

# MEMORANDUM

## State of Alaska Department of Law

**To:** Office of the Governor,  
Office of the Lieutenant Governor,  
Regulations contacts, and other  
readers of the *Drafting Manual for  
Administrative Regulations*

**Date:** April 10, 2020

**Tel. No.:** 465-3600

**From:** Susan R Pollard *SRP*  
Chief Assistant Attorney General  
and Regulations Attorney  
Legislation and Regulations Section

**Re:** Regulations Process:  
COVID-19: New Forms;  
Signatures; Meetings

### INTRODUCTION

Across the state, we are changing our routines to protect public health and comply with public health mandates. These changes include avoiding public gatherings and teleworking, both of which may pose challenges for the standard regulations process. To assist agencies, we are updating our advice on electronic signatures and public hearing procedures so that the regulations process continues smoothly and safely, and in compliance with Administrative Procedure Act (APA) (AS 44.62).

The following advice is intended for boards, commissions, and agencies that must comply with the Administrative Procedure Act in the regulations process. But this advice will be useful and likely generally applicable to other state entities that adopt regulations using a non-APA process. Any non-APA state entity reviewing this advice should take care to review relevant internal bylaws to determine if the bylaws have specific requirements for signatures or in-person meetings. If so, implementing the changes suggested here may require that the bylaws be amended, or may require the entity take other steps.

We will provide updates to procedures and forms as necessary. If you have any questions after reviewing this memo, please contact the Legislation and Regulations Section using the information provided below.

## FORMS

The following forms have been updated to reflect the changes described in this memo. The revised forms are available on the Department of Law Internet site under “Law Resources,” “Regulations Drafting Manual,” “2020 Revised Forms - COVID-19.” Please make sure to download these new forms for use with upcoming projects:

Appendix	Document Title	Appendix	Document Title
Appendix D-1	Notice of Proposed Regulations – Newspaper	Appendix N	Affidavit of Board Action Certification
Appendix D-2	Notice of Proposed Regulations – Non-Newspaper	Appendix O	Delegation
Appendix D-3	Notice of Proposed Regulations – Exempt Bds/Commns	Appendix P	Limited Delegation
Appendix H	Affidavit of Notice	Appendix U	Affidavit of Notice – Emergency Regs
Appendix I	Affidavit of Oral Hearing	Appendix X	Affidavit of Notice of Amended Version
Appendix K	Affidavit of Agency Record – Public Comment		

## SIGNATURES

Multiple components of a regulations package require a signature, notably, adoption or certification orders that need to be signed by the adopting commissioner, board, or commission. A signature helps prove that a regulation was approved, a notice was published, or information was accurate. If signatures cannot be obtained in person, we need a way to prove that the signature is valid. This question of validity is why we do not recommend using a cut-and-paste picture of a signature; anyone with access to the image can use it, so it does not prove that it was reviewed and signed by a person with adoption authority.

We suggest that agencies, boards, and commissions use a technology available through a state subscription, such as the Adobe signature function or DocuSign. These options require a user to create a password-protected signature. The document would contain a date-stamped signature confirming that the technology was used and the signature is valid (see attached instructions to create an Adobe signature or to use DocuSign). Existing forms requiring an official’s signature without notarization have not been revised; these forms will be accepted if either an original signature or password-protected electronic signature are used.

## **NOTARIZATION**

As described above, the current public health mandates make it a challenge to obtain original signatures, which naturally leads to challenges for notarizing documents. We have revised the forms listed above, which typically require a notary public, to be signed alongside a statement certifying in writing “under penalty of perjury” that the statements in the document are true. A certification is a legal option to take the place of a statement sworn before a notary public in the absence of a notary.

## **IN-PERSON MEETINGS**

You may conduct an oral hearing by telephone to take public comment on draft regulations without the public being physically present. You will not need to list an address for the hearing. Please make sure that your public notice specifies explicitly:

- that, as a public health measure, the public will not be able to attend the oral hearing physically;
- the date or time for the oral hearing;
- the telephone number for the public to call;
- that the telephone network is set up to allow participants to listen to the proceedings as well as comment.

When planning and holding telephonic hearings, please make sure that your devices for recording or preserving comments are in good working order. If a board or commission will be voting at a meeting, please plan to take votes by roll call, by voice, so that the public can hear the results of a vote.

We have updated the public meeting description in the Notice of Proposed Regulation documents in Appendix D to account for these changes.

## **ASSISTANCE**

The Legislation and Regulations Section of the Department of Law is available, in addition to your agency attorney, to assist with any questions:

Susan Pollard, Regulations Attorney – 465-2168  
Steve Weaver, Assistant Regulations Attorney – 465-2130  
Samantha Weinstein, Assistant Regulations Attorney – 465-6733  
Harry Hale, Legal Editor – 465-2120