

# Drafting Manual for Administrative Regulations

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Prepared by

State of Alaska  
Department of Law

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## PREFACE

For most state agencies, the regulation adoption process is governed by the Alaska Administrative Procedure Act (AS 44.62). The *Drafting Manual for Administrative Regulations* is published by the Department of Law to comply with AS 44.62.050 and is for use by state officials, agency staff, and the public in the development, processing, and adoption of state administrative regulations. This manual was designed to meet legal requirements, to assist state agencies in preparing clearly written regulations, and to further the participation of the public in the regulatory process.

Chapters 1 - 15 are intended mainly for the use of state agencies and the attorneys advising them; chapters 16 - 17 address legal principles and key cases related to legislation. Chapter 18 addresses state agencies that, by statute, adopt regulations under statutes other than the Alaska Administrative Procedure Act. In addition, the manual includes, as appendices, forms to be used by a state agency in the regulatory process.

An electronic version of this manual and the associated forms is available on the Department of Law website at <http://www.law.alaska.gov/pdf/manuals/DraftingManual-AdminRegs.pdf>.

The Department of Law welcomes your suggestions on how to improve this manual or the regulatory process.

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## CHAPTER 1

### INTRODUCTION

This manual has been prepared to help state agencies adopt and maintain administrative regulations under AS 44.62 (Administrative Procedure Act) (APA) and to ensure that the Alaska Administrative Code (AAC) is an accurate and coordinated set of regulations. The Department of Law will help agencies comply with this manual, the APA, and other statutes and relevant court decisions.

**What is a regulation?** The power to pass laws lies with the legislature: the state's elected representatives. Once the governor approves a bill or the legislature overrides a veto, the law is enacted and usually made part of the Alaska Statutes. When a statute takes effect, the executive branch has the duty to carry out and enforce it.

Often the legislature delegates, by statute, a part of its law-making power to an agency in the executive branch. Regulations are the rules and standards that the agency adopts in accordance with that delegation.

**Prerequisites for a valid regulation.** A regulation has the force and effect of law, but only if the substance of the regulation is valid and the agency follows the proper procedure to adopt it. Briefly, for a regulation to be valid,

(1) the agency must have the authority from the legislature to act by regulation; whether agency expertise indicates the need for a regulation or whether a regulation would be sound policy does not matter if the legislature has not given the agency the authority to adopt a regulation, or if the regulation is inconsistent with the controlling statutes; and

(2) the agency must follow the proper statutory procedures to adopt, amend, or repeal a regulation.

For most agencies, including boards and commissions, those procedures are in the APA, set out in Alaska Statute (AS) 44.62. A few agencies have their own statutory procedures for a non-APA regulation, while other agencies have procedures in addition to the APA. But, these procedures share common goals: to give the public notice of what the agency proposes, to give the public a chance to comment at least in writing, and to have the agency consider those comments before adopting a final regulation.

**Purpose of this manual.** The Department of Law produces this manual to help agencies adopt and maintain administrative regulations and prepare those regulations for printing in the AAC. This manual covers the following areas:

- how, in consultation with your attorney at the Department of Law, to decide if an agency's action or policy is a regulation that needs to be adopted under the APA (Chapters 2, 16, and 17);
- the steps in the regulation-adoption process, including advance planning (Chapter 2);
- the special process for an emergency regulation (Chapter 3);
- notice to the public of a proposed regulation or changes (Chapter 4);
- conventions to ensure that an agency's regulation is consistent in format and style (Chapters 5, 6, 7, 10, and 12);
- requirements so that the public, attorneys, and the courts can trace the history of a regulation and the statutory authority relating to that regulation (Chapters 8 and 9);
- how to adopt by reference outside material (Chapter 11);
- particulars on penalties, fees, and fiscal notes (Chapters 13 and 14);
- the role of the Department of Law, and the Department of Law's legal review of a regulation after adoption and before filing (Chapter 15);
- legal principles and select court decisions relating to a regulation (Chapters 16 and 17); and
- tips for agencies that adopt a regulation under statutes other than the APA (Chapter 18).

The Department of Law also has prepared downloadable forms, in Microsoft Word format, for an agency's use. These forms, as well as a .pdf version of this manual, are available on the Department of Law website under Law Resources/Regulations Drafting Manual at <http://law.alaska.gov>.

**Terms used in this manual.** The following terms appear throughout this manual; understanding how they are used is important:

"Administrative Regulation Review Committee" or "ARRC" is a permanent interim committee of the legislature (AS 24.20.400 - 24.20.460) established to provide "prompt legislative review of administrative regulations filed by the lieutenant governor";

"adoption," when used with a regulation, is a general term for adding a new provision, amending an existing provision, repealing a provision, or any combination of the three;

"agency" is used to mean a state agency, including a board or commission of the executive branch (but not the legislative branch or the court system);

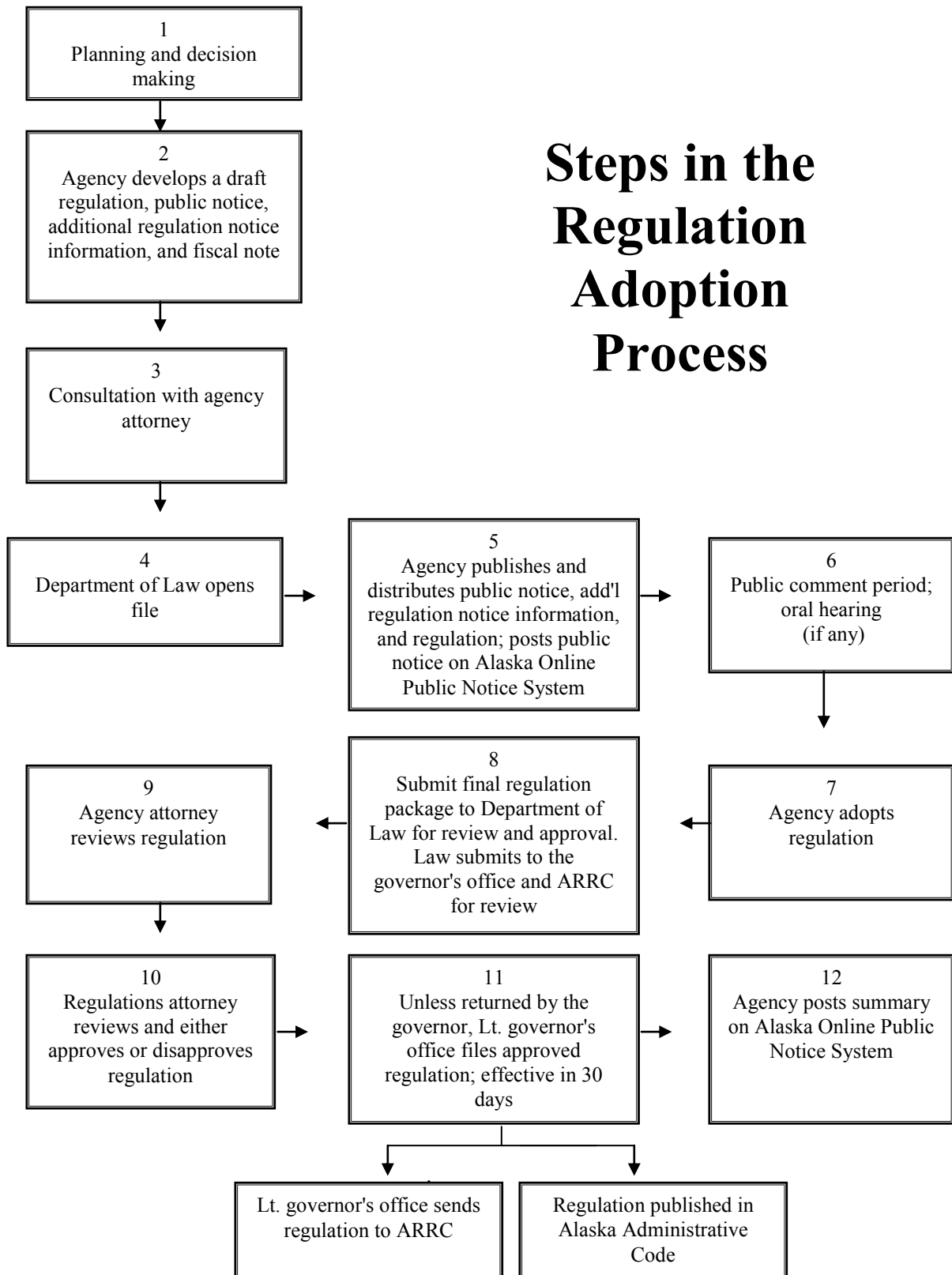
"agency attorney" is used to mean an assistant attorney general from one of the Department of Law's sections (e.g., Labor and State Affairs) that works with the client agency on a regular basis on the subject matter covered by the regulations. Typically a regulation file opening request would identify the agency attorney; if not, the Legislation and Regulations Section will assign an agency attorney.

"Division of Legal and Research Services" is the division in the Legislative Affairs Agency that provides legal advice and research to legislators and is part of the legislative branch;

"exempt boards and commissions" is used to refer to the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission; they are subject to the APA, but the APA exempts them from some requirements; *see* AS 44.62.040(c); 44.62.190(g); 44.62.200(c); and 44.62.215;

"Legislation and Regulations Section" is used to refer to the Department of Law section that includes the regulations attorney (AS 44.62.125). This section is responsible for final review and approval of all state regulations under the Alaska Administrative Procedure Act and prepares the Drafting Manual for Administrative Regulations. In addition, the section prepares legislation for the governor's office and assists agencies with legislative matters;

"regulation project" describes one or more regulation changes that are covered under the same public notice and that are assigned a single Department of Law file number.



## CHAPTER 2

# REGULATION ADOPTION PROCESS

The flow chart on the preceding page illustrates the process for adopting, amending, or repealing a regulation that is not an emergency regulation. Each step in the process is explained in more detail below. Appendix A contains a condensed checklist that will be useful in keeping track of these steps. See Chapter 3 for the steps used to adopt an emergency regulation.

### STEPS IN THE REGULATION PROCESS

#### STEP 1: PLANNING AND DECISION MAKING.

First, an agency should assess the need for the regulation and verify the agency's statutory authority to adopt and enforce the regulation. Ideas for proposals for regulatory changes may come through many sources, including

- holding a public workshop that is publicly advertised;
- holding a hearing for a state board or commission to solicit ideas to solve a problem;
- newspaper advertising or Internet publication calling for written proposals from the public;
- a formal or informal committee appointed by the agency or a subcommittee of a board or commission;
- negotiated regulation making under AS 44.62.710 - 44.62.800; or
- a petition from an interested person under AS 44.62.220.

At the beginning of a regulation project, an agency should consider:

- What is the statutory authority for the contemplated action?
- Do the relevant statutes have unanswered questions or ambiguous terms or require that program details be clarified through regulation?
- What constitutional or statutory rights of individuals will be affected?
- Who has the statutory authority to adopt the regulation (i.e., commissioner, board, governor)?
- Which members of the public constitute the primary audience for the regulation? Can the agency write the regulation to achieve the agency's intent while keeping the public's cost of compliance low?
- When does the regulation need to be in effect?
- How will the regulation impact the agency's existing budget? Will more money be needed to implement the regulation? What are the alternatives?
- Does the agency expect to apply outside material as part of the agency's own regulation and adopt by reference that material?

**STEP 2: AGENCY PREPARATION.**

**Questions.** While developing a regulatory action, but *before* the agency provides notice of the proposed action, AS 44.62.213(a) authorizes the agency to "contact a person about the development of the regulatory action" and to "answer a question from a person that is relevant to the development of the regulatory action." Legislative history indicates this is to authorize contact between the agency and the public when developing a regulation. The Department of Law recommends that the agency keep a record of contacts and that the record should be considered a public record. However, there is no requirement that these preliminary contacts be published.

**Draft regulation.** If an agency wants the benefit of public input in drafting a regulation, the agency *must* ensure that *all* members of the public have an opportunity to provide input. Copies of drafts circulated at this stage should be distributed evenhandedly and made available to all interested persons who request them. The Department of Law should be contacted if the agency is considering circulating a draft regulation.

**Timeline for regulation project.** Early in the project, the agency should prepare a timeline that sets internal deadlines to ensure that the regulation is legally in effect when needed. For an urgent project or a project of significant length or complexity, the agency should consult the Legislation and Regulations Section early in the preparation of the project regarding timelines.

In addition, the agency should review any time deadlines to adopt a regulation proposed in a legislative fiscal note as required by AS 24.08.035(f). The goal of AS 24.08.035(f) is to keep regulation development on track and to hold state agencies accountable if they are unable to meet the deadlines. This provision applies to all state agencies, except state boards or commissions. However, the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, the Alaska Public Offices Commission, and the Alaska Oil and Gas Conservation Commission must comply with this requirement.

**Deciding on an oral public hearing.** Before drafting the public notice and additional regulation notice information for the proposed regulation, the agency must make procedural decisions such as whether to hold an oral public hearing and the deadline date for submission of written comments on the proposed regulation.

An agency must *always* provide an opportunity for submission of written comments in the regulation-adoption process. In addition, the agency must decide whether it will hold an oral hearing as provided for under AS 44.62.210(a). It may be beneficial to hold an oral hearing in order to encourage public participation in the process. Answering the following questions will help the agency make that decision:

- Is the regulation controversial? Is there likely to be substantial public interest in the regulation?
- Would those most affected by the regulation be better able to participate if an oral hearing were held?

- Would the agency benefit from a face-to-face or teleconferenced opportunity to receive comments on the proposed regulation from interested persons?

**Details of a hearing.** If the agency decides to hold an oral hearing, the agencies must publish the time and place of the hearing as part of the public notice (see AS 44.62.200(a)(1)) and inform the public as to how a person may comment or ask questions at the oral hearing. Teleconferencing of an oral hearing is specifically authorized under AS 44.62.210 and 44.62.930 and may be a cost-effective way of allowing more members of the public to personally participate in the hearing process.

To maximize the usefulness of an oral hearing, we advise that the hearing be scheduled not later than 20 days after the date of public notice. A board or commission that meets infrequently, however, may wish to hold an oral hearing at the close of the public comment period so that the board or commission may take action on the proposed regulation at the same meeting, after the deadline for written comments has passed and the oral comment portion of the meeting has ended.

When considering whether to hold a public hearing, the agency must decide whether it will accept both written and oral comments at the hearing. If a person is to be given the opportunity to make oral comments, the agency must carefully consider how to keep a record of the comments, or questions, such as recording the hearing.

**Deadline for submission of written comments.** AS 44.62.190(a) requires that public notice of a proposed regulation be given "at least 30 days before the adoption, amendment, or repeal of a regulation." Therefore, the Department of Law recommends there be at least 30 days' notice before the written comment deadline. Some state agencies have found longer public comment periods (e.g., 45 or 60 days) to be more convenient to the public and to the agency.

The comment deadline should specify both a date and a time, especially for comments by e-mail, facsimile (fax), or through the Alaska Online Public Notice System. The agency should preserve and retain comments permanently to facilitate their evaluation by a court. Finally, a program may be subject to specific comment period requirements under federal law or under another Alaska statute that governs that program.

**Accommodations.** The Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12101 - 12213) (ADA) requires an agency to make reasonable accommodations to allow a qualified individual with a disability to participate in the regulatory process. The ADA applies both to the written comment process and to any oral hearing. If the agency also holds an oral hearing, the agency needs to choose a site that is accessible. On the request of an individual with a disability, the agency must make reasonable accommodations to the hearing site or procedures, or provide certain necessary auxiliary aids or services, to allow that individual to participate in the regulatory process. In setting the deadline for ADA accommodation requests, the agency should allow sufficient time to address specific requests for accommodations.

**Questions during comment period.** In setting the deadline for submission of written comments, the agency should be prepared to answer, in writing, written questions submitted at least 10 days before the end of the comment period. The agency may, but is not required to, answer written questions received after the 10-day cut-off date. The agency is allowed to "aggregate substantially similar questions and agency responses and provide a single consolidated response to substantially similar questions." AS 44.62.213(b). The agency responses must be available to the public. The law allows, and the Department of Law recommends, that the agency responses be posted on the Alaska Online Public Notice System and, if the agency chooses, on the agency's Internet website.

**Fiscal note.** AS 44.62.195 requires that an agency prepare an estimate of the appropriation increase needed if the adoption of a regulation would require an increase. A summary of this fiscal information must be included in the public notice. See Chapters 4 and 14 for a more detailed explanation.

**Other specific legal requirements.** The agency should consult the Department of Law regarding other specific legal requirements that relate to that particular agency or agency program. For example, AS 15.10.090 requires the division of elections to publish notices regarding precinct boundary changes in a particular manner. Also, some agencies are required by federal law and grant agreements, or by state law, to give advance notice to particular groups (e.g., providing 60 days' notice to Alaska Pioneers' Home and Alaska Veterans' Home residents regarding rate changes under AS 47.55.030) before certain regulations may be changed.

**STEP 3: INITIAL AGENCY ATTORNEY CONSULTATION.** Although each agency is responsible for the initial drafting of a proposed regulation and the public notice for the regulation, the agency should seek the advice of the Department of Law during the drafting process. The assistant attorney general who normally works with that agency is the first person to contact. That attorney is referred to as the "agency attorney" throughout this manual.

**STEP 4: DEPARTMENT OF LAW FILE OPENING.** A Department of Law regulation file should be opened before the agency publishes a notice of a proposed regulation. To open a regulation file, the agency must submit the file opening request in an e-mail, or a memorandum attached to the e-mail, to the regulations attorney in the Legislation and Regulations Section using the information in Appendix G. The agency should alert the Legislation and Regulations Section of any urgency relating to the regulation project.

### **STEP 5: CONTENT, PUBLICATION, AND DISTRIBUTION OF PUBLIC NOTICE.**

**Contents of public notice.** At least 30 days before the adoption of a regulation, an agency must give public notice that it is proposing to adopt the regulation by complying with AS 44.62.190(a). The requirements for the contents of the public notice, including the additional regulation notice information requirement in AS 44.62.190(d) (for most agencies) and (g) (for exempt boards and commissions), are set out in Chapter 4. Sample public notices are set out in Appendices D-1 (newspaper notice), D-2 (non-newspaper notice), and D-3 (notice for exempt boards and commissions). To avoid legal problems, the proposed notice should be reviewed by the agency attorney before publication.



**Interested-persons list.** AS 44.62.190(a) requires that public notice be furnished to every person who has filed a request for notice with the agency and, when appropriate, to persons or groups whom the agency believes are interested in the proposed action. The agency must keep a list of persons and groups who have asked to receive regulation notices. Through the use of the agency's website, application forms, handbooks, and other publications, the agency may wish to encourage persons to request to be on that list. The APA allows agencies to furnish public notices to interested persons by e-mail, unless a person has requested notices be sent by regular mail.

**Publication and distribution of public notice.** AS 44.62.190(a) requires

(1) publication of the notice in a newspaper of general circulation or trade or industry publication *and* posting the notice on the Alaska Online Public Notice System;

(2) furnishing of the notice to persons who have asked to be put on a list to receive notice of future proposed regulations;

(3) that, if the agency is not a principal department, the agency send the notice to the head of the department of which it is a part;

(4) when appropriate, in the judgment of the agency, furnishing of the notice to any other interested or affected person or group;

(5) furnishing of the notice to the Department of Law, along with a copy of the proposed regulation;

(6) furnishing of the notice by electronic format to all incumbent state legislators and to the Legislative Affairs Agency; and

(7) furnishing of the notice (and the proposed regulation) by electronic format to the Legislative Affairs Agency (Division of Legal and Research Services), the appropriate standing committee(s) of the legislature, the Administrative Regulation Review Committee, and the legislative council (this requirement is not applicable to Board of Fisheries or Board of Game regulations) (AS 24.20.105(c) and (j)).

See PUBLICATION AND DISTRIBUTION OF PUBLIC NOTICE in Chapter 4 for important details that are not included in this condensed list. The agency should consider using additional methods of notifying the public of the opportunity to submit comments during the public comment period. Some additional notification methods are: speeches and presentations; radio spots, especially public service announcements; agency newsletters; cover and explanatory materials that accompany the regulation notice being distributed; and the agency's website.

**Distribution of additional regulation notice information.** The additional regulation notice information mentioned in contents of public notice in Step 5 does not have to be published in a newspaper. However, that information must be furnished to certain recipients of the public notice for the regulation project. To avoid additional mailing or other costs, and possible procedural errors, the additional regulation notice information must be furnished *with* the public notice to the required

recipients in the same manner in which the public notice was furnished to each of those persons (i.e., by e-mail or regular mail). See DISTRIBUTION OF ADDITIONAL REGULATION NOTICE INFORMATION in Chapter 4 for details regarding the distribution. Appendices E-1 and E-2 set out the additional regulation notice information form. Most agencies will use Appendix E-1; the exempt boards and commissions will use Appendix E-2. To avoid legal problems, the proposed form should be reviewed by the agency attorney before publication.

**Affidavit of notice.** Following publication and distribution of the public notice and distribution of the additional regulation notice information, the agency should prepare an affidavit of notice (Appendix H) for submission to the Department of Law with the final regulation package (see Step 8). Additionally, after publication of the notice in a newspaper or other publication, the agency will receive from each publisher the proof-of-publication affidavit (or "publisher's affidavit"). The agency must retain the *original* of the publisher's affidavit for submission to the Department of Law with the final regulation package.

**STEP 6: PUBLIC COMMENT AND ORAL HEARING.** The agency should retain all public comments received according to the agency's records retention schedule and must make those comments available for public and Department of Law review, if requested; this includes printing and retaining comments received by e-mail or by the Alaska Online Public Notice System.

If an oral hearing is held, the hearing should be recorded and witnesses should be asked to identify themselves and any organization they represent; a person is not, however, required to give their identity in order to testify. Ground rules for hearings may be established, including time limits on speaking and whether specific technical questions will be answered at the hearing or later by the agency in writing in a public format. Basic fairness should govern the hearing process, and effort should be made to gather information and expressions of public opinion. Contact the Department of Law if additional advice is needed regarding how to conduct a hearing.

Following an oral hearing, the agency must prepare an affidavit of oral hearing (Appendix I) for submission to the Department of Law with the final regulation package (see Step 8).

Under AS 24.20.105, the Legislative Affairs Agency reviews the proposed regulation (except for a regulation of the Board of Fisheries and Board of Game). This review may result in a confidential written notification or other communication from the Legislative Affairs Agency to the adopting agency. The notification or communication *would not be a public comment* (see Step 7). If a written notification or other communication is received, the adopting agency should immediately contact the agency attorney for the project and the regulations attorney in the Department of Law.

Additionally, before adoption of the regulation, the agency should consider the Legislative Affairs Agency's notification or communication (if any) and the Department of Law advice regarding it. When a board or commission considers a notification or other communication received from the Legislative Affairs Agency (and the Department of Law advice regarding the notification or communication), it should do so in executive session under the procedures in AS 44.62.310. However, under AS 24.20.105(h), the Legislative Affairs Agency's review process does not affect an agency's ability to complete its proposed action regarding the regulation, and any suggestions for changes to a proposed regulation made by that agency are not binding on an agency.

**STEP 7: ADOPTION.** After the close of the public comment period (the last day specified by the agency for commenting on the proposed regulation), the agency must fully consider all of the comments presented. When doing so, the agency must pay special attention to the cost to private persons of the proposed regulation. AS 44.62.210(a).

Additionally, the agency must record its use or rejection of factual or other substantive information received as written or oral comments and relevant to the proposed regulation. AS 44.62.215. The required record may be made simply by noting on the comment the agency's action on the comment. Alternatively, a separate summary of comments and the agency's action on those comments may be prepared. For a board or commission regulation, a separate record of the use or rejection of comments is *not required* because the record of that body's public meeting at which the comments are discussed and final action on the regulation is taken should document that use or rejection of public comment.

An agency also must comply with any additional requirements of state or federal law for considering comments. For example, AS 46.03.024 requires the Department of Environmental Conservation to give special attention to public comments on alternative practical methods of complying with state law when adopting a pollution regulation. The APA does not require that a regulation be supported by a "decisional document," but the agency's complete record regarding the regulation should at least explain the reasons for the agency's action.

**Timing of adoption.** The agency may take final action to adopt the regulation after 30 or more days have passed since the agency first published the notice for the regulation in a newspaper of general circulation. But, before doing so, the agency must consider all public comments. To adopt the regulation, the official with regulation-adoption authority shall sign and date the adoption order. See Appendix J for a sample adoption order. An affidavit, **dated on or after the adoption action**, regarding the required record of the agency's use or rejection of written or oral comments must be submitted to the Department of Law with the final regulation package (Appendix K).

For boards and commissions, adopting a regulation means moving, voting on, and passing a motion in a properly noticed public meeting. If an adoption order is used, it is signed at the meeting by the members of the board or commission present at the time the regulation was adopted. As an alternative, the chair, an acting chair, or the executive director of the board or commission may sign a "certification" order that states that the board or commission adopted the relevant regulation at the meeting. See Appendix L for a sample certification order. An affidavit, **dated on or after the adoption action**, regarding the required record of the agency's use or rejection of written or oral comments must be submitted to the Department of Law with the final regulation package (Appendix K).

A transcript or a copy of the minutes of the portion of the public meeting in which the board or commission voted on the regulation must accompany the certification order when the final regulation package is submitted to the Department of Law. Draft or unapproved minutes of that portion of the meeting are acceptable if they are accompanied by an original affidavit of board or commission action signed by an agency staff person who attended the meeting and has knowledge that the action took place as described. If the board or commission submits a partial transcript, the partial transcript

should be accompanied by a certification or affidavit supporting its accuracy. See Appendices M and N for a sample of this staff affidavit and relevant portion of minutes.

**Delegation of authority to adopt.** AS 44.17.010 allows department heads to delegate their authority to adopt regulations. For example, a commissioner may delegate authority to adopt regulations to a deputy commissioner or a division director. The delegation must be in writing and signed by the commissioner. A commissioner may file a "standing" written delegation with the lieutenant governor's office (see sample form in Appendix O) or may state the delegation in another written form, such as a memorandum. The delegation may broadly cover all of that agency's regulations or may be specific to a particular regulation or a particular time period. See Appendix P for sample language an agency might use in a "limited" delegation form or memorandum. A copy of the delegation document must accompany the adoption order signed under the delegation. A state official signing an adoption order under a delegation may sign "for" the department head, or sign in the state official's own name. For example, a deputy commissioner with a delegation may sign the deputy commissioner's name "for the commissioner" and the typed lines directly underneath the signature line would state the commissioner's name and title; alternatively, the deputy commissioner may sign the deputy commissioner's own name and the typed lines would state the deputy commissioner's name and title.

If a commissioner is traveling and has designated a deputy commissioner or division director as acting commissioner in the commissioner's absence, that "acting" commissioner does not need a separate delegation of authority to adopt regulations in the commissioner's absence. The acting commissioner may sign the acting commissioner's name on the adoption order and the typed lines directly underneath the signature line should state the acting commissioner's name and "acting commissioner" title. A written document, signed by the commissioner, designating the deputy commissioner or division director as acting commissioner for the relevant time period must accompany the adoption order.

A board or commission may not delegate its authority to adopt regulations unless a statute specifically authorizes the delegation (e.g., AS 16.05.270 regarding the Board of Fisheries and Board of Game).

**STEP 8: SUBMISSION OF FINAL REGULATION FOR LEGAL REVIEW AND APPROVAL.** After adopting a regulation, the agency must send the final regulation package to the Department of Law for legal review and approval. AS 44.62.060. The agency checklist in Appendix A also lists the documents that must be transmitted to the Department of Law in the final regulation package. *The final regulation package must be sent to the regulations attorney, not to the agency attorney.* See Appendix Q for a sample memorandum to accompany the regulation package.

The final regulation package must include

- (1) the original and two copies of the final version of the regulation;
- (2) the adoption order (Appendix J) or certification order (Appendix L);
- (3) a copy of the delegation of authority (Appendix O or P) or designation as "acting commissioner," if required;
- (4) relevant minutes of the board or commission meeting, and staff affidavit, if required (Appendices M and N);
- (5) a copy of each public notice (Appendix D-1 or D-3);
- (6) the additional regulation notice information that was distributed with the public notice (Appendix E-1 or E-2);
- (7) the original publisher's affidavit of publication;
- (8) the original affidavit of notice of proposed regulation adoption (Appendix H);
- (9) the original affidavit of oral hearing, if an oral hearing was held (Appendix I);
- (10) a fiscal note, if required (Appendix F);
- (11) the original affidavit of agency record of public comment (Appendix K) (except for the Regulatory Commission of Alaska, the Alaska Oil and Gas Conservation Commission, the Board of Fisheries, and the Board of Game); and
- (12) any other relevant documents, such as material adopted by reference in the regulation.

The documents submitted with the final regulation provide evidence of compliance with the APA.

An agency may be ready to adopt some of the provisions in a project while needing more time for research or decision making on other provisions. If the provisions that are ready for adoption may be separated from the rest of the project, the agency may avoid delaying the whole project by dividing it into two or more parts. The adoption process may proceed for one part while agency work continues on the other parts. If adoption of the other parts is timely, and the provisions in those parts are covered by the original public notice, no additional public notice is necessary before submitting the final regulation for those parts to the Department of Law. The agency should confer with the Legislation and Regulations Section on the proper procedures for dividing a project.

For a regulation adopted by an agency, board, or commission (except for the Regulatory Commission of Alaska, the Alaska Oil and Gas Conservation Commission, the Board of Fisheries,

and the Board of Game), the Department of Law will provide a copy of the adopted regulation, the additional regulation notice information, and the public notice to the governor's office and the Administrative Regulation Review Committee (ARRC). The governor's office may review the regulation under AS 44.62.040(c) and return the regulation unfiled for specified reasons. The chair of the ARRC may submit to the governor, by legislative memorandum or letter, comments on the adopted regulation within 10 days after receiving the regulation. AS 44.62.320.

**STEP 9: FINAL AGENCY ATTORNEY LEGAL REVIEW.** A regulation that has been adopted by an agency and submitted to the Department of Law, as described in Step 8, undergoes two levels of legal review. The first level is legal review by the agency attorney. The agency attorney will review the substance of the entire regulation to (1) confirm legality, constitutionality, and consistency with other regulations; (2) confirm the statutory authority for the regulation; (3) review for correct language, style, and format, including clarity; (4) confirm the adequacy of the public notice; (5) confirm that the proper administrative procedures were followed; (6) confirm that existing regulatory language does not need amendment to conform to current law and this manual; and (7) confirm that all necessary documents are included in the final regulation package. See Appendix Y for the agency attorney review checklist for a regulation and Chapter 15 for more discussion regarding agency attorney review. Once the agency attorney's review is complete, the project file is forwarded to the regulations attorney or that person's designee for final review and approval.

**STEP 10: LEGAL REVIEW BY THE REGULATIONS ATTORNEY.** The second and final level of legal review is done by the Legislation and Regulations Section, with final review and approval by the regulations attorney or that person's designee, or by the attorney general or the attorney general's designee. This review encompasses all of the same areas reviewed by the agency attorney with particular emphasis on clarity, compliance with this manual, and conformity with the style and organization of the existing Alaska Administrative Code (AAC). See Chapter 15 for more discussion regarding legal review by the regulations attorney.

AS 44.62.060 specifically requires the Department of Law to prepare an opinion approving or disapproving the regulation after the regulation has been reviewed as described above. If the regulation is approved, the Department of Law will send a copy of the opinion to the agency and will forward the regulation, the opinion, and the relevant supporting documents to the lieutenant governor. Under AS 44.62.060(b) and 44.62.125, the regulations attorney may make technical edits to the regulation or may disapprove the regulation, in whole or in part, for legal reasons.

When a regulation adopted by an agency is changed by the agency in response to the Department of Law review, a new adoption order (or certification order) is required to show that the agency adopted the changes. In the case of a board or commission, adoption would have to take place at a properly noticed public meeting of the board or commission. If the change is covered by the original public notice for the regulation, additional public notice is not required before adoption of the revised regulation.

**STEP 11: FILING AND EFFECTIVE DATE.** A regulation approved by the Department of Law, along with the originals of the supporting documents for the regulation, is submitted to the lieutenant governor's office for filing. Before filing, the governor (or the lieutenant governor, if delegated) may return a regulation submitted by an agency if the regulation is inconsistent with the faithful execution

of the laws or to enable the agency to respond to specific issues raised by the legislature's Administrative Regulation Review Committee. After filing, the regulation and the supporting documents are maintained in the lieutenant governor's office for five years and then transferred to the state archivist in the Department of Education and Early Development for permanent retention.

A regulation takes effect on the 30th day after it is filed by the lieutenant governor or at a later date specified by the agency in its adoption order or certification order (AS 44.62.180). It is the practice of the lieutenant governor's office to notify the adopting agency that a regulation has been filed and to state the date the regulation takes effect and the quarterly register of the AAC in which it will first appear. The lieutenant governor's office also provides a copy of each newly filed regulation to the ARRC as required by AS 44.62.320(b).

Agencies should consider the use of press releases, mailings, the agency's Internet website, or no-cost publications to inform the public that a regulation has been filed and of the impending effective date of the changes.

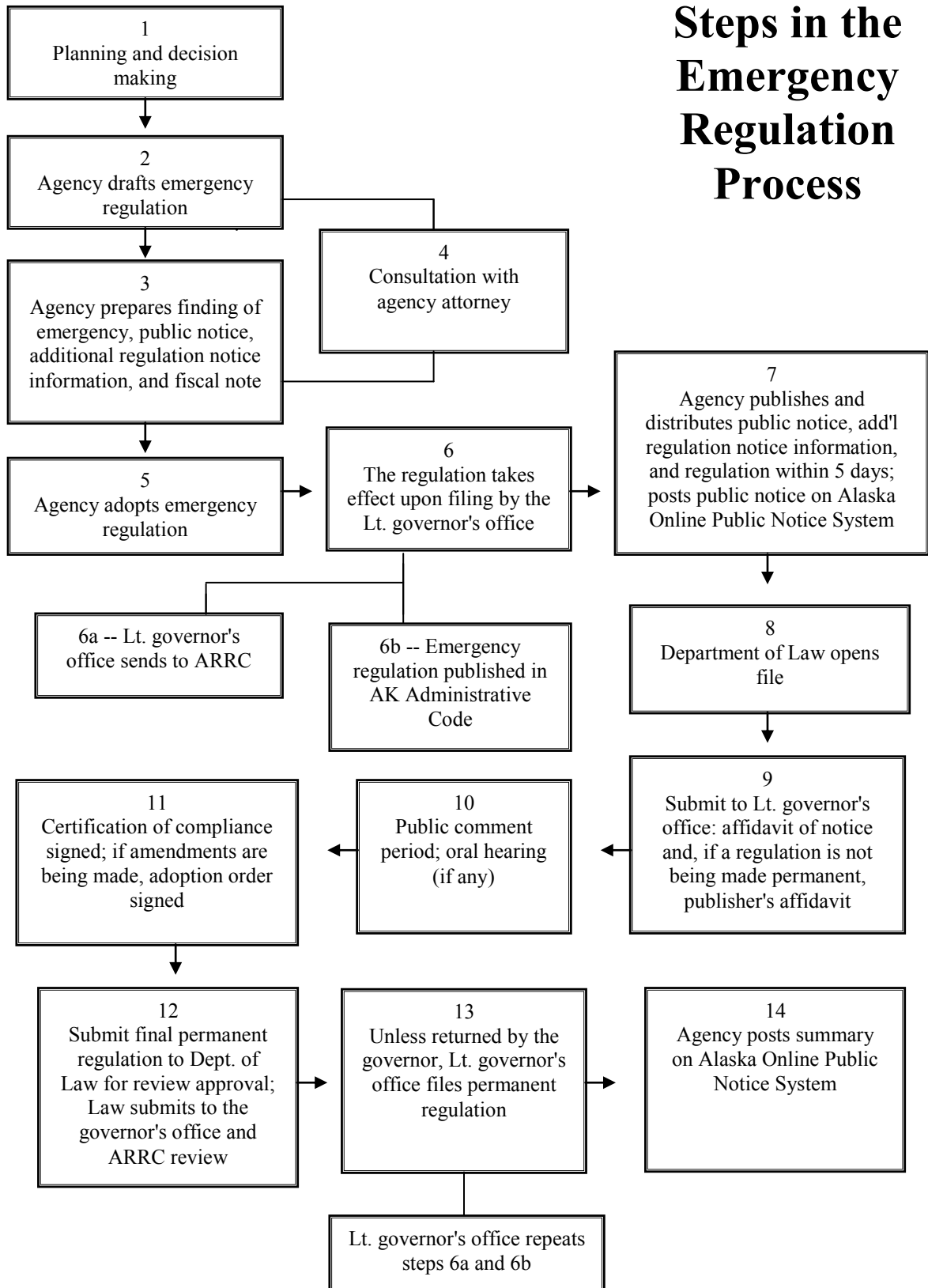
**STEP 12: SUMMARY POSTED ON ONLINE PUBLIC NOTICE SYSTEM.**

AS 44.62.175(a)(7) and (b) require state agencies to post on the Alaska Online Public Notice System the text or a summary of the text of a regulation or order of repeal for which notice is given under AS 44.62.190(a). This provision has been interpreted to require after-the-fact notice that the regulation-adoption process has been completed. See POST-FILING NOTICE REQUIREMENTS in Chapter 4 for details on how to comply with this requirement.

**CONVERTING A REGULATION PROJECT  
TO AN EMERGENCY REGULATION PROJECT**

During the course of a regulation project, an agency may conclude that it must instead adopt the regulation as an emergency regulation. Please refer to Chapter 3 for discussion of the procedures involved.

# Steps in the Emergency Regulation Process





## CHAPTER 3

# EMERGENCY REGULATION ADOPTION PROCESS

Under AS 44.62.250, if a threat to the public peace, health, safety, or general welfare requires immediate action, an agency may adopt an emergency regulation without first following the usual APA procedures of publishing notice, waiting for public comment, and obtaining approval from the Department of Law. As stated in AS 44.62.270, "[it] is the state policy that emergencies are held to a minimum and are rarely found to exist." This simply means that an agency must look critically at whether (1) the public peace, health, safety, or general welfare is truly at risk, and (2) use of the emergency regulation procedure is absolutely necessary. Adherence to this statutory policy is important because emergency regulations take effect without the public having the opportunity to comment or receive advance notice of their effect.

Although there is no requirement for pre-adoption public participation in the emergency regulation adoption process, AS 44.62.250 requires that notice of the adoption be published and distributed within five days after an emergency regulation is filed by the lieutenant governor's office. If notice is not published and distributed by the 10th day, the regulation *is automatically repealed* and cannot be readopted as an emergency regulation.

If notice is published and distributed by the 10th day, the emergency regulation only remains in effect for a total of 120 days unless the agency follows the APA procedures required in order to make the regulation permanent. The procedures include providing for public comment and Department of Law review and approval of the regulation. The procedures are discussed later in this chapter.

The flow chart on the preceding page illustrates this process, and a condensed agency checklist appears in Appendix B.

## STEPS IN THE EMERGENCY REGULATION PROCESS

**STEP 1: PLANNING AND DECISION MAKING.** This step begins the same as the planning and decision-making process for a nonemergency regulation. When considering when a regulation needs to be in effect, the agency must consider whether the circumstances of the project meet the emergency standard in AS 44.62.250 and 44.62.270. As part of that process, agencies are encouraged to consult with either an agency attorney or the Legislation and Regulations Section. If the regulation is urgent but the circumstances do not meet the emergency standard, the agency should follow the steps in Chapter 2, working with the Department of Law to expedite the project as much as possible. If the agency concludes that the circumstances do meet the emergency standard, the agency should follow the remaining steps in this chapter.

**STEP 2: DRAFTING THE REGULATION.** An emergency regulation is drafted and prepared in the same manner as is a nonemergency regulation, except that the words "EMERGENCY REGULATION" are to appear at the top of every page (centered above the normal regulation page header), as shown in Figure 3.1.

**Figure 3.1 - Emergency regulation format (header example)**

<p>EMERGENCY REGULATION</p> <p>Register ____, _____ 20__ FISH AND GAME</p> <p>5 AAC 38.130 is amended to read:</p> <p style="padding-left: 40px;"><b>5 AAC 38.130. Fishing seasons for abalone in Registration Area A.</b> Abalone may be taken or possessed from <b>September 15</b> [OCTOBER 1] through May 15. (In effect before 1983; am 6/30/83, Register 86; am 7/14/85, Register 95; am 7/12/86, Register 99; em am 4/30/91 - 8/27/91, Register 118; am __/__/____, Register __)</p> <p><b>Authority:</b> AS 16.05.251</p> <p>5 AAC 38 is amended by adding a new section to read:</p> <p style="padding-left: 40px;"><b>5 AAC 38.136. Fishing seasons for clams in Registration Area A.</b> There is no closed season on clams, except that clam harvesting may be conducted only under the terms of a permit issued by the commissioner. The permit may specify the species to be harvested, method of fishing, area of operation, harvest levels, and other related information. (Eff. __/__/____, Register __)</p> <p><b>Authority:</b> AS 16.05.251</p>
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See Chapter 5 regarding organization of regulation provisions; Chapter 6 regarding style, grammar, and words; Chapter 7 regarding general word-processing and format requirements; Chapter 8 regarding history notes; and Appendix C for examples of how a regulation is to be set out. Only the specific provisions being adopted or amended by emergency action should be set out.

**STEP 3: FINDING OF EMERGENCY; PUBLIC NOTICE; FISCAL NOTE.** An agency must identify the emergency that exists by preparing a written finding of emergency. AS 44.62.250. See the sample finding of emergency/adoption order form in Appendix R (for a board or commission, see the finding of emergency/certification order form in Appendix S). The finding should include all factors that would support the agency's conclusion that an emergency exists.

The agency must draft a public notice for the emergency regulation and also must decide whether the emergency regulation should be made permanent. If the emergency regulation is going to be made permanent, the agency must decide whether to hold an oral public hearing and set the deadline for submission of written comments. See Step 2 in Chapter 2 for help in deciding on whether to hold an oral public hearing and in setting the deadline for submission of written comments.

The public notice for an emergency regulation must contain the same information as does the public notice for a regular regulation, except that it

- need not provide for public comment *unless* the agency is going to make the emergency regulation permanent; and
- contains additional statements regarding the adoption date, effective date, and expiration date of the emergency regulation.

See CONTENTS OF NOTICE and ADDITIONAL REGULATION NOTICE INFORMATION in Chapter 4 for discussion of the APA requirements regarding information contained in a public notice. That material is directed toward a nonemergency regulation, but is applicable to the public notice for an emergency regulation. See Appendices T-1 and T-2 for sample emergency regulation public notice forms and see Appendices E-1 and E-2 for a sample form for use in providing the additional regulation notice information.

The Department of Law recommends that the public notice be drafted and the additional regulation notice information be prepared and be ready for publication and distribution as soon as the emergency regulation is filed. Even though the adoption date, effective date, and expiration date of the emergency regulation are not yet known, the statements regarding those dates should be included in the draft public notice by leaving blanks for the dates. The blanks should be filled in as soon as the relevant dates are known.

The agency must prepare a fiscal note for the emergency regulation if increased appropriations will be required. AS 44.62.195. Appendix F contains a fiscal note form for a regulation. A summary of the fiscal information must be included in the public notice. See CONTENTS OF NOTICE in Chapter 4 and see Chapter 14 for more details regarding fiscal information.

**STEP 4: AGENCY ATTORNEY CONSULTATION.** Department of Law approval under AS 44.62.060 is not required before the initial filing of an emergency regulation, but the Department of Law recommends that the agency discuss the matter with its agency attorney before adoption of the emergency regulation. The agency should provide to the agency attorney for review a draft of the regulation, the finding of emergency, and the public notice. This should ensure that the proper procedures are followed, that the finding of emergency and the substance of the regulation are legally defensible, and that the public notice is adequate.

**STEP 5: ADOPTION OF EMERGENCY REGULATION; SUBMISSION TO LIEUTENANT GOVERNOR'S OFFICE.** The person authorized by statute to adopt an agency's regulations shall sign and date the adoption order that appears below the finding of emergency using the sample finding of emergency/adoption order form in Appendix R. If the members of a board or commission who voted on the emergency regulation are going to sign the emergency regulation adoption order, use the form in Appendix R. If only the chair, acting chair, or executive director of the board or commission is going to sign, use the finding of emergency/certification order form in Appendix S.

The agency must deliver directly to the lieutenant governor's office (1) the original of the signed finding of emergency/adoption order (or finding of emergency/certification order); (2) the fiscal note, if applicable; (3) relevant minutes of the board or commission meeting and staff affidavit (if a finding of emergency/certification order is being submitted); and (4) an original of the emergency regulation. AS 44.62.180(3) and 44.62.250. If the adoption was done under a written delegation of authority or a designation as "acting commissioner," a copy of that delegation or designation must accompany the emergency regulation. The lieutenant governor's office should be informed ahead of time that the emergency regulation is coming.

If the finding of emergency/adoption order (or finding of emergency/certification order) extends to a second page, be sure that at least some part of the "adoption order" (or "certification order") paragraphs of the document appears on that second page. Do not place just the lieutenant governor's filing certification portion of the finding/order by itself on the second page. The name of the lieutenant governor should be typed in following "I," on the filing certification portion of the document.

**STEP 6: FILING AND EFFECTIVE DATE.** An emergency regulation takes effect immediately upon its filing by the lieutenant governor's office (or at a later date specified by the agency in the emergency adoption order or certification order), *not* on the date that the regulation was adopted by the agency. AS 44.62.180(3). The lieutenant governor's office maintains and distributes copies of a filed emergency regulation and notifies the adopting agency of the filing in the same manner as described for a nonemergency regulation in Step 11 in Chapter 2. The agency now will be able to fill in the effective date and expiration date blanks in the draft public notice. When the emergency regulation is published in the AAC, it will appear in the emergency regulation section at the back of the appropriate title pamphlet or supplement pamphlet. For additional information, see HOW AN EMERGENCY REGULATION IS SET OUT IN THE AAC in Step 14.

**STEP 7: PUBLIC NOTICE.** After an emergency regulation has been filed, the agency must inform the public of the emergency action taken by publishing and distributing a public notice. AS 44.62.250. See Step 3 for discussion of the contents of the public notice. The public notice of the emergency action is to be given by the fifth day *after filing* of the emergency regulation. If notice is not given by the 10th day after filing, the emergency regulation is *automatically repealed* at the end of that 10th day. Therefore, the adopting agency must be prepared to send the public notice out for publication and otherwise distribute the notice, as soon as the emergency regulation has been filed. See PUBLICATION AND DISTRIBUTION OF PUBLIC NOTICE and DISTRIBUTION OF ADDITIONAL REGULATION NOTICE INFORMATION in Chapter 4. That material is directed toward a nonemergency regulation but is applicable to the public notice for an emergency regulation.

If the emergency regulation will be made permanent, the copy of the notice (and regulation) that is to be sent to the Department of Law may be sent with the file-opening request described in Step 8. Note item (9) under PUBLICATION AND DISTRIBUTION OF PUBLIC NOTICE in Chapter 4 regarding required distribution of the public notice and a regulation to the Legislative Affairs Agency and other legislative branch entities.

**STEP 8: DEPARTMENT OF LAW FILE OPENING.** If the agency intends to make an emergency regulation permanent, the agency must request that the regulations attorney in the Department of Law open a file and assign an assistant attorney general to the regulation project. See Appendix G for a sample memorandum requesting a file opening.

**STEP 9: AFFIDAVIT OF NOTICE; PUBLISHER'S AFFIDAVIT.** Immediately after the publication and distribution of the public notice and the distribution of the additional regulation notice information, the agency should prepare an affidavit of notice of adoption of emergency regulation and must submit the original of the affidavit, along with the original or a copy of the public notice and additional regulation notice information, directly to the lieutenant governor's office to be attached to the original emergency regulation. Appendix U contains a form for the affidavit. The purpose of this affidavit is to document that the agency gave public notice as required by AS 44.62.250.

After publication of the notice in a newspaper or other publication, the agency will receive from the publisher the proof-of-publication affidavit that the agency requested in its advertising order. If the agency intends to make the emergency regulation permanent, it must retain the *original* of the publisher's affidavit for submission to the Department of Law with the final permanent regulation. If the agency does not intend to make the emergency regulation permanent, it must forward the *original* of the publisher's affidavit directly to the lieutenant governor's office. That office will attach the publisher's affidavit to the original emergency regulation as part of the permanent record for the regulation. The publisher's affidavit is important documentation that the agency complied with the 10-day notice requirement in AS 44.62.250.

If the agency is **not** going to make the emergency regulation permanent, submission of the publisher's affidavit to the lieutenant governor's office is the final step in the emergency regulation process.

**STEP 10: PUBLIC COMMENT.** If the agency intends to make an emergency regulation permanent, a written comment period should be provided for in the public notice, as discussed earlier in this chapter. Additionally, the agency might have provided for an oral hearing during the comment period. As part of the process for making the emergency regulation permanent, the agency is obligated to consider all comments received during the written comment period and during any oral hearing on the emergency regulation. AS 44.62.210.

When considering the comments for an emergency regulation being made permanent, the agency must pay special attention to the cost to private persons of the regulation. Additionally, the agency must record its use or rejection of oral and written comments and prepare an affidavit regarding that record in the manner described in Step 7 in Chapter 2 for the regular regulation adoption process.

If an oral hearing was held, the agency should prepare an affidavit of oral hearing (Appendix I). The affidavit must be submitted to the Department of Law with the final permanent regulation.

**Legislative Affairs Agency review process.** AS 24.20.105 and AS 44.62.190(a)(7) require agencies, other than the Board of Fisheries and the Board of Game, to provide to the Legislative Affairs Agency (and other legislative branch entities) the agency's public notice and a copy of the regulation (see Step 7), and AS 24.20.105 provides for Legislative Affairs Agency review of the regulation. This review may result in a written notification or other communication from the Legislative Affairs Agency to the adopting agency. The notification or communication would *not* be a public comment (see Step 11).

**STEP 11: CERTIFICATION OF COMPLIANCE; ADOPTION ORDER.** As soon as possible after the close of the public comment period and after agency consideration of all comments, the agency must make a decision regarding the language of the final permanent regulation and must certify that the requirements for public notice, public comment, and requesting Department of Law review and approval are met. AS 44.62.260. Appendix V contains a certification of compliance form for this purpose. The agency person with regulation-adoption authority (including delegated authority or an "acting commissioner" designation) shall sign the certification. In the case of a board or commission, consult with the Department of Law regarding signature requirements.

When an agency makes an emergency regulation permanent, the agency may need to make a change to the original emergency regulation. The change may consist of one or more amendments to the emergency regulation language, or one or more new provisions, new amendments, or new repeals. In those cases, a regular adoption order or certification order is required (in addition to a certification of compliance) because the additional changes were not covered by the original emergency adoption or certification order. See Appendix J for the regular adoption order form, Appendix L for the regular certification order form, and Step 7 in Chapter 2 for discussion on adoption or certification order signature requirements.

Any change to an emergency regulation must be within the scope of the public notice for the original emergency regulation. Although a supplemental notice could be published to provide notice of any changes not covered by the original notice, the time constraints of the 120-day period usually preclude that possibility. Consult the Legislation and Regulations Section if a change is needed that will require a supplemental notice.

Note that a change to the original emergency regulation that is included in the final permanent regulation is considered a regular regulation change, covered by the new adoption or certification order and do not take effect until 30 days after the permanent regulation is filed by the lieutenant governor's office.

The certification of compliance should appear on one page. If any adoption or certification order is prepared, the order also should appear on one page. If the certification of compliance or order must extend to a second page, begin the second page with the last paragraph of the main body of the certification or order.

**Legislative Affairs Agency review process.** If the agency received a written notification or other communication from the Legislative Affairs Agency as a result of its review of the agency's regulation under AS 24.20.105 (see Step 10), the notification or communication would not be a public comment. Before making a decision regarding the final permanent regulation, the agency should consider the Legislative Affairs Agency's notification or communication and the Department of Law advice regarding the regulation. When a board or commission considers a notification or other communication received from the Legislative Affairs Agency (and the Department of Law advice regarding the notification or communication), it should do so in executive session under the procedures in AS 44.62.310. However, under AS 24.20.105(h), the Legislative Affairs Agency's review process does not affect an agency's ability to complete its action regarding the regulation, and any suggestions for changes to a regulation made by that agency are not binding on an agency.

**Format for emergency regulation being made permanent.** When making an emergency regulation permanent, the final permanent regulation submitted to the Department of Law must set out the text of the emergency regulation in its published form (without underlining and bracketing). Figure 3.2. In the permanent regulation, use underlining and bracketing only to indicate any *new changes* being made to the original emergency language. Figure 3.3. The lead-in line for an emergency regulation being made permanent should also state whether it is being amended.

**Figure 3.2 - Emergency regulation made permanent without change**

Register \_\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_ LABOR AND WORKFORCE DEV.

The emergency amendment of 8 AAC 61.380 is made permanent to read:

**8 AAC 61.380. Consolidation of proceedings.** The commissioner, on his own motion or by motion of any party, may consolidate or contemporaneously consider two or more proceedings that involve the same or closely related issues. (Eff. 1/10/75, Register 53; am 8/30/2013, Register 207)

**Authority:** AS 18.60.020

**Figure 3.3 - Emergency regulation made permanent with change**

Register \_\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_ LABOR AND WORKFORCE DEV.

The emergency amendment of 8 AAC 61.380 is made permanent and that section is further amended to read:

**8 AAC 61.380. Consolidation of proceedings.** The commissioner, on **the commissioner's** [HIS] own motion or by motion of any party, may consolidate or contemporaneously consider two or more proceedings **that** [WHICH] involve the same or closely related issues. **The commissioner will give notice of a decision to consolidate or contemporaneously consider issues.** (Eff. 1/10/75, Register 53; am 8/30/2013, Register 207; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 18.60.020

**STEP 12: REVIEW BY DEPARTMENT OF LAW AND GOVERNOR'S OFFICE.** As soon as possible after signing the certification of compliance (and an adoption order or a certification order, if necessary), the agency must send the final regulation package to the *regulations attorney* in the Department of Law (*not* to the agency attorney) and must include

- (1) the original and two copies of the final version of the regulation;
- (2) the signed certification of compliance (Appendix V);
- (3) a signed adoption order or certification order if changes were made to the original emergency regulation (Appendix J or L);
- (4) a copy of the delegation of authority (Appendix O or P) or designation as "acting commissioner," if required;
- (5) relevant minutes of the board or commission meeting and staff affidavit, if applicable (Appendices M and N);
- (6) a copy of each public notice (Appendix T-1, T-2, or T-3);
- (7) the additional regulation notice information (Appendix E-1 or E-2);



- (8) the *original* publisher's affidavit of publication;
- (9) an affidavit of notice of adoption of emergency regulation (submit a copy of the affidavit if the original was previously sent to the lieutenant governor's office) (Appendix U);
- (10) an affidavit of oral hearing, if an oral hearing was held (Appendix I);
- (11) a fiscal note, if required (Appendix F);
- (12) an original affidavit of agency record of public comment (Appendix K) (except for the Regulatory Commission of Alaska, the Alaska Oil and Gas Conservation Commission, the Board of Fisheries, and the Board of Game);
- (13) a copy of the filed finding of emergency, emergency adoption or certification order, and emergency regulation; and
- (14) any other relevant documents (such as material adopted by reference in the regulation).

The documents submitted with the final regulation provide evidence of compliance with the APA. The above list of the documents that must be submitted to the Department of Law also appears in the agency checklist for emergency regulation in Appendix B.

The final regulation package is reviewed by the agency attorney and the regulations attorney. The steps in the review are outlined in the agency attorney review checklist. See Appendix Z. Additionally, the governor's office (or the lieutenant governor, if delegated) may conduct a review in the same manner as described for a regulation in Step 8 in Chapter 2.

**STEP 13: PERMANENT FILING.** After a final regulation has been approved, the Department of Law submits the regulation and supporting documents to the lieutenant governor's office for filing. Before filing, the governor (or the lieutenant governor, if delegated) may return certain regulations, other than board or commission regulations, in the same manner as described for the regulation in Step 11 in Chapter 2.

Filing of the final regulation with a certification of compliance prevents the original emergency regulation provisions from expiring on the 120th day by making the regulation permanent. Any changes contained in those provisions, covered by an adoption or certification order filed with the regulation, take effect on the 30th day after the regulation is filed or at a later date if specified in the adoption or certification order.

The lieutenant governor's office distributes copies of the filed regulation and notifies the adopting agency of the filing. The filed regulation is maintained by the lieutenant governor's office and the state archivist in the same manner as described for the regulation in Step 11 in Chapter 2.

**STEP 14: SUMMARY POSTED ON ONLINE PUBLIC NOTICE SYSTEM.**

AS 44.62.175(a)(7) and (b) require state agencies to post on the Alaska Online Public Notice System the text or a summary of the text of a regulation or order of repeal for which notice is given under AS 44.62.190(a). This provision has been interpreted to require after-the-fact notice that the regulation-adoption process has been completed. This includes notice that an emergency regulation has been made permanent. The agency should post a brief summary of the permanent regulation on the system. To be meaningful, the summary should refer to the original effective date of the emergency regulation and state that the emergency regulation has been made permanent. Please contact the lieutenant governor's office for details on posting notices on the Alaska Online Public Notice System.

**WHAT HAPPENS WHEN AN EMERGENCY REGULATION EXPIRES**

**An emergency regulation expires if it is not made permanent by the 120th day.** AS 44.62.260(b) states that an emergency regulation that has not been made permanent may not be renewed or refiled as an emergency regulation. An agency must follow the regular regulation adoption process to put back into effect an emergency provision that expired, even if the expiration was unintended. Therefore, it is important that the procedures necessary to make an emergency regulation permanent be completed within the 120 days. To accomplish this, an agency must remember to allow sufficient time for Department of Law review and filing by the lieutenant governor's office before the 120-day deadline.

If an emergency amendment or repeal of an existing regulation expires on the 120th day, the version of that regulation that was in effect immediately before the emergency amendment or repeal is reinstated automatically. An agency does not need to take any action to accomplish the reinstatement.

**HOW AN EMERGENCY REGULATION IS SET OUT IN THE AAC**

When an emergency regulation is first published in the AAC, it will appear in a separate "emergency regulation" section at the back of either the appropriate title pamphlet or its supplement pamphlet. To find the most current language of a regulation, these back sections must be consulted each time a person uses the AAC. If the emergency regulation is an amendment or repeal of an existing regulation, the original version of the regulation is retained in the main section of the appropriate supplement or title pamphlet in the AAC during the 120-day life of the emergency regulation. If an emergency amendment is made permanent, that new permanent language is moved to the main section of the appropriate supplement or title pamphlet to replace the original language. If an emergency amendment or repeal expires at the end of the 120th day (i.e., the adopting agency does not make it permanent), the emergency provision is removed from the emergency section of the supplement or title pamphlet and the original language, which again takes effect, remains in the main section. The history note for the permanent regulation will reflect the 120-day existence of the amendment or repeal as an emergency regulation.

If an emergency regulation constitutes an entire new section, it appears only in the appropriate "emergency regulation" section of the appropriate pamphlet, as described above. If the new section is made permanent, it is moved to the main section of the appropriate supplement or title pamphlet. If the new section expires at the end of the 120th day, the text of the section is deleted and the section number and heading are moved to the main section of the supplement or title pamphlet, followed by a history note that reflects the 120-day life of the provision.

In all cases, the lieutenant governor's office instructs the publisher of the AAC on placement and publication of emergency regulations in the AAC.

Figure 3.4 shows an example of how an emergency regulation is set out in the emergency regulation section of a supplement or title pamphlet.

**Figure 3.4 - Emergency regulation**

**5 AAC 31.541. Inspection points.** Inspection points are located in Kodiak and Dutch Harbor and in additional locations if specified by the department. **(Expires December 3, 2013, unless made permanent by the adopting agency.)** (In effect before 1988; am 8/6/2013, Register 207)

**Authority:** AS 16.05.251

In this example, the effective date of the emergency regulation is stated in the history note -- "am 8/6/2013, Register 207." The boldface note above the history note (which is inserted by the publisher under instructions from the lieutenant governor's office) gives the date the emergency regulation will expire unless it is made permanent.

### **CONVERTING A REGULATION PROJECT TO AN EMERGENCY REGULATION PROJECT**

On a rare occasion, an agency will publish notice for a regulation and proceed with the regulation adoption process—perhaps even to the point of adopting the regulation and submitting it to the Department of Law for review—and then find that the regulation must take effect sooner than the regular process will allow. If the agency concludes that the circumstances of the project meet the emergency standard in AS 44.62.250 and 44.62.270, as discussed at the beginning of this chapter, the agency may prepare a finding of emergency and adopt the regulation as an emergency regulation. The agency must then publish notice of the adoption and effective date of the emergency regulation within 10 days after filing by the lieutenant governor's office. Generally, that notice need not provide for public comment, even if the agency intends to make the emergency regulation permanent, so long as the earlier public notice for the regular regulation project provided for public comment. The notice of adoption of the emergency regulation should accurately describe the situation referring to the earlier public notice and comment period and should make clear that the emergency regulation will be made permanent. The earlier public notice and publisher's affidavit, as well as the notice of adoption of the emergency regulation and its publisher's affidavit, are necessary to support making the emergency regulation permanent. Conversion of a regulations project to an emergency one is, typically, somewhat complicated. The agency must consult and work closely with the Legislation and Regulations Section in order to assure successful completion of the project.

## CHAPTER 4

### PUBLIC NOTICE

AS 44.62.190 requires that, at least 30 days before adoption of a regulation, the adopting agency give notice to the public of the proposed regulatory action. One goal of a public notice is to inform the public of the agency's proposals and to provide an opportunity to comment on those proposals before the agency takes final action to adopt the proposal as a regulation. The second goal is to give the administrative agency the opportunity to receive from interested parties information and comments on its proposed action.

The material in this chapter is directed toward public notice for a nonemergency regulation. Chapter 3 describes the emergency regulation adoption process; that chapter will direct the reader to relevant information in this chapter.

#### CONTENTS OF NOTICE

The general content of a public notice is specified in AS 44.62.200. Appendices D-1, D-2, and D-3 contain sample public notice forms. Requirements for the additional regulation notice information (AS 44.62.190(d) and (g)) are discussed later in this chapter.

In order for a public notice to be clear and understandable by the public, the public notice should

- minimize the use of technical terms not generally understood by the public;
- use plain English in describing the regulatory action;
- strive for clarity and use concise language;
- name a specific agency contact person for requesting information about the regulation project, including information regarding special accommodations for a person with a disability;
- actively solicit comments from the affected public on the cost of compliance with the proposed regulation; and
- alert the public that written comments received are public records subject to public inspection.

Under AS 44.62.200, the public notice must contain the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation. AS 44.62.200(a)(1). The Department of Law has consistently interpreted this statute as referring to the time and place of the oral public hearing, if one is to be held, and to the deadline and address for submission of written comments. If the agency plans to accept comments by e-mail, by fax, or by the Alaska Online Public Notice System, the Department of Law recommends that the notice specifically address acceptance of comments by e-mail, by fax, or by the

Alaska Online Public Notice System and that the deadline include a time (e.g., 4:30 p.m.) as well as a date.

(2) Reference to the statutory authority for the proposed regulation and the statute sections that the agency is implementing, interpreting, or making specific through the regulation. AS 44.62.200(a)(2). The Department of Law recommends that an agency cite all statutes that give the agency the authority to adopt the regulation and that identify the substantive law being implemented, interpreted, or made specific through the regulation.

(3) An informative summary of the proposed subject of agency action. AS 44.62.200(a)(3). The summary should provide enough details to give the public reasonable notice of the agency's proposed action while not being so specific that the agency will not have enough flexibility to revise the regulation, before adoption, in response to concerns raised by the public or by the agency itself. When amending AS 44.62.200(a)(3) in 1970, the House Judiciary Committee addressed the administrative decision making involved in determining the amount of details in a notice (1970 House Jour. 916 - 918):

By way of example, the committee believes that notice by an agency that it is going to consider regulations setting a limit on bear in a particular area of the state should be sufficient to support agency action setting any limit, or no limits, in that area. Similarly, notice that the agency will consider a regulation opening the fishing season on a particular date is sufficient notice to support any date, since the subject matter of the regulation (opening the season) remains the same. . . .

The committee recognizes the difficulty in maintaining the balance between generality and specificity in writing notices which give members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their opinions known to the agency. It would appear that almost any statutory language, short of a provision that omits a notice requirement altogether or one that requires the notice to contain the regulation verbatim, will necessitate an administrative decision on an issue such as the content of "reasonable notice."

AS 44.62.200(b) recognizes an agency's obligation to give reasonable notification of a regulatory action; it states:

A regulation that is adopted, amended, or repealed may vary in content from the summary specified in (a)(3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are *reasonably notified* of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject. (Emphasis added.)

The Department of Law recommends that the specific language or provisions of a proposed regulation not be set out in the notice. That specific language could be unduly restrictive if the agency finds that it needs to make changes in its final regulation.

The informative summary of proposed action should not just give the legal citation (e.g., 7 AAC 110.400) of a regulation being adopted, amended, or repealed; it should also provide a description of the subject of the regulation. This will avoid difficulties if, for instance, the legal citation contained a typographical error or if the agency decides that it also wants to amend a different regulation that deals with the same subject.

(4) Any additional information specifically required by the statutes relating to the agency or to the program that is the subject of the regulation. AS 44.62.200(a)(4). This requirement is a reminder that there may be other statutes that require some additional points to be covered in the notice.

(5) A summary of the fiscal information required to be prepared under AS 44.62.195. AS 44.62.200(a)(5). For example, if the adopting agency or another agency anticipates that increased appropriations will need to be requested if the proposed regulation takes effect, the relevant agency must prepare a fiscal note under AS 44.62.195 and the public notice must contain a statement of the amounts in that fiscal note. Conversely, if it is anticipated that an additional appropriation will not be needed by any agency, the notice must contain a statement to that effect and a fiscal note is not required. The sample notice forms in Appendices D-1, D-2, D-3, T-1, T-2, and T-3 contain language for both statements. Also, see Chapter 14 for more information regarding fiscal notes.

**Brief description.** Additionally, AS 44.62.200(d) requires that certain agencies include a brief description of the regulation changes in clear, easily readable language that a person without a legal background is able to understand. The brief description in these notices should be one or two sentences long and should avoid legal citations, abbreviations, and specialized terminology. In the e-mail, online, or other Internet website notice, the brief description should appear at the top of the body of the notice. The brief description requirement applies to all agencies subject to the APA, except for the Regulatory Commission of Alaska, the Board of Fisheries, and the Board of Game. Appendices D-2 and T-2 contain placeholder language for a brief description. For a notice being published in a newspaper, Appendices D-1 and T-1 omit a brief description, which would add to printing costs if it were published in a newspaper.

#### ADDITIONAL REGULATION NOTICE INFORMATION

AS 44.62.190(d) requires that certain additional information be distributed along with the public notice for a regulation project. Most agencies provide notice under AS 44.62.190(d). (The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission give notice under AS 44.62.190(g)). Because this additional information is not required to be furnished to certain recipients of the public notice, the information need not be contained in the public notice itself. The information must be distributed in accordance with AS 44.62.190(d) (see "Distribution of Additional Regulation Notice Information" later in this chapter). Newspaper publication of the additional regulation notice is not required. The

ADDITIONAL REGULATION NOTICE INFORMATION form in Appendix E-1 includes all the required information to comply with AS 44.62.190(d) and its use is strongly recommended.

**The additional regulation notice under AS 44.62.190(d) (Appendix E-1) must contain the following:**

(1) The reason for the proposed action, including, if applicable, an identification of any federal law, or federal or state court decision that is the basis for the action. The requirement to list, if applicable, federal law or a federal or state court decision that is the basis for the action does not require a detailed explanation. Instead, legislative history indicates that agencies are required to identify in "a sentence or two" if any proposed regulation is required or mandated by federal law. (*House Judiciary Minutes*, April 8, 2013, at page 19).

(2) The initial cost to the agency of implementation. Under AS 44.62.190(d), the agency must provide information regarding the costs in implementing the proposed regulation. This differs from AS 44.62.195, which requires that a fiscal note be prepared if the regulation would require "increased appropriations by the state." Thus, an agency can comply with the additional regulation notice information requirements of AS 44.62.190(d) by stating anticipated costs to that agency, not to the state as a whole.

(3) The estimated annual costs, based on a good faith effort to estimate the costs in the aggregate using information available to the state agency to (A) private persons to comply with the proposed action; (B) the state agency and other state agencies to comply with the proposed action; and (C) municipalities to comply with the proposed action. As to the required cost information, legislative history indicates that the cost information is not intended to require a detailed analysis, but that it "simply requires a good faith effort by the agency to estimate the costs in the aggregate." (*House Judiciary Committee Minutes*, April 8, 2013, at page 20). The cost information should be limited to costs affected by the *regulatory* action. Contact the Department of Law if there are questions as to how to determine estimated annual costs.

(4) The name of the agency contact person.

(5) The origin of the proposed action, such as agency staff, the federal government, the general public, by petition for regulation change or other.

**The additional regulation notice under AS 44.62.190(g)** applies to the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission. The main difference for boards and commissions that give notice under AS 44.62.190(g) is that they do not need to provide information on the estimated costs to private persons, other agencies, and municipalities to comply with the proposed action. Instead the additional notice must include the reason for the proposed action, the initial and estimated annual costs of implementation, the name of the contact person, and the origin of the proposed action. Appendix E-2 provides the information required for these boards and commissions.



**PUBLICATION AND DISTRIBUTION OF PUBLIC NOTICE**

The APA requires that a public notice of proposed regulatory action be distributed in a particular way. So long as the APA requirements have been met, the agency may provide for notice through whatever *additional* means the agency considers appropriate in the particular circumstances. For example, the agency may use its Internet website, e-mail, public service radio announcements, and other no-cost means to alert the public about the proposed regulatory action so long as the basic distribution requirements of the APA have been met. Under AS 44.62.190(a), the public notice must be published and distributed by the adopting agency as follows:

(1) The notice must be published "in the newspaper of general circulation or trade or industry publication that the state agency prescribes." AS 44.62.190(a)(1). To meet the minimum legal requirements of the APA, publication must be made only once in one newspaper or trade or industry publication. It is often good policy to include additional publicity in rural Alaska, and press releases for local newspapers and radio and television stations should be considered. Finally, to ensure greater public awareness of a proposed regulation, the state agency may wish to consider a no-cost media campaign of interviews, press releases, or other media to reach the widest audience.

When an agency sends a public notice to a newspaper or other publication, the agency should tell the publisher the date requested for publication and request a proof-of-publication affidavit. The state's advertising order form provides spaces for all of this information and includes an affidavit of publication for use by the publisher.

(2) AS 44.62.190(a)(1) requires posting of the proposed agency action on the Alaska Online Public Notice System. Except for the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission, AS 44.62.200(c) requires an agency to either post the complete text of the proposed regulation or provide an electronic attachment or link to the complete text of each proposed regulation and, if feasible and not prohibited by copyright, the complete text of any document or other material proposed to be adopted by reference. A simple way to comply with this provision is to provide the complete text of the proposed regulatory action as an attachment to the posting on the Alaska Online Public Notice System. Contact the Department of Law if there are questions about whether posting is feasible or if there are questions about whether material is protected by copyright.

The agency may choose to receive comments through the Alaska Online Public Notice System. Contact the lieutenant governor's office for instructions on posting notices or receiving comments on the Alaska Online Public Notice System. The agency should verify that the notice actually appeared on the Alaska Online Public Notice System and that any Internet links to obtain the complete text of the proposed regulation and documents or other materials incorporated by reference are functioning properly.

(3) The notice must be furnished "to every person who has filed a request for notice of proposed action with the state agency." AS 44.62.190(a)(2). Copies should be furnished at the same time that the notice is sent for newspaper or other publication to all persons who request them. Each state agency must maintain a list of persons who have contacted the agency and have asked to be provided with copies of notices of regulation projects. The APA allows agencies to furnish public

notices to interested persons by e-mail unless a person has requested furnishing of that person's notices by regular mail. The APA requires that only the public notice, not the actual copy of the proposed regulation, be sent to persons on the list, but the agency must still provide an electronic attachment or link to a complete copy of the regulation on the Alaska Online Public Notice System; the agency should consider posting the proposed regulation and any material incorporated by reference on the agency's Internet website. Posting a notice on a state agency's Internet website however, does not relieve the agency of the APA's requirement of furnishing direct, individual notice to certain persons.

(4) If the adopting agency is not a principal department, the agency must furnish the notice to the head of the principal department of which it is a part. AS 44.62.190(a)(3).

(5) When appropriate, in the agency's judgment, the notice should be furnished to a person or group that the agency believes is interested in the proposed action. For example, the Department of Health and Social Services might decide to send a copy of its notice regarding a proposed public health regulation to the Board of Nursing even though the board had not expressly requested a copy. The agency may use additional alternative ways to give public notice of a regulation project. For example, the state agency might decide to publish the public notice for a project affecting older Alaskans in a senior newsletter in addition to a newspaper of general circulation. AS 44.62.190(a)(4). Each agency should periodically review its lists of interested persons to help assure that a broad spectrum of interested persons is reached.

(6) The agency must furnish to the Department of Law for legal review, a copy of both the notice and the proposed regulation. AS 44.62.190(a)(5). To avoid confusion and delay, the state agency also should provide a cover memorandum stating the Department of Law's file number for the project (if one has been assigned) and should send the memorandum, notice, and proposed regulation *to the attention of the regulations attorney*. If the Department of Law has not yet opened a file on the project, the agency's cover memorandum should request the regulations attorney to do so (see Appendix G).

(7) A copy of the notice must be furnished by *electronic format* to all incumbent legislators. AS 44.62.190(a)(6). Contact the Department of Law for the current e-mail address for group mailing to incumbent legislators.

(8) Under AS 44.62.190(a)(6), the agency also must furnish by electronic format a copy of the notice to the Legislative Affairs Agency. That agency has designated the Division of Legal and Research Services to receive its copy by e-mail. An agency that must comply with AS 44.62.190(a)(7) by furnishing a copy to the Legislative Affairs Agency may use that e-mail to meet the requirements of AS 44.62.190(a)(6). For other agencies (primarily the Board of Fisheries and Board of Game), the Legislation and Regulations Section has the appropriate e-mail address for the Division of Legal and Research Services.

(9) Under AS 44.62.190(a)(7), state agencies, other than the Board of Fisheries and the Board of Game, must furnish a copy of the public notice and proposed regulation electronically to the Legislative Affairs Agency, the chairs of the legislature's standing committees with jurisdiction over the subject of the proposed regulation, the Administrative Regulation Review Committee, and

the legislative council. Appendix CC contains a reproduction of the legislature's Uniform Rule 20, setting out the legislature's standing committees and the subject matter jurisdiction of each. Appendix DD contains group e-mail addresses for use in meeting the AS 44.62.190(a)(7) requirement.

### **DISTRIBUTION OF ADDITIONAL REGULATION NOTICE INFORMATION**

As mentioned earlier in this chapter, it is strongly recommended that the "Additional Regulation Notice Information" form in Appendices E-1 and E-2 be used to provide the required additional regulation notice information. The additional regulation notice information *must* be distributed, *at the same time* the public notice is distributed, to

- (1) every person who has asked to receive notice of the agency's proposed regulation actions;
- (2) a person or a group that the agency believes is interested in the proposed action; and
- (3) all incumbent state legislators and the Division of Legal and Research Services of the Legislative Affairs Agency. AS 44.62.190(d).

In addition, the additional regulation notice information should be posted on the Alaska Online Public Notice System with the public notice for the project and be sent to the regulations attorney. Newspaper publication of the additional regulation notice information form is not required.

### **RENOTICING A REGULATION PROJECT**

A regulation project may need to be renoticed due to staleness of the original notice, to correct a mistake, or to provide supplemental information.

To ensure that the public is appropriately informed and is not surprised when a regulation takes effect for which notice was published long ago, a one-year staleness rule of thumb is applied by the Department of Law. For example, if a year or more has elapsed between the time the original notice for a regulation was published and the anticipated filing date of the regulation, a supplemental notice should be published.

This one-year rule, which is not in the APA, is flexible, taking into account the nature and significance of the regulation project and the other means by which the state agency has kept the public informed during the regulation development process. A lengthy delay in the adoption and ultimate effective date of a regulation may have the effect of masking the new law from the public. The goal of the one-year rule is to avoid surprising the public with a regulation that it did not anticipate.

Sometimes it is necessary or advisable to publish a supplemental notice to, for example, extend the comment period, set a new date for an oral hearing, or to correct an error in the original notice. An example of a supplemental notice appears at the end of this chapter.

In a supplemental notice, be sure to mention its relationship to the earlier notice and make clear what the *difference* is (i.e., the supplementation or correction). It is helpful if the heading for the notice contains the word "supplemental." A supplemental notice must be distributed in the same manner as was the original public notice (i.e., all of the publication and distribution requirements of AS 44.62.190(a) must be met). Consult the Legislation and Regulations Section on whether the additional regulation notice information required by AS 44.62.190(d) should be revised and distributed with the supplemental notice. Generally, a substantial revision of a regulation previously noticed or the passage of a lengthy period between the first notice and the supplemental notice (e.g., 12 months) will require that the additional regulation notice information be revised and distributed. A copy of any supplemental notice and the publisher's affidavit for it must be submitted to the Department of Law with the final regulation package along with the original notice and the publisher's affidavit for it.

If the agency has already provided at least 30 days for public comment on a proposed regulation in the preceding 12 months, the agency may, in a supplemental notice, reopen the public comment period on the same subject matter for less than a full 30 days. The period should be reasonable in light of the complexity of material and other factors to make sure that the public has adequate opportunity for review and comment. Consult the Legislation and Regulations Section for recommendations regarding appropriate time frames under a supplemental notice for a particular regulation project.

### **POST-FILING NOTICE REQUIREMENTS**

The APA does not require that a notice be published in a newspaper after a regulation is filed. However, AS 44.62.175(a)(7) and (b) do require state agencies to post on the Alaska Online Public Notice System "the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.62.190(a)." This provision has been interpreted to require a notice that the regulation-adoption process has been completed for a proposed regulation and that the regulation will be taking effect. To facilitate compliance with this requirement, the agency should post a brief summary of the filed regulation on the online public notice system as soon as possible after the regulation is filed. The notice should appear on the system for at least two weeks. Please contact the lieutenant governor's office for details on posting notices on the Alaska Online Public Notice System. To the extent economically feasible, agencies should publicize the filing of a regulation and its impending effective date to alert the public. This publication could be done through interviews, press releases, or other no-cost methods.

**EXAMPLES OF NOTICES OF PROPOSED REGULATION**

Based on the forms provided for giving notice of a proposed action, the following are examples of introductory language and informative summaries from a typical public notice:

**Figure 4.1 - Adoption of new material only**

The Department of Labor and Workforce Development proposes to adopt a regulation in Title 8 of the Alaska Administrative Code dealing with employment of minors, including the following:

The proposed regulation would include a prohibition on the employment of children under 18 years of age in activities such as canvassers, peddlers, and solicitors for door-to-door contributions.

This proposed prohibition would apply only if an employee-employer relationship exists and would not affect individuals engaged in the activity of a nonprofit religious, charitable, educational, or service organization where an employee-employer relationship does not exist and where services rendered to the organization are on a volunteer basis. This prohibition is being proposed in order to avoid the exploitation and abuse of minor workers that has been experienced in those occupations in Alaska and across the country.

**Figure 4.2 - Adoption of new material with amendments to existing material**

The Regulatory Commission of Alaska proposes to adopt and amend regulations in Title 3 of the Alaska Administrative Code dealing with joint use of electric and telephone utility equipment and facilities by cable television (CATV) utilities, including the following:

3 AAC 52 will be amended by adding new sections providing for commission regulation of CATV joint use of electrical and telephone utility facilities, including rates for joint use. The sections would apply to all electric, telephone, and CATV utilities in the state, regardless of whether the utilities are regulated or are exempt from the commission's general regulatory powers. The proposed regulations encourage the affected utilities to agree to terms for joint use and indicate that the commission generally will not exercise its authority to order joint use, and determine the rates or other terms of joint use, so long as the utilities appear to be acting consistent with the policies underlying AS 42.05.

In addition, 3 AAC 50.100(a), dealing with the application and purpose of regulatory policy standards, will be amended to include a reference to telephone utilities in light of the new material for 3 AAC 52 proposed above.

**Figure 4.3 - Adoption of new material with repeal of existing material**

The Division of Insurance proposes to amend, adopt, and repeal regulations in Title 3 of the Alaska Administrative Code dealing with agents, brokers, solicitors, and adjusters, including the following:

3 AAC 23.070 will be amended to include a provision allowing for a good cause exception for the length of time that an insurance licensing examination score is valid. If licensure is not obtained within that period without receiving an exception, the applicant must retest.

3 AAC 23.085 will be a new section that specifies fees for an applicant required to retest in certain circumstances, such as when an applicant's prior Alaska insurance license was revoked for any reason, including nonpayment of annual continuation fees.

3 AAC 23.170(6), dealing with the definition of "licensee," will be repealed. This regulation is not needed as the definition is provided in AS 21.97.900.

**Figure 4.4 - Repeal of existing material**

The Department of Health and Social Services proposes to repeal 7 AAC 07.105(c) and (d) dealing with an annual report on certain information for the certificate of need program. The department intends to place documents on its Internet website rather than preparing an annual report.

**Figure 4.5 - Amendment of existing material only**

The Department of Health and Social Services proposes to amend regulations in 7 AAC 150 dealing with establishment of a rate-setting process for payment of services for medical assistance programs to facilities to implement AS 47.07, including the following:

7 AAC 150.130 will be amended to reflect accounting manual changes.

7 AAC 150.170 will be amended to further define allowable, reasonable operating costs included in determining a prospective rate.

7 AAC 150.200 will be amended regarding facility audits and desk reviews.

**EXAMPLE OF SUPPLEMENTAL NOTICE**

Figure 4.6 shows an example of the introductory language and informative summary for a supplemental notice that refers back to the original public notice for a regulation project.

**Figure 4.6 - Supplemental notice**

SUPPLEMENTAL NOTICE OF PROPOSED  
CHANGES IN THE REGULATION OF THE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

The Alaska Department of Labor and Workforce Development proposes to amend regulations in Title 8 of the Alaska Administrative Code that adopt occupational safety and health standards by reference and proposes to adopt and amend safety and health standards regarding the Telecommunication Code, including the following:

The adoption by reference of federal regulations in 8 AAC 61.1010 will be amended to reflect the addition of new federal regulations regarding the Telecommunication Code.

8 AAC 61.1070, on additional telecommunication standards, will be amended regarding preparation and maintenance of certain records, including training records.

The proposed changes to these regulations provide minimum safety and health requirements for employment and places of employment in the state and are at least as effective as those adopted by the United States Secretary of Labor.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES that was issued on August 4, 2015, concerning these proposed regulation revisions contained in the Department of Law file number JU2015200999. This SUPPLEMENTAL NOTICE is being issued because the Department of Labor and Workforce Development has decided to hold oral hearings on those proposed revisions. The hearings will be held as follows:

. . . .

## CHAPTER 5

# ORGANIZATION AND NUMBERING OF THE ALASKA ADMINISTRATIVE CODE

## ORGANIZATION

Regulations in the Alaska Administrative Code (AAC) are organized into the following classifications in much the same manner as the Alaska Statutes:

- Title -- Department, other state agency, or subject matter (e.g., **Title 11. Natural Resources.**). This would be cited 11 AAC. At the beginning of each title, there is a list of the "parts" (if used) and chapters in that title.
- Part -- Division of a department, some other major agency within a department, or some other broad subject matter designation (e.g., **Part 2. Parks, Recreation, and Public Use.** -- to correspond to those programs within the Department of Natural Resources). If it is used, this classification appears at the beginning of one or more chapters but is not reflected in the citation for a regulation in that title. It is merely a means of grouping regulations within the title to make it easier to locate provisions that relate to a particular subject or function.
- Chapter -- A less comprehensive grouping of provisions under a part or title (e.g., **Chapter 09. State Recreation Rivers System.**). This would be cited 11 AAC 09. This classification is often used to distinguish divisions within a department, board, or commission, or to distinguish major programs within an agency. At the beginning of each chapter there is either a list of the articles (if used) or a list of the sections (if articles are not used) in that chapter.
- Article -- This classification is often used to organize the sections within a chapter into logical groupings (e.g., **Article 2. Use by General Public.**). If articles are used, an article listing appears at the beginning of the chapter, but the article number is not reflected in the citation for a regulation in that chapter. At the beginning of each article there is a list of the sections in that article.
- Section -- The basic unit used to contain closely related provisions on a particular part of a process or program (e.g., **11 AAC 09.010. Float plane landing areas.**).

An individual section can be organized into two or more subdivisions if necessary to make it easier to read and understand the material in the section. Section subdivisions, in the order and format in which they would be used, are shown in Figure 5.1.



**Figure 5.1 - Section subdivisions**

A regulation may be all one section without any subdivisions, a section composed of paragraphs (commonly used for definition sections), or a section composed of subsections, paragraphs, subparagraphs, or sub-subparagraphs, as follows:

- (a) Subsection
  - (1) paragraph
    - (A) subparagraph;
      - (i) sub-subparagraph;
      - (ii) sub-subparagraph;
    - (B) subparagraph;
  - (2) paragraph.
- (b) Subsection.

Every provision must be within a section, subsection, paragraph, subparagraph, or sub-subparagraph; *there is no designation after a sub-subparagraph.*

Following the section number and heading, the text of a regulation may not be given a number or letter designation unless there are two or more subdivisions at the same level—that is, an (a) must be followed by a (b), a (1) by a (2), and so on. If a section consists of a single, integrated statement, the section is not subdivided. See Chapter 7 for examples on how to format and subdivide regulations.

If a section does not have multiple subsections, but does have introductory language for a series of provisions, the introductory language should not be designated as subsection "(a)," and the elements in the series should be designated as paragraphs. Figure 5.2 contains an example of a series of provisions that follow introductory language.

**Figure 5.2 - Series of provisions**

<b>Introductory language</b>	
<b>11 AAC 05.990. Definitions.</b>	In this chapter, unless the context requires otherwise,
(1) "commissioner" means . . . ;	
(2) "department" means . . . ;	
(3) "director" means . . . .	

### NUMBERING

The numbering system used in the AAC is similar to that used in the Alaska Statutes. Chapter and section numbers within each title have been arranged so that new chapters and sections may be inserted without disrupting the numbering system. For consistency, each chapter is identified with a two-digit number and each section with a three-digit number.

Title	Chapter	Section
5	AAC	01.550

When designating chapter or section numbers, leave gaps in the numbering so that the unused numbers are available for future provisions that need to appear in those locations because of subject matter or logic. Usually, chapters should be numbered by 5's and sections numbered by 10's, depending on the total number of chapters or sections. If more chapter or section numbers are needed, smaller gaps may be left between numbers. A chapter number may be used only once in a title, and a section number may be used only once in a chapter.

Only when a title is "full" is it permissible to use more than two digits for a chapter number, and only when a chapter is "full" is it permissible to use more than three digits for a section number. In either case, the adopting agency must confer with the Legislation and Regulations Section before departing from the standard number limitation.

To preserve history and continuity, to avoid confusion, and to avoid wasting number citations in the AAC, a new section number may not be used for a section on essentially the same subject as an existing section. Conversely, the section number of a repealed section may not be re-used.

In addition, when repealing a subsection, do not reletter any following subsections to fill the gap left by the repealed provision. For example, if an agency repeals subsection (b) of a section that contains four subsections, the agency should *not* amend the section to move subsection (c) up to (b), and (d) up to (c). An exception to this is when an agency repeals and readopts an entire section because it needs to extensively reorganize or revise the section, and in doing so the agency moves material around within the section. This rule also applies to repeal of any subdivision of a section. Also, if an agency needs to add a new subsection (c) among existing subsections (a) - (d), the entire section must be repealed and readopted.

An agency *may not* use the repeal and readopt method *or* the amending method to change the basic subject matter of an existing section. The same rule applies to an existing subsection unless the subsection is in an existing section that is being repealed and readopted to extensively reorganize the material in it. The differing subject matter instead must be placed in a new section (or subsection) and the existing section (or subsection) must be repealed (if necessary). To avoid legal problems, the agency must contact the Legislation and Regulations Section before starting a regulation project that comprehensively revises a chapter or title.

### ORGANIZING PROVISIONS WITHIN A CHAPTER

Sections are used to organize the material within a chapter into logical groupings of subject matter.

If a chapter deals with several different programs, functions, or subjects, the sections in the chapter must be grouped into articles for each program, function, or subject. If a chapter deals with a single program, function, or subject, the use of articles is not always necessary.

The purpose of organizing material into sections and articles is to make the regulations easier to understand by keeping closely related provisions together and by dividing material at logical points to avoid provisions that are long and confusing.

The arrangement of sections and articles in a chapter generally should result in a logical flow of thought from the first section to the last. Any introductory provisions should come first. These provisions might explain to whom the regulations in the chapter apply or the purpose of the regulations in that chapter. Provisions setting relevant procedures and requirements would come next. General provisions are last. These sections include provisions that apply generally to the program or function but are not procedural, such as provisions regarding nondiscrimination, department waiver of certain requirements, and definitions. As an example, the regulations for a loan program might be grouped into articles in the following order:

- Article 1. Applicability and Eligibility.**
- Article 2. Application Process.**
- Article 3. Department Review and Decision.**
- Article 4. Appeals.**
- Article 5. Loan Terms.**
- Article 6. General Provisions.**

Articles in a chapter must be numbered consecutively without regard as to whether the article number corresponds to the section numbers contained in that article. For example, if "Article 6" is the next consecutive article number available for a group of general provisions numbered as sections .900 - .999, use "Article 6." Do *not* attempt to match the article number to the section grouping by using "Article 9."

Consult the Legislation and Regulations Section early in the drafting process for advice on organizing regulation provisions.

## CHAPTER 6

# STYLE, GRAMMAR, AND WORDS

A state agency, including a board or commission, should make sure that its regulations are clear, direct, and understandable to the public, especially to those who must comply with the regulations. The key is to use plain English, a consistent style, correct grammar, and precise words. This chapter includes general rules for good drafting and highlights a number of common but significant drafting errors.

### GENERAL RULES

The following general rules apply to all effective writing, but especially to regulation drafting:

Use plain English; avoid jargon and legalese words or phrases. Think about each word that is written. To help the agency achieve its desired results, the wording of a regulation must be clear, easily understood, and as accurate as possible. Remember that the public must comply with the regulation, and the courts and administrative law judges must apply it.

An amendment should match the style of the existing regulation being amended.

Use consistent terminology. Do not use the same word or phrase to denote different things or different words or phrases to denote the same thing.

Write simply and concisely, but make sure that words used accurately state the agency's meaning. Do not use words or phrases that are longer or more complicated than necessary to express an idea.

Avoid long and complex sentences; break them into two or more short and simple sentences. For example, do not put a list of exceptions into one sentence with the general legal requirement. Instead, use the following approach:

An application must be received by the department not later than April 15. However, the department will accept a late application if it is received not later than April 30 and the applicant shows, to the department's satisfaction, that

- (1) . . . ;
- (2) . . . ;
- (3) . . . .

Draft the regulation in a logical progression. For example, start with receipt of application, move to agency decision on the application, and finally discuss appeal rights on denial of the application. Using subsections or paragraphs may be helpful in clearly stating the steps in the process.

Do not rely on chapter, article, section, or subsection headings to clarify the text of a provision.

Whenever possible, use the present tense. For example,

*Do not use*

*Use*

A permit shall be required . . . .

A permit is required . . . .

Use the active rather than the passive voice. For example,

*Do not use*

*Use*

A committee shall be appointed  
by the director . . . .

The director shall appoint  
a committee . . . .

Use the third person. For example,

*Do not use*

*Use*

You shall . . . .

An applicant shall . . . .

Use the singular number. For example,

*Do not use*

*Use*

Applicants shall submit  
the required fees.

An applicant shall submit  
the required fee.

Express ideas positively.

*Do not use*

*Use*

This section does not apply  
to a person under 21 years of age.

This section applies only to a  
person who is at least 21 years of age.

Use gender-neutral language if it is feasible to do so (e.g., use "firefighter" instead of "fireman"). Gender-neutral language is generally a more accurate description of the agency's intent (i.e., a man or a woman can be employed as a firefighter). It is permissible to continue to use "fisherman" and "seaman" to refer to either gender, as those terms are commonly used in those fields.

Do not use masculine or feminine pronouns, and do not mix singular subject nouns with plural pronouns.

*Do not use*

*Use*

An applicant must sign his or her  
[their] application.

An applicant must sign the  
person's application.

**PREFERRED USAGE**

Use this table when drafting regulations.

<b>DO NOT USE</b>	<b>USE</b>
%	percent
Alaska	state, as appropriate
Alaskan as an adjective	Alaska
any	a, an, the
at the time	when
approximately	about
attempt	try
attorney's fees	attorney fees
by reason of	because
cease	stop
chairman	chair
commence	begin, start
deem	consider, determine
for the duration of	during
forthwith	immediately
give consideration to	consider
have knowledge of	know
his, her	the person's, the individual's
including, but not limited to	including
impact	effect
in lieu of	instead of
in order to	to
in the event that	if
monies	money
no person shall	a person may not
no more than, no later than	not more than, not later than
null and void	void
obtain	get
on the part of	by
per	each, a
per annum	a year
per cent	percent
possess	have
prior to	before

promulgate	adopt
provided that	if
pursuant to	under
remainder	rest
rules and regulations	regulations
said	the
set forth	set out
shall not	may not
subsequent to	after
such	a, that, the
within 10 days of	not later than 10 days after

### PUNCTUATION

**Commas.** Since the courts and the public rely on punctuation, punctuate carefully but do not depend on punctuation to convey the agency's meaning.

If a series contains three or more elements that are not set out in separate paragraphs or subparagraphs, use a comma after each element except the last one, as follows:

An applicant must state the applicant's educational background, work history, and work references in the application.

Avoid using parentheses in the text of a regulation. Commas can separate the words and phrases in the text.

*Do not use*

The carrier (or its successor in interest)

*Use*

The carrier, or its successor in interest,

**"And" and "or".** Do not use a connector of "and" or "or" between every element in a series. For example:

*Do not use*

The application must contain X and Y and Z.

*Use*

The application must contain X, Y, and Z.



When setting out a series of elements, do not use a mixture of "and" and "or" connectors between the elements. To say "A and B, or C" is ambiguous, since it is not clear whether A and B must always be together, with C being an alternative, or whether just A must always be present, with either B or C also being required. To avoid the problem, put the constant element (the one that must always be present) in the language leading into the series, or say "A and either B or C." When dealing with a longer series, another alternative is to put the "and" elements in one subsection and the "or" elements in another subsection. For example:

- (a) An applicant must submit the required fee, a completed application, and educational transcripts.
- (b) An applicant may provide reference letters, writing samples, or other documents that the applicant believes are relevant.

Do not use "and/or" as a connector because it is ambiguous.

If a subsection contains several paragraphs that are part of one continuous standard, the paragraphs should be linked by a connector of "and" or "or," as appropriate. For example:

- (a) An applicant for renewal shall document completion of 45 contact hours of continuing education that include a minimum of
  - (1) six contact hours in substance abuse education; and
  - (2) three contact hours in professional ethics.

or

- (a) An applicant for renewal shall document completion of 45 contact hours of continuing education that include a minimum of six contact hours in
  - (1) alcohol abuse education; or
  - (2) substance abuse education.

But, if a subsection contains several paragraphs that are not part of one continuous standard and are preceded by language such as "as follows" or "the following," no connection is needed. For example:

- (a) The following fees are established for mobile home dealers:
  - (1) application fee for initial registration, \$50;
  - (2) registration fee for initial registration periods, \$150;
  - (3) registration renewal fee, \$510.

If a paragraph contains more than one sentence, the sentences must be separated by semicolons, not by periods. For example:

- (a) An application must be
  - (1) on a form provided by the department; the department will not accept an application submitted in any other manner; and
  - (2) accompanied by the fee.

## CAPITALIZATION

Use capitals sparingly; as a general rule use the lowercase. For example, DO NOT CAPITALIZE:

constitution; legislature; state; president; divisions or sections of departments; position titles such as lieutenant governor, governor, commissioner, chief justice, judge; substitutes for official titles such as board, commission, committee, supreme court, superior court, code.

There are exceptions. For example, CAPITALIZE:

Act, when used in the sense of a statute; President, when referring to the President of the United States; the full official title of a department, board, commission, or committee, such as the Department of Education and Early Development; Twenty-Ninth Alaska State Legislature or Legislature of the State of Alaska; Constitution of the State of Alaska; Alaska Administrative Code; Alaska Workers' Compensation Board.

## ELECTRONIC TERMINOLOGY

The use of an electronic means of contacting an agency or obtaining copies of proposed regulations and other material is commonplace. References to the electronic means should be done in a formal manner if the reference is within the text of a regulation, but some references may be done in a more informal manner if the reference is in an editor's note for a regulation or is in related material such as a public notice. Following are examples of electronic terminology shown in the manner in which the terms may be used in regulation text and in related material such as editor's notes and public notices:

*Term as used in regulation text*

by facsimile transmission  
by electronic mail  
Internet address  
department's Internet website  
telephone number

*Term as used in related material*

by fax  
by e-mail  
Internet address  
department's website  
phone number

## NUMERALS

Numbers from one through nine are written in words only:

one, two, three, four, etc.; first, second, third, etc.

Numbers greater than nine are written in figures only:

10, 11, 12, 13, etc.; 10th, 11th, 12th, etc.

If a number is at the beginning of a sentence it is written in words.

When a hyphenated phrase contains a number over nine and a number from one through nine, use figures only:

. . . Election Districts 7 - 15 . . .

The older, redundant style sometimes used in legal documents (e.g., five (5)) should not be used.

When referring to money, use figures only:

\$.25 (not \$0.25 or 25¢)  
\$5 (not \$5.00), \$15, \$4.50, \$15.35, \$3,190.54

Use words for simple fractions: one-half; three-fourths; two-thirds. Use figures for complex fractions: 9/10; 28/100; 70/100.

Do not use the percent symbol (%). Spell out the word: six percent or 14 percent.

When setting out an ordinal number, use normal-size font rather than superscript, i.e., 10th, not 10<sup>th</sup>.

When expressing age, *use* "under 18 years of age," "younger than 18 years of age," or "at least 18 years of age"; *do not use* "less than 18 years old," "more than 18 years old," or "age 18." If expressing a range, *use* "at least 18 years of age and under 21 years of age," *do not use* "age 18 - 21."

### SHALL, MUST, MAY, AND WILL

Use the word "shall" to impose a duty upon a person or entity. Although there is some debate over the usefulness of the word "shall" in legal drafting (due to interpretation issues if not used correctly and consistently), the Alaska Supreme Court has stated use of the word "shall" denotes a mandatory intent. *Fowler v. City of Anchorage*, 583 P.2d 817 (Alaska 1978). For example:

The school district *shall* ensure each student is immunized. (The school district has a duty to ensure that each student is immunized.)

The director *shall* issue a license to a qualified applicant. (This regulation, adopted by the commissioner of the agency, imposes a duty on the director. The director has no discretion if the applicant is qualified.)

Use the word "must" for requirements relating to objects, such as forms or criteria. Also, use the word "must" for preconditions, such as a qualifier for board membership. For example:

The application *must* include . . . .

A state office building *must* have ramps.

In deciding between "shall" and "must," an entity made up of people, such as a corporation, school district, or state commission, is not considered an inanimate object for this purpose.

One member of the board *must* be a medical provider. (The member's qualification as a medical provider is a precondition for appointment to the board, not a requirement imposed after appointment to the board.)

Use the word *may* to grant a privilege or discretionary power (e.g. A person *may* apply for a grant).

Additionally, to show that a state agency might or might not take a particular action that a statute authorizes it to take, use the word *may*. Use "may not" to impose a prohibition on a person. For example:

The director *may* inspect records of a grantee during routine business hours of the grantee. (Here, the director is given discretionary power by the commissioner to inspect under certain circumstances such as routine business hours.)

The director *may not* issue a license to an applicant who has a felony conviction. (The adopting authority (i.e., commissioner or department) specifically denies permission or authority to the director to issue a license under these circumstances.)

A person *may not* operate a vehicle without a driver's license. (Do not use "No person may . . ." phrasing.)

Use the word *will* to state what the adopting state agency will do under specified circumstances. The "will" language commits the agency to a particular procedure or action (e.g., The department *will* accept applications until December 31, 2016.). For example:

The department *will* provide a hearing to an applicant denied a license. (The department is committing itself to providing a hearing.)

### RESTATING STATUTES

Do not paraphrase or restate a statute in a regulation. Paraphrasing or restating a statute does not create a regulation, and does not add to the force of the statute; a regulation implements, interprets, or makes specific the statutory law being enforced or administered by the regulatory agency. In addition, it makes errors more likely because (1) the more often a statute is paraphrased the greater the chances are of its meaning being inadvertently changed; and (2) the more places a statute is stated the greater the chances are of subsequent statute amendments not being reflected in all of those places.

Furthermore, restating a statute can mislead the reader into thinking that all pertinent law on a given subject is reflected in the regulations and can present serious problems in determining whether a given regulation that paraphrases a statute is intended to be merely a helpful restatement of the law or is actually something of different substantive meaning adopted for the purpose of implementing the statute.

### FINDINGS

At times an agency, especially a board or commission, "adopts" findings regarding one or more regulation provisions to provide important background information or to document the agency's rationale supporting the provisions. Because these findings are *not* themselves a regulation under the Administrative Procedure Act, only in extremely rare circumstances may they be included in a regulation. Consult the Legislation and Regulations Section before including findings in a final set of regulations for adoption.

## CHAPTER 7

# WORD PROCESSING AND FORMAT REQUIREMENTS

Standards for the preparation of a regulation project are important for maintaining a uniform and consistent administrative code. While Chapter 6 discusses general style, grammar, and wording requirements, this chapter discusses the mechanical standards of how to uniformly prepare and display a regulation. Adherence to these standards from the beginning of the project will avoid the need for revisions later and will expedite review by the Department of Law. See Appendix C for examples of how a regulation is to be set out.

### GENERAL WORD PROCESSING INSTRUCTIONS

(1) **Spacing.** Double-spacing of a draft regulation makes the regulation easier to read and edit. When a regulation is adopted and submitted to the Department of Law for final review, it must be double-spaced to facilitate final editing and the addition of notes to the publisher.

(2) **Double-sided; single-sided.** To reduce copying and postage costs, an agency may wish to double-side the copies of the regulation that are distributed for public comment. However, the final adopted version submitted to the Department of Law for final review *must* be single-sided.

(3) **Paper.** Use only standard quality, 8½ inch by 11 inch, 20-lb. white paper.

(4) **Margins.** Margins are set at one inch on the sides, top, and bottom of the page.

(5) **Layout.** Do *not* use full justification.

(6) **Font style, size, and color.** Use Times New Roman, font size 12, printed in black. To avoid confusion, italicize the lowercase "L" when being used as subsection designation (*l*). When printed lowercase "L" is not italicized, it looks like the numeral "1."

(7) **Italicizing; underlining.** Except for a subsection (*l*) designation, do not italicize or use a script-like font for the main body of a regulation; however, the title of a book, treatise, pamphlet, or publication should be italicized. See Figure 11.1 in Chapter 11. Do not underline the title of a court case, book, treatise, or publication, etc.

(8) **Headers or footers.** Headers or footers with dates or version numbers should not be shown on the final adopted version of a regulation when it is submitted to the Department of Law for review. Use the header and footer formats discussed under GENERAL FORMAT in this chapter.

(9) **Pictures, diagrams, charts, or forms.** In some cases, it may be necessary to display a picture, diagram, chart, or form in a regulation. Please check with the Legislation and Regulations Section for instructions on how to display this material for printing in the AAC.

(10) **Boldface type.** Use **boldface** type in part, chapter, article, and section headings. Additionally, "**Authority:**" and "**Editor's note:**" headings that follow a regulation are to be in **boldface** type.

When a regulation is being amended, new material that is being added to an existing provision is to be in **boldface** type and **underlined**. Unless it appears in a bolded heading, do *not* use boldface type for material that is being deleted, and do not use it for emphasis.

(11) **Lead-in lines.** Before each regulation that is being added, amended, or repealed, describe the action being taken. For example:

13 AAC 65.010 is amended to read:

18 AAC 60.150(a)(3) is repealed:

Additional examples of lead-in lines are shown in Figures 7.1 - 7.5.

(12) **Spacing between sentences.** Insert one space after the period ending a sentence, before starting the next sentence.

## HOW TO SHOW CHANGES TO A REGULATION

### New sections.

When adding an entire new section, group of sections, or chapter, all of the new material must be set out. For an entirely new section, group of sections, or chapter being added, use the lead-in line to identify the material as new and do not underline and bold the material, except when headings are to be in boldface type.

**Figure 7.1 - New chapter without articles**

<p><b>lead-in line</b></p> <p>6 AAC is amended by adding a new chapter to read:</p> <p style="text-align: center;"><b>Chapter 32. Employment Rights.</b></p> <p><b>Section</b></p> <p>10. Basic statement</p> <p>20. More material</p> <p style="text-align: center;"><b>6 AAC 32.010. Basic statement.</b> Set out the text of this section and all succeeding sections that are to be in this chapter. Do not underline this new material. The lead-in line expressly states that it is new. (Eff. ___/___/____, Register ___)</p> <p><b>Authority:</b> AS 18.60.020</p> <p style="text-align: center;"><b>6 AAC 32.020. More material.</b> In this case, a separate lead-in line is not necessary for each section because the lead-in line above states that an entire new chapter is being added. (Eff. ___/___/____, Register ___)</p> <p><b>Authority:</b> AS 18.60.020</p>
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**Figure 7.2 - New chapter with articles**

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

**Chapter 33. Rules Governing Setting Out Articles in New Chapter.**

**Article**

1. Capitalization of Headings (6 AAC 33.010 - 6 AAC 33.090)
2. Font (6 AAC 33.100 - 6 AAC 33.190)
3. General Provisions (6 AAC 33.900 - 6 AAC 33.990)

**Article 1. Capitalization of Headings.**

**Section**

10. Article headings
  20. Section headings
- ... (all ellipses must be bold and font size 16)

**Figure 7.3 - New section**

6 AAC 32 is amended by adding a new section to read:

**6 AAC 32.010. Additional requirements.** Set out the new material in this section without bold and underlining. (Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 18.60.020

**Amendment of existing section.** When amending an existing regulation section, set out amendments in the same manner as used for bills in the legislature. This means using a lead-in line, underlining and bolding new language being inserted, and using brackets and capitalization to show the deletion of existing language. However, when deleting an existing statute or regulation citation that contains a reference to a subsection, do not capitalize the subsection reference; the bracketed citation should appear as: [AS 47.10.020(a)].

When amending an existing section, language being added (underlined and bolded words) comes before the language being removed (bracketed and capitalized words). Underlining and bracketing must be shown on drafts and on the final adopted version that is submitted to the Department of Law for review. If the amending method requires using brackets, it means brackets [ ], not parentheses ( ).

Other than in a bolded heading, boldface type should not be used when showing the deletion of existing text.

If an existing section that contains two or more subsections is being amended to add a new subsection, the new subsection must be added at the end of that section. If logical arrangement or agency preference requires that the new subsection be placed elsewhere in the section, the entire section must be repealed and readopted. The "amended to read" method cannot be used to change the lettering of existing subsections.

Do not change capitalization or plurals by underlining or bracketing only an individual letter of the word to be changed. Also, if the change is to a term that is hyphenated, such as open-access, or is a spanned statute or regulation citation connected by a hyphen, the entire hyphenated term or spanned citation must be changed—not just the part needing amending.

Common problems in setting out amendments are shown in the following examples:

*Incorrect*

teacher[S]  
 teachers  
 t[T]he teacher

open-entry [ACCESS]  
An o [O]ccupation[S]

June 15 [1], 2015  
June 15, 2015 [JUNE 15, 2007]

AS 47.10.020[(a)]

7 AAC 07.010 - 7 AAC 07.050 [7 AAC 07.040]

*Correct*

**teacher** [TEACHERS]  
**teachers** [TEACHER]  
**the** [THE] teacher

**open-entry** [OPEN-ACCESS]  
**An occupation** [OCCUPATIONS]

**June 15** [JUNE 1], 2015  
 June 15, **2015** [2007]

**AS 47.10.020** [AS 47.10.020(a)]

**7 AAC 07.010 - 7 AAC 07.050**  
 [7 AAC 07.010 - 7 AAC 07.040]

**Figure 7.4 - Amendment of existing section**

6 AAC 32.017 is amended to read:

**6 AAC 32.017. Additional requirements.** This section **shows** [ILLUSTRATES] the underlining and bracketing method. Set out the new **provisions** [MATERIAL] and delete the old **provisions** [MATERIAL IN THIS SECTION]. (Eff. 2/15/2010, Register 160; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 23.10.360 AS 23.10.365

6 AAC 32.020 is amended by adding a new subsection to read:

(b) Set out the text of the new subsection, even if the current section is not broken into subsections. The publisher will take care of labeling the current material as "(a)." Do not underline or bold the new material when it follows this type of lead-in line. (Eff. 2/15/2015, Register 175; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 23.10.360 AS 23.10.365

**Repeal of existing provision.**

In the public distribution version of a proposed regulation, it is helpful to set out in brackets the existing text of a section or subdivision of a section that is being repealed. In the final adopted regulation, however, set out only the repeal notation, not the text being repealed. Be sure to identify in the lead-in line the exact provision (section, subsection, paragraph, etc.) being repealed. The format of the repeal notation differs depending on whether an entire section, or a subdivision of a section is being repealed. See Figure 7.5, below, Figures 8.3 and 8.4 in Chapter 8, and the sample regulations in Appendix C for illustrations of repeal format.

**Figure 7.5 - Repeal of existing provision**

6 AAC 32.017 is repealed:

**6 AAC 32.017. Additional requirements.** Repealed. (Eff. 2/15/2010, Register 160; repealed \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

6 AAC 32.020(b) is repealed:

(b) Repealed \_\_\_/\_\_\_/\_\_\_ (Eff. 2/15/2010, Register 160; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 23.10.360 AS 23.10.365

6 AAC 32.150(d)(7) is repealed:

(7) repealed \_\_\_/\_\_\_/\_\_\_;

(Eff. 2/15/2010, Register 160; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 23.10.360 AS 23.10.365

**Repeal and readoption.**

If a regulation is being amended so extensively that the underlining and bracketing method shown in Figure 7.4 would be more confusing than helpful, the repeal and readopt method should be used. Also, the repeal and readopt method *must* be used if the agency wishes to add a new subsection in the middle of existing subsections.

For this method the lead-in line should say, for example, "6 AAC 32.010 is repealed and readopted to read:" followed by the text of the regulation set out as if it were new (i.e., the desired text without any underlining or bracketing). See Figure 8.5 in Chapter 8 and the sample regulations in Appendix C for illustrations of repeal and readopt format.

**Multiple changes within one section.**

If multiple changes are being made to more than one subdivision of a section or subsection, set out a separate lead-in line for each subdivision change. For example, if 6 AAC 32.030(b) is being amended, subsection (c) is being repealed, and a new subsection is being added, three separate lead-in lines must be used. As another example, if within a subsection, paragraph (4) is being repealed, paragraphs (6) and (7) are being amended, and a new paragraph (10) is being added, four separate lead-in lines must be used. Finally, as another example, if 12 AAC 40.058(b) and (d) are both being amended, two separate lead-in lines must be used. The history note and authority citation for each regulation section should be set out only once, after the last part of the section being changed. See Appendix C for an example of multiple changes within the same section.

**Corrections to history note.**

Occasionally, the history note of an existing regulation section as it appears in print in the AAC will contain a printing error. If the agency is aware of the error, and the section is being amended or repealed and readopted in a set of regulations, the agency should indicate the necessary corrections to the history note by using the standard underlining/bolding and bracketing technique. For example:

(Eff. **8/5/2015** [4/15/2002], Register **207** [191]; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Changes to authority citation.**

Additions and deletions to the authority citation for a section should be shown as amendments to existing material. See Figure 7.6. A new authority citation being added should be set out in boldface type and underlined (e.g., **AS 47.07.050**). Regardless of whether the regulation section itself is being amended or is being repealed and readopted, a change to the section's authority citation should be shown as an amendment. (See the sample regulations in Appendix C.) The statutes listed in an authority citation are always set out in statute number order, regardless of whether a particular statute is being added to or deleted from the listed authorities.

**Figure 7.6 - Changes to authority citation**

<b>Authority:</b>	[AS 47.07.020]	AS 47.07.035	AS 47.07.040
	<u>AS 47.07.025</u>		

If an entire regulation section is being repealed, the section's authority citation is omitted when the repeal notation is set out in the final adopted regulation. The publisher of the AAC deletes the authority citation when the repeal notation is printed in the AAC.

### **Emergency regulation being made permanent.**

When making an emergency regulation permanent, the final permanent regulation submitted to the Department of Law must use the format set out in Step 11 in Chapter 3, in addition to following any general word-processing requirements set out in this chapter.

## **GENERAL FORMAT**

**Header.** One inch below the top of every page of regulations must be a header that (1) provides blanks in which the lieutenant governor's office will fill in the register number, month, and year of publication in the AAC; and (2) identifies the agency or other subject matter of which the regulations are a part, as shown in the printed AAC.

**Figure 7.7 - Header for regular regulations and emergency regulations being made permanent**

Register _____, _____ 20__	FISH AND GAME
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For regulations being filed as emergency regulations, use the header set out in Step 2 in Chapter 3.

**Footer.** One inch up from the bottom of every page of regulations (i.e., at the bottom margin) must be a footer that contains a centered page number (e.g., 1). Nothing else should appear in the footer. The number of pages indicated in the adoption or certification order for that set of regulations must match exactly the number of pages in the set. If the number is different, a new adoption or certification order will be required.

**Contents list.** Do not set out an existing chapter or article contents list in a set of regulations, even if extensive changes will be required to that existing contents list as a result of the regulations project. The publisher of the AAC will make the necessary changes to the contents list before the regulations are printed. However, adding a new chapter or article does require that a contents list be set out in the regulations. See Figures 7.1 and 7.2 in this chapter.

**Part, chapter, article, and section headings.** Parts, chapters, articles, and sections always have headings; subsections sometimes do. Headings should be descriptive but brief. The substance of the chapter, article, section, etc., will not be changed by the heading that it is given. Write the text of a section so that the meaning and context are clear without the heading.

Part, chapter, and article headings are bolded, the first letter only of each word in the heading (other than words such as a, and, the, in, or, and to) is in uppercase, and the heading is followed by a period.

Section headings are bolded, only the first letter of the first word is capitalized, and they are followed by a period. However, when a section heading contains a proper noun or a proper abbreviation or acronym, those words are to be properly capitalized even if they are not the first word of the heading.

When a heading appears in a contents list, however, it is not bolded and the period is omitted.

**History note; authority citation.** At the end of each existing section set out in a regulations project, or at the end of the last in a series of amendments to an existing section, the existing history note must be set out with blanks added at the end. If a section is new, a new history note with blanks is set out. The lieutenant governor's office fills in the blanks with the effective date of the regulation change and the register number. The authority citation is set out below the history note. "**Authority:**" is to be bolded. Refer to Chapters 8 and 9 for complete instructions on history notes and authority citations.

**Editor's note.** Any editor's note for a regulation section appears below the authority citation for the section. An editor's note can be used to provide helpful information that is not appropriate for inclusion in the text of the regulation. For example, an editor's note may be used to inform the public as to where forms may be obtained. The heading of an editor's note is to be bolded, and the first line of an editor's note and of any subsequent paragraphs in the editor's note is to be indented one tab (one-half inch). Figure 7.8, below, and Figure 11.1 in Chapter 11 show an example of an editor's note.

**Figure 7.8 - Example of editor's note**

**Editor's note:** The application checklist form adopted by reference in 12 AAC 40.058 is available at Department of Commerce, Community, and Economic Development offices in Anchorage and Juneau.

If the change being made to a regulation section does not require a change to an existing editor's note for the section, do not set out the text of the existing editor's note.

**Abbreviations.** Abbreviations are to be rarely used and if the relevant word starts a sentence the full word must be spelled out. Informal abbreviations, such as "Dep't of Education and Early Development" or "D.O.T.P.F." are not acceptable in a regulation.

**Citations.** When setting out a spanned citation in a regulation, use a single hyphen between the beginning and ending citations. For example, "An entity or individual service provider that is subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 must request a criminal history check . . . ."

If a spanned citation must be split at the end of a line of text, the hyphen should remain with the first half of the citation—it should not appear at the beginning of the next line.

When setting out a statute citation, type a hard space between "AS" and the statute number, to ensure that the two do not become separated if the citation appears close to the end of a line of text. For the same reason, for a regulation citation, type a hard space between the title number and "AAC" (e.g., "7 ctrl + shift + space AAC"). For a regulation citation, it is acceptable for the title number and AAC to appear together at the end of a line of text and the remainder of the citation to appear at the beginning of the following line.

**Indentation and spacing.** Incorrect indentation is one of the most frequent drafting errors. The proper indentation for each subdivision of a section is shown in Figure 7.9. Indentation must be set at the standard one-half inch intervals. Certain subdivisions of a section are indented to set in the second and succeeding lines of those subdivisions. The parenthetical at the beginning of each set out subdivision of a section (e.g., (b)) is followed by two spaces. When subsection (a) follows a section heading and is not indented, it follows the rule of one space between sentences. Figure 7.10 shows the text of a regulation when properly indented. Also, see the sample regulation in Appendix C.



**Figure 7.9 - Indentation**

(left indent 0.5 inches)

**1 AAC 00.000. Section heading.** (a) .....  
.....(Section)

(left indent 0.5 inches)

(b) .....  
.....(Subsection)

(left indent 1.0 inches)

(1) .....  
.....(Paragraph)

(left indent 1.5 inches; second line 0.5 inches)

(A) .....  
.....(Subparagraph)

(left indent 2.0 inches; second line 1.0 inch)

(i) .....  
.....(Sub-subparagraph)

**Figure 7.10 - Example of indentation**

**1 AAC 05.035. Section heading is bolded.** (a) The section number is indented in one-half inch. If the first section subdivision is a subsection, it begins directly following the section heading. Within a subsection, each complete sentence ends with a period.

(b) The first line of each subsequent subsection is indented in one-half inch. The first line of the next section subdivision, a paragraph, is indented. Notice that the left margins change as this sample regulation is subdivided into paragraphs, subparagraphs, and sub-subparagraphs, as follows:

(1) this is a paragraph, the first word of which is not capitalized; independent clauses within a paragraph are separated by semicolons not periods;

(2) paragraphs can be further subdivided, as follows:

(A) remember, when you have an (a) or a (1), you also must have a corresponding (b) or a (2), respectively;

(B) the following is an example of a subparagraph and the sub-subparagraphs that may follow it:

(i) a regulation cannot be subdivided any further than sub-subparagraphs; if further subdivisions appear necessary, the section must be reorganized or broken into more than one section;

(ii) to assist comprehension, two or three shorter sections are better than one long section. (Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 00.00.000 AS 00.00.000 AS 00.00.000  
AS 00.00.000 AS 00.00.000

### PROOFREADING AND BOOK PROOFING

Accurate, thorough proofreading is very important. Numbers, spelling, punctuation, and format should always be checked and corrected before the final regulation is sent to the Department of Law.

If an existing regulation is being amended, book proofing is required. Book proofing means making a detailed comparison of the regulation (as typed for the regulations project) against the most current existing language of the regulation. Except for any underlined new language, the regulation as typed must be exactly the same as the most current language of that regulation. Existing language that is being deleted will, of course, be set out in capital letters within brackets. Punctuation must be exactly the same as in the existing regulation. Accurately accomplishing a detailed comparison usually requires that one person reads from the most current language of the regulation while another person follows along in the typed set of regulations and marks necessary corrections. The section's history note and authority citation must be book proofed also.

Locating the most current language of an existing regulation requires looking in the printed main title pamphlet of the AAC, the relevant printed supplement pamphlet of the AAC, and checking the agency's copy of any regulations that have been filed by the lieutenant governor's office but have not yet been printed in the AAC.

Once published, the regulations in the AAC must be proofread by agency personnel to ensure that the regulation changes are accurately set out. If there is an error, contact the Legislation and Regulations Section.

## CHAPTER 8

### HISTORY NOTE

Each section in the Alaska Administrative Code (AAC) is followed by a history note in parentheses indicating when the regulation first took effect, when amendments to the regulation took effect, and, if it was repealed, the date the repeal took effect. References to the year in history notes are shown using two digits for calendar years 1999 and earlier (e.g., am 6/30/98) and using four digits for calendar years 2000 and later (e.g., am 5/19/2013).

An example of a history note as it would be printed in the AAC appears in Figure 8.1.

**Figure 8.1 - History note as printed in AAC**

**8 AAC 10.130. Return of fee.** If an applicant who has paid a registration fee fails to obtain employment, the agency must return the amount of the fee to the applicant not later than 48 hours after receiving a demand from the applicant. (In effect before 7/28/59; am 6/23/74, Register 50; am 12/31/80, Register 76; am 12/31/2014, Register 211)

**Authority:** AS 23.15.480 AS 23.15.500

In the example above, 8 AAC 10.130 was in effect before July 28, 1959, (the effective date of the Alaska Administrative Procedure Act). The history note shows that after the initial July 28, 1959, date, the regulation was amended three times. The register number for each amendment is shown after the effective date of the amendment.

A history note is placed at the end of the provision that is being adopted, amended, or repealed but before the citation of authority.

- If the provision is only a portion of a section (i.e., a subsection, paragraph, subparagraph, or sub-subparagraph) and is the last provision of the entire section, the history note begins two spaces after the end of that provision, in the same place it will appear in the AAC. See Figure 8.1.

- If the portion of the section being adopted, amended, or repealed would not be the last provision of the section if the section were set out in its entirety, the history note should begin on the next line, at the far left margin. See Figure 8.2.

When an agency submits a set of adopted regulations to the Department of Law for review, the agency will not know the effective date of the regulation changes since the agency will not know the exact date the regulations will be filed. When the regulation is filed, the lieutenant governor's office will fill in the correct effective date and register number by hand. The agency must therefore leave enough space in the history note for that information to be written legibly.

**Figure 8.2 - Display when amended provision is not the section's last provision**

18 AAC 50.301(a) is amended to read:

(a) An air quality permit that is effective under this chapter as of October 1, **2013**,

[2004] remains in effect until it

- (1) expires, consistent with AS 46.14.230;
- (2) is revoked by the department under AS 46.14.280; or
- (3) is replaced by a permit issued under this chapter.

(Eff. 10/1/2004, Register 171; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 46.04.010 AS 46.04.210

**New section.** When preparing regulations, the agency should put the following history note at the end of a new section:

(Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Amendment.** If one or more changes are being made to an existing regulation, the agency must set out the *current* history note and add blank spaces for the effective date and register of the new changes. When one or more changes are made to a subdivision of a section (i.e., a subsection, paragraph, etc.), each change is shown as an amendment of the entire section for purposes of the history note. Regardless of the number of, or types of, changes, only one new entry is made in the history note. Following is an example of a history note for an amended existing regulation section:

(Eff. 10/5/60, Register 15; am 4/15/68, Register 26; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Repealed provisions.** Treatment of a repeal in the history note, as well as in the repeal notation itself, differs depending on whether an entire section, or just a subdivision of a section, is being repealed.

If an entire section is being repealed, the repeal notation consists of only the word "Repealed." and in the history note, which is retained, blank spaces are added for insertion of the date of the repeal, as shown in Figure 8.3.

**Figure 8.3 - Repeal of an entire section**

8 AAC 05.020 is repealed:

**8 AAC 05.020. Permissible occupations.** Repealed. (Eff. 10/27/73, Register 48; am 6/4/82, Register 82; am 7/30/99, Register 151; am 3/2/2008, Register 185; repealed \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Figure 8.4 - Repeal of Subsection or Paragraph**

7 AAC 50.185(b) is repealed:

(b) Repealed \_\_/\_\_/\_\_. (Eff. 2/3/77, Register 61; am 9/28/85, Register 95; am 1/1/2000, Register 152; am \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 47.10.020 AS 47.10.980

7 AAC 50.190(c)(2) is repealed:

(2) repealed \_\_/\_\_/\_\_;  
(Eff. 9/28/85, Register 95; am \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 47.10.020 AS 47.10.980

If a subdivision of a section (i.e., a subsection, paragraph, etc.) is being repealed, the repeal notation contains both the word "repealed" *and* blank spaces for insertion of the date of the repeal. In that repeal notation, the first letter of "repealed" is in uppercase if a subsection is being repealed and is in lowercase if a paragraph, subparagraph, or sub-subparagraph is being repealed. The repeal of a section subdivision is shown as an amendment to the section in the history note; blank spaces are left at the end of the existing history note for insertion of the date of the amendment. The correct format for repeal of a subdivision of a section is shown in Figure 8.4.

**Figure 8.5 - Repeal and readoption of section**

8 AAC 05.020 is repealed and readopted to read:

**8 AAC 05.020. Permissible occupations.** The new text of the readopted regulations appears here. (Eff. 10/27/73, Register 48; am 6/4/82, Register 82; am 7/30/99, Register 151; am 3/2/2008, Register 185; am \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 23.10.350 AS 23.10.360

In the case of a section, or of a subdivision of a section, that is repealed and readopted, that change is shown as an amendment in the history note for the section. The correct format for a repeal and readoption is shown in Figure 8.5.

See Appendix C for additional examples of how history notes are to be set out in regulations.



## CHAPTER 9

### CITATION OF AUTHORITY

AS 44.62.040(b) requires that following each adopted regulation the adopting agency cite the "general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted, or made clear." The resulting list of statutes is referred to as the "citation of authority" for the regulation. The only situation in which a citation of authority is not required is when an entire existing section is being repealed.

The following are three types of "statutory authority" for administrative regulations:

(1) general authority given to an agency "to carry out the purposes of this chapter" or that is given to all department heads under AS 44.17.030 for "administration of the department" (e.g., AS 47.05.010 requires the Department of Health and Social Services to "adopt regulations necessary for the conduct of its business and for carrying out federal and state laws . . .");

(2) a specific provision requiring or authorizing certain regulations dealing with a particular subject (e.g., AS 18.07.101 requires the commissioner of health and social services to adopt "regulations that establish procedures under which sponsors may make application for certificates of need required by this chapter . . ."); and

(3) a statute that needs to be "implemented, interpreted, or made specific," but does not itself refer to regulations. However, in light of *Warner v. State, Real Estate Commission*, 819 P.2d 28 (Alaska 1991), an agency relying heavily on this third type of authority should consult with the agency attorney before proceeding with adoption of a regulation.

All three types of authority must be cited when appropriate. Sometimes there will be no specific authority so that only the general authority can be cited.

The citation of authority begins at the left-hand margin on the line following the history note for the regulation. The statute citations must be set out in numerical order, even when adding or deleting statute citations by amendment. See Appendix C for examples of how the citation of authority appears in a set of regulations.

Examples of properly formatted authority citations are set out in Figure 9.1.

**Figure 9.1 - Proper Citation of Authority**

For one authority:

**Authority:** AS 08.36.070

For two authorities:

**Authority:** AS 08.36.070 AS 08.36.248

For three authorities:

**Authority:** AS 08.36.070 AS 08.36.248 AS 08.36.315

For four authorities:

**Authority:** AS 08.36.070 AS 08.36.315 AS 08.36.360  
AS 08.36.248

For five authorities:

**Authority:** AS 08.36.070 AS 08.36.315 AS 08.36.365  
AS 08.36.248 AS 08.36.360

For five authorities, with amendments:

**Authority:** [AS 08.36.070] AS 08.36.248 AS 08.36.315  
AS 08.36.080 AS 08.36.250

Note that the citation of authority should be set out in not more than *three* columns to the right of the word "**Authority:**".

Do not cite federal law as authority. Even if the agency is implementing a *federal* program, the agency must cite only the *Alaska* statutory authority for a regulation. Federal law, in itself, is not sufficient authority to adopt a state regulation under the Administrative Procedure Act.

Only in unusual circumstances, and after consultation with the Department of Law, may the Alaska Constitution or a court rule be cited as authority for a regulation. If the Alaska Constitution is used, it should be set out as follows:

**Authority:** Art. II, sec. 1, Ak Const.      Art. III, sec. 24, Ak Const.

A session law (e.g., sec. 1, ch. 2, SLA 2015) generally should not be cited as authority for a regulation. Instead, the codified statute citation (e.g., AS 18.60.580) should be used. Citation to a session law is appropriate only if the session law provides regulation authority in temporary law for which there is no codified statute citation; for example, temporary law authority for a short-term pilot program.

## CHAPTER 10

### DEFINITIONS

A definition section is usually included in a set of regulations to provide the meaning of one or more words or groups of words used in the regulations, the program statutes, or both. Often, a definition section is essential in order to make the regulations or statutes precise and to avoid confusion.

A definition section is located at the end of the title, chapter, or article in which the defined terms are used. However, if a word has an uncommon or special meaning only as it is used in a particular section, it is usually better to put the definition of that word at the end of that section (in its own subsection) rather than at the end of the title, chapter, or article.

Words should not be given strained or artificial definitions that are out of keeping with customary usage and other regulations. For example, it would be inappropriate to define the term "minor child" as "including persons to 25 years of age" or to define "employee" as including "contractor."

Definitions should not include substantive or operative provisions. For example, it is inappropriate to say "'physician' means a person licensed to practice medicine under AS 08, and one physician must serve on each evaluation team." The requirement that a physician serve on each team belongs in a substantive section of the regulations. Placing substantive requirements in a definition tends to hide them from the public being regulated.

If a word used in a regulation is defined in the program statute, the definition should not be repeated in regulation. But, if an agency feels that confusion will result without a regulation definition, it may adopt a definition that simply refers to the statutory cite. For example, a definition for the term "airport," as used in AS 02.25, is provided in AS 02.25.110. Regulations adopted under AS 02.25 should not repeat the statutory definition, although a regulation could state that "'airport' has the meaning given in AS 02.25.110."

Also, AS 01.10.060 provides a general list of definitions for some basic terms commonly used throughout the statutes. For example, AS 01.10.060 defines "month" as "a calendar month unless otherwise expressed." There is no reason to repeat that statutory definition in regulation for it to apply to that body of regulations.

One exception to the general rule against repeating statutory definitions is that definitions used merely for identification can be repeated in regulation. For example:

- (1) "commissioner" means the commissioner of health and social services;
- (2) "department" means the Department of Health and Social Services.

Another exception is in the case of a statutory definition that the agency decides must be interpreted or made clear. In order for the interpretation or clarification to be understandable, the statutory definition might have to be repeated in the regulation definition. It is often possible, however, for an agency to accomplish the interpretation or clarification by using language like "'airport' has the meaning given in AS 02.25.110, and includes . . . ." An agency should consult the Department of Law before adopting a regulation that interprets or clarifies a statutory definition to ensure that the regulation does not impermissibly broaden or narrow the scope of the statutory definition.

When referring to a statutory definition, an agency's regulatory definition should set out the defined term and the statute section in which it appears (e.g., AS 02.25.110). Do not refer to the particular paragraph in which the definition is located (e.g., AS 02.25.110(2)); the revisor of statutes periodically renumbers paragraphs within statutory definition sections, which could make the paragraph reference in the regulation inaccurate and confusing.

Definition sections usually define more than one term, with the terms placed in alphabetical order. However, definitions in an existing definition section should not be renumbered when that section is being amended to add some new definitions. To preserve historical continuity, new definitions should be arranged in their own alphabetical order and placed at the end of the existing list. If a definition section is repealed and readopted, however, existing and new definitions would be rearranged to place them in their correct alphabetical location.

The lead-in line of a definition section needs to identify whether the terms being defined are used in the regulations or are used in the program statute. If a term is used in the regulation, the introductory language should read: "In this chapter [or title], '[term]' means . . . ." If a term is used only in statute and is not already defined in statute, the introductory language of the regulation defining the term should read: "In AS xx.xx.xxx, '[term]' means . . . ." These groups of definitions should appear in different subsections of the definition section, as illustrated in Figure 10.1.

**Figure 10.1 - Definitions**

- (a) In AS 14.30, unless the context requires otherwise,
  - (1) "school" means . . . ;
  - (2) "superintendent" means . . . .
- (b) In AS 14.30 and this chapter, unless the context requires otherwise,
  - (1) "child" means . . . ;
  - (2) "recess" means . . . .
- (c) In this chapter, unless the context requires otherwise,
  - (1) "student" means . . . ;
  - (2) "teacher" means . . . .

If a defined term is complex, it may be helpful to include, in addition to the statement of the meaning of a word or phrase, a list of words that are included in the defined term or a list of words that are excluded from the defined term. For example,

- (1) "child"
  - (A) means an individual who is under 18 years of age and is not emancipated, married, or enlisted in the military;
  - (B) includes an adoptive child;
  - (C) does not include a stepchild or foster child.

## CHAPTER 11

### ADOPTION BY REFERENCE

Under certain circumstances, an agency may adopt a regulation that requires adherence to other material that is already in existence. Adopting (incorporating) other material "by reference" avoids setting out in full the entire text of voluminous documents, such as safety codes and building codes (see 13 AAC 50.020), or setting out documents that would be impractical to print in the Alaska Administrative Code (AAC), such as maps of anadromous streams or technical documents created by the agency itself. Material adopted by reference does not need to follow the word-processing format required for codified regulations printed in the AAC.

Adopting material by reference in a regulation makes that material itself a regulation. Just as for any other regulation, the agency must have the statutory authority to adopt that material as a regulation, and the material must meet the standards of the Administrative Procedure Act (APA).

#### GENERAL REQUIREMENTS

An agency that wishes to adopt material by reference in a regulation, including the agency's own manuals or publications, must give notice to the public of its intent as it would for any other regulation and must otherwise comply with the APA. At the time notice is published and distributed, *any agency* must have on hand the material it wishes to adopt by reference, so that the material is available to the public during the public comment period. In addition, *an agency other than* the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission must make available on the Alaska Online Public Notice System a complete copy, if feasible and not prohibited by copyright, of any document or other material adopted by reference. The agency may make the material available by providing an electronic attachment or a link to the complete text. If you have questions whether posting on the Alaska Online Public Notice System would be feasible or might result in a copyright violation, please contact the Legislation and Regulations Section.

If a document can be obtained by e-mail request, the agency may wish to place the e-mail address in the editor's note, in addition to providing the mailing or physical address for inspecting or obtaining a copy. For example,

**Editor's note:** A copy of the most current version of the *National Industry Classification System Manual*, United States, or an electronic equivalent may be obtained by contacting National Industrial Classification Association, 10088 South Prestwick Circle, South Jordan, Utah 94095. Internet: [www.naics.com](http://www.naics.com) or e-mail: [info@naics.com](mailto:info@naics.com).

If a document is readily available to the public through the Internet, the agency should provide a website address in the editor's note in addition to providing the mailing or physical address for inspecting or obtaining a copy. If a website address is set out, the agency should ensure that it is not in "link" format (i.e., not automatically underlined). Here is an example of a website address in an editor's note:

**Editor's note:** Copies of the *Alaska Traffic Manual*, adopted by reference in 17 AAC 15.241, are available for inspection at regional offices of the Department of Transportation and Public Facilities located at Juneau, Anchorage, and Fairbanks, Alaska. The *Alaska Traffic Manual*, also may be viewed through the department's Internet website at <http://www.dot.state.ak.us/stwddes/dcstraffic/atmintr.shtml>.

An editor's note is not necessary for federal or state statutes or regulations adopted by reference because that material is generally available to the public in state libraries and court system libraries throughout Alaska and on the Internet.

Adoption by reference requires careful regulation drafting. To be legally valid, the regulation must clearly state that a particular dated version of the material is being adopted by reference. The following are examples for typical types of material adopted by reference:

#### Federal regulation

34 C.F.R. 76.401, revised as of July 1, 2015, and adopted by reference;  
40 C.F.R. Part 763, revised as of July 1, 2015, and adopted by reference;

#### Books and Manuals

*Alaska Falconry Manual No. 9*, July 1, 2012, adopted by reference.

There are several approaches that may be taken in selecting the appropriate date to use in an adoption by reference of a federal regulation depending on factors such as federal program requirements, state statutory requirements, agency policy decisions, and availability to the public of the federal regulation. An agency wishing to adopt by reference a federal regulation should contact the Legislation and Regulations Section for advice regarding an appropriate date.

Also, if an agency is adopting by reference its own manual or other document, that document should not summarize or paraphrase the agency's regulations that are printed in the AAC. Legal problems arise when the language of the agency's own adopted-by-reference document and the printed regulations are not the same. This causes interpretation issues. If the agency wants to be sure that the public is aware of requirements that appear in the printed regulations, the adopted-by-reference document can refer to those regulations. For example, the agency's document could say that actions must be taken "in the manner specified in 7 AAC 85.300."

A copy of material adopted by reference in a regulations project, regardless of the size or cost of the material, must accompany the final regulations package that is submitted for review to the



regulations attorney, unless the material is a readily available federal or state statute or regulation. AS 44.62.080(2) requires that copies of regulations must be on file with the lieutenant governor's office or, after five years, with the state archivist for public inspection; this requirement includes material adopted by reference. If the agency's regulations are approved, the material adopted by reference is forwarded to the lieutenant governor's office for filing with the rest of the regulations project.

The regulation set out in Figure 11.1 (5 AAC 95.011) adopts by reference an atlas and a catalog and is an excellent example. Although it is generally not necessary to provide the kind of description contained in this regulation, some detail about the material being adopted by reference can be very useful if the material is likely to be confusing to the general public who must use it.

**Figure 11.1 - Material adopted by reference**

**5 AAC 95.011. Waters important to anadromous fish.** (a) *An Atlas to the Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes*, and the *Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes*, as revised as of April 2013, are adopted by reference. The six-volume atlas is a compilation of topographic maps upon which are specified, as provided in AS 16.05.871(a), the various rivers, lakes, or streams, or parts of them, that are important for the spawning, rearing, or migration of anadromous fish. The catalog is a listing of those water bodies. It sets out legal descriptions for the mouth and the known upper range of the fish of each stream, river, or lake designated on the maps in the atlas. The atlas and the catalog identify the water bodies for which a person or agency must first notify the department, as required by AS 16.05.871(b), before undertaking to construct a hydraulic project, or to use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a specified river, lake, or stream.

(b) Permit application procedures, catalog and atlas updating procedures, definitions of terms, and other information or requirements to implement, interpret, or make specific the provisions of AS 16.05.871, included in the introduction attached to the catalog and the atlas described in (a) of this section, are also adopted by reference. The introduction also includes a user's guide to the atlas and catalog and limitations of the information in the atlas or the catalog. (Eff. 3/1/75, Register 53; am 7/31/82, Register 83; am 10/14/83, Register 88; am 7/27/84, Register 91; am 5/19/85, Register 94; am 5/8/86, Register 98; am 5/1/87, Register 102; am 5/8/88, Register 106; am 6/7/89, Register 110; am 9/29/90, Register 115; am 4/1/92, Register 121; am 8/30/92, Register 123; am 10/20/93, Register 128; am 4/28/95, Register 134; am 6/22/97, Register 142; am 2/6/99, Register 149; am 1/15/2005, Register 172; am 3/1/2006, Register 177; am 9/15/2006, Register 179; am 6/1/2007, Register 182; am 6/2/2008, Register 186; am 6/2/2009, Register 190; am 6/1/2010, Register 194; am 6/1/2011, Register 198; am 6/1/2012, Register 202; am 7/1/2013, Register 206; am 6/1/2014, Register 210)

**Authority:** AS 16.05.020 AS 16.05.871

**Editor's note:** Copies of the *Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes* for a specified region may be obtained by writing to the Department of Fish and Game (ADF&G), Division of Sport Fish, 333 Raspberry Road, Anchorage, AK 99518-1599. Electronic copies may also be viewed through the Department of Fish and Game Internet website at <http://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=data.AWCdata>.

Copies of the entire *An Atlas to the Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes* are available for examination at the ADF&G, Division of Habitat offices in Anchorage, Douglas, and Juneau. Copies are also available for viewing at the Alaska State Library in Juneau and the ARLIS Library in Anchorage.

Copies of regional volumes of the atlas for the region of the state where they are located are available for examination at the ADF&G offices in Anchorage, Bethel, Cold Bay, Cordova, Craig, Delta Junction, Dillingham, Douglas, Dutch Harbor, Fairbanks, Glennallen, Haines, Homer, Juneau, Ketchikan, King Salmon, Kodiak, Nome, Palmer, Petersburg, Sand Point, Sitka, Soldotna, Tok, Wrangell, and Yakutat. An electronic equivalent may also be viewed through the ADF&G Internet website at <http://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=maps.maps>.

**ADOPTION BY REFERENCE OF FUTURE AMENDED VERSIONS**

The APA specifically addresses requirements for the adoption of future amended versions of certain material adopted by reference in a regulation. To adopt future amended versions of material in an adoption by reference, the material must meet certain requirements and the agency subsequently must follow certain procedural steps.

First, the material must be of a particular type—(1) a regulation of another state agency (e.g., a Department of Public Safety fire code regulation); or (2) material for which adoption by reference of future amended versions is explicitly authorized by another statute. If the material meets either of these requirements, AS 44.62.245(a) authorizes the agency to adopt by reference future amended versions if the reference to that material in the adopting regulation is followed by one of the following phrases (or similar language): "as amended" or "as amended from time to time." The following is an example of an adoption by reference that complies with the wording requirement:

In this section, "federal poverty guidelines" means the United States Department of Health and Human Services federal poverty guidelines for this state, established in 78 Fed. Reg. 5182 - 5183, revised as of January 24, 2013, as amended from time to time, and adopted by reference.

Second, when a future amended version of material adopted by reference becomes available, the agency must make the amended version available to the public for review. To comply with this requirement, the agency could have the document available at one or more of its offices for public inspection, place a copy in the state library on interlibrary loan, or, if not copyrighted, put an electronic copy on the state agency's Internet website. Next, the agency must post a notice on the Alaska Online Public Notice System *and* publish the notice in a newspaper of general circulation or trade or industry publication or in a regularly published agency newsletter or similar printed publication to alert the public of the effective date of the amended version of the material and how a copy of the amended version may be obtained for review. To be effective, the posting and publishing must be done "not later than 15 days after the amended version . . . becomes available...." The Department of Law would interpret this provision as requiring the agency to give notice not later than 15 days *after* the agency becomes aware of the revised document and makes a decision to begin applying the amended version as its standard.

This notice must include at least three elements:

- (1) text that describes the affected regulation;
- (2) the effective date of the amended version; and
- (3) information on how a copy of the amended version may be obtained or reviewed.

A sample notice setting out these elements appears in Appendix W.

The Department of Law recommends that an agency that has adopted future versions of a document by reference make every effort to monitor the impending revision of that document so that the required notice can be given at the earliest opportunity. As for the revised version's effective date that is to be stated in the notice, the agency should contact the Legislation and Regulations Section for assistance in selecting an appropriate date.

Third, the agency also must send a copy of the notice to persons who have requested to receive notice and to the members of the Administrative Regulation Review Committee. The Department of Law recommends that agencies develop and maintain a routine list for this type of request.

Fourth, the agency also must send the notice to the regulations attorney. When sending this notice to the Department of Law also include an affidavit of notice to verify compliance with the notice procedures of AS 44.62.245(b). A sample affidavit for this purpose appears at Appendix X. A copy of the amended version of the material adopted by reference must accompany the notice and affidavit. The Department of Law will forward the notice, affidavit, material adopted by reference, and other material to the lieutenant governor's office for its records. In the printed AAC, at the regulation containing the adoption by reference, the regulations attorney will insert an editor's note stating the effective date of the amended version of the material.

Additionally, the agency must notify the regulations attorney if the title of the material adopted by reference changes. Under the revisor's authority given by AS 44.62.125, the regulations attorney will correct the title that appears in the regulation as printed in the AAC. Notification of a title change should be made by a memorandum to the regulations attorney.

Finally, the Department of Law strongly recommends that an agency that adopts by reference a regulation of another state agency request to be put on the other state agency's interested-persons list to receive notices of that agency's proposed regulation changes. That will provide a means for the first agency to make sure that it can comply with the requirements of AS 44.62.245 and notify the regulations attorney of any appropriate changes to its regulations as printed in the AAC.

**CHAPTER 12**  
**CITATION OF STATE AND FEDERAL**  
**STATUTES AND REGULATIONS**

For consistency, and to avoid ambiguity, use the following guidelines when citing regulations, statutes, or other laws:

**CITING THE ALASKA ADMINISTRATIVE CODE (AAC)**

To cite an entire title:

in another title	-- 8 AAC
in the same title	-- say "in this title"

To cite an entire part:

(whether the citation is in the same or another part)	-- 8 AAC 05 - 8 AAC 27
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To cite an entire chapter:

in another chapter	-- 8 AAC 05
in the same chapter	-- say "in this chapter"

To cite an entire article  
or group of sections

(whether the citation is in the same or another article):	-- 8 AAC 05.010 - 8 AAC 05.030
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To cite an entire section:

in another section	-- 8 AAC 05.010
in the same section	-- say "in this section"

To cite a portion of a section:

in another section	-- 12 AAC 09.190(a)(1)(B)
in the same section	-- (a)(1)(B) of this section
in the same subsection	-- (1)(B) of this subsection
in the same paragraph	-- (B) of this paragraph
in the same subparagraph	-- (ii) of this subparagraph

To cite more than one  
subsection of a section:

in another section	-- 12 AAC 09.190(a), (b), and (f) ( <i>not</i> 12 AAC 09.190(a)(b)(f))
in the same section	-- (a), (b), and (f) of this section ( <i>not</i> (a)(b)(f) of this section)

DO NOT USE:

in these regulations ("these" is ambiguous)

### CITING ALASKA LAW

The Alaska Constitution, Alaska Statutes, and Session Laws of Alaska are cited as follows:

Constitution	-- art. III, sec. 1, Constitution of the State of Alaska
Statutes	
Title	-- AS 45
Chapter	-- AS 45.45
Section	-- AS 45.45.010
Spanned sections	-- AS 45.45.010 - 45.45.030
DO NOT USE:	-- AS 45.45.010 - .030
DO NOT USE:	-- AS 45.45.010, et seq.

Annual session laws	-- sec. 1, ch. 10, SLA 2015
First special session laws	-- sec. 3, ch. 1, FSSLA 2011
Second special session laws	-- sec. 6, ch. 1, SSSLA 2007
Third special session laws	-- sec. 4, ch. 2, TSSLA 2006
Fourth special session laws	-- sec. 4, ch. 2, 4SSLA 2008

When "article" or "section" is the first word of a sentence, use the entire word, not its abbreviated form, and capitalize the first letter.

When citing several statute titles, chapters, or sections, repeat the "AS" only when a change occurs in the title or chapter number, as in the following: AS 10.06.105, 10.06.233; AS 10.15.350; AS 25.23.190; and AS 44.25.020.

### CITING FEDERAL STATUTES

There are several possible citations for most federal statutes: the Public Law (P.L.), the Statutes at Large (Stat.), the United States Code (U.S.C.), and, in many cases, the popular name of the Act (e.g., Americans with Disabilities Act of 1990). To avoid confusion and to ensure that the references will be helpful to the user, as well as legally adequate in the case of adoption by reference, the preferred citation form is to use the United States Code, with the appropriate popular name, if any, following in parentheses. This style does *not* use "sec." or the "§" symbol. Note that the term "et seq." also is not used.

Examples:

- 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938)
- 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934)
- 20 U.S.C. 1070 - 1099d (Title IV of the Higher Education Act of 1965)
- 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act of 1990)

Public Law - If a citation to a Public Law is necessary, be sure that the section reference is to a section of the Public Law, not to a section of the Statutes at Large or the U.S.C. that is being amended by the Public Law.

**CITING FEDERAL REGULATIONS**

Federal regulations are printed in the Code of Federal Regulations (C.F.R.). With their notice of proposed adoption and later with their notice of adoption, they also are printed in the Federal Register. For reference purposes in Alaska regulations, only the C.F.R. citation should be used: e.g., 34 C.F.R. 76.401, as revised as of July 1, 2013; 34 C.F.R. 361.48 - 361.57, as revised as of July 1, 2013; or 40 C.F.R. Part 763, as revised as of July 1, 2013. If the federal regulations do not yet appear in the C.F.R., it is appropriate to cite to the Federal Register in which those final regulations were shown (e.g., 78 Fed. Reg. 32359 - 32362 (May 30, 2013)).



## CHAPTER 13

### PENALTIES AND FEES

#### PENALTIES

Regulations should not provide for penalties for a violation unless there is express statutory authority to do so. An example of this express authority is in AS 14.56.020(2), which requires the Department of Education and Early Development to "adopt reasonable regulations and orders, with penalties, as may be required" for state libraries.

If conduct prohibited by regulation results in a penalty, civil or criminal, the regulation prohibiting that conduct should be precise, definite, and unambiguous. *See Alaska Pub. Offices Comm'n v. Stevens*, 205 P.3d 321, 326 (Alaska 2009).

#### FEES

AS 37.10.050(a) provides, in part, that a state agency may not charge a fee for the provision of state services unless the fee (1) is set or otherwise authorized by statute; and (2) where a regulation is necessary, is set by or provided for in a regulation that meets the standards of AS 44.62.020 and 44.62.030. That subsection also provides that a fee or other charge that is set by regulation may not exceed the estimated actual costs of the state agency in administering the activity or providing the service unless otherwise provided by the statute under which the regulation is adopted.

To draft a fee regulation, the agency must first look at its statutory authority to adopt a fee, and then determine its "estimated actual costs," to be sure that the estimated aggregate of fees collected will not exceed "the estimated actual costs . . . in administering the activity or providing the service." Contact the Department of Law if the agency has questions about the statutory authority authorizing the fee regulation, or if the fee is charged under a regulation that was adopted before July 1, 1987, under authority of a statute that does not expressly authorize a charge for services.

Once the amount of the fee is determined, the fee must be adopted in regulation and should be stated either as a specific fee (e.g., a \$30 application fee) or as a rate (e.g., \$25 an hour for research). If an exact fee amount cannot be set due to varying factors or unknowns, the agency must at least adopt in regulation the formula or standard for establishing the fee (e.g., setting the fee at "the amount billed to the state by the Federal Bureau of Investigation for fingerprint evaluation" for certain occupational licenses, or setting the fee for a booklet at "the total amount charged by the printer divided by the number of copies").

Occasionally, an agency will wish to set fees that would require nonresidents to pay a higher amount than would Alaska residents. Unless the program statute specifically authorizes the fee differentials, the agency must provide detailed evidence to the Department of Law to support the differing

treatment of residents and nonresidents. The Department of Law strongly recommends consultation with this department if an agency intends to adopt the regulation.

AS 37.10.050 also requires each state agency to annually review fees and charges collected by the agency and to recommend adjustments to fees set by statute. Again, if changes to fees set in regulation are needed, a regulation project must be started and the relevant provisions of the Administrative Procedure Act must be followed before the changes can be implemented.

Finally, certain "resource agencies" that provide "designated regulatory services" must comply with special statutory provisions for the development of fees for those services. See AS 37.10.052 - 37.10.058. Affected agencies should consult the Department of Law on implementation of these specific requirements.

## CHAPTER 14

### FISCAL NOTES

**Introduction.** The Administrative Procedure Act (APA) requires public notice and disclosure of financial ramifications of a proposed regulation, including costs to private persons and to other state agencies. Although agencies are not prohibited from adopting a regulation with fiscal ramifications, the agency must think carefully about any financial ramifications and publicize those ramifications. If a proposed regulation would require "increased appropriations," AS 44.62.195 requires that a fiscal note be prepared:

**Sec. 44.62.195. Fiscal notes on a regulation.** If the adoption, amendment, or repeal of a regulation would require increased appropriations by the state, the department or agency affected shall prepare an estimate of the appropriation increase for the fiscal year following adoption, amendment, or repeal of the regulation and for at least two succeeding fiscal years.

AS 44.62.195 should be interpreted in a common-sense manner so that the true financial impact of a regulations project is considered and publicized. If the regulation will not require an increased appropriation, it should be stated in the public notice. Furthermore, even if the agency determines a fiscal note is not needed, the agency will still need to determine and disclose, in the additional regulation notice (Appendices E-1 and E-2), whether the proposed action will result in costs to the state agency proposing the action and to other state agencies. (See Chapter 4, ADDITIONAL REGULATION NOTICE INFORMATION). An agency should consult with its agency attorney if there are any questions about whether a fiscal note is needed.

**When a fiscal note is required.** A fiscal note is required if a proposed regulation (whether a new regulation, amendment, or repeal) would require "increased appropriations by the state." The adopting agency must address its own increased appropriation needs and the needs of other agencies of the state that are impacted by the regulation. For example, if a Department of Labor and Workforce Development regulation requires all public and private health care personnel covered by occupational safety and health programs to receive a special inoculation, the Department of Labor and Workforce Development should request fiscal notes for increased appropriations from the Department of Health and Social Services and the Department of Corrections since both departments hire nurses and, therefore, are directly affected. The adopting agency should request a fiscal note from any other state agency that the adopting agency knows is directly impacted by a proposed regulation.

The reality of the budget process, and possible future budget shortfalls, may require an agency to decide to absorb the cost of a regulatory change within the existing budget. Since the agency is not requesting "increased appropriations" in that case, a strong argument can be made that fiscal impact need not be shown. But, even if an "increased appropriation" is not needed, the agency will still need to consider and disclose, in the additional regulation notice information under AS 44.62.190, the initial cost to the state agency of implementation and the estimated annual costs to the state agency

and to other state agencies to comply with the proposed actions. (Appendices E-1 and E-2, as applicable).

If a fiscal note is required, the adopting agency must include a summary of the fiscal note information in its public notice on the regulation project. Failure to include that summary in a public notice of a proposed regulation could contribute to a finding that an adopted regulation is invalid. AS 44.62.300(1) provides that a court may declare a regulation invalid for a "substantial failure" to comply with the relevant provisions of the Administrative Procedure Act.

To provide the required summary, Appendices D-1, D-2, D-3, T-1, and T-2 (public notice forms) each contain a statement regarding the dollar amount of anticipated appropriations and a statement that no increased appropriations are expected. The agency should use the appropriate statement.

**How to consider shifts in funding sources (as opposed to an increased appropriation).** While AS 44.62.195 is not clear on whether shifts in funding sources require a fiscal note, the Department of Law recommends that the adopting agency also reflect on the fiscal note changes of state revenue that would require an increase in appropriation from another revenue source to maintain the activity. For example, if an agency is making a policy change through the adoption of a regulation that would make a program eligible for federal receipts, the resulting offset of state general fund money by federal receipts should be shown on the fiscal note. Likewise, losses of revenue from one source (e.g., fish and game fund) that would need to be made up from another source (e.g., general fund) and would require an increased appropriation should be reflected on the form.

**Time period.** Although AS 44.62.195 literally requires that the fiscal note cover only the fiscal year following the adoption of regulations and at least two succeeding fiscal years, an estimate of any additional money needed during the current fiscal year should be included as well. It seems likely that what the legislature meant by its phrase "for the fiscal year following adoption" was the rest of the year remaining after the adoption. It would not make sense to require a fiscal note only for succeeding years if, in fact, the agency will be going to the legislature for additional money in the current fiscal year.

**Format.** Although AS 44.62.195 requires no special format, the fiscal note form in Appendix F sets out the basic information required by AS 44.62.195 (based on fiscal notes for legislation).

**Preparation and timing of a fiscal note.** The agency's fiscal staff should be involved in the determination of whether a fiscal note is needed and in the preparation of one. The fiscal note does not need to be published or distributed with the public notice but the notice of a proposed regulation must include a "summary of the fiscal information required to be prepared under AS 44.62.195." Due to the time it takes to prepare a fiscal note, an agency should consider, at the beginning of a regulation project, whether the proposed action would require "increased appropriations by the state." It should be noted that AS 44.62.195 requires only an estimate of any expected appropriation increase. The adopting agency should carefully review the assumptions made in developing increased appropriation estimates and should analyze the justification for any appropriation increase, whether to itself or another agency.

**Statement of fiscal impact in a final regulation.** The Department of Law is not in a position to audit an adopting agency when reviewing a final adopted regulation. When it adopts the final regulation, the agency must decide whether an increased appropriation is anticipated to be required and must provide to the Department of Law a statement regarding the appropriation. Appendices J and R (adoption order forms) and Appendices L and S (certification orders for board or commission adoptions) contain a statement referring to a fiscal note (if appropriations will be required) and a statement that an increased appropriation is not expected. The agency should use the appropriate statement and must attach a fiscal note if the appropriation is anticipated to be required.

When a regulation is filed by the lieutenant governor's office, AS 44.62.320(b) requires that office to send a copy of any fiscal note for the regulations to the legislature's Administrative Regulation Review Committee along with the filed regulation.

## CHAPTER 15

### DEPARTMENT OF LAW REVIEW

Although the Department of Law may provide legal advice throughout the development of a regulations project, the Department of Law is most actively involved before the public notice of the project is given, during the final legal review after the adoption, and, if technical edits, corrections, or revisions to the filed regulations are necessary, after filing. Since AS 44.62.060(a) requires adherence to this manual in adopting regulations under the Administrative Procedure Act (APA), the Department of Law review ensures that this requirement has been met.

#### REVIEW BEFORE PUBLIC NOTICE

Whenever possible, the Department of Law agency attorney should review a draft of proposed regulations and a draft of the public notice for the regulations before the notice is published and distributed. Many times errors can be detected early and the need for and cost of a corrective supplemental notice can be avoided. The Department of Law agency attorney should check the draft notice to make sure that

- (1) the adopting agency is clearly identified;
- (2) the statutory authority and the statutes being implemented, interpreted, or made specific are correctly cited (these are two distinct statutory requirements); separate notations regarding the two are to be included in the notice;
- (3) the deadline date and address for submission of written comments is clearly stated; the notice specifically should address the acceptance of comments by e-mail, by fax, or by the Alaska Online Public Notice System, and a deadline time for receipt of the comments should be stated;
- (4) if an oral hearing is being held, the time, place, and procedures for the oral hearing are clearly stated; if teleconferencing is being offered, the sites are to be separately listed; sufficient details are given regarding the address of each hearing site;
- (5) the informative summary of the proposed regulation is clearly stated and is specific enough to adequately inform the public but general enough to allow the flexibility to respond to comments;
- (6) if required under AS 44.62.200(d), a brief description of the changes proposed is included in the notice; the brief description should be a sentence or two in clear, easily readable language that a person without a legal background is able to understand;
- (7) any regulation being repealed is adequately described and not just listed by citation number;

(8) fiscal information is properly stated; if another state agency would be directly impacted by the proposed regulation, the statement regarding fiscal information should cover that impact;

(9) the notice includes an informative statement about how an individual may request a special accommodation under the Americans with Disabilities Act (ADA) in order to participate in the comment process; the deadline date for requesting an ADA accommodation should be at least several days before the hearing or close of the public comment period in order to allow time to make necessary arrangements;

(10) the notice is to be signed and dated by an agency official (the notice does not need to be signed by the person or body who has adoption authority); and

(11) there are no obvious constitutional or statutory problems.

At this time, the agency attorney also should remind the agency, under AS 44.62.190(d), and the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission, under AS 44.62.190(g), of the need to provide and properly distribute the additional regulation notice information. The AS 44.62.190(d) requirement applies to both regular regulations and emergency regulations. See Chapter 4 for more discussion regarding the additional regulation notice information.

The agency attorney should do a quick read of the proposed regulation to make sure that

(1) the draft conforms to the requirements of this manual; and

(2) there are no obvious constitutional or statutory problems.

The agency attorney also should check with the client agency to confirm that the notice will be published

(1) a sufficient amount of time before the written comment deadline and the date of any oral hearing; and

(2) in an appropriate number of newspapers and otherwise properly distributed as required by the APA.

For an emergency regulation, the agency attorney review of the relevant documents should occur before the agency adopts the emergency regulation. See Step 4 in Chapter 3.

**IN-DEPTH REVIEW AFTER ADOPTION**

AS 44.62.060(b) requires the Department of Law to review every regulation adopted under the APA in order to determine

- (1) the legality, constitutionality, and consistency with other regulations;
- (2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section;
- (3) the clarity, simplicity of expression, and absence of possibility of misapplication; and
- (4) compliance with this manual.

For a regular regulation, this review occurs before the regulation is filed by the lieutenant governor's office. For an emergency regulation being made permanent, this review occurs after the emergency regulation has been filed by the lieutenant governor's office but before the end of the 120-day life of the emergency regulation.

To facilitate this review, the agency provides the final adopted regulation and all of the supporting documentation to the regulations attorney in the Department of Law. Once this final regulation package is logged in, the regulations attorney forwards the final regulation package to the agency attorney.

The agency attorney will then conduct an in-depth review of the substance of the adopted regulation and the procedures used to adopt the regulation.

The substantive review includes

- (1) checking statute and regulation citations to make sure that they are legally in effect and are appropriate to legally support the project; this includes checking newly filed regulations that have not yet been published in the AAC;
- (2) determining whether the adopted regulation contains any constitutional problems, especially in problem areas such as due process and equal protection;
- (3) determining whether the regulation contains any statutory problems (i.e., is the regulation within the scope of statutes reasonably necessary to implement the statutes, reasonable and not arbitrary, and consistent with statutes);



(4) checking for consistency with other regulations; this includes checking newly filed regulations that have not yet been published in the AAC;

(5) checking the set-out text of an existing regulation (not just the amendment to the regulation) for changes needed due to court decisions or to conform to this manual;

(6) checking federal programs for consistency with federal law;

(7) determining whether the regulation is clearly written and substantively expresses the agency's intent; and

(8) checking for previously written attorney general's opinions relating to the project.

The procedural review includes

(1) reviewing the documents to make sure that the requirements of the APA have been met; and

(2) reviewing the forms submitted for consistency with this manual.

The agency attorney will advise the agency of any problems and necessary corrections. Depending on the nature and extent of any necessary corrections, the agency attorney might have to return the adopted regulation and one or more of the supporting documents to the agency for revision and resubmission to the agency attorney. If only minor technical corrections to the regulation are required, the agency attorney will mark them on a **copy** of the final regulation. After completing the review, the agency attorney will draft a memorandum recommending approval (or disapproval) and forward the final regulations file to the regulations attorney. Appendix Y provides a checklist to help the agency attorney conduct the review for a regular regulation. Appendix Z provides a checklist to help the agency attorney conduct the review for an emergency regulation being made permanent.

At this point, the Legislation and Regulations Section reviews the final regulation package following the same steps as did the agency attorney. The regulations attorney or designee will edit the adopted regulation using the same guidelines used to make post-filing revisions (noted later in this chapter). Once approved by the regulations attorney or designee, the edited regulation, supporting documentation, and approval memorandum are submitted to the lieutenant governor's office. The Legislation and Regulations Section sends an approval memorandum and a copy of the final edited regulation to the adopting agency and to the agency attorney.

If the Department of Law disapproves a regulation on legal grounds, it will provide a memorandum to the agency stating its disapproval under AS 44.62.060. Under AS 44.62.060(c), a disapproved regulation may not be filed by the lieutenant governor's office and cannot take effect. If a disapproved regulation constitutes the entire set of final regulations, the Department of Law will not send the final regulations to the lieutenant governor's office. Instead, the disapproved set of regulations will be returned to the adopting agency along with the disapproval memorandum. The supporting documents and a copy of the disapproved regulations will be retained in the Department

of Law's project file. If disapproval of only part of a set of final regulations is necessary, the regulations attorney will line through the disapproved provisions and note the disapproval in the margin. The disapproval will be stated in the approval memorandum for the set of regulations, and the set of regulations will be submitted to the lieutenant governor's office for filing. The disapproved provisions, however, do not take effect and are not published in the AAC. The agency attorney should carefully review the regulations attorney's approval memorandum and attached edited copy of the final regulation in order to advise the agency accordingly.

Neither the Department of Law nor the lieutenant governor's office retypes edited final regulations. If the agency wants to have a clean version of the filed regulation (for immediate distribution or other publication), the agency will have to retype the regulation, incorporating the handwritten edits made by the Department of Law, and should include the effective date in the history note. If an agency does reproduce an edited filed regulation by retyping it, extreme care must be taken to ensure complete accuracy.

The following notice should be displayed on any retyped version of filed regulations that the adopting agency prepares for public use:

"THE REGULATIONS REPRODUCED HERE HAVE BEEN PROVIDED BY THE [AGENCY] AS A PUBLIC COURTESY. WHILE EVERY EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE REPRODUCED VERSION, THE [AGENCY] CANNOT GUARANTEE ITS ABSOLUTE ACCURACY. A COPY OF THE REGULATIONS AS ORIGINALLY FILED BY THE LIEUTENANT GOVERNOR ARE AVAILABLE FROM THE [AGENCY] OR ON THE ALASKA ONLINE PUBLIC NOTICE SYSTEM.

THE REGULATIONS HAVE AN EFFECTIVE DATE OF [MONTH/DAY/YEAR], ARE IN REGISTER [FILL IN REGISTER NUMBER], AND WILL APPEAR IN OFFICIAL PUBLISHED FORM IN THE [FILL IN REGISTER MONTH, YEAR] SUPPLEMENT TO THE ALASKA ADMINISTRATIVE CODE."

#### **TECHNICAL REVISIONS AFTER FILING**

AS 44.62.125(b)(6) authorizes the regulations attorney to edit and revise a regulation after filing to make technical corrections similar to those made in statutes by the revisor of statutes. See AS 01.05.031(b). So long as it is done without changing the meaning of the regulation, the regulations attorney may

- (1) renumber sections, parts of sections, articles, chapters, and titles;
- (2) change the wording of a section or provide new titles for articles, chapters, and titles;
- (3) change capitalization for the purpose of uniformity;
- (4) substitute the proper designation for the terms "the preceding section" and like terms;

(5) substitute the proper calendar date for the effective date of a regulation and other phrases of similar import;

(6) strike out figures if they are merely a repetition of written words or vice versa, or substitute figures for written words or vice versa for the purpose of uniformity;

(7) correct manifest errors that are clerical, typographical, or errors in spelling, or errors by way of additions or omissions;

(8) correct manifest errors in references to laws;

(9) rearrange sections, combine sections or parts of sections with other sections or parts of sections, divide long sections into two or more sections, and rearrange the order of sections to conform to a logical arrangement of subject matter in the manner generally followed in the Alaska Statutes;

(10) change all sections, when possible, to read in the present tense, indicative mood, active voice and, if the use of personal pronouns cannot be avoided in a section, change the section to read in the third person, and singular number, or any other necessary grammatical change in the manner generally followed in the Alaska Statutes; and

(11) delete or change sections or parts of sections if a deletion or change is necessary because of other legislative amendments that did not specifically amend or repeal them.

If a state agency wishes to request that a minor technical correction be made in a filed regulation, the agency should contact the regulations attorney and provide specific recommendations for language referring to the relevant authority noted above.

#### **FILE CLOSURE BEFORE ADOPTION**

If at some point before final adoption an agency decides not to pursue a regulations project, the agency should send a memorandum to the regulations attorney to request closure of the Department of Law's file.

## CHAPTER 16

# LEGAL PRINCIPLES RELATED TO REGULATIONS

In order to simplify this manual, the legal analysis relating to the regulations process has been centralized in this chapter rather than spread throughout the manual. The legal points are briefly highlighted to facilitate additional legal research, if necessary.

### INTRODUCTION TO REGULATIONS

The requirements for filing and publication of regulations, the uniform codification in the Alaska Administrative Code (AAC) and Alaska Administrative Register, development and adherence to this manual, and the procedure for adopting regulations are set out in AS 44.62.040 - 44.62.290 of the Administrative Procedure Act (APA). Relevant definitions, including the definitions of "lieutenant governor," "regulation," and "state agency," are set out in AS 44.62.640(a). In *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, 1181 n.7 (Alaska 1977), the Alaska Supreme Court expressly recognized that the use of the manual is required in formulating regulations.

When an agency adopts a regulation, it is acting in place of the legislature, usually by virtue of the legislature's general delegation of that power in a specified area. A regulation cannot waive or disregard a statutory requirement. *E.g.*, *Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003); *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983). Absent evidence of bad faith, the governor, department head, or a board or commission member is not held personally liable for adopting and enforcing a regulation that is later held unconstitutional. *See Lebert v. Hammond*, 661 P.2d 635, 638 (Alaska 1983).

### WHEN REGULATIONS ARE NECESSARY AND THE AUTHORITY FOR REGULATIONS

Agency action taken in the absence of *necessary* regulations will be invalid. *See U.S. Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140, 142 (Alaska 1971). However, the absence of statutorily mandated regulations does not result in a grant of any personal right to an individual. *See State v. Eluska*, 724 P.2d 514, 516 (Alaska 1986).

Although the definition of "regulation" is broad, it does not encompass every routine, predictable interpretation of a statute by an agency: obvious, common-sense interpretations of statutes do not require rulemaking. *See Alyeska Pipeline Serv. Co. v. State, Dep't of Env'tl. Conservation*, 145 P.3d 561, 573 (Alaska 2006); *see also Squires v. Alaska Bd. of Architects, Eng'rs & Land Surveyors*, 205 P.3d 326 (Alaska 2009). Also, the court is hesitant to require an agency to convert each statutory interpretation into a regulation, especially regarding a matter that the agency would have had difficulty foreseeing; and rather than require an agency to engage in "counterproductive" rulemaking against every eventuality, the court recognizes agency discretion to set policy by adjudication

instead. *See Marathon Oil Co. v. State, Dep't of Natural Res.*, 254 P.3d 1078, 1086-87 (Alaska 2011). But if an agency interpretation is not longstanding, the court will accord it little deference based on longevity. *See State, Dep't of Health & Soc. Servs. v. Gross*, 347 P.3d 116, 121-23 (Alaska 2015).

If an agency has a general grant of regulation-adopting authority, the agency does not need a specific grant of power to have the authority to adopt each individual provision of a regulation. *State v. Anderson*, 749 P.2d 1342, 1345 n.8 (Alaska 1988).

The court reviews emergency regulations in the same way as it reviews other agency regulations. Emergency regulations adopted under the APA enjoy the same presumption of validity as regulations adopted after a notice and comment process. *See State, Alaska Bd. of Fisheries v. Grunert*, 139 P.3d 1226, 1232 (Alaska 2006) (*Grunert II*).

### ADOPTION BY REFERENCE

The Alaska Supreme Court has recognized that standards adopted by reference in the regulations are valid parts of the regulations. *See Kingery v. Chapple*, 504 P.2d 831, 836-37 (Alaska 1972). Additionally, the APA recognizes adoption by reference by allowing the lieutenant governor to avoid printing some material in the AAC. AS 44.62.130(a) provides in part:

The lieutenant governor shall provide for the continuing compilation, codification, and publication, with periodic supplements, of all regulations filed by the lieutenant governor's office, or *of appropriate references to any regulations the printing of which the lieutenant governor finds to be impractical*, such as detailed schedules or forms otherwise available to the public, *or which are of limited or particular application*. [Emphasis added.]

However, even though adopted-by-reference material need not be printed in the AAC, the Alaska Supreme Court has recognized that because that material *is* a regulation, a copy of it must be on file in the lieutenant governor's office under AS 44.62.080(a)(2). *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, 1181-82 (Alaska 1977).

The Alaska Supreme Court has not yet reached the issue of whether standards adopted by reference may include all future amendments. *See id.* Because this type of adoption by reference raises unresolved constitutional issues, the Department of Law recommends that any future amendments be made by formal adoption of the amended version in a new regulations project, unless the simplified process in AS 44.62.245 is available. For more detail, see Chapter 11.

### PENALTIES

State courts are split on whether a statute that merely authorizes an agency to adopt regulations also gives the agency authority to adopt sanctions for violations of those regulations. *See Singer & Singer, Sutherland Statutory Construction*, 7th ed., sec. 4.26. To avoid this issue, it is best to have the penalty for violation of a regulation set out in the statutes, such as in AS 28.90.010(c).

### RETROACTIVE EFFECT

Generally a state regulation must have prospective—future—effect. See AS 44.62.240. In rare instances, a regulation adopted under the APA may have retroactive effect if it "is primarily an interpretative regulation" and "only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation." Of particular note, the APA considers "silence or failure to follow any course of conduct" as "earlier inconsistent conduct" to preclude the adoption of retroactive regulations. AS 44.62.240.

### CONSISTENT WITH STATUTES AND REASONABLY NECESSARY

The APA and case law require that a regulation be "consistent with the statute," "reasonable," and "reasonably necessary." *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 930-32 (Alaska 1983), provides a discussion and application of this consistency requirement. "A regulation is consistent with a statute if it has a reasonable relation to statutory objectives." *State v. Alyeska Pipeline Serv. Co.*, 723 P.2d 76, 78 (Alaska 1986). To determine whether a regulation conflicts with statute, the court will use a reasonable and common-sense construction consonant with the objective of the legislature. The intent of the legislature must govern and the policies and purposes of the statute should not be defeated. *Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004). The Alaska Supreme Court has not required "a showing that the regulation is the only or most effective means of carrying out department goals." *State v. Anderson*, 749 P.2d 1342, 1346 (Alaska 1988). The court has observed that revising regulations for the purpose of eliminating ambiguity is not arbitrary or unreasonable. *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 806-07 (Alaska 1975). If a regulation conflicts with a statute, the regulation must yield. *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

### DECISIONAL DOCUMENTS

The APA does not require that a regulation be supported by findings of fact or conclusions of law in a decisional document. In *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256, 1261 (Alaska 1988), the court ruled that it would not impose such a requirement in adopting regulations. The *Johns* court explained that the record for the regulation "should at least explain the reasons for the agency's action." *Id.* In *Alaska Fish Spotters Ass'n v. State, Department of Fish & Game*, 838 P.2d 798, 801 (Alaska 1992), the court noted "it is vital that the agency clearly voice the grounds upon which the regulation was based in its discussions of the regulation or in a document articulating its decision." In *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314, 1319 (Alaska 1994), the Alaska Supreme Court noted that a decisional document to support a regulation is not required when the record showed reasonable decision making. The court noted that its preparation would impose a significant burden upon a board, especially its public members. *Id.*

## OPEN MEETINGS ACT

The Open Meetings Act (OMA) applies to "meetings" held by "governmental bodies," as defined in AS 44.62.310(h), relating to the development or adoption of regulations. See AS 44.62.310 - 44.62.312. The action of adopting regulations by a state governmental body must be done in a publicly noticed meeting in compliance with the OMA. Most task force or other formal working group meetings also must comply with the OMA's requirements. Agency personnel should contact the appropriate agency attorney in the Department of Law for further information on the requirements of the OMA.

## PUBLIC RECORDS

Documents prepared by or submitted to a state agency as part of the regulations process are subject to AS 40.25.100 - 40.25.295 (Alaska Public Records Act). The exceptions to release of state public records are contained in AS 40.25.120 and include records required to be held confidential by federal law or regulation or state law. The primary public records regulations are contained in 2 AAC 96. Some agencies have other specific statutes and regulations affecting public records. Agency personnel should contact the appropriate agency attorney in the Department of Law for further information on the requirements regarding retention, maintenance, and disclosure of public records related to the regulation process.

## JUDICIAL REVIEW

The Alaska Supreme Court has indicated that the court will not substitute the court's judgment as to the content of a rule (regulation) if it meets the *Kelly v. Zamarello* standards. *Simpler v. State, Commercial Fisheries Entry Comm'n*, 728 P.2d 227, 229 (Alaska 1986). The *Kelly v. Zamarello*, 486 P.2d 906, 911 (Alaska 1971) standard is

when a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature . . . [the court] should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute.

The court will not substitute its "judgment for that of the agency with respect to the efficacy of the regulation nor review the 'wisdom' of a particular [legislative type of] regulation." *State, Dep't of Revenue v. Cosio*, 858 P.2d 621, 624 (Alaska 1993). The agency, though, should be sure that the regulation is drafted clearly and unambiguously. The court has noted, "Although an administrative agency's interpretation of its own rules is entitled to great weight, the ultimate resolution of a regulation's meaning is for the courts." *United States v. RCA Alaska Commc'ns, Inc.*, 597 P.2d 489, 498 (Alaska 1979).

The Alaska Supreme Court applies a deferential "reasonable basis" standard of review (sometimes called the "rational basis" standard) when the agency is interpreting its own regulations and the interpretation concerns administrative expertise. It noted that:

where an agency interprets its own regulation . . . a deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue.

*Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982); *see, e.g., Davis Wright Tremaine LLP v. State, Dep't of Admin.*, 324 P.3d 293, 301 (Alaska 2014).

The court has also noted:

The "substitution of judgment" test is the appropriate standard for interpreting regulations, at least when the agency interpretation does not concern administrative expertise as to either complex subject matter or fundamental policy.

*Borkowski v. Snowden*, 665 P.2d 22, 25 (Alaska 1983).

The substitution of judgment test substitutes the court's interpretation for that of the administrative agency when dealing with questions of law.

If an agency is basing its interpretation of its own regulation upon its interpretation of a statute, the Alaska Supreme Court has ruled that the court was "in just as good a position to make that judgment as the . . . [agency]." *State, Commercial Fisheries Entry Comm'n v. Templeton*, 598 P.2d 77, 80-81 (Alaska 1979). The court is especially likely to substitute its judgment if an agency's interpretation of a statute is new rather than longstanding. *See State, Dep't of Health & Soc. Servs. v. Gross*, 347 P.3d 116, 121-23 (Alaska 2015). If a regulation is legislative in character, rules of interpretation applicable to statutes are to be used in interpreting its meaning. *State, Dep't of Highways v. Green*, 586 P.2d 595, 603 n.24 (Alaska 1978). Interpretation of statutes ("statutory construction") is considered to be within the special expertise of courts, not the administrative agencies. An agency's interpretation of a statute is not binding on the courts, but some weight will be given to an agency's decisions interpreting an ambiguous statute. *Id.* at 602 n.21; *see also Marathon Oil v. State, Dep't of Natural Res.*, 254 P.3d 1078, 1085-86 (Alaska 2011).

The Alaska Supreme Court has noted, "an administrative regulation must be accorded a presumption of validity, and the challenger of the regulation must demonstrate its invalidity." *Union Oil Co. of Cal. v. State, Dep't of Natural Res.*, 574 P.2d 1266, 1271 (Alaska 1978). Therefore, the court has placed the burden of proving the invalidity of a regulation on the party challenging the regulation. *E.g., Grunert v. State*, 109 P.3d 924, 928-29 (Alaska 2005) (*Grunert I*).

Under AS 44.62.100(a), a filed regulation is presumed to have met the procedural requirements of the APA. The court has stated that a later challenge of a filed regulation for procedural violation grounds must be "substantial" before the regulation will be declared invalid. *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 425 (Alaska 1982); *see also* AS 44.62.300(1). But if a court finds a portion of a regulation invalid, the state agency may be able to save the remainder of the regulation in appropriate circumstances. In *State v. Palmer*, 882 P.2d 386, 388-89 (Alaska 1994), the court applied a two-fold test to determine whether an invalid portion of a regulation was severable from the remainder of the regulation. First, the remainder of the regulation must be capable of standing on



its own absent the invalid portion. Second, the adopting agency would have intended the remainder of the regulation to stand if the invalid portion were declared invalid.

Please keep in mind that a state agency's regulations are subject to judicial review. The state agency must have facts and logic ready to defend a regulation if it is challenged in court.

Finally, please note that the court cited with approval an attorney general's memorandum concerning the interpretation of a regulation. *Diaz v. Silver Bay Logging, Inc.*, 55 P.3d 732, 735-36 (Alaska 2002).

## CHAPTER 17

### ADDITIONAL COURT DECISIONS AND TREATISE READINGS BY SELECTED MANUAL CHAPTER

Many of the subjects discussed in this manual are complex and frequently will require additional legal research should an issue arise that needs resolution. This chapter presents a listing of select court cases and readings that may be helpful. This material is listed according to the relevant chapters in this manual.

#### CHAPTER 1. INTRODUCTION

- (1) *Alaska Center for the Environment v. State, Office of the Governor*, 80 P.3d 231, 243-44 (Alaska 2003) -- the state agency's interpretation of a regulation standard, as it was neither plainly erroneous nor inconsistent with the regulation, did not need to be adopted as a regulation under the APA; the court distinguishes the facts in this case from *Jerrel v. State, Department of Natural Resources*, 999 P.2d 138 (Alaska 2000).
- (2) *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 585 (Alaska 1960) -- discusses validity of a delegation of legislative power to an agency to adopt regulations.
- (3) *Jerrell v. State, Department of Natural Resources*, 999 P.2d 138 (Alaska 2000) -- discusses the standards for (1) applying estoppel against a state agency's enforcement of a regulation and (2) determining when a state agency's interpretation of an existing regulation establishes a new general standard that must be adopted as a regulation under the Administrative Procedure Act (APA).
- (4) *Marathon Oil Co. v. State, Department of Natural Resources*, 254 P.3d 1078, 1086-87 (Alaska 2011) -- the court discusses when an agency may interpret a statute by adjudication rather than regulation, "especially in matters that the agency would have difficulty foreseeing," or where adopting "regulations on every possible eventuality" would be "counterproductive."
- (5) *Mathis v. Sauser*, 942 P.2d 1117, 1123 n.13 (Alaska 1997) -- the internal policies and procedures of the Department of Corrections contained in its Standard Operating Procedure policy need not conform to formal requirements of the APA.
- (6) *Messerli v. Department of Natural Resources*, 768 P.2d 1112, 1117 (Alaska 1989) -- *overruled on other grounds by Olson v. State, Department of Natural Resources*, 799 P.2d 289, 292-93 (Alaska 1990) -- provisions of a state manual pertaining to this case were merely paraphrases of statutes and thus fell within the "internal management" exception.

- (7) *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983) -- regulations are subject to statutory requirements and cannot disregard them.
- (8) *Squires v. Alaska Board of Architects, Engineers & Land Surveyors*, 205 P.3d 326 (Alaska 2009) -- sets out standards to determine whether an agency policy or rule is a regulation that must be adopted in compliance with the APA. Common sense statutory interpretations do not require formal rule making.
- (9) *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 777 (Alaska 1980) -- a regulation is a law in every meaningful sense and annulling any one of them effects a change in the law.
- (10) *State, Department of Revenue v. Merriouns*, 894 P.2d 623, 626 n.3 (Alaska 1995) -- a state agency does not have an affirmative duty to inform applicants of all relevant statutory and regulatory provisions.
- (11) *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489, 498 (Alaska 1979) -- "In general, an administrative agency must comply with its own regulations."
- (12) *Usibelli Coal Mine, Inc. v. State, Department of Natural Resources*, 921 P.2d 1134, 1143-44 (Alaska 1996) -- the court recognizes implied authority to adopt regulations and discusses standards needed to guide an agency when a broad delegation of authority is given to an agency from the legislature.
- (13) *Warner v. State, Real Estate Commission*, 819 P.2d 28, 31 n.1 (Alaska 1991) -- the court will apply strict construction to questions of statutory grants of authority when resolving availability of damages as administrative remedy.
- (14) *Wien Air Alaska, Inc. v. Department of Revenue*, 647 P.2d 1087, 1097 (Alaska 1982), *limited on other grounds by Louisiana-Pacific Corp. v. State, Department of Revenue*, 26 P.3d 422, 428 (Alaska 2001) -- a state agency letter interpreting a statute may be a regulation, but that letter did not serve to make the regulation binding on the department.

### **When are Regulations Necessary?**

- (1) *Alyeska Pipeline Service Co. v. State*, 288 P.3d 736, 742 (Alaska 2012) -- when a state agency's interpretation does not add substantive requirements to the statute but simply interprets the statute according to its own terms, the agency is not required to adopt the interpretation as a regulation under the Administrative Procedure Act.
- (2) *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170, 1178 (Alaska 1986) -- absent statutory restrictions and due process limitations, administrative agencies have the discretion to set policy by adjudication instead of rulemaking.
- (3) *Coghill v. Boucher*, 511 P.2d 1297 (Alaska 1973) -- "early court" election regulations were invalid because they were not mere "internal management" matters and should have complied with the APA.

- (4) *Friends of Willow Lake, Inc. v. State, Department of Transportation & Public Facilities*, 280 P.3d 542, 549 (Alaska 2012) -- a use plan for a float plane facility was a common sense interpretation of an agency's existing regulations to ensure the facility's safe and secure operation. If any slight change in runways, taxi lanes, or other general rules required regulations, ossification of airport operations would result.
- (5) *Gilbert v. State, Department of Fish & Game*, 803 P.2d 391, 396 (Alaska 1990) -- the tests for identifying a regulation that must be adopted under the APA include whether the practice implements, interprets, or makes specific the law enforced or administered by the state agency, and whether it affects the public or is used by the agency in dealing with the public.
- (6) *Kachemak Bay Watch, Inc. v. Noah*, 935 P.2d 816, 825 (Alaska 1997) -- whether an agency action is a regulation is a question of law that does not involve agency expertise. If an action does not alter the rights of parties, does not deprive any party of a fair opportunity for public participation, embodies no finding as to a particular application, and does not establish criteria by which particular applications should be evaluated, it does not constitute a regulation under the APA.
- (7) *Kenai Peninsula Fisherman's Cooperative Ass'n v. State*, 628 P.2d 897, 906-07 (Alaska 1981) -- a comprehensive management policy affecting the public was a regulation and had to be adopted under the APA.
- (8) *Mukluk Freight Lines, Inc. v. Nabors Alaska Drilling, Inc.*, 516 P.2d 408, 415 (Alaska 1973) -- action taken by a commission in absence of a necessary procedural regulation was invalid.
- (9) *Rubey v. Alaska Commission on Postsecondary Education*, 217 P.3d 413, 417 (Alaska 2009) -- Alaska Commission on Postsecondary Education's decision to eliminate medical cancellations in promissory notes was within the scope of the state agency's discretionary business judgment and cannot fairly be considered a policy requiring compliance with formal rulemaking procedures.
- (10) *Silides v. Thomas*, 559 P.2d 80, 91 (Alaska 1977) -- the court found that a regulation was not necessary to tell a candidate where to file the name and address of a campaign treasurer.
- (11) *Sisters of Providence in Washington, Inc. v. Department of Health & Social Services*, 648 P.2d 970, 977-78 (Alaska 1982) -- although the agency had not adopted procedural regulations, the agency had adopted regulations specifying criteria governing decisions, which gave interested parties a fair opportunity to present evidence. The lack of procedural regulations did not invalidate its substantial implementation decision.
- (12) *Smart v. State, Department of Health & Social Services*, 237 P.3d 1010, 1017-18 (Alaska 2010) -- although the definition of "regulation" is broad, it does not encompass every routine, predictable interpretation of a statute by an agency. The Department of Health and Social Services' interpretation of "statistically valid sampling methods" is a "common sense interpretation" of a regulation. It does not impose any new substantive requirements.

- (13) *State v. First National Bank of Anchorage*, 660 P.2d 406, 424 n.30 (Alaska 1982) -- it was not necessary to readopt existing regulations when the legislature amended the underlying statute to add a new category of land to an existing category. The application of the regulations was found to be consistent with legislative intent and a due process violation did not occur.
- (14) *State v. Hebert*, 743 P.2d 392, 396-97 (Alaska App. 1987) -- the Court of Appeals mentioned the distinction between agency adjudication and agency rule-making. The court held that an agency is not limited to the agency record when deciding to adopt regulations and may rely on its experience, expertise, and any facts known from whatever source.
- (15) *State v. Northern Bus Co.*, 693 P.2d 319, 323 (Alaska 1984) -- the court upheld a state agency's interpretation (in the form of a "directive") of one of its regulations, against an argument that the interpretation had not been adopted as a regulation.
- (16) *State v. Tanana Valley Sportsmen's Ass'n, Inc.*, 583 P.2d 854, 858 (Alaska 1978) -- oral instructions for issuing a permit were invalid for the Board of Game's failure to adopt the instructions under the APA.
- (17) *State, Department of Natural Resources v. Nondalton Tribal Council*, 268 P.3d 293, 305 (Alaska 2012) -- a state land use plan such as the Bristol Bay Area Plan is neither required to be nor precluded from being adopted as regulations by statute. It does not affect the public nor is it used by the state agency in dealing with the public because it is not enforceable against the public in a meaningful way until implemented by further agency action.
- (18) *Usibelli Coal Mine, Inc. v. State, Department of Natural Resources*, 921 P.2d 1134, 1148 (Alaska 1996) -- a decision to implement a regulation is not a regulation, for it is not an addition to the regulation involving a requirement of substance.

### **Consistent with Statutes and Reasonably Necessary**

- (1) *Alaska Survival v. State, Department of Natural Resources*, 723 P.2d 1281, 1289-90 (Alaska 1986) -- a regulation providing for brief site-specific land-use reports was found to be inconsistent with a statutory scheme that contemplated broad-scale regional plans before site-specific planning and classification.
- (2) *Brooks Range Exploration Co. v. Gordon*, 46 P.3d 942, 945-46 (Alaska 2002) -- if literal interpretation of a statute leads to absurd results, a court may interpret the statute to agree with legislative intent.
- (3) *Bullock v. State, Department of Community & Regional Affairs*, 19 P.3d 1209, 1214 - 1215 (Alaska 2001) -- this decision sets out an analysis on how to construe statutes. Also, the court again rejects the plain meaning rule of statutory construction in favor of construction in light of the statute's purpose.

- (4) *Davis v. State*, 235 P.3d 1017, 1020 (Alaska App. 2010) -- the state has the authority to adopt and enforce commercial motor vehicle regulations patterned on corresponding federal regulations, if the legislature directed the state agency to adopt regulations necessary to implement requirements imposed by federal statutes or regulations relating to commercial motor vehicles, in order to avoid the loss or withholding of federal highway money.
- (5) *DeNardo v. State*, 741 P.2d 1197, 1198-99 (Alaska 1987) -- a legislative enactment on a topic does not preclude the legislature from delegating authority to adopt regulations on the same topic.
- (6) *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004) -- when a regulation conflicts with a statute, the regulation must yield.
- (7) *K.L.F. v. State*, 790 P.2d 708, 711 (Alaska App. 1990) -- the moving party arguing for a position other than the plain meaning of a statute or rule bears the burden of establishing legislative history that supports departure from its plain meaning.
- (8) *Madison v. Alaska Department of Fish & Game*, 696 P.2d 168, 176-78 (Alaska 1985) -- the court held the Board of Fisheries' regulation defining "subsistence" invalid since it is inconsistent with statutes and contrary to the legislature's intent in enacting the 1978 subsistence law.
- (9) *Moore v. Beirne*, 714 P.2d 1284, 1288 (Alaska 1986) -- the court upheld a regulation as being within the discretion of the adopting agency where the statute allowed a certain public assistance payment "in excess of \$280 a month" and the regulation implementing that statute set the amount at a flat \$280 a month.
- (10) *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 543-44 (Alaska 1978) -- an emergency regulation, which limited a tax credit, conflicted with the relevant statute that provided for the credit but did not mention a limitation.
- (11) *Smith v. State, Department of Corrections*, 872 P.2d 1218, 1226 (Alaska 1994) -- if an administrative agency is given discretion to dole out a privilege or impose a restriction, the agency may generally restrict its own discretion by formulating mandatory rules, so long as they are reasonable and consistent with the statutory framework.
- (12) *State, Board of Marine Pilots v. Renwick*, 936 P.2d 526, 531 (Alaska 1997) -- regulations are presumptively valid and will be upheld so long as they are consistent with and reasonably necessary to implement the statutes authorizing their adoption. Reasonable necessity is not a requirement separate from consistency. If it were, courts would be required to judge whether a particular administrative regulation is desirable as a matter of policy.

**CHAPTER 2. THE REGULATION ADOPTION PROCESS**

- (1) *INS v. Chadha*, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983) -- Congress may not annul an agency's action by resolution.
- (2) *O'Callaghan v. Rue*, 996 P.2d 88, 95 (Alaska 2000) -- recognizes the "clear legislative intent" to delegate regulation-adoption authority to the commissioner of fish and game when the legislature "explicitly delegates to the [c]ommissioner the authority to enforce and interpret the law."
- (3) 1 *Pierce*, *Administrative Law Treatise*, 5th ed., sec. 7.2 (Wolters Kluwer Law & Business, 2010) -- discusses the principle that a statutory requirement of hearing may be satisfied by written comments without an opportunity to present oral evidence.

**CHAPTER 3. EMERGENCY REGULATION ADOPTION PROCESS**

*O'Callaghan v. State, Director of Elections*, 6 P.3d 728, 730-31 (Alaska 2000) -- the court found that it was appropriate for the division of elections to adopt emergency regulations to implement a new United States Supreme Court decision concerning the Republican ballot, since the primary election was less than two months away and the legislature was not in session to act. The court reasoned that temporary action was needed to ensure a timely and constitutional primary and such action was "solidly rooted in the principle of necessity and in the division's statutory powers of supervision over elections."

**CHAPTER 4. PUBLIC NOTICE**

- (1) *Alaska Fish & Wildlife Conservation Fund v. State*, 347 P.3d 97, 108 (Alaska 2015) -- if the final agency regulations vary from the action proposed in the public notice, the Administrative Procedure Act is satisfied if the subject matter remains the same and the notice assured reasonable notification that the proposed agency action might affect the public's interests.
- (2) *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 929-30 (Alaska 1983) -- the court presents an in-depth analysis regarding the scope of the public notice when the final version of the regulation differs from the draft.
- (3) *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1011-12 (Alaska 2000) -- discusses the standards for a newspaper of general circulation. While the decision concerns a notice of a hearing for a local tax ordinance, and not for a regulation adoption, it is helpful in evaluating whether a newspaper meets the standard set out in the decision to be a newspaper of general circulation in that context.
- (4) *Kenai Peninsula Fisherman's Cooperative Ass'n v. State*, 628 P.2d 897, 908 (Alaska 1981) -- discusses the purposes of notice and hearing provisions of APA for regulations.

- (5) *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1119 (9th Cir. 2002), *overruled on other grounds by Wilderness Society v. U.S. Forest Service*, 630 F.3d 1172, 1178-80 (9th Cir. 2011) (en banc) -- though developed in the context of federal scoping process and rulemaking, this case provides an interesting discussion of the role of notice and comment in rulemaking, especially when arguments that the periods were too brief were used even though the process complied with legal minimums; the case also discusses the value of widely distributing copies of the regulations and posting copies on an Internet website to meet notice requirements.
- (6) *Moore v. State*, 553 P.2d 8, 21-22 (Alaska 1976) -- discussion of "newspaper of general circulation" for a public notice of proposed regulations.
- (7) *State v. First National Bank of Anchorage*, 660 P.2d 406, 425 & n.32 (Alaska 1982) -- the legislature intended that the "informative summary" requirement be liberally construed.

#### CHAPTER 6. STYLE, GRAMMAR, AND WORDS

- (1) *Adamson v. Municipality of Anchorage*, 333 P.3d 5, 16 (Alaska 2014) -- when interpreting a statute, the court presumes that the legislature intends every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.
- (2) *Boyd v. State*, 210 P.3d 1229, 1232 (Alaska App. 2009) -- if the meaning of a regulation is clear and unambiguous, the court will not consider its section heading. *See also* AS 01.05.006.
- (3) *Exxon Corp. v. State*, 40 P.3d 786, 794 (Alaska 2001) -- discusses that passive voice can be ambiguous.
- (4) *Fowler v. City of Anchorage*, 583 P.2d 817, 820 (Alaska 1978) -- unless the context of a statute requires otherwise, the use of "shall" denotes mandatory intent.
- (5) *Gerber v. Juneau Bartlett Memorial Hospital*, 2 P.3d 74, 76 (Alaska 2000) -- in contrast to the term "shall" in a statute, the term "may" generally denotes permissive or discretionary authority and not a mandatory duty.
- (6) *Haar v. State, Dep't of Admin.*, 349 P.3d 173, 180 (Alaska 2015) -- the court found that a statute's use of "may" gave the agency "some measure of discretion in determining whether a vehicle meets requirements for titling and registration"; the court thus applied the deferential "reasonable basis" standard of review to the agency decision.
- (7) *In re Reinstatement of Wiederholt*, 24 P.3d 1219, 1233 (Alaska 2001) -- the court discusses the standards to evaluate whether "shall" denotes a mandatory or directory intent.



- (8) *South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Board of Adjustment*, 172 P.3d 768, 771-72 (Alaska 2007) -- discusses the use of "shall" as a mandatory or directory term.
- (9) *State v. Schmidt*, 323 P.3d 647, 652-53, 665-66 (Alaska 2014) -- though only the heading of a regulation, "Eligibility," implied that the text related to eligibility for a municipal tax exemption, but where all parties to the litigation read the substantive text of the regulation to address eligibility, the court assumed the parties' reading to be correct for purposes of the appeal. Also, when interpreting statutes and regulations, the court will harmonize seemingly conflicting provisions, unless the resulting interpretation would be at odds with statutory purpose.
- (10) *State, Department of Transportation & Public Facilities v. Sanders*, 944 P.2d 453, 457-58 (Alaska 1997) -- discusses use of "may" as discretionary term in regulations.
- (11) *Tweedy v. Matanuska-Susitna Borough Board of Adjustment & Appeals*, 332 P.3d 12, 18 (Alaska 2014) -- the title of a statutory provision or code section is relevant only if legislative meaning is left in doubt.

#### CHAPTER 9. CITATION OF AUTHORITY

*Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 926-28 (Alaska 1983) -- upholds regulations based on a general grant of authority and the assignment of responsibility for the function to the agency.

#### CHAPTER 10. DEFINITIONS

*Alaska Center for the Environment v. Rue*, 95 P.3d 924, 930-32 (Alaska 2004) -- the court describes tests used to determine whether a definition selected by a state agency for a statutory term is consistent with statutory standards; the court examines when "narrow" and "technical definitions" are appropriate instead of "commonly understood definitions."

#### CHAPTER 11. ADOPTION BY REFERENCE

- (1) *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, 1181 n.5 (Alaska 1977) *aff'd on rehearing*, 563 P.2d 256 (Alaska 1977) -- Alaska Supreme Court reserves the question of the constitutionality of adopting future amendments by reference.
- (2) *State, Department of Revenue v. DynCorp*, 14 P.3d 981, 984 (Alaska 2000) -- the court recognizes that state regulation incorporates by reference the body of federal law interpreting certain provisions of the Internal Revenue Code.
- (3) *Veeck v. Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002) (en banc) -- incorporation by reference of a model building code developed by a private entity into a government code did not affect the copyright protection of the code, but copying the municipal ordinances that duplicated the model code is permissible.

**CHAPTER 13. PENALTIES AND FEES**

*Alaska Public Offices Commission v. Stevens*, 205 P.3d 321, 326 (Alaska 2009) -- holding that, as the court has for criminal penalties, "imprecise, indefinite, or ambiguous statutory or regulatory requirements must be strictly construed in favor of the accused before an alleged breach may give rise to a civil penalty."

**CHAPTER 14. FISCAL NOTES**

*Turpin v. North Slope Borough*, 879 P.2d 1009, 1013-14 (Alaska 1994) -- it is substantial failure to comply with the APA, and will invalidate a regulation, if a state agency fails to prepare a fiscal note in conjunction with a proposed regulatory change that is anticipated to need additional appropriations.

**CHAPTER 16. LEGAL PRINCIPLES RELATED TO REGULATIONS****Judicial Review**

- (1) *Alaska Fish Spotters Ass'n v. State, Department of Fish & Game*, 838 P.2d 798, 800 (Alaska 1992) -- whether a regulation is consistent with the Alaska Constitution is a question of law requiring de novo review.
- (2) *Alaska Police Standards Council v. Parcell* 348 P.3d 882, 886-88 (Alaska 2015) -- the deferential "reasonable basis" standard, not the "substitution of judgment" standard, was the correct standard of review for the agency's application of the agency's own regulation defining "good moral character."
- (3) *Blas v. State, Dep't of Labor & Workforce Development*, 331 P.3d 363. 371-75 (Alaska 2014) -- absent a definition of the term in statute, the court applied the "substitution of judgment" standard of review to construe the meaning of the term "knowingly"; applying the "sliding scale" analysis -- in which the plainer the language of the statute, the more convincing contrary legislative history must be -- the court construed "knowingly" in accordance with the criminal law definition in AS 11.81.900, to require subjective intent to defraud. The court held the agency made the required showing by a preponderance of evidence.
- (4) *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 929-30 (Alaska 1983) -- the court applied the "substantial failure" rule to uphold the final version of regulations that differed from the draft regulations published because the subject matter remained the same and the original notice assured reasonable notification to the public that its interests might be affected.
- (5) *Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003) -- a regulation cannot authorize a state agency to waive statutory requirements.

- (6) *Davis Wright Tremaine LLC v. State, Department of Administration*, 324 P.3d 293, 301 (Alaska 2014) -- the court reviews an agency's interpretation of its own regulation under the reasonable basis standard, deferring to the agency unless the interpretation is plainly erroneous and inconsistent with the regulation.
- (7) *Dresser Industries, Inc. v. Alaska Department of Labor*, 633 P.2d 998, 1005 (Alaska 1981), *cert. denied*, 455 U.S. 1019 (1982) -- the court held that the "reasonable and not arbitrary" test was applicable to what the court had found to be a quasi-legislative regulation.
- (8) *Ellingson v. Lloyd*, 342 P.3d 825, 830-33 (Alaska 2014) -- the court invalidated as arbitrary a regulation defining "feral" where the Board of Game disregarded dictionary and scientific definitions of the term, to the point where the court concluded that the board failed to consider important policy factors.
- (9) *Flanigin v. State, Department of Revenue*, 946 P.2d 446, 450 (Alaska 1997) -- the court discusses agency interpretation of a statute when a policy was not validly adopted as a regulation.
- (10) *Gilbert v. State, Department of Fish & Game*, 803 P.2d 391, 394 (Alaska 1990) -- a regulation is presumed procedurally valid once a certified copy has been filed. A party challenging a regulation must show a substantial failure to comply with the APA to rebut this presumption.
- (11) *Grunert v. State*, 109 P.3d 924, 928-29 (Alaska 2005) (*Grunert I*) -- the court discusses the standards for presumption of validity of regulations and the principal standards for judicial review of administrative regulations. The court reiterates the "hard look" at the salient problems and reasoned decision making standard of review where "specialized agency expertise is involved."
- (12) *Halliburton Energy Services v. State, Department of Labor*, 2 P.3d 41, 50 (Alaska 2000) -- explains the standard for evaluating whether a regulation is unconstitutionally void for vagueness.
- (13) *Herrick's Aero-Auto-Aqua Repair Service v. State, Department of Transportation & Public Facilities*, 754 P.2d 1111, 1115 (Alaska 1988) -- recognizes the deferential standard of review when an agency is interpreting its own regulations, but finds the regulation unreasonable anyway.
- (14) *Hidden Heights Assisted Living, Inc. v. State, Department of Health & Social Services*, 222 P.3d 258, 268-69 (Alaska 2009) -- the failure of a state agency to separately inform a regulated entity that a record-keeping regulation might one day be enforced does not constitute the assertion of a position that the regulations would never be enforced. Equitable estoppel argument failed in this case because the regulated entity failed to show that the state entity asserted a position contrary to enforcement of the regulation.

- (15) *Interior Alaska Airboat Ass'n v. State*, 18 P.3d 686, 693 (Alaska 2001) -- in deciding whether a regulation is reasonable and not arbitrary, the court deals not with policy but process. The court asks whether the agency has failed to consider an important factor or whether it has not really taken a hard look at the salient problems and has not genuinely engaged in reasonable decision making.
- (16) *Jager v. State*, 537 P.2d 1100, 1107 (Alaska 1975) -- discusses the principal standards of judicial review of administrative decisions.
- (17) *Kenai Peninsula Fisherman's Cooperative Ass'n v. State*, 628 P.2d 897, 906 (Alaska 1981) -- "if [a regulation is] adopted according to APA procedures and within the discretion vested in the [agency] by the legislature, our review is limited to (1) whether the regulation is consistent with the statute (i.e., within the scope of the [agency's] authority) and reasonably necessary to its purposes, and (2) whether the regulation is reasonable and not arbitrary."
- (18) *Koyukuk River Basin Moose Co-Management Team v. Board of Game*, 76 P.3d 383, 386-87 (Alaska 2003) -- the court will not overturn a resource management regulation simply because one group of resource users believes that the regulation should have a different substance.
- (19) *Lauth v. State, Department of Health & Social Services*, 12 P.3d 181, 185-86 (Alaska 2000) - - when determining the validity of an administrative regulation, the court may apply a deferential review even if the agency's expertise in adopting a particular regulation is implicit rather than explicit, and the agency did not directly invoke that expertise.
- (20) *Lynden Transport, Inc. v. State*, 532 P.2d 700, 716 (Alaska 1975) -- because the legislature has spoken as a whole once a law is enacted, the court will not consider the post-enactment recollections of any individual legislator, even the prime sponsor, as relevant to a determination of legislative intent.
- (21) *Mathis v. Sauser*, 942 P.2d 1117, 1122-24 (Alaska 1997) -- the court must further ascertain that the stated purpose behind the regulation is not a subterfuge for any impermissible motive. Selective enforcement of a statute, regulation, or policy violates the equal protection clause if it is part of a deliberate and an intentional plan to discriminate based on an arbitrary or unjustifiable classification.
- (22) *Mechanical Contractors of Alaska, Inc. v. State, Department of Public Safety*, 91 P.3d 240, 246-47 (Alaska 2004) -- if a regulation is consistent with the statutory purpose, the court will not generally require a separate showing of reasonable necessity. The agency record documented a "hard look" at salient problems and reasoned decision making.
- (23) *Northern Alaska Environmental Center v. State, Department of Natural Resources*, 2 P.3d 629, 633-34 (Alaska 2000) -- the court reviews the agency's interpretation of non-technical statutory terms under the substitution of judgment standard.

- (24) *O'Callaghan v. Rue*, 996 P.2d 88, 98 (Alaska 2000) -- the inquiry to determine whether a regulation is reasonable and not arbitrary is whether the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making.
- (25) *Owsichek v. State, Guide Licensing & Control Board*, 763 P.2d 488, 498 (Alaska 1988) -- regulations assigning exclusive guide areas were held invalid (along with the statutes under which they were adopted) for violating the Alaska Constitution.
- (26) *Regulatory Commission of Alaska v. Tesoro Alaska Co.*, 178 P.3d 1159, 1166-67 (Alaska 2008) -- the court reviews an agency's interpretation of its own regulations under the reasonable and not arbitrary standard. The court noted that this deferential standard of review properly recognizes that the agency is best able to discern its intent in adopting the regulation at issue.
- (27) *Sisters of Providence in Washington, Inc. v. Department of Health & Social Services*, 648 P.2d 970, 978 (Alaska 1982) -- the principle of presumption of the validity of a regulation was affirmed.
- (28) *State v. Aleut Corp.*, 541 P.2d 730, 736-37 & n.15 (Alaska 1975) -- the court will apply the independent judgment standard if a statutory term is not technical, because an agency's mere familiarity with the term's application does not make the agency better able than the court to discern legislative intent.
- (29) *State v. F/V Baranof*, 677 P.2d 1245, 1251 (Alaska 1984) -- a federal agency's interpretation of the federal Act that it is responsible for administering is entitled to "considerable weight."
- (30) *State, Board of Marine Pilots v. Renwick*, 936 P.2d 526, 531 (Alaska 1997) -- regulations are presumptively valid and will be upheld so long as they are consistent with and reasonably necessary to implement the statutes authorizing their adoption. Reasonable necessity is not a requirement separate from consistency. If it were, courts would be required to judge whether a particular administrative regulation is desirable as a matter of policy.
- (31) *State, Department of Highways v. Green*, 586 P.2d 595, 602 n.21 (Alaska 1978) -- an agency's interpretation of its own regulation is "normally given effect unless it is plainly erroneous or inconsistent with the regulation."
- (32) *State, Department of Revenue v. Cosio*, 858 P.2d 621, 624-25 (Alaska 1993) -- when reviewing whether a regulation is reasonable and not arbitrary, the court gives the agency considerable deference. The court does not substitute its judgment for the agency regarding the efficacy of the regulation or review the wisdom of a particular regulation.

- (33) *Tea ex rel A.T.*, 278 P.3d 1262, 1265 (Alaska 2012) -- when a regulation's interpretation is challenged, the court applies the same standards that the court applies to statutory interpretations. When construing statutes, the court considers three factors: the language of the statute, the legislative history, and the legislative purpose behind the statute. The court has held that the plainer the language of the statute, the more convincing any contrary legislative history must be to overcome the statute's plain meaning.
- (34) *Union Oil Co. of California v. Department of Revenue*, 560 P.2d 21, 23 (Alaska 1977) -- if issues turn on statutory interpretation, the knowledge and expertise of the agency is not conclusive of the intent of the legislature. It is the court's duty to consider the statute independently.
- (35) *Weaver Bros., Inc. v. Alaska Transportation Commission*, 588 P.2d 819, 821 (Alaska 1978) -- when an administrative determination involving an agency's expertise as to complex subject matter or as to the formulation of fundamental policy has a reasonable basis in law and fact, the court will give deference to that determination.
- (36) *Wien Air Alaska, Inc. v. Department of Revenue*, 647 P.2d 1087, 1090 (Alaska 1982), *limited on other grounds by Louisiana-Pacific Corp. v. State, Department of Revenue*, 26 P.3d 422, 428 (Alaska 2001) -- an agency's "contemporaneous administrative construction is a valuable aid in determining the meaning of the statute; it is not conclusive."
- (37) *Wilson v. State, Dep't of Corrections*, 127 P.3d 826, 829 (Alaska 2006) -- when interpreting a regulation, the court will apply a similar analysis to that used when interpreting statutes.

## CHAPTER 18

### AGENCIES NOT SUBJECT TO THE APA

The legislature has expressly excluded some state agencies from compliance with the APA when adopting regulations. Some of these agencies operate as "market participant" public corporations: for example, the Alaska Industrial Development and Export Authority, the Alaska Housing Finance Corporation, or the Alaska Permanent Fund Corporation. Also, the legislature may expressly exclude a state agency when the regulation concerns only the internal management of state agencies: for example, regulations that concern the relationship between the state as employer and state employees and that the Department of Administration adopts subject to Personnel Board oversight, or regulations that the Alaska Retirement Management Board adopts with respect to state employee retirement plans.

In place of the APA, however, the legislature typically substitutes statutory requirements specific to each non-APA agency for the agency to follow when adopting non-APA regulations. Also, the legislature may by statute make a non-APA agency subject to the APA when the agency adopts regulations in specified subject areas: for example, procurement of goods and services.

Accordingly, an agency that is exempt by statute from the APA should work closely with the agency attorney in adopting regulations. For uniformity and to avoid legal challenges, such as due process issues, the guidelines set out in this manual should still be followed for a non-APA regulation project. Appendix AA sets out a sample adoption order form, and Appendix BB sets out a sample certification order form for use by agencies that are exempt from the APA.

Other appendices in this manual are useful starting points if the non-APA agency wants to use affidavits and other supporting paperwork similar to what agencies subject to the APA use. But because most of the appendices are tailored to APA regulations—and include, for example, citations to specific provisions of the APA—those appendices would not be suitable in their unchanged form for non-APA regulations. Additionally, some statutory requirements for APA regulations do not exist for non-APA regulations; conversely, some statutory requirements for non-APA regulations do not appear in the APA. A non-APA agency using those appendices as models for the agency's own supporting paperwork should work closely with the agency attorney to ensure that the paperwork is tailored to the non-APA agency's own specific statutes.

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## **APPENDICES**

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## AGENCY CHECKLIST/REGULAR REGULATION

### DRAFTING

- \_\_\_\_\_ Discuss the project timeline with Legislation and Regulations Section if the project has an effective date deadline or other urgency or is lengthy or complex. Review any timeline proposed under AS 24.08.035 (See Step 2 in Ch. 2).
- \_\_\_\_\_ Proposed regulation is drafted and reviewed by agency in accordance with law and this manual (See Step 2 in Ch. 2).
- \_\_\_\_\_ Prepare fiscal note, if required (See Ch. 4 and 14) (Appendix F).
- \_\_\_\_\_ Decide whether to use the Alaska Online Public Notice System to receive comments on the project.
- \_\_\_\_\_ Draft the public notice of proposed regulation; prepare additional regulation notice information. Public notice must include: (1) references to statutory authority and statutes being implemented, interpreted, or made specific; (2) informative summary (*not* text) of the regulation; (3) summary of fiscal information; (4) deadline and address for submission of written comments (if an oral hearing is held, the time, date, and place of the hearing); and (5) any information required by the relevant program statute (See Ch. 4) (Appendices D-1, D-2, D-3, E-1, and E-2).
- \_\_\_\_\_ Request the regulations attorney to open Department of Law file (Appendix G). Agency attorney reviews the draft regulation and public notice (See Steps 3 and 4 in Ch. 2).

### PUBLICATION AND DISTRIBUTION OF NOTICE (See Ch. 4)

- \_\_\_\_\_ Published in newspaper of general circulation or trade publication; request return of affidavit of publication from newspaper or trade publication.
- \_\_\_\_\_ Furnished to the head of the department in which adopting agency is located (if adopting agency is not a principal department).
- \_\_\_\_\_ Furnished to all persons on the interested-persons list and others thought to be interested.
- \_\_\_\_\_ Furnished to the regulations attorney in the Department of Law (along with proposed regulation).
- \_\_\_\_\_ Furnished electronically to all incumbent Alaska state legislators and the Legislative Affairs Agency (Division of Legal and Research Services).
- \_\_\_\_\_ Furnished electronically, along with the proposed regulation, to the Legislative Affairs Agency, the chairs of the appropriate legislative standing committees, the Administrative Regulation Review Committee, and the legislative council (not applicable to Board of Fisheries or Board of Game regulations) (Appendices CC and DD).
- \_\_\_\_\_ Additional regulation notice information sent with notice to interested persons, legislators, Legislative Affairs Agency (Division of Legal and Research Services), and regulations attorney (Appendices E-1 and E-2).
- \_\_\_\_\_ Notice and additional regulation notice information posted on the Alaska Online Public Notice System.
- \_\_\_\_\_ Prepare affidavit of notice of proposed adoption of regulation (Appendix H).

### PUBLIC COMMENT/QUESTIONS

- \_\_\_\_\_ Prepare for questions during the comment period.
- \_\_\_\_\_ Answers to questions made publicly available on the Alaska Online Public Notice System.
- \_\_\_\_\_ Written comments collected (See Step 6 in Ch. 2).
- \_\_\_\_\_ Oral public hearing, if any, conducted; prepare affidavit of oral hearing (See Step 6 in Ch. 2) (Appendix I).
- \_\_\_\_\_ Written comments and any oral comments received before deadline are carefully considered, including comments on costs of compliance to private persons (See Step 7 in Ch. 2).
- \_\_\_\_\_ Use or rejection of written and oral comments is documented (See Step 7 in Ch. 2).

**LEGISLATIVE AFFAIRS AGENCY REVIEW - CONFIDENTIAL**

\_\_\_\_\_ Any written notification or other communication received from Legislative Affairs Agency as a result of its confidential review under AS 24.20.105, and Department of Law advice regarding that notification or other communication, is considered (use executive session if adopting agency is a board or commission).

**ADOPTION OF REGULATION**

\_\_\_\_\_ Final version of regulation is prepared in proper final format (see Ch. 7 and sample regulation in Appendix C).

\_\_\_\_\_ Agency formally adopts the regulation by signing the adoption order; or, for a board or commission, voting to adopt during a properly noticed public meeting; certification order prepared, if appropriate (Appendices J and L). Delegation attached, if required (Appendices O and P). Designation as acting commissioner attached, if required (See Step 7 in Ch. 2).

\_\_\_\_\_ Relevant portion of minutes of board or commission meeting and staff affidavit prepared, *if* a certification order was signed (See Step 7 in Ch. 2) (Appendices M and N).

\_\_\_\_\_ Affidavit of agency record of public comment prepared (Appendix K) (not applicable to exempted boards and commissions) (See Step 7 in Ch. 2).

**TRANSMITTAL TO DEPARTMENT OF LAW**

\_\_\_\_\_ Completed project is **sent to the regulations attorney** in the Department of Law. (See Step 8 in Ch. 2). Transmittal must include

- \_\_\_\_\_ (1) Cover memo to the regulations attorney stating the Department of Law file number, noting any particular issues regarding the project, noting any urgency or requested effective date, and requesting review and approval (Appendix Q);
- \_\_\_\_\_ (2) Original and two copies of final version of regulation for Department of Law's use (including submission to the governor's office and the Administrative Regulation Review Committee);
- \_\_\_\_\_ (3) Original signed adoption order or certification order;
- \_\_\_\_\_ (4) A copy of any delegation of authority or acting commissioner designation;
- \_\_\_\_\_ (5) Relevant minutes of board or commission meeting and staff affidavit, *if* a certification order is being submitted;
- \_\_\_\_\_ (6) An original or copy of public notice;
- \_\_\_\_\_ (7) Additional regulation notice information form that was distributed with the public notice;
- \_\_\_\_\_ (8) Fiscal note, if required;
- \_\_\_\_\_ (9) Original affidavit of notice of proposed regulation adoption;
- \_\_\_\_\_ (10) Original publisher's affidavit of publication;
- \_\_\_\_\_ (11) Original affidavit of oral hearing, if one was held;
- \_\_\_\_\_ (12) Original affidavit of record of public comment (not applicable to exempted boards and commissions);
- \_\_\_\_\_ (13) Any other relevant documents (such as material adopted by reference).

**FILING AND EFFECTIVE DATES**

\_\_\_\_\_ Date Department of Law approved regulations (See Steps 9 and 10 in Ch. 2).

\_\_\_\_\_ Date regulation filed by the lieutenant governor's office, unless returned under AS 44.62.040(c), if applicable (See Step 11 in Ch. 2).

\_\_\_\_\_ Effective date of regulation (See Step 11 in Ch. 2).

\_\_\_\_\_ Summary of text of filed regulation, indicating the effective date, posted on the Alaska Online Public Notice System as soon as possible after filing of the regulation (See Step 12 in Ch. 2).

## AGENCY CHECKLIST/EMERGENCY REGULATION

### DRAFTING

- \_\_\_\_\_ Proposed emergency regulation drafted and reviewed by agency in accordance with law and this manual (See Ch. 3). Review any timeline proposed under AS 24.08.035.
- \_\_\_\_\_ Draft a factual finding of emergency/adoption order (Appendix R) or finding of emergency/certification order (See Step 3 in Ch. 3) (Appendix S).
- \_\_\_\_\_ Prepare fiscal note, if required (See Ch. 4 and 14) (Appendix F).
- \_\_\_\_\_ Draft the notice of adoption of emergency regulation; prepare additional regulation notice information. Public notice must include: (1) references to statutory authority and statutes being implemented, interpreted, or made specific; (2) statement regarding the adoption date, effective date, and expiration date of the regulation; (3) informative summary (*not* text) of regulation; (4) summary of fiscal information; (5) if regulation is to be made permanent, deadline and address for submission of written comments (if an oral hearing is held, the time, date, and place of the hearing); and (6) any information required by the relevant program statute (See Step 3 in Ch. 3 and Ch. 4) (Appendices E-1, E-2, T-1, T-2, and T-3).
- \_\_\_\_\_ Decide whether to use the Alaska Online Public Notice System to receive comments on the project.
- \_\_\_\_\_ Consult with agency attorney in Department of Law; request review of draft documents (See Step 4 in Ch. 3).

### ADOPTION OF EMERGENCY REGULATION; DELIVERY TO LT. GOVERNOR'S OFFICE

- \_\_\_\_\_ Agency formally adopts emergency regulation by signing adoption order; or, for a board or commission, voting to adopt during a properly noticed public meeting; certification order prepared, if appropriate (Appendices R and S). Delegation attached, if required (Appendices O and P). Designation as acting commissioner attached, if required (See Step 5 in Ch. 3).
- \_\_\_\_\_ Relevant portion of minutes of board or commission meeting and staff affidavit prepared (if certification order is being submitted) (See Step 5 in Ch. 3) (Appendices M and N).
- \_\_\_\_\_ Emergency regulation, finding of emergency/adoption order (or finding of emergency/certification order), fiscal note if there is one, and relevant minutes of meeting, if applicable, submitted to the lieutenant governor's office for filing (See Steps 5 and 6 in Ch. 3).

### PUBLICATION AND DISTRIBUTION OF NOTICE (See Steps 7 - 9 in Ch. 3; see also Ch. 4).

- \_\_\_\_\_ Publication in a newspaper of general circulation or trade publication within five days after filing.
- \_\_\_\_\_ Request *immediate* publication of notice and return of affidavit of publication from the newspaper or trade publication.
- \_\_\_\_\_ Furnished to head of the department in which the adopting agency is located (if the adopting agency is not a principal department).
- \_\_\_\_\_ Furnished to all persons on the interested-persons list and others thought to be interested.
- \_\_\_\_\_ Furnished to the regulations attorney in the Department of Law (if the emergency regulation will be made permanent, send copy of the regulation and request file opening) (Appendix G).
- \_\_\_\_\_ Furnished electronically to all incumbent Alaska state legislators.
- \_\_\_\_\_ Furnished electronically to the Legislative Affairs Agency (Division Legal and Research Services).
- \_\_\_\_\_ Furnished electronically, along with the regulation, to the Legislative Affairs Agency, the chairs of the appropriate legislative standing committees, the Administrative Regulation Review Committee, and the legislative council (not applicable to Board of Fisheries or Board of Game regulations) (Appendices CC and DD).
- \_\_\_\_\_ Notice and additional regulation notice information posted on the Alaska Online Public Notice System.

\_\_\_\_\_ Additional regulation notice information sent with notice to interested persons, legislators, Legislative Affairs Agency (Division of Legal and Research Services), and regulations attorney (Appendix E-1 and E-2).

\_\_\_\_\_ Following publication and distribution of public notice, prepare and submit to lieutenant governor's office an original affidavit of notice of adoption of emergency regulation (Appendix U), and an original or copy of the public notice and the additional regulation notice information.

### **PUBLISHER'S AFFIDAVIT OF PUBLICATION**

\_\_\_\_\_ Forward *original* directly to lieutenant governor's office if the regulation will *not* be made permanent (This is the last step if the regulation will not be made permanent) (See Step 9 in Ch. 3).

\_\_\_\_\_ Retain the *original* for submission to the regulations attorney in the Department of Law if the regulation will be made permanent (See Step 9 in Ch. 3).

### **PUBLIC COMMENT/QUESTIONS**

\_\_\_\_\_ Prepare for questions during comment period.

\_\_\_\_\_ Answers to questions made publicly available on the Alaska Online Public Notice System.

\_\_\_\_\_ Written comments collected (See Step 10 in Ch. 3).

\_\_\_\_\_ Oral public hearing, if any, conducted; prepare affidavit of oral hearing (See Step 10 in Ch. 3) (Appendix I).

\_\_\_\_\_ Written comments and any oral comments received before deadline are carefully considered, including comments on cost of compliance to private persons (See Step 10 in Ch. 3).

\_\_\_\_\_ Use or rejection of written and oral comments is documented (except exempt boards and commissions) (See Step 10 in Ch. 3).

### **LEGISLATIVE AFFAIRS AGENCY REVIEW - CONFIDENTIAL**

\_\_\_\_\_ Any written notification or other communication received from Legislative Affairs Agency as a result of its review under AS 24.20.105, and Department of Law advice regarding that notification or other communication, is considered (use executive session if adopting agency is a board or commission) (See Step 11 in Ch. 3).

### **FINAL PERMANENT REGULATION PREPARED**

\_\_\_\_\_ Agency decides whether changes to original emergency regulation are needed (for a board or commission, this occurs during properly noticed public meeting) (See Step 11 in Ch. 3).

\_\_\_\_\_ Final permanent regulation is prepared (See Step 11 in Ch. 3).

\_\_\_\_\_ Certification of compliance prepared and signed (See Step 11 in Ch. 3) (Appendix V).

\_\_\_\_\_ Regular adoption order or certification order prepared and signed if changes to the original emergency regulation were made in final version (See Step 11 in Ch. 3) (Appendices J and L).

\_\_\_\_\_ If changes were made in final version, relevant portions of minutes of board or commission meeting and staff affidavit prepared, *if* a certification order was signed (See Step 11 in Ch. 3) (Appendices M and N).

\_\_\_\_\_ Affidavit of agency record of public comment prepared (Appendix K) (not applicable to exempted boards and commissions).

### **TRANSMITTAL OF FINAL PERMANENT REGULATION PACKAGE TO DEPARTMENT OF LAW**

\_\_\_\_\_ Completed project is **sent to the regulations attorney** in the Department of Law (See Step 12 in Ch. 3). Transmittal must include

\_\_\_\_\_ (1) Cover memo to the regulations attorney stating the Department of Law file number, noting any particular issues regarding the project, and requesting review and approval (Appendix Q);

\_\_\_\_\_ (2) Original and two copies of the final permanent regulation for Department of Law's use (including submission to the governor's office and the Administrative Regulation Review Committee);

- \_\_\_\_\_ (3) Original signed certification of compliance;
- \_\_\_\_\_ (4) A signed, original, regular adoption order or certification order if changes were made to the original emergency regulation;
- \_\_\_\_\_ (5) A copy of any delegation of authority or acting commissioner designation;
- \_\_\_\_\_ (6) Relevant minutes of the board or commission meeting, and staff affidavit, *if* a certification order is being submitted;
- \_\_\_\_\_ (7) A full-size copy of public notice of adoption of the emergency regulation (submit original if not already submitted to the lieutenant governor's office);
- \_\_\_\_\_ (8) Additional regulation notice information form that was distributed with the public notice (submit original if not already submitted to the lieutenant governor's office);
- \_\_\_\_\_ (9) Copy of fiscal note, if required;
- \_\_\_\_\_ (10) Copy of affidavit of notice (original already submitted to the lieutenant governor's office);
- \_\_\_\_\_ (11) Original publisher's affidavit of publication;
- \_\_\_\_\_ (12) Original affidavit of oral hearing, if an oral hearing was held;
- \_\_\_\_\_ (13) Original affidavit of agency record of public comment (not applicable to exempted boards and commissions);
- \_\_\_\_\_ (14) Copy of the filed finding of emergency, emergency adoption or certification order, and the emergency regulation;
- \_\_\_\_\_ (15) Any other relevant documents (such as material adopted by reference).

**PERMANENT FILING AND EFFECTIVE DATES**

- \_\_\_\_\_ Date Department of Law approved regulation for permanent filing (See Step 12 in Ch. 3).
- \_\_\_\_\_ Date permanent regulation is filed by the lieutenant governor's office, unless returned under AS 44.62.040(c), if applicable (See Step 13 in Ch. 3).
- \_\_\_\_\_ Effective date of changes, if any, made in the permanent regulation (See Step 13 in Ch. 3).
- \_\_\_\_\_ Summary of text of filed regulation, indicating that the emergency regulation has been made permanent, posted on the Alaska Online Public Notice System as soon as possible after filing of the permanent regulations (See Step 14 in Ch. 3).

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## SAMPLE SET OF REGULATIONS

Register \_\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_ LABOR AND WORKFORCE DEV.<sup>1</sup>

8 AAC 05.020 is repealed:

<sup>2</sup>**8 AAC 05.020. Occupations prohibited to persons under age 21.** Repealed. (Eff. 10/5/80, Register 15; am 5/20/90, Register 33; repealed \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_)<sup>3</sup>

8 AAC 05.035(a) is amended to read:

(a) Except for enrollees in work training, apprenticeship, vocational education, and other programs approved by the commissioner, employment of minors [AGE] 14, [OR] 15, **16, or 17 years of age** must be confined to the periods and limitations set **out** [FORTH] in AS 23.10.340 **and employment of minors under 14 years of age must be confined to the periods and limitations set out elsewhere throughout AS 23.10.**

8 AAC 05.035(c) is repealed:

(c) Repealed \_\_\_/\_\_\_/\_\_\_\_.<sup>4</sup>

8 AAC 05.035 is amended by adding a new subsection to read:

(d) An employer must notify the department within 48 hours after employing a minor described in (a) and (b) of this section. (Eff. 10/5/60, Register 15; am 4/15/68, Register 26; am 5/20/70, Register 33; am 7/11/2010, Register 155; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_)<sup>5</sup>

**Authority:** AS 23.10.355            AS 23.10.365            AS 44.31.020<sup>6</sup>  
AS 23.10.360

Register \_\_\_\_\_, \_\_\_\_\_ 20\_\_ LABOR AND WORKFORCE DEV.<sup>1</sup>

8 AAC 05.040(3) is repealed:

(3) repealed \_\_\_/\_\_\_/\_\_\_\_.<sup>4</sup> (Eff. 10/5/70, Register 15; am 4/15/88, Register 26; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_)<sup>5</sup>

**Authority:** AS 23.10.360 AS 23.10.365<sup>6</sup>

8 AAC 05 is amended by adding a new section to read:

**8 AAC 05.043. Occupations prohibited to persons under five years of age. All**

occupations are prohibited to a minor under five years of age. (Eff. \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_)<sup>5</sup>

**Authority:** AS 23.10.360 AS 23.10.370 AS 23.10.410  
AS 23.10.365 AS 23.10.385 AS 23.10.900<sup>6</sup>  
AS 23.10.367

8 AAC 05.045(a) is amended to read:

(a) **An occupation** [OCCUPATIONS] for which a permit is required under (b) of this section is one that requires the following responsibilities:

- (1) handling of and accounting for cash; [AND]
- (2) resolving **customer** [CONSUMER] complaints; **and**
- (3) closing an establishment at the end of the business day.**

(Eff. 8/1/84, Register 134; am 2/15/2010, Register 153; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_)<sup>5</sup>

**Authority:** AS 23.10.360 AS 23.10.365<sup>6</sup>

Register \_\_\_\_\_, \_\_\_\_\_ 20\_\_ LABOR AND WORKFORCE DEV.<sup>1</sup>

8 AAC 05.050(c)(3) is amended to read:

(3) a copy of the applicant's driver's license **or photo-identification card issued**

**by this state;**

(Eff. 10/5/60, Register 15; am 4/15/88, Register 26; am 5/5/99, Register 102; am \_\_\_/\_\_\_/\_\_\_,

Register \_\_\_)<sup>5</sup>

<b>Authority:</b>	AS 23.10.360	<b><u>AS 23.10.375</u></b>	AS 23.10.400
	AS 23.10.365	AS 23.10.380	AS 23.10.410 <sup>6</sup>
	[AS 23.10.370]	AS 23.10.390	

8 AAC 05.200 is repealed and readopted to read:

**8 AAC 05.200. Occupations in roofing operations.** (a) Except as provided in (b) of this section, all occupations in roofing operations are dangerous and prohibited to minors.

(b) A minor may work in roofing operations during daylight hours only if the requirements of AS 23.10.350 have been met and the minor has the written permission of the minor's parent or legal guardian. (Eff. 10/27/99, Register 48; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)<sup>5</sup>

**Authority:** AS 23.10.350 **AS 23.10.360**<sup>6</sup>

Register \_\_\_\_\_, \_\_\_\_\_ 20\_\_ LABOR AND WORKFORCE DEV.<sup>1</sup>

**lead-in line**

The introductory language of 8 AAC 05.260(b) is amended to read:<sup>7</sup>

**introductory language**

(b) Notwithstanding (a) of this section, minors who are **16** [17] years of age may drive automobiles or trucks on public roadways in the course of their employment only if all of the following conditions are met:

...<sup>8</sup>

8 AAC 05.260(b)(7) is amended to read:

(7) the minor has successfully completed a driver education course approved by the state under **AS 28.43** [AS 28.17];

8 AAC 05.260(b)(13) is repealed:

(13) repealed \_\_\_/\_\_\_/\_\_\_;

8 AAC 05.260(b) is amended by adding a new paragraph to read:

(21) driving is only occasional and incidental to the minor's employment. (Eff. 10/27/73, Register 48; am 7/30/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)<sup>5</sup>

**Authority:** AS 23.10.350 AS 23.10.360<sup>6</sup>

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<sup>1</sup> Headers are explained in Chapter 7.

<sup>2</sup> Indentation and margins are explained in Chapter 7.

<sup>3</sup> When an entire section is repealed, no blanks need to be left in the repeal notation; the history note is retained and should contain blanks for the repeal date (which will be filled in by the lieutenant governor's office when the regulation is filed and the effective date is determined). The authority citation is omitted if an entire section is repealed.

<sup>4</sup> When only a subdivision (subsection, paragraph, etc.) of a section is repealed, the repeal notation must contain blanks for the repeal date. The blanks in the repeal notation will be filled in by the lieutenant governor's office when the regulation is filed and the effective date is determined.

<sup>5</sup> History notes, including their positioning, are explained in Chapter 8. When only a subdivision (subsection, paragraph, etc.) of a section is repealed, the history note for that section will show that change as an amendment of the section; and the authority citation is retained.

<sup>6</sup> Authority citations and how to format them are explained in Chapter 9.

<sup>7</sup> If the introductory language of a section or subsection is being amended, but none of the paragraphs in that provision are being changed, you may set out only the introductory language of the provision, using the lead-in line shown. This approach also may be used if the introductory language is being amended and some, but not all, of the paragraphs in the provision are being changed under separate lead-in lines.

<sup>8</sup> Ellipses are used to indicate omitted language when the section or subsection introductory language is being set out as described in endnote 7, above. The ellipses should appear at the left margin on the line following the amended introductory language. Ellipses must be in font style **boldface** and font size 16, in order to be visible to the public and to the publisher of the AAC.

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NOTICE OF PROPOSED CHANGES<sup>1</sup> ON [SUBSTANCE OF REGULATION]<sup>2</sup>  
IN THE REGULATIONS OF [NAME OF AGENCY]

The [name of agency] proposes to adopt regulation changes in [AAC Title] of the Alaska Administrative Code, dealing with [the general subject, expressed in a few words], including the following:

- (1) \_\_\_\_\_ is proposed to be changed as follows: [informative summary of proposed amendment or new material; describe the change from the existing regulations.]
  
- (2) \_\_\_\_\_ is proposed to be repealed. The intended effect of this repeal is to \_\_\_\_\_.

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 [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address].] [Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link.]<sup>3</sup> The comments must be received not later than [time] on [month and day, year].<sup>4</sup>

[Oral or written comments also may be submitted at a hearing to be held on [month and day, year], at [room number], [physical address, including city]. The hearing will be held from [time] to [time] and might be extended to accommodate those present before [time] who did not have an opportunity to comment.]<sup>5</sup>

You may submit written questions relevant to the proposed action to [name of agency representative by e-mail and physical address]. The questions must be received at least 10 days before the end of the public comment period. The [name of agency] will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System [and agency website].<sup>6</sup>

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact [name of agency representative at e-mail address and phone number] not later than [month and day, year], to ensure that any necessary accommodation can be provided.<sup>7</sup>

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting [name of agency representative at e-mail address and phone number].<sup>8</sup>

[A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System [or though the electronic link to the complete text].] [A copy of material proposed for adoption by reference may be viewed at the agency's office at [physical address].]<sup>9</sup>

After the public comment period ends, the [name of agency] 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.<sup>10</sup>

**Statutory authority:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>11</sup>

**Statutes being implemented, interpreted, or made specific:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>12</sup>

**Fiscal information:** [The proposed regulation changes are not expected to require an increased appropriation.] [It is estimated that the proposed regulation changes will require increased appropriations as follows: FY \_\_, \_\_\_\_\_; FY \_\_, \_\_\_\_\_; FY \_\_, \_\_\_\_\_; FY \_\_, \_\_\_\_\_.]

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature]<sup>13, 14</sup>  
[official's name and title, typed]

<sup>1</sup> Use this form of notice to publish in a newspaper of general circulation. The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use Appendix D-3.

<sup>2</sup> For describing the substance of the regulation, use just a few words that would work as the subject line of an electronic mail message.

<sup>3</sup> If the agency wishes to allow written comments to be submitted through the Alaska Online Public Notice System, provide the information here in addition to a required mailing address and e-mail address for written comments.

<sup>4</sup> Specify a deadline time, as well as a deadline date, for written comments. This is especially important if the agency is allowing comments to be submitted by e-mail, fax, or the Alaska Online Public Notice System. Set the time not later than the close of business for the day, and set the date so that it does not fall on a weekend or holiday.

<sup>5</sup> Use bracketed sentences only if the agency has decided to hold an oral public hearing.

<sup>6</sup> We recommend that the agency make the answers to questions available on the Alaska Online Public Notice System. The agency may also make the answers to questions publicly available through the agency's Internet website or other means. The agency may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

<sup>7</sup> This date should be before the written comment deadline and any oral public hearing. In choosing a date, the agency should leave sufficient time to review the request, make any required accommodation, and allow the requestor to give comments before the public comment period ends.



<sup>8</sup> Agencies must provide a complete copy of the proposed regulation, including each proposed adoption, amendment, or repeal, on the Alaska Online Public Notice System by an electronic attachment or link to the complete text.

<sup>9</sup> Use the first sentence if linking to or attaching material proposed for adoption by reference; use the second sentence if not. Unless the material is protected by copyright, or linking is not feasible, the agency must also provide a link to any material adopted by reference. Contact the Department of Law if there are concerns that material to be adopted by reference may be subject to copyright restrictions.

<sup>10</sup> The following sentence could be included at the end of this paragraph: Written comments received are public records and are subject to public inspection.

<sup>11</sup> Do not cite AS 44.62 (the Administrative Procedure Act). Cite each statute that gives the agency authority to adopt regulations. This is a separate requirement of the APA. *Do not* combine it with the statutes being implemented, interpreted, or made specific.

<sup>12</sup> Cite the statutes that the agency is implementing, interpreting, or making specific through the proposed regulation. This is a separate requirement of the APA. *Do not* combine it with the statutory authority provisions.

<sup>13</sup> The public notice need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulation adoption in the agency.

<sup>14</sup> To encourage readers to request placement on the agency's interested-persons list, consider adding a paragraph like the following after the date and signature lines of the notice:

The [name of agency or division] keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the [agency/division] notices of proposed regulation changes. To be added to or removed from the list, send a request to the [agency/division] at [insert appropriate contact address], giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

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NOTICE OF PROPOSED CHANGES<sup>1</sup> ON [SUBSTANCE OF REGULATION]<sup>2</sup>  
IN THE REGULATIONS OF [NAME OF AGENCY]

BRIEF DESCRIPTION<sup>3</sup>

The [name of agency] proposes to change regulations on [topic of regulations].

The [name of agency] proposes to adopt regulation changes in [AAC Title] of the Alaska Administrative Code, dealing with [the general subject expressed in a few words], including the following:

- (1) \_\_\_\_\_ is proposed to be changed as follows: [informative summary of proposed amendment or new material; describe the change from existing regulations.]
- (2) \_\_\_\_\_, is proposed to be repealed. The intended effect of this repeal is to \_\_\_\_\_.

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 [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address]. [Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link.]<sup>4</sup> The comments must be received not later than [time] on [month and day, year].<sup>5</sup>

[Oral or written comments also may be submitted at a hearing to be held on [month and day, year], at [room number], [physical address, including city]. The hearing will be held from [time] to [time] and might be extended to accommodate those present before [time] who did not have an opportunity to comment.]<sup>6</sup>

You may submit written questions relevant to the proposed action to [name of agency representative by e-mail and physical address]. The questions must be received at least 10 days before the end of the public comment period. The [name of agency] will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System [and agency website].<sup>7</sup>

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact [name of agency representative at e-mail address and phone number] not later than [month and day, year], to ensure that any necessary accommodations can be provided.<sup>8</sup>

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting [name of agency representative at e-mail address and phone number].<sup>9</sup>

[A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System [or though the electronic link to the complete text]. [A copy of material proposed for adoption by reference may be viewed at the agency's office at [physical address]].<sup>10</sup>

After the public comment period ends, the [name of agency] 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.<sup>11</sup>

**Statutory authority:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>12</sup>

**Statutes being implemented, interpreted, or made specific:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>13</sup>

**Fiscal information:** [The proposed regulation changes are not expected to require an increased appropriation.] [It is estimated that the proposed regulation changes will require increased appropriations as follows: FY \_\_\_\_, \_\_\_\_\_; FY \_\_\_\_, \_\_\_\_\_; FY \_\_\_\_, \_\_\_\_\_; FY \_\_\_\_, \_\_\_\_\_.]

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature] <sup>14, 15</sup>  
[official's name and title, typed]

<sup>1</sup> Use this form of notice for non-newspaper distribution. The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use Appendix D-3.

<sup>2</sup> For describing the substance of the regulation, use just a few words that would work as the subject line of any electronic mail message.

<sup>3</sup> Include a brief description in plain English that a person without a legal background is able to understand. This requirement does not apply to the Regulatory Commission of Alaska, the Board of Fisheries, or the Board of Game, AS 44.62.200(d).

<sup>4</sup> If the agency wishes to allow written comments to be submitted through the Alaska Online Public Notice System, provide the appropriate information here in addition to a required mailing address and e-mail address for written comments. Specify a deadline time, as well as a deadline date, for written comments. This is especially important if the agency is allowing comments to be submitted by e-mail, fax, or the Alaska Online Public Notice System. Set the time not later than the close of business for the day, and set the date so that it does not fall on a weekend or holiday.

<sup>5</sup> Specify a deadline time, as well as a deadline date, for written comments. This is especially important if the agency is allowing comments to be submitted by e-mail, fax, or the Alaska Online Public Notice System. Set the time not later than the close of business for the day, and set the date so that it does not fall on a weekend or holiday.

<sup>6</sup> Use bracketed sentences only if the agency has decided to hold an oral public hearing.

<sup>7</sup> We recommend that the agency make the answers to questions available on the Alaska Online Public Notice System. The agency may also make the answers to questions publicly available through the agency's Internet website or other means. The agency may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

<sup>8</sup> This date should be before the written comment deadline and any oral public hearing. In choosing a date, the agency should leave sufficient time to review the request, make any required accommodation, and allow the requestor to give comments before the public comment period ends.

<sup>9</sup> Agencies must provide a complete copy of the proposed regulation, including each proposed adoption, amendment, or repeal, on the Alaska Online Public Notice System by an electronic attachment or link to the complete text. Unless protected by copyright, or otherwise not feasible, the agency must also provide a link to any materials adopted by reference.

<sup>10</sup> Unless protected by copyright, or otherwise not feasible, the agency must also provide a link to any materials adopted by reference. Contact the Department of Law if there are concerns that material to be adopted by reference may be subject to copyright restrictions, or if it is not feasible to post the material.

<sup>11</sup> The following sentence could be included at the end of this paragraph: Written comments received are public records and are subject to public inspection.

<sup>12</sup> Do not cite AS 44.62 (the Administrative Procedure Act). Cite each statute that gives the agency authority to adopt regulations. This is a separate requirement of the APA. *Do not* combine it with the statutes being implemented, interpreted, or made specific.

<sup>13</sup> Cite the statutes that the agency is implementing, interpreting, or making specific through the proposed regulations. This is a separate requirement of the APA. *Do not* combine it with the statutory authority provisions.

<sup>14</sup> The public notice need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulations adoption in the agency.

<sup>15</sup> To encourage readers to request placement on the agency's interested-persons list, consider adding a paragraph like the following after the date and signature lines of the notice:

The [name of agency or division] keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the [agency/division] notices of proposed regulation changes. To be added to or removed from the list, send a request to the [agency/division] at [insert appropriate contact address], giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

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NOTICE OF PROPOSED CHANGES ON [SUBSTANCE OF REGULATION]  
IN THE REGULATIONS OF [NAME OF AGENCY]<sup>1</sup>

The [name of agency] proposes to adopt regulation changes in [AAC Title] of the Alaska Administrative Code, dealing with [the general subject expressed in a few words], including the following:

- (1) \_\_\_\_\_ is proposed to be changed as follows: [informative summary of proposed amendment or new material; describe the change from the existing regulations.]
- (2) \_\_\_\_\_ is proposed to be repealed. The intended effect of this repeal is to \_\_\_\_\_.

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 [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address]. [Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link.]<sup>2</sup> The comments must be received not later than [time] on [month and day, year].<sup>3</sup>

[Oral or written comments also may be submitted at a hearing to be held on [month and day, year], at [room number], [physical address, including city]. The hearing will be held from [time] to [time] and might be extended to accommodate those present before [time] who did not have an opportunity to comment.]<sup>4</sup>

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact [name of agency representative at e-mail address and phone number] not later than [month and day, year], to ensure that any necessary accommodation can be provided.<sup>5</sup>

For a copy of the proposed regulation changes, contact [name of agency or agency representative at mailing address or phone number] [, or go to [www.agency website address]].

After the public comment period ends, the [name of agency] 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.<sup>6</sup>

**Statutory authority:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>7</sup>

**Statutes being implemented, interpreted, or made specific:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>8</sup>

**Fiscal information:** [The proposed regulation changes are not expected to require an increased appropriation.] [It is estimated that the proposed regulation changes will require increased appropriations as follows: FY \_\_\_\_, \_\_\_\_\_; FY \_\_\_\_, \_\_\_\_\_; FY \_\_\_\_, \_\_\_\_\_; FY \_\_\_\_, \_\_\_\_\_.]<sup>9</sup>

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature] 10  
[official's name and title, typed]

<sup>1</sup> The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use this form to give the information required by AS 44.62.200. Use just a few words to give the reader a fair idea of the substance of the regulation.

<sup>2</sup> If the agency wishes to allow written comments to be submitted through the Alaska Online Public Notice System, provide the appropriate information here, in addition to a required mailing address and e-mail address for written comments.

<sup>3</sup> Specify a deadline time, as well as a deadline date, for written comments. This is especially important if the agency is allowing comments to be submitted by e-mail, fax, or the Alaska Online Public Notice System. Set the time not later than the close of business for the day, and set the date so it does not fall on a weekend or holiday.

<sup>4</sup> Use bracketed sentences only if the agency has decided to hold an oral public hearing.

<sup>5</sup> This date should be before the written comment deadline and any oral public hearing. In choosing a date, the agency should leave sufficient time to review the request, make any required accommodation, and allow the requestor to give comments before the public comment period ends.

<sup>6</sup> The following sentence could be included at the end of this paragraph: Written comments received are public records and are subject to public inspection.

<sup>7</sup> Do not cite AS 44.62 (the Administrative Procedure Act). Cite each statute that gives the agency authority to adopt regulations. This is a separate requirement of the APA. *Do not* combine it with the statutes being implemented, interpreted, or made specific.

<sup>8</sup> Cite the statutes that the agency is implementing, interpreting, or making specific through the proposed regulation. This is a separate requirement of the APA. *Do not* combine it with the statutory authority provisions.

<sup>9</sup> To encourage readers to request placement on the agency's interested-persons list, consider adding a paragraph like the following after the date and signature lines of the notice:

The [name of agency or division] keeps a list of individuals and organizations interested in its regulation. Those on the list will automatically be sent a copy of all of the [agency/division] notices of proposed regulation changes. To be added to or removed from the list, send a request to the [agency/division] at [insert appropriate contact address], giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

<sup>10</sup> The public notice need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulation adoption in the agency.



ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(d))<sup>1</sup>

1. Adopting agency: \_\_\_\_\_
2. General subject of regulation: \_\_\_\_\_
3. Citation of regulation (may be grouped): \_\_\_\_\_
4. Department of Law file number, if any:<sup>2</sup> \_\_\_\_\_

5. Reason for the proposed action:
  - ( ) Compliance with federal law or action (identify):<sup>3</sup> \_\_\_\_\_
  - ( ) Compliance with new or changed state statute
  - ( ) Compliance with federal or state court decision (identify): \_\_\_\_\_
  - ( ) Development of program standards
  - ( ) Other (identify): \_\_\_\_\_

6. Appropriation/Allocation:<sup>4</sup> \_\_\_\_\_

7. Estimated annual cost to comply with the proposed action to:<sup>5</sup>
  - A private person: \_\_\_\_\_
  - Another state agency: \_\_\_\_\_
  - A municipality: \_\_\_\_\_

8. Cost of implementation to the state agency and available funding (in thousands of dollars):<sup>6</sup>

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

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

Name: \_\_\_\_\_
Title: \_\_\_\_\_
Address: \_\_\_\_\_
Telephone: \_\_\_\_\_
E-mail address: \_\_\_\_\_

10. The origin of the proposed action:

\_\_\_\_\_ Staff of state agency
\_\_\_\_\_ Federal government
\_\_\_\_\_ General public
\_\_\_\_\_ Petition for regulation change7
\_\_\_\_\_ Other (identify): \_\_\_\_\_

11. Date: \_\_\_\_\_ Prepared by: \_\_\_\_\_

[signature]

Name (printed): \_\_\_\_\_

Title (printed): \_\_\_\_\_

Telephone: \_\_\_\_\_

1 This notice should be distributed at the same time as the notice of proposed regulation. The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use Appendix E-2.

2 A regulation file should be opened by this time by sending a file opening request to the regulations attorney (Appendix G).

3 If applicable, identify the law, order, decision, or other action of the federal government or federal or state court that is the basis for the regulatory action. The description need only be a sentence or two.

4 Use the appropriation/allocation information that would appear on a legislative fiscal note for the department or division. For example, Office of the Governor/Commissions/Human Rights Commission.

5 Do not leave blank. If there are no estimated annual costs, put \$0. "Private person" is not defined in the APA, but should be considered to mean an individual or a nongovernmental entity, such as a partnership or corporation. The cost to a state agency refers to costs that may be incurred by an agency other than the adopting agency. The cost information is to be an estimate of annual costs to comply with the regulatory action. For example, if a license fee is being increased by \$50 annually, the cost to a private person is \$50. Contact the Department of Law for guidance on the cost estimate.

6 This section is for costs to the implementing agency. Once again, do not leave blank. If there are no costs, please indicate a \$0 cost figure.

7 Under AS 44.62.220, a person has a right to petition for regulatory action (adoption or repeal).

ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(g))<sup>1</sup>

1. Adopting agency: \_\_\_\_\_
2. General subject of regulation: \_\_\_\_\_
3. Citation of regulation (may be grouped): \_\_\_\_\_
4. Department of Law file number, if any:<sup>2</sup> \_\_\_\_\_

5. Reason for the proposed action:

- Compliance with federal law
- Compliance with new or changed state statute
- Compliance with court order
- Development of program standards
- Other (identify): \_\_\_\_\_

6. Appropriation/Allocation:<sup>3</sup> \_\_\_\_\_

7. Cost of implementation to the state agency and available funding (in thousands of dollars):<sup>4</sup>

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

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

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 E-mail address: \_\_\_\_\_

9. The origin of the proposed action:

- \_\_\_\_\_ Staff of state agency
- \_\_\_\_\_ Federal government
- \_\_\_\_\_ General public
- \_\_\_\_\_ Petition for regulation change<sup>5</sup>
- \_\_\_\_\_ Other (identify)\_\_\_\_\_

10. Date:\_\_\_\_\_ Prepared by:\_\_\_\_\_ [signature]

Name (printed)\_\_\_\_\_

Title (printed):\_\_\_\_\_

Telephone:\_\_\_\_\_

<sup>1</sup> This appendix is for use by the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission. This notice should be distributed at the same time as the notice of proposed regulation.

<sup>2</sup> A regulation file should be opened by this time by sending a file opening request to the regulations attorney (Appendix G).

<sup>3</sup> Use the appropriation/allocation information that would appear on a legislative fiscal note for the department or division. For example, Office of the Governor/Commissions/Human Rights Commission.

<sup>4</sup> This section is for costs to the implementing agency. Do not leave blank. If there are no costs, please indicate a \$0 cost figure.

<sup>5</sup> Under AS 44.62.220, a person has a right to petition for regulatory action (adoption or repeal).

**FISCAL NOTE<sup>1</sup>**

Agency: \_\_\_\_\_

Appropriation/Allocation: <sup>2</sup> \_\_\_\_\_

General subject of regulation: \_\_\_\_\_

Citation of regulation: \_\_\_\_\_

Estimated appropriations required (in thousands of dollars) \_\_\_\_\_

**Expenditures/Revenues**

	FY __ Appropriation Requested	(Thousands of Dollars)	
<b>OPERATING EXPENDITURES</b>	<b>FY __</b>	<b>FY __</b>	<b>FY __</b>
Personal Services			
Travel			
Services			
Commodities			
Capital Outlay			
Grants & Benefits			
Miscellaneous			
<b>TOTAL OPERATING</b>			

<b>FUNDING SOURCE<sup>3</sup></b>		(Thousands of Dollars)	
1002	Federal Receipts		
1003	General Fund Match		
1004	General Fund		
1005	General Fund/Program		

<b>POSITIONS</b>			
Full-time			
Part-time			
Temporary			

<b>CHANGE IN REVENUES</b>			

Date \_\_\_\_\_

Prepared by: \_\_\_\_\_ [Signature] \_\_\_\_\_

\_\_\_\_\_ [name and title, printed]

\_\_\_\_\_ [division/department]

Phone No.: \_\_\_\_\_

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<sup>1</sup> The agency's fiscal staff should be involved in the determination of whether a fiscal note is needed and in the preparation of one.

<sup>2</sup> Appropriation/Allocation. Example: Office of the Governor/Commission/Special offices/Human Rights Commission.

<sup>3</sup> The fiscal staff should identify the fund source; the fund sources listed are the most common. The agency may add the appropriate fund source if needed. If there will be no increased appropriation, the agency does not need a fiscal note. In other words, if there is zero fiscal impact, the agency does not need to prepare a "zero" fiscal note.

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TO: [Name], Regulations Attorney<sup>1</sup>  
 Legislation and Regulations Section  
 Department of Law

DATE: [Date]

FILE NO.: NEW FILE

TEL. NO.:

FROM: John S. Smith, Regulations Contact<sup>2</sup>  
 Department of \_\_\_\_\_

SUBJECT: File-opening request for  
 new regulation project  
 regarding \_\_\_\_\_  
 (xx AAC xx.xxx. - .xxx)

We are requesting that you open a new file for a regulation project regarding [subject of project and citation for regulations]<sup>3</sup> for [affected division of agency].

[Attached is a draft of the regulation and a draft public notice, for your review.] [The regulation is an emergency regulation that was filed by the lieutenant governor's office on \_\_\_\_\_, \_\_\_\_\_. Attached are copies of the regulation, the finding of emergency and adoption order, and the public notice. This department intends to make the regulation permanent.]<sup>4</sup>

[This department wishes to alert you of an urgency related to this project as follows: \_\_\_\_\_. We hope to have the regulation in effect by [date].]<sup>5</sup>

Please assign an assistant attorney general to this project. [We have worked with Assistant Attorney General \_\_\_\_\_ on this topic.]<sup>6</sup>

Our contact person for the project is [name at phone number or e-mail address].

<sup>1</sup> This request may be made by e-mail to the Legislation and Regulations Section of the Department of Law so long as the request contains all of the information that would have been provided in this memorandum.

<sup>2</sup> In some departments, the commissioner has specified that regulation file-opening requests only be sent under that commissioner's signature. Check with the commissioner's office regarding the practice for the agency.

<sup>3</sup> The regulation citation should be as specific as possible.

<sup>4</sup> Use whichever of the bracketed material is appropriate for the regulation project.

<sup>5</sup> Use this paragraph if there is some urgency related to the regulation project or if a specific effective date is planned.

<sup>6</sup> Including the information in the bracketed sentence (if it is known) is helpful to the Department of Law in assigning the appropriate attorney.



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AFFIDAVIT OF NOTICE OF PROPOSED REGULATION AND FURNISHING OF ADDITIONAL INFORMATION

I, [name], [title], of [name of agency], being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to [regulation citation and short statement of its subject] 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 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: \_\_\_\_\_ 4

[affiant's signature] 3
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_ 4

(date)

[notary signature]
Notary Public in and for the State of Alaska

[NOTARY SEAL]

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<sup>1</sup> Fill in the blank with the name of the appropriate standing committee. Usually, only one committee in each house need be furnished the notice and proposed regulation. See Appendices CC and DD.

<sup>2</sup> Omit item (8) for Board of Fisheries or Board of Game regulations.

<sup>3</sup> This affidavit need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has actual knowledge of the publication and distribution of notice for this particular regulation project. However, it must be signed by the person named in the first line.

<sup>4</sup> The dates of the affiant's signature and of the notary statement must match.

AFFIDAVIT OF ORAL HEARING

I, [name], [title] of [name of agency], being sworn, state the following:

On [date], at [time], in Room \_\_\_\_\_, [physical address, including city],<sup>1</sup> I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to [citation and description of regulations].<sup>2</sup>

Date: \_\_\_\_\_<sup>4</sup>

\_\_\_\_\_<sup>3</sup>  
[affiant's signature]  
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_<sup>4</sup>  
(date)

\_\_\_\_\_  
[notary signature]  
Notary Public in and for the State of Alaska

[NOTARY SEAL]

<sup>1</sup> If the oral hearing included teleconferencing sites, this paragraph should be modified to reflect those additional locations, as follows:

" . . . and by teleconferencing at [physical address, including city] . . ."

<sup>2</sup> If a person other than the one who presided over the hearing is to sign this affidavit, this paragraph could be modified to say ". . . a public hearing presided over by [agency or official] was held in accordance . . ."

<sup>3</sup> This affidavit need not be signed by the agency person with regulation-adoption authority, so long as it is signed by the person who presided over the hearing. Or, if optional wording such as that mentioned in the preceding endnote is used, the affidavit should be signed by an officer or employee of the agency who was present at the hearing. Whatever wording is used, the affidavit must be signed by the person named in the first line.

<sup>4</sup> The date of the affiant's signature and of the notary statement must match.

[This page intentionally left blank.]

ORDER ADOPTING CHANGES TO REGULATIONS
OF [name of agency]

The attached \_\_\_ page[s] of regulations, dealing with \_\_\_\_, [is] [are] adopted and certified to be a correct copy of the regulation changes that the [name of agency] adopts under the authority of AS \_\_\_\_ 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.

[It is estimated that this action will require increased appropriations as shown on the attached fiscal note.] [This action is not expected to require an increased appropriation.]

[In considering public comments, the [name of agency] paid special attention to the cost to private persons of the regulatory action being taken.] [Although no public comments were received, the [name of agency] 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] [on \_\_\_\_, \_\_\_\_], as provided in AS 44.62.180.

Date: \_\_\_\_\_

[official's signature]
[official's name and title, typed]

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on \_\_\_\_, 20\_\_, at \_\_\_\_m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

[signature]
Lieutenant Governor

Effective: \_\_\_\_\_.

Register: \_\_\_\_\_.

- 
- <sup>1</sup> Use this form when a single official is authorized to take the adoption action or when the members of a board or commission will be signing the order at the meeting where the adoption action was taken.
- <sup>2</sup> In just a few words, state the basic subject of the regulations. Adding a general citation (e.g., 2 AAC 44) is advisable.
- <sup>3</sup> Do *not* cite a provision of the Administrative Procedure Act. Cite the statutory authority to adopt the regulations and the statutes the agency is implementing, interpreting, or making specific.
- <sup>4</sup> Select the appropriate bracketed sentence.
- <sup>5</sup> Select the appropriate bracketed sentence depending on whether the agency received any comments on the proposed regulations. Note: A written notification or communication from the Legislative Affairs Agency under AS 24.20.105 is *not* a public comment.
- <sup>6</sup> For Department of Environmental Conservation regulations related to control, prevention, and abatement of air, water, or land or subsurface land pollution, the Department of Law recommends the addition of the following sentence:
- The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action as required by AS 46.03.024.
- <sup>7</sup> Use the appropriate bracketed words. Unless a delayed effective date is desired (e.g., to have the effective date coincide with the beginning of the fiscal year or the calendar year), use the first set of bracketed words. See AS 44.62.180.
- <sup>8</sup> An adoption order must be signed by the agency person with regulation-adoption authority. See Step 7 in Chapter 2 for guidance regarding signatures in the case of board or commission adoption or in the case of commissioner delegation of regulation-adoption authority or designation as acting commissioner.
- <sup>9</sup> Type in the name of the lieutenant governor.
- <sup>10</sup> The blanks below this line will be filled in by the lieutenant governor's office.

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT<sup>1</sup>

I, [name], [title] for the [name of agency], being duly sworn, state the following:

[In compliance with AS 44.62.215, the [name of agency] has kept a record of its use or rejection of factual or other substantive information that was submitted in writing [and orally]<sup>2</sup> as public comment and that was relevant to the accuracy, coverage, or other aspect of the [name of agency] regulation on [subject of regulation].] [The [name of agency] did not receive any factual or other substantive information that was submitted in writing [or orally]<sup>2</sup> as public comment and that was relevant to the accuracy, coverage, or other aspect of the [name of agency] regulation on [subject of regulation].]<sup>3</sup>

Date: \_\_\_\_\_

\_\_\_\_\_ [affiant's signature]  
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_  
(date)

\_\_\_\_\_ [notary signature]  
Notary Public in and for the State of Alaska

[NOTARY SEAL]

<sup>1</sup> The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission need not include this affidavit.

<sup>2</sup> Insert "and orally" if the agency held an oral hearing on the regulations, and received one or more oral comments at that hearing.

<sup>3</sup> Subject to the instructions in endnote 2 of this appendix, use one or the other appropriate bracketed sentence, depending on whether public comments were received on the regulation. A written notification or communication from the Legislative Affairs Agency under AS 24.20.105 is not a public comment.

*If the agency received oral comments but not written comments:* (1) include the first sentence, but change "that was submitted in writing [and orally]" to "that was submitted orally"; (2) also include the second sentence, but omit [or orally].

*If the agency received written comments but not oral comments at an oral hearing:* (1) include the first sentence, but omit [and orally]; (2) also include the second sentence, but change "that was submitted in writing [or orally]" to "that was submitted orally".



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ORDER CERTIFYING THE CHANGES TO REGULATIONS OF [name of board/commission]<sup>1</sup>

The attached \_\_\_ page[s] of regulations, dealing with \_\_\_\_\_,<sup>2</sup> [is] [are] certified<sup>3</sup> to be a correct copy of the regulation changes that the [name of board/commission] adopted at its [date] meeting, under the authority of AS \_\_\_\_\_<sup>4</sup> 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.

[It is estimated that this action will require increased appropriations as shown on the attached fiscal note.] [This action is not expected to require an increased appropriation.]<sup>5</sup>

[On the record, in considering public comments, the [name of board/commission] paid special attention to the cost to private persons of the regulatory action being taken.] [Although no public comments were received, the [name of board/commission] paid special attention to the cost to private persons of the regulatory action being taken.]<sup>6</sup>

The regulation changes described in this order take effect [on the 30th day after they have been filed by the lieutenant governor] [on \_\_\_\_\_, 20\_\_\_\_],<sup>7</sup> as provided in AS 44.62.180.

Date: \_\_\_\_\_

\_\_\_\_\_ [official's signature]<sup>8</sup>  
[official's name and title, typed]

FILING CERTIFICATION

I, [name of lieutenant governor],<sup>9</sup> Lieutenant Governor for the State of Alaska, certify that<sup>10</sup> on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

\_\_\_\_\_ [signature]  
Lieutenant Governor

Effective: \_\_\_\_\_.

Register: \_\_\_\_\_.

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<sup>1</sup> Use this form for certifying the adoption action of a board or commission when the executive director, chair, or acting chair will be signing the order (also see endnote 3, below).

<sup>2</sup> In just a few words, state the basic subject of the regulations. A general citation (e.g., 12 AAC 44) is advisable too.

<sup>3</sup> If a board or commission adopts regulation changes (by motion at a properly noticed public meeting) and the members do *not* sign an adoption order at the meeting, the executive director, chair, or acting chair of the board or commission who signs this certification order is simply certifying that the attached regulation changes constitute what the board or commission adopted. Specify the date of the meeting and attach the relevant portion of the minutes or a transcript.

<sup>4</sup> Do *not* cite a provision of the Administrative Procedure Act. Cite the board's or commission's statutory authority to adopt the regulations and the statutes that entity is implementing, interpreting, or making specific.

<sup>5</sup> Select the appropriate bracketed sentence.

<sup>6</sup> Select the appropriate bracketed sentence depending on whether the board or commission received any comments on the proposed regulations. Note: A written notification or communication from the Legislative Affairs Agency under AS 24.20.105 is *not* a public comment.

<sup>7</sup> Use the appropriate bracketed words. Unless a delayed effective date is desired by the board or commission (e.g., to have the effective date coincide with the beginning of the fiscal year or the calendar year), use the first set of bracketed words. See AS 44.62.180.

<sup>8</sup> The certification order should be signed by the executive director, chair, or acting chair of the board or commission who attended the adoption meeting or otherwise has personal knowledge that the board or commission adopted the regulations. See Step 7 in Chapter 2 for guidance regarding signatures.

<sup>9</sup> Type in the name of the lieutenant governor.

<sup>10</sup> The blanks below this line will be filled in by the lieutenant governor's office.

State Board of Education and Early Development Meeting  
June 16, 2015  
Excerpt from Unapproved Minutes

Board member Lois Luck moved and member Chuck Jones seconded the following motion:

"I move to adopt 4 AAC 11.111 and 4 AAC 11.112 as written in the March 18, 2015, draft regulation."

The motion carried unanimously.

[This page intentionally left blank.]

AFFIDAVIT OF [BOARD] [COMMISSION] ACTION

I, [name]<sup>1</sup>, [title] for the [name of board or commission], being duly sworn, state the following:

The attached motion dealing with [subject of regulation dealt with at meeting] was passed by the [name of board or commission] during its [date] meeting.

Date: \_\_\_\_\_

\_\_\_\_\_ <sup>1</sup>  
[affiant's signature]  
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_  
(date)

\_\_\_\_\_   
[notary signature]  
Notary Public in and for the State of Alaska

[NOTARY SEAL]

<sup>1</sup> The affiant must be an agency staff person who attended the relevant meeting and has actual knowledge that the action was taken.

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DELEGATION OF AUTHORITY

Under as 44.17.010, the authority and responsibility for adopting regulations of the Department of \_\_\_\_\_ under the Alaska Administrative Procedure Act are delegated to [name], [position].

OR

I, Commissioner \_\_\_\_\_, elect not to delegate this authority.

Date: \_\_\_\_\_

\_\_\_\_\_ [affiant's signature]
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_

[date]

\_\_\_\_\_ [notary signature]
Notary Public in and for the State of Alaska

[NOTARY SEAL]



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LIMITED DELEGATION OF AUTHORITY FOR ADOPTING REGULATIONS<sup>1</sup>

Under as 44.17.010, the authority and responsibility for adopting regulations of the Department of \_\_\_\_\_ under the Alaska Administrative Procedure Act [, dealing with \_\_\_\_\_,] [during the period \_\_\_\_\_, 20\_\_\_\_, through \_\_\_\_\_, 20\_\_\_\_],<sup>2</sup> is delegated to [name], [position].

Date: \_\_\_\_\_

\_\_\_\_\_ [affiant's signature]<sup>1</sup>  
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_  
(date)

\_\_\_\_\_ [notary signature]  
Notary Public in and for the State of Alaska

[NOTARY SEAL]

<sup>1</sup> If a limited regulation-adoption delegation is part of other duties as acting commissioner, no special form is required. The limited delegation may be given in the written memorandum that makes the acting commissioner designation.

<sup>2</sup> Use the appropriate bracketed language to describe the desired limitation.

[This page intentionally left blank.]

TO: [Name], Regulations Attorney  
 Legislation and Regulations Section  
 Department of Law

DATE: [Date]

FILE NO.: JU20\_-----<sup>1</sup>

TEL. NO.:

FROM: John S. Smith, Regulations Contact  
 Department of \_\_\_\_\_

SUBJECT: Request for legal review of  
 regulation project regarding

\_\_\_\_\_  
 (xx AAC xx.xxx. - .xxx)

We are requesting legal review and approval of the attached final [permanent]<sup>2</sup> regulation on [topic of regulation], that was adopted [originally as an emergency regulation]<sup>3</sup> by [name of agency].

Enclosed are the following documents:

- (1) the original and two copies of the final regulation for use by the Department of Law (and submission to the governor's office and the Administrative Regulation Review Committee);
- (2) the original of the signed and dated adoption document;<sup>4</sup>
- (3) the original signed and dated certification of compliance and a copy of the [finding of emergency/adoption order] [finding of emergency/certification order];<sup>5</sup>
- (4) [a copy of the delegation of authority to adopt regulations] [a copy of the designation as acting commissioner];<sup>6</sup>
- (5) [the original] [a copy] of the public notice;
- (6) [the original] [a copy] of the additional regulation notice information form distributed with the notice;
- (7) the original of the publisher's affidavit of publication;
- (8) [the original of the affidavit of notice] [a copy of the affidavit of notice (the original was submitted directly to the lieutenant governor's office)];<sup>7</sup>
- (9) the original of the affidavit of oral hearing;<sup>8</sup>

- (10) the original of the affidavit of agency record of public comment;<sup>9</sup>
- (11) [relevant minutes] [transcript pages] from the \_\_\_\_\_, \_\_\_\_\_ meeting;<sup>10</sup>
- (12) staff affidavit for the [relevant minutes] [transcript pages];<sup>11</sup>
- (13) fiscal note;<sup>12</sup>
- (14) material adopted by reference in the regulation.<sup>13</sup>

[The regulation must be in effect by [date], for the following reason(s): \_\_\_\_\_.]<sup>14</sup>  
 [The emergency regulation expires \_\_\_\_\_, \_\_\_\_\_.]<sup>15</sup>

We have worked with Assistant Attorney General \_\_\_\_\_ on the project.

[Upon completion of your review, please forward the regulation to the lieutenant governor for filing.] [Please complete your review and forward the permanent regulation to the lieutenant governor's office for filing before the expiration date of the emergency regulation.]<sup>16</sup>

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<sup>1</sup> Department of Law file number that has been assigned to the project.

<sup>2,3</sup> Use the bracketed language if the project is an emergency regulation being made permanent.

<sup>4</sup> For a regular regulation or for an emergency regulation being made permanent with change, either an adoption order or certification order must be submitted. See Step 7 in Chapter 2, Appendices J and L for guidance as to which document is appropriate.

<sup>5</sup> This item applies only to an emergency regulation being made permanent (either with or without change). Use whichever of the bracketed terms is appropriate.

<sup>6</sup> This item applies only if the adoption document or certification of compliance was signed under a delegation of authority or a designation as acting commissioner; if so, select the appropriate bracketed wording.

<sup>7</sup> Use the first bracketed language for a regular regulation project; use the second bracketed language for an emergency regulation being made permanent.

<sup>8</sup> Include this item only if there was an oral hearing.

<sup>9</sup> Do not include this item if the regulation was adopted by an exempted board or commission.

<sup>10</sup> Include this item if a board or commission adopted the regulation and a certification order rather than an adoption order is being submitted. Use the appropriate bracketed language.

<sup>11</sup> Include this item, selecting the appropriate bracketed term, only if draft or unapproved minutes are being submitted under item (11).

- <sup>12</sup> Include this item if required by AS 44.62.195.
- <sup>13</sup> Include this item if material is adopted by reference in the regulation.
- <sup>14</sup> If there is an urgency regarding the project, or a specific effective date that is desired, include this sentence and explain the circumstances.
- <sup>15</sup> Use this sentence if the regulation is an emergency regulation being made permanent.
- <sup>16</sup> Use whichever of the bracketed sentences is appropriate.

FINDING OF EMERGENCY<sup>1</sup>

The [name of agency] finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

[STATEMENT OF FACTS]<sup>2</sup>

ADOPTION ORDER

Under the authority of AS \_\_\_\_\_,<sup>3</sup> the attached \_\_\_\_\_ pages of regulation changes are therefore adopted as an emergency regulation to take effect [immediately upon filing by the lieutenant governor] [\_\_\_\_\_, \_\_\_\_\_],<sup>4</sup> as provided in AS 44.62.180(3).

[It is estimated that this action will require increased appropriations as shown on the attached fiscal note.] [This action is not expected to require an increased appropriation.]<sup>5</sup>

Date: \_\_\_\_\_

\_\_\_\_\_ [official's signature]<sup>6</sup>  
[official's name and title, typed]

FILING CERTIFICATION

I, [name of lieutenant governor],<sup>7</sup> Lieutenant Governor for the State of Alaska, certify<sup>8</sup> that on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m., I filed the attached regulation according to the provisions of AS 44.62.

\_\_\_\_\_ [signature]  
Lieutenant Governor

Effective: \_\_\_\_\_.

Register: \_\_\_\_\_.

\_\_\_\_\_

<sup>1</sup> Use this form for an emergency regulation when a single official is authorized to take the adoption action or when the members of the board or commission that adopted the emergency regulation will be signing the order at the adoption meeting.

<sup>2</sup> See Step 3 in Chapter 3 for guidance regarding the necessary statement.

<sup>3</sup> This citation should be of each statute granting regulation-adopting authority to the agency and one or more substantive statutes that the agency is implementing, interpreting, or making specific in the action being taken. AS 44.62.250 should not be cited.

<sup>4</sup> Use whichever of the bracketed phrases is appropriate.

<sup>5</sup> Use whichever of the bracketed sentences is appropriate.

<sup>6</sup> An adoption order must be signed by the agency person with regulation-adoption authority. See Step 7 in Chapter 2 for guidance regarding signatures in the case of board or commission adoption or in the case of commissioner delegation of regulation-adoption authority or designation as acting commissioner.

<sup>7</sup> Type in the name of the lieutenant governor.

<sup>8</sup> The blanks below this line will be filled in by the lieutenant governor's office.



FINDING OF EMERGENCY<sup>1</sup>

The [name of board/commission] finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

[STATEMENT OF FACTS]<sup>2</sup>

ORDER CERTIFYING ADOPTION

I certify that the [name of board/commission], under the authority of AS \_\_\_\_\_,<sup>3</sup> adopted at its [date] meeting the attached \_\_\_\_\_ pages of regulation changes as an emergency regulation to take effect [immediately upon filing by the lieutenant governor] [\_\_\_\_\_, \_\_\_\_\_],<sup>4</sup> as provided in AS 44.62.180(3).

[It is estimated that this action will require increased appropriations as shown on the attached fiscal note.] [This action is not expected to require an increased appropriation.]<sup>5</sup>

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature]<sup>6</sup>  
[official's name and title, typed]

FILING CERTIFICATION

I, [name of lieutenant governor],<sup>7</sup> Lieutenant Governor for the State of Alaska,<sup>8</sup> certify that on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_m., I filed the attached regulation according to the provisions of AS 44.62.

\_\_\_\_\_  
[signature]  
Lieutenant Governor

Effective: \_\_\_\_\_.

Register: \_\_\_\_\_.

<sup>1</sup> Use this form for certifying the emergency adoption action of a board or commission (by motion at a properly noticed public meeting) when the executive director, chair, or acting chair of the board or commission will be signing the order rather than the members signing.

<sup>2</sup> See Step 3 in Chapter 3 for guidance regarding the necessary statement.

<sup>3</sup> This citation should be of each statute granting regulation-adoption authority to the board or commission and one or more substantive statutes that the board or commission is implementing, interpreting, or making specific in the action being taken. AS 44.62.250 should not be cited.

<sup>4</sup> Use whichever of the bracketed phrases is appropriate.

<sup>5</sup> Use whichever of the bracketed sentences is appropriate.

<sup>6</sup> The certification order must be signed by the executive director, chair, or acting chair of the board or commission who attended the adoption meeting and has actual knowledge that the board or commission adopted the regulation. See Step 7 in Chapter 2 for guidance regarding signatures.

<sup>7</sup> Type in the name of the lieutenant governor.

<sup>8</sup> The blanks below this line will be filled in by the lieutenant governor's office.

NOTICE OF ADOPTION<sup>1</sup> OF EMERGENCY REGULATION  
ON [SUBSTANCE OF REGULATION]<sup>2</sup> OF [NAME OF AGENCY]

On [month and day, year],<sup>3</sup> the [name of agency] adopted, as an emergency regulation, changes in [AAC Title] of the Alaska Administrative Code dealing with [the general subject, expressed in a few words], including the following:

- (1) \_\_\_\_\_ is proposed to be changed as follows: [informative summary of proposed amendment or new material; describe the change from the existing regulation.]
- (2) \_\_\_\_\_ is proposed to be repealed. The intended effect of this repeal is to \_\_\_\_\_.

The emergency regulation [took] [takes] effect [month and day, year],<sup>4</sup> and will expire [month and day, year].<sup>5</sup> The [name of agency] [intends] [does not intend]<sup>6</sup> to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes,<sup>7</sup> by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address].] [Comments also may be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link.]<sup>8</sup> The comments must be received not later than [time] on [month and day, year].<sup>9</sup>

[Oral or written comments also may be submitted at a hearing to be held on [month and day, year], at [room number], [physical address, including city]. The hearing will be held from [time] to [time] and might be extended to accommodate those present before [time] who do not have an opportunity to comment.]<sup>10</sup>

You may submit written questions relevant to the proposed action to [name of agency representative by e-mail and physical address]. The questions must be received at least 10 days before the end of the public comment period. The [name of agency] will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System [and agency website]. The [name of agency] may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact [name of agency representative at phone number] not later than [month and day, year], to ensure that any necessary accommodation can be provided.<sup>11</sup>

A copy of the emergency regulation is available on the Alaska Online Public Notice System [and/or through the electronic link to the complete text] and by contacting [name of agency representative at phone number and e-mail address].<sup>12</sup>

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System [or though the electronic link to the complete text]. A copy of material proposed for adoption by reference may be viewed at the agency's office at [physical address].<sup>13</sup>

The language of the permanent regulation may be different from that of the original emergency regulation and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected.<sup>14</sup>

**Statutory authority:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>15</sup>

**Statutes being implemented, interpreted, or made specific:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>16</sup>

**Fiscal information:** [The regulation is not expected to require an increased appropriation.] [It is estimated that the regulation will require increased appropriations as follows: FY \_\_\_\_\_, \_\_\_\_\_; FY \_\_\_\_\_, \_\_\_\_\_; FY \_\_\_\_\_, \_\_\_\_\_.]<sup>17</sup>

Date: \_\_\_\_\_

\_\_\_\_\_<sup>18, 19</sup>  
[official's signature]  
[official's name and title, typed]

<sup>1</sup> Use this form of notice to publish in a newspaper of general circulation. The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use Appendix T-3.

<sup>2</sup> For describing the substance of the regulation, use just a few words that would work as the subject line of an electronic mail message.

<sup>3</sup> Insert the date that the emergency adoption order was signed, or, for a board or commission, the date that the adoption vote was taken.

<sup>4</sup> Do not use "immediately." Insert the effective date given by the lieutenant governor's office (that date could be different from the adoption date or the date the emergency regulation was submitted to the lieutenant governor's office for filing).

<sup>5</sup> Insert the expiration date given by the lieutenant governor's office.

<sup>6</sup> Use the appropriate bracketed language. Use the paragraphs on comments only if the regulation is to be made permanent.

<sup>7</sup> Use this paragraph and the following paragraphs on how to submit comment only if the agency is making the emergency regulation permanent.

<sup>8</sup> If the agency wishes to allow written comments to be submitted through the Alaska Online Public Notice System, provide the information here in addition to the required mailing address or e-mail address for written comments.

<sup>9</sup> Specify a deadline time, as well as a deadline date, for written comments. This is especially important if the agency is allowing comments to be submitted by e-mail, fax, or the Alaska Online Public Notice System.

<sup>10</sup> Use these bracketed sentences only if the agency will be making the emergency regulation permanent AND has decided to hold an oral public hearing.

<sup>11</sup> Omit this paragraph if the agency will not be making the emergency regulation permanent. In choosing a date, the agency should leave sufficient time to review the request, make any required accommodation, and allow the requestor to give comments before the public comment period ends.

<sup>12</sup> Agencies must provide a complete copy of the emergency regulation, including each proposed adoption, amendment, or repeal on the Alaska Online Public Notice System, whether or not it is to be made permanent, by electronic attachment or link to the complete text.

<sup>13</sup> Use the first sentence if linking to or attaching material proposed for adoption by reference; use the second sentence if not. Unless the material is protected by copyright, or linking is not feasible, the agency must provide a link to any material adopted by reference. Contact the Department of Law if there are concerns that material to be adopted by reference may be subject to copyright restrictions.

<sup>14</sup> The following sentence could be included at the end of this paragraph: Written comments received are public records and are subject to public inspection.

<sup>15</sup> Do not cite AS 44.62 (the Administrative Procedure Act). Cite each statute that gave the agency authority to adopt the emergency regulation. This is a separate requirement of the APA. Do not combine it with the statutes being implemented, interpreted, or made specific.

<sup>16</sup> Cite the statutes that the agency is implementing, interpreting, or making specific through the emergency regulation. This is a separate requirement of the APA. Do not combine it with the statutory authority provisions.

<sup>17</sup> Use the appropriate bracketed sentence.

<sup>18</sup> The public notice need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulation adoption in the agency.

<sup>19</sup> To encourage readers to request placement on the agency's interested-persons list, consider adding a paragraph like the following after the date and signature lines of the notice:

The [name of agency or division] keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the [agency/division] notices of proposed regulation changes. To be added to or removed from the list, send a request to the [agency/division] at [insert appropriate contact address], giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

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NOTICE OF ADOPTION<sup>1</sup> OF EMERGENCY REGULATION  
ON [SUBSTANCE OF REGULATIONS]<sup>2</sup> OF [NAME OF AGENCY]

BRIEF DESCRIPTION<sup>3</sup>: The [name of agency] proposes to make permanent regulation changes made by emergency regulation on [topic of regulations].

On [month and day, year],<sup>4</sup> the [name of agency] adopted, as an emergency regulation, changes in [AAC Title] of the Alaska Administrative Code dealing with [the general subject expressed in a few words], including the following:

- (1) \_\_\_\_\_ is proposed to be changed as follows: [informative summary of proposed amendment or new material; describe the change from existing regulation.]
- (2) \_\_\_\_\_ is proposed to be repealed. The intended effect of this repeal is to \_\_\_\_\_.

The emergency regulation [took] [takes] effect [month and day, year],<sup>5</sup> and will expire [month and day, year].<sup>6</sup> The [name of agency] [intends] [does not intend]<sup>7</sup> to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes,<sup>8</sup> by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] or by electronic mail at [e-mail address].] [Comments also may be submitted through the Alaska Public Online Notice System by accessing this notice on the system and using the comment link.]<sup>9</sup> The comments must be received not later than [time] on [month and day, year].<sup>10</sup>

[Oral or written comments also may be submitted at a hearing to be held on [month and day, year], at [physical address, including city], [room number]. The hearing will be held from [time] to [time] and might be extended to accommodate those present before [time] who do not have an opportunity to comment.]<sup>11</sup>

You may submit written questions relevant to the proposed action to [name of agency representative by e-mail and physical address]. The questions must be received at least 10 days before the end of the public comment period. The [name of agency] will aggregate its response to substantially similar questions and make the questions and response available on the Alaska Online Public Notice System [and agency website]. The [name of agency] may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact [name of agency representative at phone number] not later than [month and day, year] to ensure that any necessary accommodations can be provided.<sup>12</sup>

A copy of the emergency regulation is available on the Alaska Online Public Notice System [and/or through the electronic link to the complete text] and by contacting [name of agency representative at e-mail address and phone number].<sup>13</sup>

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System [or though the electronic link to the complete text]. A copy of material proposed for adoption by reference may be viewed at the agency's office at [physical address].<sup>14</sup>

The language of the permanent regulations may be different from that of the original emergency regulation and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected.<sup>15</sup>

**Statutory authority:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>16</sup>

**Statutes being implemented, interpreted, or made specific:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>17</sup>

**Fiscal information:** [The regulations are not expected to require an increased appropriation.] [It is estimated that the regulations will require increased appropriations as follows: FY \_\_\_\_\_, \_\_\_\_\_; FY \_\_\_\_\_, \_\_\_\_\_; FY \_\_\_\_\_, \_\_\_\_\_.]<sup>18</sup>

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature]<sup>19, 20</sup>  
[official's name and title, typed]

<sup>1</sup> Use this form for non-newspaper notice. The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use Appendix T-3.

<sup>2</sup> For describing the substance of the regulation, use just a few words that would work as the subject line of an electronic mail message.

<sup>3</sup> Include a brief description in plain English that a person without a legal background is able to understand. This does not apply to the Regulatory Commission of Alaska, the Board of Fisheries, or the Board of Game, AS 44.62.200(d).

<sup>4</sup> Insert the date that the emergency adoption order was signed, or, for a board or commission, the date that the adoption vote was taken.

<sup>5</sup> Do not use "immediately." Insert the effective date given by the lieutenant governor's office (that date could be different from the adoption date or the date the emergency regulation was submitted to the lieutenant governor's office for filing).

<sup>6</sup> Insert the expiration date given by the lieutenant governor's office.



<sup>7</sup> Use the appropriate bracketed language. Use the paragraphs on comments only if the regulation is to be made permanent.

<sup>8</sup> Use the appropriate bracketed language. Use the paragraphs on comments only if the regulation is to be made permanent.

<sup>9</sup> If the agency wishes to allow written comments to be submitted through the Alaska Online Public Notice System, provide the information here in addition to the required mailing address or e-mail for written comments.

<sup>10</sup> Specify a deadline time, as well as a deadline date, for written comments. This is especially important if the agency is allowing comments to be submitted by e-mail, fax, or the Alaska Online Public Notice System.

<sup>11</sup> Use these bracketed sentences only if the agency will be making the emergency regulation permanent *and* has decided to hold an oral public hearing.

<sup>12</sup> Omit this paragraph if the agency will not be making the emergency regulation permanent. In choosing a date, the agency should leave sufficient time to review the request, make any required accommodation, and allow the requestor to give comments before the public comment period ends.

<sup>13</sup> Agencies must provide a complete copy of the emergency regulation, including each proposed adoption, amendment, or repeal on the Alaska Online Public Notice System, whether or not it is to be made permanent, by electronic attachment or link to the complete text.

<sup>14</sup> Use the first sentence if linking to or attaching material proposed for adoption by reference; use the second sentence if not. Unless the material is protected by copyright, or linking is not feasible, the agency must provide a link to any material adopted by reference. Contact the Department of Law if there are concerns that material to be adopted by reference may be subject to copyright restrictions.

<sup>15</sup> The following sentence could be included at the end of this paragraph: Written comments received are public records and are subject to public inspection.

<sup>16</sup> Do not cite AS 44.62 (the Administrative Procedure Act). Cite each statute that gave the agency authority to adopt the emergency regulation. This is a separate requirement of the APA. Do not combine it with the statutes being implemented, interpreted, or made specific.

<sup>17</sup> Cite the statutes that the agency is implementing, interpreting, or making specific through the emergency regulation. This is a separate requirement of the APA. Do not combine it with the statutory authority provisions.

<sup>18</sup> Use the appropriate bracketed sentence.

<sup>19</sup> The public notice need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulation adoption in the agency.

<sup>20</sup> To encourage readers to request placement on the agency's interested-persons list, consider adding a paragraph like the following after the date and signature lines of the notice:

The [name of agency or division] keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the [agency/division] notices of proposed regulation changes. To be added to or removed from the list, send a request to the [agency/division] at [insert appropriate contact address], giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

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NOTICE OF ADOPTION OF EMERGENCY REGULATION  
ON [SUBSTANCE OF REGULATION] OF [NAME OF AGENCY]<sup>1</sup>

On [month and day, year],<sup>2</sup> the [name of agency] adopted, as an emergency regulation, changes in [AAC Title] of the Alaska Administrative Code dealing with [the general subject expressed in a few words], including the following:

- (1) \_\_\_\_\_ is proposed to be changed as follows: [informative summary of proposed amendment or new material; describe the change from existing regulation.]
- (2) \_\_\_\_\_ is proposed to be repealed. The intended effect of this repeal is to \_\_\_\_\_.

The emergency regulation [took] [takes] effect [month and day, year],<sup>3</sup> and will expire [month and day, year].<sup>4</sup> The [name of agency] [intends] [does not intend]<sup>5</sup> to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes,<sup>6</sup> by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address]. [Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link.]<sup>7</sup> The comments must be received not later than [time] on [month and day, year].<sup>8</sup>

[Oral or written comments also may be submitted at a hearing to be held on [month and day, year], at [physical address, including city], [room number]. The hearing will be held from [time] to [time] and might be extended to accommodate those present before [time] who do not have an opportunity to comment.]<sup>9</sup>

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact [name of agency representative at phone number] not later than [month and day, year] to ensure that any necessary accommodation can be provided.<sup>10</sup>

A copy of the emergency regulation is available on [the Alaska Online Public Notice System and/or through the electronic link to the complete text] and by contacting [name of agency representative at e-mail address and phone number].

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System [or through the electronic link to the complete text]. A copy of material proposed for adoption by reference may be viewed at the agency's office at [physical address].

The language of the permanent regulation may be different from that of the original emergency regulation, and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected.

**Statutory authority:** AS \_\_\_\_\_; AS \_\_\_\_\_; AS \_\_\_\_\_<sup>12</sup>

**Statutes being implemented, interpreted, or made specific:** AS \_\_\_\_\_; AS \_\_\_\_\_;  
AS \_\_\_\_\_<sup>13</sup>

**Fiscal information:** [The regulations are not expected to require an increased appropriation.] [It is estimated that the regulations will require increased appropriations as follows: FY \_\_\_\_\_, \_\_\_\_\_; FY \_\_\_\_\_, \_\_\_\_\_; FY \_\_\_\_\_, \_\_\_\_\_.]<sup>14</sup>

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature] <sup>15, 16</sup>  
[official's name and title, typed]

<sup>1</sup> The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use this form.

<sup>2</sup> Insert the date that the emergency adoption order was signed, or, for a board or commission, the date that the adoption vote was taken.

<sup>3</sup> Do not use "immediately." Insert the effective date given by the lieutenant governor's office (that date could be different from the adoption date or the date the emergency regulations were submitted to the lieutenant governor's office for filing).

<sup>4</sup> Insert the expiration date given by the lieutenant governor's office.

<sup>5</sup> Use the appropriate bracketed language. Use the paragraphs on how to comment only if the regulation is to be made permanent.

<sup>6</sup> Use this paragraph and the following paragraphs on how to submit comment only if the agency is making the emergency regulation permanent.

<sup>7</sup> If the agency wishes to allow written comments to be submitted through the Alaska Online Public Notice System, provide the information here in addition to the required mailing address or e-mail address for written comments.

<sup>8</sup> Specify a deadline time, as well as a deadline date, for written comments. This is especially important if the agency is allowing comments to be submitted by e-mail, fax, or the Alaska Online Public Notice System.

<sup>9</sup> Use these bracketed sentences only if the agency will be making the emergency regulation permanent *and* has decided to hold an oral public hearing.

<sup>10</sup> Use this paragraph only if the agency will be making the emergency regulation permanent. In choosing a date, the agency should leave sufficient time to review the request, make any required accommodation, and allow the requestor to give comments before the public comment period ends.

<sup>11</sup> Use the first sentence if linking to or attaching material proposed for adoption by reference; use the second sentence if not. Unless the material is protected by copyright, or linking is not feasible, the agency must provide a link to any material adopted by reference. Contact the Department of Law if there are concerns that material to be adopted by reference may be subject to copyright restrictions.

<sup>12</sup> Do not cite AS 44.62 (the Administrative Procedure Act). Cite each statute that gave the agency authority to adopt the emergency regulations. This is a separate requirement of the APA. Do not combine it with the statutes being implemented, interpreted, or made specific.

<sup>13</sup> Cite the statutes that the agency is implementing, interpreting, or making specific through the emergency regulation. This is a separate requirement of the APA. Do not combine it with the statutory authority provisions.

<sup>14</sup> Use the appropriate bracketed sentence.

<sup>15</sup> The public notice need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulation adoption in the agency.

<sup>16</sup> To encourage readers to request placement on the agency's interested-persons list, consider adding a paragraph like the following after the date and signature lines of the notice:

The [name of agency or division] keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the [agency/division] notices of proposed regulation changes. To be added to or removed from the list, send a request to the [agency/division] at [insert appropriate contact address], giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

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AFFIDAVIT OF NOTICE OF ADOPTION OF EMERGENCY REGULATION AND FURNISHING OF ADDITIONAL INFORMATION

I, [name], [title], of [agency], being sworn, state the following:

As required by AS 44.62.250, notice of the [date]1 emergency changes to [regulation citation and short statement of subject] has been given under AS 44.62.190(a) 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 regulation;
(5) electronically transmitted 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 regulations, to the Legislative Affairs Agency, the chair of the \_\_\_\_\_ Committee2 of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.3

As required by AS 44.62.190, additional regulation notice information regarding the [date]4 emergency changes to the regulation described above has been furnished to interested persons and furnished to 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: \_\_\_\_\_

[affiant's signature]5
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_6

[date]

[notary signature]
Notary Public in and for the State of Alaska

[NOTARY SEAL]

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<sup>1</sup> The relevant date is the effective date of the emergency regulation, as supplied by the lieutenant governor's office.

<sup>2</sup> Fill in the blank with the name of the appropriate standing committee. Usually, only one committee in each house need be furnished the notice and regulation. See Appendices CC and DD.

<sup>3</sup> Omit item (8) for Board of Fisheries or Board of Game regulations.

<sup>4</sup> Same information as in endnote 1, above.

<sup>5</sup> This affidavit need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has actual knowledge of the publication and distribution of notice for this particular regulation project. However, it *must* be signed by the person named in the first line.

<sup>6</sup> The date of the affiant's signature and of the notary statement must match.



CERTIFICATION OF COMPLIANCE<sup>1</sup>

I, [name and title], certify that, as required by AS 44.62.260 in order to make the attached \_\_\_\_\_ pages of regulations permanent, as of this date a legal opinion of the Department of Law has been requested under AS 44.62.060, a notice conforming to AS 44.62.200 was issued in compliance with AS 44.62.190, and an opportunity for public comment was provided under AS 44.62.210, for the following emergency regulation:

[citation and short statement of subject]<sup>2</sup>

This regulation originally was filed as an emergency regulation on \_\_\_\_\_, 20 \_\_\_\_.

[If not included in the emergency adoption or certification order, or if circumstances have changed, include a statement regarding appropriations, as in Appendices J, L, R, and S.]

[In considering the public comments, the [name of agency] paid special attention to the cost to private persons of the regulatory action being taken.] [Although no public comments were received, the [name of agency] paid special attention to the cost to private persons of the regulatory action being taken.]<sup>3,4</sup>

Date: \_\_\_\_\_

\_\_\_\_\_ <sup>5</sup>  
 [official's signature]  
 [official's name and title, typed]

FILING CERTIFICATION

I, [name of lieutenant governor],<sup>6</sup> Lieutenant Governor for the State of Alaska,<sup>7</sup> certify that on \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_m., I filed the attached regulation according to the provisions of AS 44.62.

\_\_\_\_\_ <sup>5</sup>  
 [signature]  
 Lieutenant Governor

Register: \_\_\_\_\_.

---

<sup>1</sup> This form is to be used only to make an emergency regulation permanent. If the final regulation is different from the original emergency regulation, an adoption order or a certification order, in addition to this form, is necessary. See Step 11 in Chapter 3.

<sup>2</sup> Give identifying information, including the citation of the regulation and a concise statement of the basic subject matter. Often the section heading or chapter heading will suffice. Indicate repeals if appropriate.

<sup>3</sup> Select the appropriate bracketed sentence depending on whether the agency received any comments on the emergency regulation. Note: A written notification or communication from the Legislative Affairs Agency under AS 24.20.105 is not a public comment.

<sup>4</sup> For Department of Environmental Conservation regulations related to control, prevention, and abatement of air, water, or land or subsurface land pollution, the Department of Law recommends the addition of the following sentence:

The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

<sup>5</sup> This certification should be signed by the agency person with regulation-adoption authority. In the case of a board or commission regulation, consult with the Department of Law regarding signature requirements.

<sup>6</sup> Please type in the name of lieutenant governor.

<sup>7</sup> The blanks below this line will be filled in by the lieutenant governor's office.

NOTICE OF AMENDED VERSION OF MATERIAL  
PREVIOUSLY ADOPTED BY REFERENCE

As required by AS 44.62.245, the [name of agency] gives notice that the following amended version[s] of material adopted by reference in \_\_\_\_\_,<sup>1</sup> under authority of \_\_\_\_\_,<sup>2</sup> and dealing with \_\_\_\_\_,<sup>3</sup> is in effect:

[Identify the amended version of the material adopted by reference by title, edition number (if appropriate), and date]

A copy of the above material is available for public review at [address of state agency where material is available, and addresses of other review sites as applicable] and on the Alaska Online Public Notice System.<sup>4</sup>

[Additionally, the above material may be obtained [for a fee] by contacting [name and address of publisher or issuer].]<sup>5</sup>

The effective date for the amended version[s] of the material described above is \_\_\_\_\_.<sup>6</sup>

For more information, please contact [name of agency representative, address, and phone number].

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature]<sup>7</sup>  
[official's name and title, typed]

<sup>1</sup> Cite the regulation that contains the pertinent adoption by reference.

<sup>2</sup> Unless the material adopted by reference is a regulation of another Alaska state agency, cite the statute that explicitly authorizes the agency to adopt by reference future amendments of the material.

<sup>3</sup> Briefly state the basic subject of the pertinent regulation.

<sup>4</sup> Posting on the Alaska Online Public Notice System is not required but may be a convenient way to make the material publicly available. However, posting should not be used if the material is subject to copyright. Contact the Department of Law if there are questions about whether material is subject to copyright restrictions.

<sup>5</sup> Use this bracketed sentence if applicable.

<sup>6</sup> Consult the Legislation and Regulations Section of the Department of Law to determine an appropriate effective date.

<sup>7</sup> The notice need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulation adoption in that agency.

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AFFIDAVIT OF NOTICE OF AMENDED VERSION  
OF MATERIAL PREVIOUSLY ADOPTED BY REFERENCE

I, [name], [title], of [name of agency], being sworn, state the following:

As required by AS 44.62.245, notice of the amended version of material previously adopted by reference in [citation of regulation], dealing with [brief description of regulation], has been given by being

- (1) posted on the Alaska Online Public Notice System;
- (2) published in a newspaper of general circulation or trade or industry publication or in a regularly published agency newsletter or similar printed publication;
- (3) furnished to interested persons;
- (4) furnished to the regulations attorney in the Department of Law; and
- (5) furnished to the members of the Administrative Regulation Review Committee.

As required by AS 44.62.175(a)(8) and (b) and 44.62.245(b), a copy of the notice has been posted on the Alaska Online Public Notice System.

Date: \_\_\_\_\_<sup>2</sup>

\_\_\_\_\_<sup>1</sup>  
[affiant's signature]  
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on \_\_\_\_\_<sup>2</sup>

(date)

\_\_\_\_\_  
[notary signature]  
Notary Public in and for the State of Alaska

[NOTARY SEAL]

<sup>1</sup> This affidavit need not be signed by the agency person with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has actual knowledge of the publication and distribution of notice for this particular amended version of the material. However, this affidavit *must* be signed by the person named in the first line.

<sup>2</sup> The date of the affiant's signature and of the notary statement must match.

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**AGENCY ATTORNEY FINAL REVIEW CHECKLIST  
(FOR REGULAR REGULATION)**

**DOCUMENTS IN FINAL REGULATION PACKAGE**

- \_\_\_ Clean (unmarked) original and two copies of the regulation.
- \_\_\_ Original adoption order (Appendix J) or certification order (Appendix L).
- \_\_\_ Copy of any delegation of authority (Appendices O and P) or "acting commissioner" designation.
- \_\_\_ Excerpt of board/commission minutes (Appendix M) and staff affidavit (Appendix N), if appropriate.
- \_\_\_ Copy of public notices (for most agencies, Appendices D-1 and D-2) (Appendix D-3 for Regulatory Commission of Alaska, Board of Fisheries, Board of Game, or Alaska Oil and Gas Conservation Commission).
- \_\_\_ Additional regulation notice information form, as distributed with the public notice (Appendix E-1 or E-2).
- \_\_\_ Original signed and notarized agency affidavits:
  - \_\_\_ affidavit of notice (Appendix H);
  - \_\_\_ affidavit of oral hearing, if appropriate (Appendix I);
  - \_\_\_ affidavit of agency record of public comment (not applicable to Regulatory Commission of Alaska, Board of Fisheries, Board of Game, or Alaska Oil and Gas Conservation Commission) (Appendix K).
- \_\_\_ Original publisher's affidavit.
- \_\_\_ Original fiscal note, if appropriate (Appendix F).
- \_\_\_ Copy of any material adopted by reference.

**PUBLIC NOTICE**

- \_\_\_ Subject matter covers everything included in the final regulation.
- \_\_\_ Adequately describes changes that were made in the regulation.
- \_\_\_ Includes the brief description of regulation changes if required by AS 44.62.200(d).
- \_\_\_ Allowed sufficient time frame for written comments and for any oral hearing.
- \_\_\_ Alaska Online Public Notice attached or linked to material proposed for adoption by reference, if feasible and not prohibited by copyright (not applicable to Regulatory Commission of Alaska, Board of Fisheries, Board of Game, or Alaska Oil and Gas Conservation Commission).
- \_\_\_ Correctly cites statutory authority and statutes being implemented, interpreted, or made specific.
- \_\_\_ Contains statement of fiscal impact.
- \_\_\_ Published in at least one newspaper of general circulation.
- \_\_\_ Properly distributed (follow Affidavit of Notice list) (Appendix H).
- \_\_\_ Meets all requirements of AS 44.62.190(a) and (b) and 44.62.200(a).
- \_\_\_ AS 44.62.190(d) or (g) additional regulation notice information was distributed with the public notice.

**PROCEDURE**

- \_\_\_ Any public meetings were properly noticed.
- \_\_\_ Agency considered written comments and any oral comments.
- \_\_\_ Agency properly responded to Department of Law legal advice.
- \_\_\_ Agency adopted regulation within any timeline proposed under AS 24.08.035.

**FOR AN ADOPTION ORDER**

- \_\_\_ Signed by person with current regulation-adoption authority or signed at adoption meeting by all board or commission members who voted.
- \_\_\_ Signed at least 30 days after notice was first published.
- \_\_\_ Refers to correct number of pages of the regulation.

**FOR A CERTIFICATION ORDER FOR BOARD OR COMMISSION**

- \_\_\_ Signed by executive director, chair, or acting chair of board or commission.
- \_\_\_ Date of board or commission meeting stated in order was at least 30 days after notice was first published.
- \_\_\_ Refers to correct number of pages of the regulation.

**MECHANICS**

- \_\_\_ Correct numbering system used with no duplication.
- \_\_\_ Amendments amend current version of regulation (check AAC and unpublished filed regulations).
- \_\_\_ Adoption by reference contains all necessary elements.
- \_\_\_ In-text citations are accurate.
- \_\_\_ History notes are present and accurate (check AAC and unpublished filed regulations).
- \_\_\_ Authority citation is present and accurate (check it).
- \_\_\_ Lead-in lines are present and accurate.
- \_\_\_ Page headings are complete and correct.
- \_\_\_ Pages are numbered.

**SUBSTANCE OF REGULATION**

- \_\_\_ Within scope of regulation-adoption authority (check AS and prior AG's opinions).
- \_\_\_ Consistent with statutes (check cases and prior AG's opinions).
- \_\_\_ Reasonably necessary to carry out purpose of statute.
- \_\_\_ Valid under state and federal constitutions.

**LANGUAGE, STYLE, AND DRAFTING**

- \_\_\_ Understandable by public in general and especially by target audience.
- \_\_\_ Plain English is used.
- \_\_\_ Terminology and result are consistent with other regulations (check AAC and other regulations in project).
- \_\_\_ Logically developed and organized.
- \_\_\_ Only necessary and helpful definitions are included.
- \_\_\_ Agency's intended effect is clear; regulation is not vague or ambiguous.

**ITEMS FOR SUBMITTAL TO LEGISLATION/REGULATIONS SECTION**

- \_\_\_ Agency's final regulation package.
- \_\_\_ Review memorandum from agency attorney to regulations attorney.
- \_\_\_ Any recommended corrections marked on a separate copy of the regulation.
- \_\_\_ The blue regulation project file.



**AGENCY ATTORNEY REVIEW CHECKLIST  
(FOR EMERGENCY REGULATION)**

**BEFORE ADOPTION, IF ASSISTANCE IS REQUESTED BY THE AGENCY**

- \_\_\_ Review agency's draft documents (See Drafting in agency checklist; Appendix B).
- \_\_\_ Review documents for legal sufficiency. Are the facts supporting the emergency regulation clearly stated in the finding of emergency?
- \_\_\_ Remind the agency of need to publish notice of adoption in a newspaper or trade publication within five days after filing.
- \_\_\_ Remind the agency to request that the regulations attorney open a regulation project file if the emergency regulation is to be made permanent.

**AFTER FILING, IF EMERGENCY REGULATION IS TO BE MADE PERMANENT**

**DOCUMENTS IN FINAL REGULATION PACKAGE**

- \_\_\_ Original certification of compliance (Appendix V).
- \_\_\_ Original adoption order (Appendix J) or certification order (Appendix L) (if changes were made to the emergency regulation).
- \_\_\_ Copy of any delegation of authority (Appendices O and P) or acting commissioner designation.
- \_\_\_ Excerpt of board/commission minutes (Appendix M) and staff affidavit (Appendix N), if appropriate.
- \_\_\_ Clean (unmarked) original, and one copy, of the final permanent regulation.
- \_\_\_ Copy of public notices (Appendices T-1 and T-2) (Appendix T-3 for Regulatory Commission of Alaska, Board of Fisheries, Board of Game, or Alaska Oil and Gas Conservation Commission).
- \_\_\_ Additional regulation notice information form, as distributed with the public notice (Appendix E-1 or E-2).
- \_\_\_ Copy of fiscal note, if appropriate (Appendix F).
- \_\_\_ Agency affidavits, signed by affiant, and notarized:
  - \_\_\_ copy of affidavit of notice (Appendix U) (original already submitted to Lt. governor's office);
  - \_\_\_ original affidavit of oral hearing, if one was held (Appendix I);
  - \_\_\_ original affidavit of agency record of public comment (not applicable to Regulatory Commission of Alaska, Board of Fisheries, Board of Game, or Alaska Oil and Gas Conservation Commission) (Appendix K).
- \_\_\_ Original publisher's affidavit.
- \_\_\_ Copy of filed finding of emergency, emergency adoption or certification order, and emergency regulation.
- \_\_\_ Copy of any material adopted by reference.

**PUBLIC NOTICE**

- \_\_\_ Subject matter covers everything included in final permanent regulation.
- \_\_\_ Adequately describes changes that were made in the emergency regulation and any changes made to the emergency regulation when making it permanent.
- \_\_\_ Includes the brief description of regulation changes if required by AS 44.62.200(d).
- \_\_\_ Allowed sufficient time frame for written comments and for any oral hearing.
- \_\_\_ Correctly cites statutory authority.
- \_\_\_ Contains statement of fiscal impact.
- \_\_\_ Published in at least one newspaper at least once within 10 days after filing.
- \_\_\_ Properly distributed within 10 days after filing (follow Affidavit of Notice list).
- \_\_\_ Meets all requirements of AS 44.62.190(a) and (b) and 44.62.200(a).
- \_\_\_ AS 44.62.190(d) or (g) additional regulation notice information was distributed with the public notice.

**PROCEDURE**

- \_\_\_ All related public meetings were properly noticed.
- \_\_\_ Agency considered written comments and any oral comments.
- \_\_\_ Agency properly responded to Department of Law legal advice.

**FOR A CERTIFICATION OF COMPLIANCE ORDER (APPENDIX V)**

- \_\_\_ Signed by agency person with regulations-adoption authority.
- \_\_\_ Refers to correct number of pages of the regulation.

**FOR AN ADOPTION ORDER, IF CHANGES**

- \_\_\_ Signed by person with regulation-adoption authority, or signed at meeting by all board or commission members who voted.
- \_\_\_ Signed at least 30 days after notice was first published.
- \_\_\_ Refers to correct number of pages of the regulation.

**FOR A CERTIFICATION ORDER FOR BOARD OR COMMISSION, IF CHANGES**

- \_\_\_ Signed by executive director, chair, or acting chair of board or commission.
- \_\_\_ Date of board or commission meeting stated in order was at least 30 days after notice was first published.
- \_\_\_ Refers to correct number of pages of the regulation.

**MECHANICS**

- \_\_\_ Correct numbering system used with no duplication.
- \_\_\_ Amendments amend current version of right section (check AAC and unpublished filed regulation).
- \_\_\_ Adoptions-by-reference contain all necessary elements.
- \_\_\_ In-text citations are accurate.
- \_\_\_ History notes are present and accurate (check AAC and unpublished filed regulation).
- \_\_\_ Authority citation is present and accurate (check it).
- \_\_\_ Book proof against the emergency regulation as filed and verify that any new changes to the emergency regulation are shown in correct format.
- \_\_\_ Lead-in lines are present and accurate.
- \_\_\_ Page headings are complete and correct.
- \_\_\_ Pages are numbered.

**SUBSTANCE OF REGULATION**

- \_\_\_ Within scope of regulation-adoption authority (check AS and prior AG's opinions).
- \_\_\_ Consistent with statutes (check AS and prior AG's opinions).
- \_\_\_ Reasonably necessary to carry out purpose of statute.
- \_\_\_ Valid under state and federal constitutions.

**LANGUAGE, STYLE, AND DRAFTING**

- \_\_\_ Understandable by public in general and especially by target audience.
- \_\_\_ Plain English is used.
- \_\_\_ Terminology and result are consistent with other regulations (check AAC and other regulations in project).
- \_\_\_ Logically developed and organized.
- \_\_\_ Only necessary and helpful definitions are included.
- \_\_\_ Agency's intended effect is clear; the regulation is not vague or ambiguous.

**ITEMS FOR SUBMITTAL TO LEGISLATION/REGULATIONS SECTION**

- \_\_\_ Agency's final permanent regulation package.
- \_\_\_ Review memorandum from agency attorney to regulations attorney.
- \_\_\_ Any recommended corrections marked on a separate copy of the regulation.
- \_\_\_ The pink emergency regulation project file.

ORDER CHANGING REGULATION OF [NAME OF AGENCY]<sup>1</sup>

The attached \_\_\_ page[s] of the regulation, dealing with \_\_\_\_\_,<sup>2</sup> [is] [are] adopted and certified to be a correct copy of the regulation changes that the [name of agency] adopts under the authority of AS \_\_\_\_\_.<sup>3</sup>

The attached regulation is exempt from the adoption procedures of the Administrative Procedure Act and takes effect [immediately upon filing by the lieutenant governor] [\_\_\_\_\_, \_\_\_\_\_].<sup>4</sup>

Date: \_\_\_\_\_

\_\_\_\_\_ [official's signature]<sup>5</sup>  
[official's name and title, typed]

FILING CERTIFICATION

I, [name of lieutenant governor],<sup>6</sup> Lieutenant Governor for the State of Alaska, certify that<sup>7</sup> on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_m., I filed the attached regulation.

\_\_\_\_\_ [signature]  
Lieutenant Governor

Effective: \_\_\_\_\_.

Register: \_\_\_\_\_.

<sup>1</sup> Use this form when a single official is authorized to take the adoption action or when the members of a board or commission will be signing the order at the meeting where the adoption action was taken.

<sup>2</sup> In just a few words state the basic subject of the regulations. Adding a general citation is advisable (e.g., AS 47.45).

<sup>3</sup> Cite the statutory authority to adopt the regulations and the statutes being implemented, interpreted, or made specific.

<sup>4</sup> Select the wording that accurately states the date that the regulation will take effect under the relevant program statutes.

<sup>5</sup> Generally, the adoption order must be signed by the agency person with regulation-adoption authority. See Step 7 in Chapter 2 for guidance regarding signatures in the case of board or commission adoption or in the case of commissioner delegation of regulation-adoption authority or designation as acting commissioner.

<sup>6</sup> Type in the name of the lieutenant governor.

<sup>7</sup> The blanks below this line will be filled in by the lieutenant governor's office.

ORDER CERTIFYING THE CHANGES TO REGULATION  
OF [NAME OF BOARD/COMMISSION]<sup>1</sup>

The attached \_\_\_\_ page[s] of the regulation, dealing with \_\_\_\_\_,<sup>2</sup> [is] [are] certified to be a correct copy of the regulation changes that the [name of board/commission] adopted at its [date]<sup>3</sup> meeting under the authority of AS \_\_\_\_\_.<sup>4</sup>

The attached regulation is exempt from the adoption procedures of the Administrative Procedure Act and take effect [immediately upon filing by the lieutenant governor] [\_\_\_\_\_, \_\_\_\_\_].<sup>5</sup>

Date: \_\_\_\_\_

\_\_\_\_\_  
[official's signature] <sup>6</sup>  
[official's name and title, typed]

FILING CERTIFICATION

I, [name of lieutenant governor],<sup>7</sup> Lieutenant Governor for the State of Alaska, certify that<sup>8</sup> on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_m., I filed the attached regulation.

\_\_\_\_\_  
[signature]  
Lieutenant Governor

Effective: \_\_\_\_\_.

Register: \_\_\_\_\_.

<sup>1</sup> Use this form for certifying the adoption action of a board or commission when the executive director, the chair, or acting chair, will be signing the order.

<sup>2</sup> In just a few words state the basic subject of the regulation. A general citation is advisable too (e.g., AS 47.45).

<sup>3</sup> Specify the date of the adoption meeting and attach the relevant portion of the minutes or a transcript.

<sup>4</sup> Cite the statutory authority to adopt the regulation and the statutes being implemented, interpreted, or made specific.

<sup>5</sup> Select the wording that accurately states the date that the regulation will take effect under the relevant program statutes.

<sup>6</sup> Generally, the certification order must be signed by the executive director, chair, or acting chair of the board or commission who attended the adoption meeting and has personal knowledge that the board or commission adopted the regulations.

<sup>7</sup> Type in the name of the lieutenant governor.

<sup>8</sup> The blanks below this line will be filled in by the lieutenant governor's office.

ALASKA STATE LEGISLATURE  
UNIFORM RULE 20(a)  
(As Amended as of 2012)

**Rule 20. Standing Committees.** (a) Each house has the following standing committees with the jurisdiction indicated:

Education (the programs and activities of the Department of Education and Early Development and the University of Alaska)

Finance (all appropriation, revenue, capital improvement, and bonding measures, the executive budget, and the programs and activities of the Department of Revenue)

Health and Social Services (the programs and activities of the Department of Health and Social Services)

Judiciary (the programs and activities of the Alaska Court System and the Department of Law, and the legal and substantive review of bills referred to it for that purpose)

Labor and Commerce (the programs and activities of the Department of Labor and Workforce Development relating to labor-management relations, industrial safety, unemployment compensation, and workers' compensation and the programs and activities of the Department of Commerce, Community, and Economic Development that do not primarily relate to local government or to government services or functions in the unorganized borough)

Community and Regional Affairs (the programs and activities of the Department of Commerce, Community, and Economic Development that primarily relate to local government and government services or functions in the unorganized borough, and other matters relating to political subdivisions)

Resources (the programs and activities of the Departments of Fish and Game, Natural Resources, and Environmental Conservation)

Rules (interpretation of the Uniform Rules, calendar, the internal administration of the house and matters pertaining to the management of the legislature as a whole)

State Affairs (programs and activities of the Office of the Governor and the Departments of Administration, Military and Veterans' Affairs, Corrections, and Public Safety, and programs and activities of the Department of Transportation and Public Facilities relating to public facilities)

Transportation (programs and activities of the Department of Transportation and Public Facilities relating to transportation and other legislative matters relating to transportation).

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LEGISLATIVE BRANCH E-MAIL ADDRESSES

The Legislative Affairs Agency has set up group e-mail addresses to assist state agencies in complying with the requirement of AS 24.20.105 and AS 44.62.190(a)(7) to electronically furnish public notices for regulations, and the regulations themselves, to the

- Legislative Affairs Agency
- chairs of the standing committees of the legislature with jurisdiction over the subject matter of the regulation
- Administrative Regulation Review Committee
- legislative council

Each group address includes *one* Senate and House standing committee, the Legislative Affairs Agency, the Administrative Regulation Review Committee, and the legislative council. Once the appropriate standing committee or committees for the subject matter of the regulations have been determined (see Appendix CC), use the appropriate address or addresses below.

TO SEND PUBLIC NOTICE AND REGULATIONS TO:	USE THIS E-MAIL ADDRESS:
House & Senate C&RA Committees, plus LAA, ARRC, and Legislative Council	craregs@akleg.gov
House & Senate Education Committee, plus LAA, ARRC, and Legislative Council	eduregs@akleg.gov
House & Senate Finance Committees, plus LAA, ARRC, and Legislative Council	finregs@akleg.gov
House & Senate HSS Committees, plus LAA, ARRC, and Legislative Council	hssregs@akleg.gov
House & Senate Judiciary Committees, plus LAA, ARRC, and Legislative Council	judregs@akleg.gov
House & Senate Labor & Commerce Committees, plus LAA, ARRC, and Legislative Council	lacrege@akleg.gov
House & Senate Resources Committees, plus LAA, ARRC, and Legislative Council	resregs@akleg.gov
House & Senate Rules Committees, plus LAA, ARRC, and Legislative Council	rlsregs@akleg.gov
House & Senate State Affairs Committees, plus LAA, ARRC, and Legislative Council	staregs@akleg.gov
House & Senate Transportation Committees, plus LAA, ARRC, and Legislative Council	traregs@akleg.gov

Additionally, notice of proposed action must be sent to all incumbent State of Alaska legislators. AS 44.62.190(a)(6).

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