AAC 93.012 is amended to read:

6 AAC 93.012. References to federal law. In this chapter, each reference to a provision of 50 C.F.R. 679 refers to that provision **in 50 C.F.R. 679** as revised as of **June 16, 2004** [JUNE 9, 1999]. (Eff. 8/19/99, Register 151; am ___/___/___, Register___)

Authority: [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

Art. III, sec. 1, Ak Const. **Art. III, sec. 24, Ak Const.**

6 AAC 93.015(a)(1) is amended to read:

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

(1) the commissioner of the Department of Commerce, Community, and Economic Development, or one or more of the commissioner's representatives from that department [, **INCLUDING ONE PERSON TO ACT AS CDQ MANAGER**];

6 AAC 93.015(a)(3) is amended to read:

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

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(3) **the governor’s fish policy advisor** [ONE OR MORE OTHER STATE EMPLOYEES OR STATE OFFICIALS DESIGNATED JOINTLY BY THOSE COMMISSIONERS, IF ADDITIONAL MEMBERS OF THE TEAM WOULD BE BENEFICIAL].

6 AAC 93.015(c)(1) is amended to read:

(c) To fulfill the purpose of this chapter, including providing accountability to the CDQ program, the CDQ team shall

(1) solicit submittals of community development plans (CDP) from eligible communities; **in this chapter, the term “eligible community” means a community that has been recognized by the federal government as being eligible to participate in the CDQ Program;**

6 AAC 93.015 is amended by adding a new subsection to read:

(e) The commissioner of the Department of Commerce, Community, and Economic Development will designate a person from the department to act as CDQ manager. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am ____/____/____, Register____)

Authority: [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

Art. III, sec. 1, Ak Const. **Art. III, sec. 24, Ak Const.**

6 AAC 93.017 is repealed and readopted to read:

6 AAC 93.017. CDQ program standards. To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) - (4) of this section, as applicable. The CDQ team shall determine whether

(1) a CDP provides specific and measurable benefits to each community participating in the CDP;

(2) a CDQ project set forth in a CDP provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;

(3) a proposed CDP has the support of all participating communities; **and**

(4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board. (Eff. 8/19/99, Register 151, am ____/____/____, Register____)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.025 is repealed and readopted to read:

6 AAC 93.025. Requirements for submitting a proposed CDP. (a) To apply for an allocation under 50 C.F.R. 679, a qualified applicant shall submit to the CDQ team, on or before the deadline set under 6 AAC 93.020, a complete proposed CDP that contains the information required by 50 C.F.R. 679.30(a), including

(1) a statement that the applicant is a qualified applicant as defined in 50 C.F.R. 679.2; this statement shall be accompanied by a certificate of incorporation showing that the applicant is a nonprofit corporation formed under AS 10.20;

(2) a statement as to whether the applicant is also the managing organization for the proposed CDP;

(3) a statement that each community participating in the proposed CDP is an eligible community;

(4) a list of communities participating in the CDP as required by 50 C.F.R. 679.30(a)(1)(iv) and the following information as to those communities:

(A) evidence that the applicant has developed an effective outreach project to keep participating communities informed about the CDQ group's activities and to facilitate community input throughout the course of the CDP;

(B) evidence that the applicant has annually provided to residents of the applicant's participating communities

(i) notice of its nonprofit corporation's annual meeting; and

(ii) an annual report as required by 6 AAC 93.050(g);

(C) evidence that the applicant held at least one full meeting of its corporate board of directors in an eligible community in its region annually under its previous CDPs;

(D) information as to the number of both permanent and temporary jobs created in the community as a result of the applicant's previous CDPs and the number of both permanent and temporary jobs expected to be created or eliminated in the community as a result of the proposed CDP;

(5) for each member of the applicant's board of directors,

(A) a copy of the articles of incorporation or election results by which the person became a member of the board of directors;

(B) a letter of support from the governing body of the board member's eligible community; and

(C) a statement of support from the governing body of each community participating in the proposed CDP; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(6) for each species allocation, evidence, such as a contract with a business partner, that the applicant has not obligated, and does not intend to obligate, further allocations to a third party;

(7) for an applicant that is also a managing organization,

(A) evidence that the managing organization has a board of directors with a membership composed of at least 75 percent resident fishermen from the community or group of communities participating in the CDP, with at least one member from each community; and

(B) a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(8) for a managing organization that will participate in a fishery on behalf of the applicant, but is not the applicant, a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(9) information regarding the particular benefits that an allocation under the CDP would generate for the Bering Sea and Aleutian Islands region; in addition, the applicant may provide information regarding any benefits to the state or the United States;

(10) a detailed description of the applicant's plan to maximize specific and measurable benefits to eligible communities from CDQ allocations;

(11) a description of the applicant's CDQ projects for employment, education, and training to provide career track opportunities to residents of the applicant's participating communities;

(12) the applicant's existing and foreseeable business relationships; to meet the requirement of this paragraph, the applicant shall

(A) provide copies of any contractual arrangements dealing with legal services, lobbying services, consulting services, auditing services, accounting services, allocation management services, investment research services, fund management services, and all other services;

(B) provide copies of profit sharing arrangements;

(C) provide copies of funding and financing plans; and

(D) describe each type of relationship, including joint ventures, loans, partnerships, corporations, and, if applicable, distribution of proceeds;

(13) a copy of the applicant's investment guidelines approved by its corporate board of directors demonstrating a formal, effective administrative process that sets out sound business principles, including examples of due diligence, that the applicant will follow for

(A) for-profit CDQ projects;

- (B) infrastructure CDQ projects;
- (C) fund and cash management CDQ projects;
- (D) investment-related CDQ projects; and
- (E) other applicable CDQ projects;

(14) as part of the detailed description of each CDQ project required by 50 C.F.R. 679.30(a)(1)(i), information that

- (A) identifies the project as an active or proposed CDQ project; and
- (B) describes the project's normal scope of operations;

(15) a milestone table that sets out specific, realistic, and measurable objectives for each CDQ project and dates for achieving each objective;

(16) budgets, including

(A) a general budget for the proposed CDP that identifies all allocation revenue, project revenue, and project expenditures for the entire period for the proposed CDP;

(B) an annual budget listing detailed expenses for each CDQ project for the first year of the proposed CDP; and

(C) an annual comprehensive budget for the allowable administrative expenses, as previously determined by the CDQ team, specifically indicating the expenses that are chargeable to the managerial, general administrative, and policy phases of a CDQ group and the group's projects;

(17) a description of how the applicant plans to report financial and audit information to the CDQ team throughout the course of its CDP, in accordance with 6 AAC 93.050;

(18) a copy of the applicant's federal Internal Revenue Service Form 990 Non-Profit Corporation Income Tax Return for the three most recent tax years;

(19) a copy of the applicant's federal consolidated Internal Revenue Service Form 1120 U.S Corporation Income Tax Return for the three most recent tax years;

(20) a copy of the federal income tax return filed with the Internal Revenue Service by each of the applicant's affiliates for the three most recent tax years;

(21) a list of names of the applicant's five highest-paid salaried personnel, five highest-paid consultants, and five highest-paid board members and the amount of total compensation paid to each of the persons listed; and

(22) any additional information that the CDQ team finds is necessary to determine whether to recommend approval of the proposed CDP under 6 AAC 93.040(b).

(b) An eligible community may not

(1) submit more than one proposed CDP during a single CDQ application period;

or

(2) participate in more than one CDP; this paragraph does not prevent an eligible community from participating in halibut allocations that are restricted by regulatory areas of the International Pacific Halibut Commission and 50 C.F.R. 679.30.

(c) Except for circumstances that the CDQ team finds were beyond the applicant's control, the CDQ team may not evaluate a proposed CDP received after the deadline set under 6 AAC 93.020. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am ____/____/____, Register____)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.035(c) is amended to read:

(c) A public hearing under this section **will** [MUST] be recorded and **may be** transcribed. **A copy of the** [THE] **recording** [TRANSCRIPT] of the public hearing will be made available to the public, upon request [, AT THE SAME TIME THAT THE TRANSCRIPT IS SUBMITTED UNDER 6 AAC 93.045]. **If the public hearing is transcribed, a copy of the transcript will be made available to the public, upon request.**

(Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am ____/____/____, Register____)

Authority: [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

Art. III, sec. 1, Ak Const. **Art. III, sec. 24, Ak Const.**

6 AAC 93.040 is repealed and readopted to read:

6 AAC 93.040. Evaluation of proposed CDPs. (a) After the public hearing under 6 AAC 93.035, the CDQ team shall evaluate all complete proposed CDPs to determine whether the CDPs are consistent with the standards in 6 AAC 93.017 and comply with the applicable requirements of this chapter and 50 C.F.R. 679.

(b) After evaluation under this section, the CDQ team shall transmit to the governor for the governor's review and necessary action each proposed CDP and the CDQ team's evaluation and recommendation regarding each CDP. The governor will then make a written finding that a proposed CDP

(1) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the National Marine Fisheries Service (NMFS) for approval for an allocation in the amount requested by the applicant;

(2) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the NMFS for approval with a reduced allocation from the amount initially requested by the applicant; or

(3) does not meet the requirements of this chapter and 50 C.F.R. 679 and will not be recommended to the NMFS for approval.

(c) If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval.

(d) If there is an insufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion and after consultation by the CDQ team under (e) of this section,

(1) apportion the available quota among the applicants whose CDPs will be recommended for approval and will recommend the apportionment to the NMFS for approval; or

(2) select those complete proposed CDPs that the governor believes best satisfy the objectives, requirements, and criteria of the CDQ program and will recommend those CDPs to the NMFS for approval; a recommendation under this paragraph may also include a recommendation for an apportionment under (1) of this subsection.

(e) Before the CDQ team recommends an apportionment of the quota under (d) of this section, it shall consult with the applicants that might be affected by the proposed apportionment.

The CDQ team may request an applicant to submit a revised CDP to assist the CDQ team in determining the

(1) economic feasibility and likelihood of success of the proposed CDP with an allocation of fishery resource less than that requested; and

(2) particular benefits that may be derived by participating communities affected by an allocation of fishery resource less than that requested.

(f) In apportioning the quota of fishery resource under (d) of this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.

(g) If an applicant disagrees with the governor's recommendation regarding a proposed CDP or an allocation of quota of the fishery resource, the applicant may file a request for reconsideration of that recommendation as provided in 6 AAC 93.090.

(h) Before forwarding recommendations to the NMFS under 6 AAC 93.045, the governor will, or, at the governor's direction, the CDQ team shall, consult with the North Pacific Fishery Management Council (Council) regarding the proposed CDPs to be recommended by the governor for allocations and incorporate any comments from the Council into the written findings required under (b) of this section and 50 C.F.R. 679.30(d). (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am ___/___/___, Register ___)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93 is amended by adding a new section to read:

6 AAC 93.042. Apportionment of quota allocations. (a) In making a recommendation to the NMFS that requires apportionment of quota allocations under 6 AAC 93.040, the governor may, in the governor's discretion, consider the following criteria:

(1) the population of each community participating in the proposed CDP;

(2) the number of existing jobs in the applicant's CDQ region, both permanent and temporary, that exist as a result of the applicant's previous CDPs; the change, if any, in the number of permanent and temporary jobs since the applicant's last CDP was approved; and the number of jobs, if any, that have been reclassified from temporary to permanent or from permanent to temporary since the applicant's last CDP was approved;

(3) the amount of all investments that the applicant has made within the applicant's CDQ region from net CDQ assets as a result of the applicant's previous CDPs,

including grants given by the applicant and funds spent by the applicant on all projects, and the amount of those investments made since the applicant's last CDP was approved;

(4) the amount of all funds disbursed by the applicant in the form of scholarships, stipends, grants, and other expenditures to promote education and training at all scholastic or training institutions from net CDQ assets as a result of the applicant's previous CDPs and the amount of those funds disbursed since the applicant's last CDP was approved;

(5) the overall economic condition of the CDQ region to which the proposed CDP applies, including the median income for the region, the unemployment rate in the region, the percentage of the population in the region that lives below federal poverty guidelines for Alaska, and the change, if any, in those elements of the overall economic condition since the applicant's last CDP was approved;

(6) the applicant's past performance in developing harvesting or processing capability sufficient to support substantial participation by the applicant in fisheries in the Bering Sea and Aleutian Islands Management Area and the extent to which the proposed CDP is expected to develop harvesting or processing capability sufficient to support substantial participation by the applicant in fisheries in the Bering Sea and Aleutian Islands Management Area;

(7) the applicant's past performance in promoting conservation-based fisheries by minimizing bycatch, providing for full retention and increased utilization of the fishery resource, and minimizing impact to essential fish habitats; and

(8) the applicant's past performance in implementing and administering previous CDPs, including the extent to which the applicant has developed an effective outreach project as required by 6 AAC 93.025(a)(4)(C) and has provided the residents of its participating communities with an annual report, financial statement, or other communication that advised those residents of

(A) the annual gross income and net income the applicant realized from its CDQ projects;

(B) all financial transactions by the applicant if those transactions exceeded \$20,000 in the aggregate in any given year;

(C) the identities of the applicant's employees, officers, and directors who were paid more than \$20,000 in any year and the amounts those persons were paid;

(D) the identities of all consultants, attorneys, accountants, and others who performed professional services for the applicant who were paid more than \$10,000 in any year and the amounts those persons were paid; and

(E) all commitments by the applicant to pay any person or entity any amount exceeding \$10,000 in the future for any purpose.

(b) In considering the criteria set out in (a) of this section, the governor may, in the governor's discretion, rank applicants using the following weighting criteria:

(1) fisheries-related matters – 80 percent;

(2) matters that are not fisheries-related – 20 percent. (Eff. ____/____/____, Register_____)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.050 is repealed and readopted to read:

6 AAC 93.050. Annual reports. (a) In order for the CDQ team to monitor a CDP as required under 50 C.F.R. 679.30, a CDQ group shall submit to the CDQ team an annual report of the CDQ group's activities during the previous fiscal year. The CDQ group shall deliver the annual report to the CDQ team within 90 days after the end of the fiscal year. The annual report shall be considered to be delivered when it is personally delivered or when it is postmarked.

(b) The annual report required in (a) of this section shall include

(1) annual financial statements, including comparative annual consolidated financial statements prepared in accordance with generally accepted accounting principles for each of the two most recent calendar years; unaudited financial statements for the earlier year may be submitted if the CDQ group was not subject to this section for that year and audited statements were not prepared;

(2) an independent public accountant's report on the annual financial statements and a copy of the engagement letter by which the accountant agreed to perform the audit for the CDQ group;

(3) notes to the financial statements in which an independent public accountant explains in detail how financial results were determined and provides other information relevant to the annual financial statements;

(4) supplemental schedules reporting the financial position and results of operations for each of the CDQ group's affiliates;

(5) a supplemental schedule detailing the CDQ group's general and administrative expenses;

(6) a management report or letter;

(7) a report that explains how the CDQ group has met various milestones and objectives set out in its CDP and explains why it has failed to meet other milestones and objectives;

(8) a list of the names of the corporation's five highest-paid salaried personnel, five highest-paid consultants, and five highest-paid board members and the amount of total compensation paid to each of the persons listed; and

(9) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the group's annual report is due.

(c) The annual report required by (a) of this section shall be audited before it is submitted to the CDQ team. The CDQ group shall engage an independent public accountant to audit and report on its annual financial statements in accordance with generally accepted auditing standards. The scope of the audit engagement shall be sufficient to permit the accountant to determine and report whether the financial statements are presented fairly and in accordance with generally accepted accounting principles. The accountant shall examine, attest to, and report separately on, all items required to be submitted by (b)(1) – (b)(5) of this section, including the assertion of management concerning the CDQ group's internal control structure and the CDQ group's procedures for financial reporting. The attestation shall be made in accordance with generally accepted standards for attestation engagements.

(d) The independent public accountant engaged by the CDQ group to perform the functions set forth in (a) and (c) of this section shall

(1) be registered or licensed to practice as a public accountant in the state in which the audit occurs;

(2) be in good standing to perform audit services in the state in which the audit occurs;

(3) be in compliance with applicable rules of professional conduct that apply in the state in which the accountant is registered or licensed to practice; and

(4) upon request by the CDQ team, provide copies of any work papers, policies, and procedures relating to the audit;

(e) The CDQ group shall provide written notice to the CDQ team of the resignation or dismissal of an independent public accountant previously engaged. The notice shall be delivered

to the CDQ team no later than 15 days following the resignation or dismissal of the accountant and shall include a statement of the reasons for the resignation or dismissal in reasonable detail.

(f) In this section, "postmarked" means the

(1) United States Postal Service postmark;

(2) the date of placement with a courier-type delivery service as evidenced on the shipping documents;

(3) the date the document is delivered to the CDQ team by facsimile; or

(4) the date the document is delivered to the CDQ team by electronic mail.

(g) In addition to the annual report required by (a) of this section, a CDQ group shall prepare an annual report of its nonprofit corporation's activities based on the corporation's previous fiscal year and furnish the report to the CDQ team and the residents of its participating communities. The report of the corporation's activities is required to help ensure that the CDQ group is conducting an effective outreach project to keep the residents of its participating communities informed about the corporation's activities and to facilitate community input throughout the course of the CDP. The term "corporation" in this section includes the CDQ group's nonprofit corporation and all of its affiliates. The CDQ group shall deliver the annual report of the corporation's activities to the CDQ team within 90 days after the end of the fiscal year and shall deliver the annual report of the corporation's activities to all residents in all communities participating in the CDQ group at least 30 days before the date of the corporation's annual meeting. The annual report shall be considered to be delivered when it is personally delivered or when it is postmarked. If the corporation's annual meeting is not conducted within 120 days after the end of the fiscal year, the CDQ group shall update the information in the annual report of the corporation's activities before furnishing it to the residents of its participating communities. The annual report of the corporation's activities shall include

(1) sufficient information to adequately inform the residents of the participating communities and the CDQ team of the corporation's

(A) training and education programs;

(B) employment programs, and reports on employment of community residents, using the employment data reporting system of the United States Department of Labor Bureau of Labor Statistics;

(B) for-profit and non-profit community and economic development projects;

(C) CDQ harvesting activities; and

(D) community outreach efforts;

(2) financial information, including

(A) annual financial statements, including comparative annual consolidated financial statements prepared in accordance with generally accepted accounting principles for each of the two most recent fiscal years; unaudited financial statements for the earlier year may be submitted if the CDQ group was not subject to this section for that year and audited statements were not prepared;

(B) a list of the names of the corporation's five highest-paid salaried personnel, five highest-paid consultants, and five highest-paid board members and the amount of total compensation paid to each of the persons listed;

(C) a list of the names of the corporation's employees, officers, and directors who were paid more than \$20,000 during the year and the amount of total compensation paid to each of the persons listed;

(D) a list of the names of all consultants, attorneys, accountants, and others who performed professional services for the corporation who were paid more than \$10,000 and the amount of total compensation paid to each of the persons listed;

(E) a list of the names of all persons and entities the corporation has agreed to pay any amount exceeding \$10,000 in the future for any purpose, the amount the corporation has agreed to pay to each person and entity listed, and the purpose for which the corporation has agreed to pay the money to each person and entity listed;

(F) a description of all financial transactions by the corporation with any person or entity during the fiscal year and any financial transactions with any person or entity proposed by the corporation at the time the annual report is issued if the transactions in the aggregate exceeded or will exceed \$20,000 and

(i) any transaction was or will be with an entity in which an interest was or will be held by an officer or director of the corporation;

(ii) any transaction was or will be with a person nominated to become a director of the corporation; or

(iii) any transaction was or will be with a family member of an officer or director of the corporation or a family member of a person nominated to become a director of the corporation;

(G) a description of all financial transactions by the corporation with any entity during the fiscal year and any financial transactions with any entity proposed by the corporation at the time the annual report is issued if

(i) the transactions in the aggregate exceeded or will exceed \$20,000; and

(ii) an officer or director of the corporation or a family member of an officer or director of the corporation is employed by the entity, is an officer or director of the entity, or owns, directly or indirectly, an interest in the entity;

(H) a description of any arrangement by which a director of the corporation was compensated for services to the corporation and the amounts paid to the director for those services, including any amounts payable for committee participation or special assignments, but not including costs for ordinary and necessary business expenses or for group life insurance plans, medical reimbursement plans, or other plans that do not discriminate in favor of directors of the corporation and are generally available to all salaried employees;

(I) a statement of all current remuneration distributed or accrued and all future remuneration contributed during the corporation's fiscal year on behalf of officers and directors of the corporation; the term "current remuneration distributed or accrued" includes all monies paid to the officers and directors and all monies owed to the officers and directors but not yet paid by the corporation; the term "future remuneration contributed" includes amounts paid by the corporation for annuity, pension or retirement plans and for deferred compensation or profit sharing plans but does not include costs for ordinary and necessary business expenses or for group life insurance plans, medical reimbursement plans, or other plans that do not discriminate in favor of officers or directors of the corporation and are generally available to all salaried employees; the information shall be provided in the annual report for

(i) each of the five officers and directors who received, or will receive, the most remuneration for services to the corporation in any capacity; the five persons shall be named in the annual report; and

(ii) all officers and directors as a group; the number of persons in the group may be set forth without naming them;

(3) a biographical description of each nominee for a position as a member of the corporation's board of directors and each current director whose term of office will continue after the annual meeting; each description shall include

(A) the person's name, age and address;

(B) a list of all positions and offices the person has held in the corporation in the past and those positions and offices the person currently holds in the corporation;

(C) the date a nominee's term of office as director would end if the person is elected and the date a current director's term of office will end;

(D) the dates of service the person served as a director of the corporation in the past;

(E) information as to the attendance of the person

(i) at regularly-scheduled and special meetings of the corporation's board of directors during the fiscal year if the person attended less than 75 percent of the meetings; and

(ii) at meetings of the corporation's committees on which the person served during the fiscal year if the person attended less than 75 percent of the meetings;

(F) the nature of any family relationship if the person is a family member of any director, any person nominated to become a director, or any officer of the corporation;

(G) the person's business experience as a self-employed person or as an employee during the past five years, including the nature of the person's principal employment or occupation and the names and addresses of the person's businesses and past employers; and

(H) information as to whether, during the five years preceding the annual report, the person or the person's business

(i) filed a petition in bankruptcy court for relief of debt;

(ii) was adjudged insolvent in bankruptcy proceedings;

(iii) was placed in receivership;

(iv) was convicted of a criminal offense; or

(v) was found to have engaged in unethical or illegal business practices or was found to have violated securities laws;

(4) all existing or potential conflicts of interest that a director or executive officer of the corporation has or may have with the corporation, including a brief description of all legal proceedings to which a director or executive officer is a party with interests adverse to the corporation;

(5) if action is to be taken on the election of directors or other matters for which the financial statements are material to the exercise of prudent judgment, a description of the corporation's relationship with its independent public accountants; this description must include:

(A) the name of the principal accountant for the last fiscal year;

(B) a statement indicating whether the principal accountant, or a representative of the principal accountant, is expected to be present at the corporation's annual meeting with the opportunity of making a statement and with the responsibility of responding to appropriate questions;

(C) each professional service provided by the principal accountant and paid for by the corporation during the last fiscal year, including the preparation of corporate tax returns, preparation of personal tax returns, review of proposed acquisitions, review of personal investments, or development of corporate data processing systems;

(D) the percentage relationship which the aggregate of all nonaudit services bears to the aggregate of fees paid by the corporation to the principal accountant for both audit and nonaudit services performed by the principal accountant; and

(E) each disagreement the corporation had with the principal accountant in connection with audits of the last two fiscal years and any subsequent interim period;

(6) a list of the corporation's committees, including committees within or supervised by the corporation's board of directors, that perform audit, nomination, or compensation functions; the list shall include

(A) the names of the members of each committee;

(B) the number of meetings held by each committee during the last fiscal year; and

(C) a brief description of the functions performed by each committee;

(7) for each matter which is to be submitted to a vote of the board of directors, other than the election of directors, a description of the proposal and a statement of the vote required for its approval; for example,

(A) if action is to be taken on a proposed amendment to the articles of incorporation or bylaws, the description shall include the reasons for the amendment and the general effect of the amendment; or

(B) if action is to be taken on a proposed property transaction, the description shall

(i) outline the material features of the proposed transaction;

(ii) state the nature and amount of consideration involved in the transaction and, to the extent practicable, outline the facts which bear on the question of fairness and consideration;

(iii) state the name and address of the other party or parties to the proposed transaction and the nature of any material relationship of the party or parties to the corporation or the corporation's officers and directors; and

(iv) include a brief description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each officer or director of the corporation in any matter to be acted upon at the annual meeting, unless the officer or director would receive no special benefit from the transaction not shared on a pro rata basis by all persons in all communities participating in the CDQ group;

including (8) information regarding the preparation and distribution of the annual report,

(A) a description of the methods to be employed in distributing the annual report;

(B) a statement of the amount spent in preparing the annual report for distribution;

(C) a statement of the estimated total costs to prepare and distribute the annual report, including fees for attorneys, accountants, public relations advisors,

or financial advisors and expenses for advertising, printing, transportation, and any other matters; and

(D) a statement identifying the source of the funds to be spent on preparation and distribution of the annual report and the total amount any person or entity has contributed or has agreed to contribute, unless the source is a contributor of less than \$500 in the aggregate. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am ____/____/____, Register____)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.055 is repealed and readopted to read:

6 AAC 93.055. Amendments to an approved CDP. (a) General requirements. A CDP is a working business plan that must be kept current by the CDQ group. A CDQ group that seeks to amend a CDP under this section and 50 C.F.R. 679.30 shall submit to the CDQ team a written request for approval of the amendment under the appropriate process described in this section. A CDQ group may not engage in an activity that requires an amendment to the group's CDP until the amendment is recommended for approval by the state and approved by the NMFS.

(b) Submittal requirements. When submitting a proposed CDP amendment under (c) or (d) of this section, in addition to the information that is required to be submitted under 50 C.F.R. 679.30(g)(4) or (5), the CDQ group shall describe how the amendment is consistent with

(1) the standards set forth in 6 AAC 93.017, the group's investment guidelines submitted under 6 AAC 93.025(a)(13), and the requirements of 50 C.F.R. 679; and

(2) the CDQ group's ability to meet the milestones and objectives in its CDP.

(c) Substantial amendments. A substantial amendment to a CDP is subject to (e) and (g) of this section and 50 C.F.R. 679.30(g)(4). A substantial amendment requires the commissioner to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(4). A substantial amendment is required if

(1) a CDQ group intends to make a change described in 50 C.F.R. 679.30(g)(4)(iv);

(2) a CDQ group intends to add a new proposed CDQ project;

(3) a CDQ group receives notice of its breach of a loan covenant;

(4) a CDQ group fails to make a timely payment of a loan or debt obligation; or

(5) any entity involved in a CDQ project files a petition for relief of debt in a bankruptcy court.

(d) Technical amendments. A technical amendment to a CDP is subject to (f) and (h) of this section and 50 C.F.R. 679.30(g)(5). A technical amendment requires the CDQ manager to review the materials submitted by the CDQ group and make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). A technical amendment to the CDP under this subsection is required when a CDQ group intends to

(1) make a change in its board of directors or key administrative staff;

(2) make a change in a contract dealing with a business relationship described under 6 AAC 93.025(a)(10)(A);

(3) add a harvesting or processing contract that is substantially similar to an existing contract in the group's approved CDP; the CDQ group shall provide a copy of the contract; or

(4) make any other change that the CDQ team determines is technical in nature.

(e) Review process for substantial amendments. The CDQ team shall use the following process in its review for a substantial amendment proposed under (c) of this section:

(1) within 30 days after receiving the proposed amendment, the CDQ team shall determine whether the amendment is consistent with

(A) the standards set forth in 6 AAC 93.017, the group's investment guidelines submitted under 6 AAC 93.025(a)(13), and the requirements of 50 C.F.R. 679; and

(B) the CDQ group's ability to meet the milestones and objectives in its CDP;

(2) if the CDQ team finds an amendment to be inconsistent under (1)(A) or (1)(B) of this subsection,

(A) the CDQ team shall notify the CDQ group of that finding; the CDQ group may, within 10 days after receipt of the notice, submit to the CDQ team a written response to the finding;

(B) within 10 days after the CDQ team receives a response to the finding from the CDQ group, the CDQ team shall repeat the review under (1) of this subsection;

(3) the CDQ team shall repeat the process described in (2) of this subsection until the CDQ team recommends approval of the amendment or makes a determination under (g) of this section.

(f) Review process for technical amendments. The CDQ manager shall use the following process in the review of a technical amendment proposed under (d) of this section.

(1) within 10 days after receiving the proposed amendment, the CDQ manager shall determine whether the amendment is consistent with

(A) the standards set forth in 6 AAC 93.017, the group's investment guidelines submitted under 6 AAC 93.025(a)(13), and the requirements of 50 C.F.R. 679; and

(B) the CDQ group's ability to meet the milestones and objectives in its CDP;

(2) if the CDQ manager finds that an amendment is inconsistent under (1)(A) or (1)(B) of this subsection,

(A) the CDQ manager shall notify the CDQ group of that finding; the CDQ group may, within five days after receipt of the notice, submit to the CDQ manager a written response to the finding;

(B) within 10 days after the CDQ manager receives a response to the finding from the CDQ group, the CDQ manager shall repeat the review under (1) of this subsection;

(3) the CDQ manager shall repeat the process described in (2) of this subsection until the CDQ manager recommends approval of the amendment or makes a determination under (h) of this section.

(g) Recommendation for disapproval of a substantial amendment. If the CDQ team finds that a substantial amendment proposed under (c) of this section is inconsistent under (e)(1) of this section, the CDQ team shall recommend that the commissioner forward the amendment to the NMFS with a recommendation for disapproval. If the commissioner decides to recommend disapproval under this subsection, the commissioner will notify the CDQ group of that decision and will advise the CDQ group that it may request reconsideration of that decision under 6 AAC 93.090.

(h) Recommendation for disapproval of a technical amendment. If the CDQ manager finds that a technical amendment proposed under (d) of this section is inconsistent with the group's investment guidelines submitted under 6 AAC 93.025(a)(13) or the requirements of 50 C.F.R. 679, or that the proposed amendment is inconsistent with the CDQ group's ability to meet the milestones and objectives in its CDP, the CDQ manager shall recommend disapproval of the amendment. If the CDQ manager finds that the amendment is inconsistent with the standards in 6 AAC 93.017, the CDQ manager may recommend disapproval of the amendment. If the CDQ manager decides to recommend disapproval of the proposed amendment under this subsection, the CDQ manager will notify the CDQ group of that decision and will advise the CDQ group that it may request reconsideration of that decision under 6 AAC 93.090. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am ___/___/___, Register ___)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.057 is repealed:

6 AAC 93.057. Reclassification of core and noncore projects. Repealed. (Eff. 8/19/99, Register 151; repealed ___/___/___, Register ___)

The section heading of 6 AAC 93.070 is amended to read:

6 AAC 93.070. Public [CONFIDENTIAL] records.

6 AAC 93.070(a) is amended to read:

(a) Except as provided in (b) and (c) of this section, records submitted under this chapter by an applicant or a CDQ group that are in the possession of the governor or the CDQ team are subject to AS 40.25.110 - 40.25.120, [AND] are **in the public record, and are** open to inspection by the public during regular office hours.

6 AAC 93.070(b) is amended to read:

(b) A participating community, applicant, CDQ group, or managing organization wishing to protect a **trade secret or other proprietary information** [RECORD] that was provided to the state under this chapter may file with the governor or CDQ team a written petition **that identifies the particular information for which protection is sought and contains a showing of good cause as to why the information should be classified as a trade secret or proprietary information.** [IDENTIFYING THE RECORD TO BE PROTECTED AND SHOWING GOOD CAUSE TO CLASSIFY THE RECORD AS CONFIDENTIAL. IF, AT THE TIME OF SUBMISSION, A PARTICIPATING COMMUNITY, APPLICANT, CDQ GROUP, OR MANAGING ORGANIZATION WISHES TO PROTECT A RECORD BEING SUBMITTED UNDER THIS CHAPTER, THE COMMUNITY, APPLICANT, GROUP, OR ORGANIZATION SHALL MARK THE RECORD AS "CONFIDENTIAL" AND SHOW GOOD CAUSE TO CLASSIFY THE RECORD AS CONFIDENTIAL.]

6 AAC 93.070(c)(1) is amended to read:

(c) Good cause to classify a record as confidential under this section includes a showing that

(1) disclosure of the record to the public **would disclose a trade secret or proprietary information that is critical to the operation of a CDP or a CDQ project** [MIGHT COMPETITIVELY OR FINANCIALLY DISADVANTAGE OR HARM THE PARTICIPATING COMMUNITY, APPLICANT, CDQ GROUP, OR MANAGING ORGANIZATION WITH THE CONFIDENTIALITY INTEREST, OR MIGHT REVEAL A TRADE SECRET OR PROPRIETARY BUSINESS INTEREST]; and

6 AAC 93.070(c)(2) is amended to read:

(c) Good cause to classify a record as confidential under this section includes a showing that

• • •

(2) the need for **continued** confidentiality outweighs the public interest in disclosure.

6 AAC 93.070(e) is amended to read:

(e) Except as provided in Alaska Rules of Court, a record classified as confidential under this section will not be made public or furnished to any person **or entity** other than the United States Secretary of Commerce, [THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL,] the Alaska Region of the National Marine Fisheries Service, the governor, the CDQ team and staff, or other authorized representatives of the governor. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151; am ___/___/____, Register _____)

Authority: [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

Art. III, sec. 1, Ak Const. **Art. III, sec. 24, Ak Const.**

6 AAC 93.090 is repealed and readopted to read:

6 AAC 93.090. Reconsideration process. (a) A CDQ group may submit to the CDQ team a request for reconsideration of a decision under 6 AAC 93.040, 6 AAC 93.055, or 6 AAC 93.060. The request for reconsideration shall be submitted within 20 days after the CDQ group receives notice of the decision. For a decision to be reconsidered, the request for reconsideration shall include additional information that was not provided for consideration in the initial decision.

(b) For reconsideration of a decision under

(1) 6 AAC 93.040, involving a CDP or an allocation, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding a reconsideration decision; the governor will make the decision on reconsideration;

(2) 6 AAC 93.055(g), involving a substantial amendment, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the commissioner regarding a reconsideration decision; the commissioner will make the decision on reconsideration;

(3) 6 AAC 93.055(h), involving a technical amendment, the CDQ manager shall review the additional information submitted with the request for reconsideration and make the decision on reconsideration;

(4) 6 AAC 93.060, involving a CDP or an allocation, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding a reconsideration decision; the governor will make the decision on reconsideration.

(c) Within 20 days after a request for reconsideration is received by the CDQ team, notification to the CDQ group of the decision on reconsideration will be made by

- (1) the commissioner, for a decision under 6 AAC 93.055(g);
- (2) the CDQ manager, for a decision under 6 AAC 93.055(h);
- (3) the governor, for a decision under 6 AAC 93.040 or 6 AAC 93.060.

(d) Findings regarding a reconsideration decision will be submitted to the NMFS along with the final recommendation regarding the CDP, allocation, or amendment in question. The CDQ team shall shorten the time within which a request for reconsideration may be submitted under (a) of this section if the CDQ team determines that a participating community will be competitively or financially harmed by a delay in issuing the decision. (Eff. 8/19/99, Register 151; am ____/____/____, Register____)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.900 is repealed and readopted to read:

6 AAC 93.900. Definitions. In this chapter

(1) "active CDQ project" means a CDQ project that was initiated under an approved CDP or through the amendment process in 6 AAC 93.055, and that continues its status as a CDQ project;

(2) "affiliate" means a separate legal entity that controls a CDQ group, is controlled by a CDQ group, or is under common control with a CDQ group, whether the control is exercised by ownership or contract; "affiliate" includes a parent, subsidiary, or other business with at least 10 percent ownership by a CDQ group and related entities;

(3) "allocation" includes a CDQ allocation and a PSQ allocation under 50 C.F.R. 679;

(4) "allocation cycle" means the time of duration of a CDP as designated at the onset of the CDQ application period;

(5) "applicant" means a nonprofit corporation formed under AS 10.20 that has submitted a proposed CDP to the CDQ team;

(6) "application period" means the time between the date of publication of the notice under 6 AAC 93.020(a) and the forwarding of the final CDP recommendation to the NMFS;

(7) "audit" means an examination of the financial statements, accounting records, and other supporting evidence of an entity performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards and of sufficient scope to enable the independent public accountant to express an opinion on the entity's financial statements as to their presentation in accordance with generally accepted accounting principles;

(8) "CDP" means community development plan;

(9) "CDQ" means community development quota;

(10) "CDQ activity" means an activity pursued by the CDQ group that is paid for, directly or indirectly, through CDQ assets;

(11) "CDQ asset" means property of a CDQ group;

(12) "CDQ group" means a qualified applicant with an approved CDP;

(13) "CDQ liability" means a debt of a CDQ group;

(14) "CDQ manager" means the department employee designated by the commissioner;

(15) "CDQ project" means any program that is funded by CDQ assets or involves CDQ liability as a result of the project;

(16) "CDQ region" means a geographic region encompassing the communities that are participating in a CDQ group;

(17) "CDQ team" means the state officials designated in or under 6 AAC 93.015;

(18) "commissioner" means the commissioner of the department;

(19) "community development plan" means a business plan for the economic and social development of a specific western Alaska community or group of communities under the CDQ program that is consistent with applicable state and federal law;

(20) "department" means the Department of Commerce, Community, and Economic Development;

(21) "engagement letter" means a letter from an independent public accountant to an entity's board of directors or audit committee that addresses the purpose and scope of the external auditing work to be performed, the period of time to be covered by the auditing work, the reports expected to be rendered, and any limitations placed on the scope of the auditing work;

(22) "family member" of a person means

(A) the spouse of the person;

(B) another person cohabiting with the person in a conjugal relationship that is not a legal marriage;

(C) a child, including a stepchild and an adoptive child, of the person;

(D) a parent, sibling, grandparent, aunt, or uncle of the person;

(E) a parent or sibling of the person's spouse or a parent or sibling of the person with whom the person is cohabiting in a conjugal relationship that is not a legal marriage; and

(F) an in-law of the person, including a mother-in-law, father-in-law, brother-in-law, and sister-in-law;

(23) "financial statements" means statements of an entity's financial position (balance sheet), income, cash flows, and changes in equity together with related notes;

(24) "fisheries-related matters" means those matters associated with the goals and purpose of the Western Alaska Community Development Quota Program, including those matters associated with starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy;

(25) "for-profit CDQ project" means a CDQ project with a central activity that involves an ongoing exchange of goods or services for compensation between two or more parties;

(26) "governing body" means a city council, traditional council, or Indian Reorganization Act (IRA) Council;

(27) "independent public accountant" means an accountant who is independent of an entity being audited, who is registered or licensed to practice as a public accountant in the state in which the audit is conducted, and who is in good standing under the laws of the state in which the audit is conducted; the accountant must be independent both in fact and in appearance;

(28) "investment" means an expenditure of CDQ assets for the social and economic development of a CDQ region;

(29) "NMFS" means the National Marine Fisheries Service;

(30) "participating community" means a community in a CDQ region that is participating in a CDQ group;

(31) "proposed CDQ project" means a CDQ project that is yet to be initiated;

(32) "PSQ" means prohibited species quota and is the amount of a PSQ reserve that is allocated to a CDQ group;

(33) "resident" means a person who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address;

(34) "resident fisherman" means a person with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address;

(35) "state" means the State of Alaska;

(36) "temporary job" means a job designed to last no more than six months. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am ___/___/____, Register____)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)