

# 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: July 3, 2018

TEL. NO.: (907) 465-3600

FROM: Susan R. Pollard  
Chief Assistant Attorney General and Regulations Attorney  
Legislation & Regulations Section

SUBJECT: NEW: Procedures for notice and review of adopted regulations

### **REGULATIONS: NEW LAW EFFECTIVE AUGUST 1, 2018**

This memorandum explains the effect of a law enacted this past legislative session—HB 168, enacted as ch. 7, SLA 2018. The guidance in this memorandum applies to an agency's or public corporation's regulations proposed and adopted under the procedures of the Alaska Administrative Procedure Act (APA; AS 44.62) and to certain public corporation regulations not subject to the APA regulation process requirements.

Chapter 7, SLA 2018 will be effective August 1, 2018; this law repeals the Administrative Regulation Review Committee (ARRC) and changes who must receive notice of proposed and adopted regulations. The new law applies to proposed regulations published on or after August 1, 2018 or adopted on or after August 1, 2018 (but noticed before August 1, 2018). *Please distribute this memorandum and its attachments to agency personnel that work on regulations processes.*

## **1. Notice of proposed regulations for regulations subject to the APA.**

This applies to agency regulations subject to the APA. For regulations published and distributed for public comment *on or after August 1, 2018*, agencies will no longer furnish notice of proposed regulations to the ARRC, to the Legislative Affairs Agency, to the legislative council, or to the chairs of certain legislative standing committees.<sup>1</sup>

But notice of proposed regulations *must* still be published in a newspaper or trade publication, posted on the Alaska Online Public Notice System, and furnished electronically to, among others, “all incumbent State of Alaska legislators” under AS 44.62.190(a)(6).

For regulations distributed for public comment *before* August 1, 2018, and for which the agency wishes to distribute a supplemental notice *after* August 1, 2018, the agency would comply with the new law in distributing the supplemental notice.

In summary, for regulations published for public notice and comment on or after August 1, 2018, or for supplemental notices issued on or after August 1, 2018, notice of the proposed regulations must be

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;<sup>2</sup>
- (5) furnished to the Department of Law, along with a copy of the proposed regulations;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).<sup>3</sup>

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<sup>1</sup> Sec. 13, ch. 7, SLA 2018, amending AS 44.62.190(a).

<sup>2</sup> The notice to persons who have asked to receive notice of agency action and the interested persons may overlap; persons who may qualify as “interested” and are on the agency’s list to receive notice of a proposed action do not need to receive duplicate notices.

<sup>3</sup> See sec. 13, ch. 7, SLA 2018, amending AS 44.62.190(a); see also AS 44.62.175.

Agencies may show compliance with the new law by using attached Appendix H (affidavit of notice of proposed regulation) or, for emergency regulations, Appendix U (affidavit of notice of emergency regulations).

In addition, the new law affects who must receive notice of adoption of amended versions of material previously adopted by reference. Accordingly, as of August 1, 2018, agencies giving notice of amended material adopted by reference should use revised Appendix X (attached).<sup>4</sup>

## **2. Review of regulations adopted under APA procedures.**

For regulations *adopted on or after* August 1, 2018, even if proposed *before* August 1, 2018, agencies must furnish the *adopted regulations* to the governor (AS 44.62.040(c)) using the “[gov-regs@list.state.ak.us](mailto:gov-regs@list.state.ak.us)” e-mail address. The Office of the Lieutenant Governor has requested this e-mail address be live on August 1, 2018, and persons subscribed to the current “gov-arrc” e-mail list will be transferred to the new “gov-regs” e-mail list.<sup>5</sup> As with current law, the requirement to submit adopted regulations to the governor for review does not apply to the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the Office of Victims’ Rights, and the Office of the Ombudsman.<sup>6</sup>

Agencies will notify the legislation and regulations section of compliance with this requirement through Appendix Q (agency request for final review) (attached). Further, we have provided a sample e-mail template for agencies to use when submitting regulations to the governor’s office.

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<sup>4</sup> Sec. 14, ch. 7, SLA 2018, amending AS 44.62.245(c).

<sup>5</sup> Contact the Office of the Lieutenant Governor if you are uncertain if you are on the list of subscribers for the current “gov-arrc” list, or if you need to be added to the newly formed “gov-regs@list.state.ak.us” list.

<sup>6</sup> See sec. 12, ch. 7, SLA 2018, amending AS 44.62.040(c) to remove the reference to the Administrative Regulation Review Committee.

**3. Public corporations that notice and adopt regulations under statutes specific to that corporation.**

Beginning August 1, 2018, certain public corporations that notice and adopt regulations under statutes specific to those corporations, and not under the APA, will no longer need to submit adopted regulations to the ARRC. This applies to the Alaska Housing Finance Corporation (sec. 2, ch. 7, SLA 2018, amending AS 18.56.088); the Alaska Aerospace Corporation (sec. 5, ch. 7, SLA 2018, amending AS 26.27.110); the Alaska Gasline Development Corporation (sec. 7, ch. 7, SLA 2018, amending AS 31.25.130); the Alaska Permanent Fund Corporation (sec. 8, ch. 7, SLA 2018, amending AS 37.13.206); and the Alaska Industrial Development and Export Authority (sec. 22, ch. 7, SLA 2018).

Some public corporation regulations, such as procurement regulations, are subject to the APA. For those projects, the public corporation must follow the guidance in paragraph 2 above for regulations noticed and adopted after August 1, 2018. Since statutory authority for regulations varies among public corporations, please contact the legislation and regulations section if you have questions about specific statutes.

**4. Oversight by legislative standing committees.**

The new law amends AS 24.05.182, review of administrative regulations by standing committees of the legislature. With the changes, standing committees of the legislature “may, consistent with the committee’s jurisdiction as provided in the uniform rules of the legislature, review a proposed or adopted regulation, amendment of a regulation, or repeal of a regulation,”<sup>7</sup> to “determine if the regulation properly implements legislative intent.”<sup>8</sup> The law does not require that any special notice must be furnished to legislative standing committee members (these individuals will receive notice as incumbent Alaska state legislators).<sup>9</sup>

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<sup>7</sup> Sec. 3, ch. 7, SLA 2018, amending AS 24.05.182(a).

<sup>8</sup> AS 24.05.182(b).

<sup>9</sup> Through House Concurrent Resolution 10, 2018, the legislature amended Rule 20 of the Uniform Rules of the Alaska State Legislature to clarify that the jurisdiction of the standing committee over programs and activities includes proposed or adopted regulations within the subject of that committee’s oversight.

**Summary.** The basic procedures of notice and comment continue to apply under AS 44.62, but in a more streamlined manner. Legislators, for example, continue to receive notice, but will no longer receive duplicate notices of proposed regulations. Further, the legislature retains oversight to review regulations, including adopted regulations, but through individual standing committees and not the Administrative Regulation Review Committee. Please contact Susan Pollard if you have any questions.

Attachments for use beginning August 1, 2018 and available on the Department of Law website beginning August 1, 2018:

Appendix A – Agency Checklist/Regular Regulation  
Appendix B – Agency Checklist/Emergency Regulation  
Appendix H – Affidavit of Notice of Proposed Regulation  
Appendix Q – Agency Request for Final Review  
Appendix U – Affidavit of Notice of Proposed Regulation (emergency regulations)  
Appendix X – Affidavit of Notice of Amended Version of Material Previously Adopted  
by Reference  
Appendix Y – Agency Attorney Review Checklist/Regular Regulations  
Appendix Z – Agency Attorney Review Checklist/Emergency Regulations  
Sample “gov-regs” e-mail

SRP:rjc

## APPENDIX A - AGENCY CHECKLIST REGS

### 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. (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 for general authority to adopt regulations and to statutes being implemented, interpreted, or made specific (these statutes may not refer directly to regulations); (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).
- \_\_\_\_\_ Decide whether to use the Alaska Online Public Notice System to receive comments on the project
- \_\_\_\_\_ 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 or industry 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 who have filed a request for notice of proposed action
  
- \_\_\_\_\_ Furnished to all persons whom the agency believes may be interested in the proposed action.
- \_\_\_\_\_ Furnished to the regulations attorney in the Department of Law (along with proposed regulation).
- \_\_\_\_\_ Furnished electronically to all incumbent Alaska state legislators.
- \_\_\_\_\_ Additional regulation notice information sent with notice to interested persons, legislators, and regulations attorney (Appendices E-1 and E-2).
- \_\_\_\_\_ Notice and additional regulation notice information posted on the Alaska Online Public Notice System; and under AS 44.62.200(c) any attachments or links also posted (consult the Department of Law).
- \_\_\_\_\_ 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).

#### ADOPTION OF REGULATION

## APPENDIX A - AGENCY CHECKLIST REGS

- \_\_\_\_\_ 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).
- \_\_\_\_\_ Agency furnishes adopted regulations to the Office of the Governor and the Office of the Lieutenant Governor using [gov-regs@list.state.ak.us](mailto:gov-regs@list.state.ak.us) (this requirement does not apply to the RCA, the AOGCC, the Board of Fisheries, or the Board of Game, or to non-APA regulations).

### TRANSMITTAL TO DEPARTMENT OF LAW

- \_\_\_\_\_ Completed project is **sent to the regulations attorney** in the Department of Law along with:
- \_\_\_\_\_ Cover memo to the regulations attorney stating the Department of Law file number. Note any particular issues regarding the project, and any urgency or requested effective date. Confirm that the adopted regulations were furnished to the Office of the Governor, and the Office of the Lieutenant Governor (Appendix Q). Furnishing adopted regulations is not applicable to the RCA, the AOGCC, the Board of Fisheries, or the Board of Game.
- \_\_\_\_\_ Original and one copy of final version of regulation for Department of Law's use;
- \_\_\_\_\_ Original signed adoption order or certification order;
- \_\_\_\_\_ A copy of any delegation of authority or acting commissioner designation;
- \_\_\_\_\_ Relevant minutes of board or commission meeting and staff affidavit, *if* a certification order is being submitted;
- \_\_\_\_\_ An original or copy of public notice;
- \_\_\_\_\_ Additional regulation notice information form that was distributed with the public notice;
- \_\_\_\_\_ Fiscal note, if required;
- \_\_\_\_\_ Original affidavit of notice of proposed regulation adoption;
- \_\_\_\_\_ Original publisher's affidavit of publication;
- \_\_\_\_\_ Original affidavit of oral hearing, if one was held;
- \_\_\_\_\_ Original affidavit of record of public comment (not applicable to exempted boards and commissions);
- \_\_\_\_\_ 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).

## APPENDIX B - AGENCY CHECKLIST EMERGENCY REGS

### AGENCY CHECKLIST -- EMERGENCY REGULATION

#### DRAFTING

- \_\_\_\_\_ Proposed emergency regulation drafted and reviewed by agency in accordance with law and this manual (See Ch. 3).
- \_\_\_\_\_ Draft a factual finding of emergency and 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 for general authority to adopt regulations and statutes being implemented, interpreted, or made specific (these statutes may not refer directly to regulations); (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 or industry 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 who have filed a request for notice of proposed action.
- \_\_\_\_\_ Furnished to all persons whom the agency believes may be interested in the proposed action.
- \_\_\_\_\_ 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.
- \_\_\_\_\_ Notice and additional regulation notice information posted on the Alaska Online Public Notice System and under AS 44.62.200(c) any attachments or links also posted (consult the Department of Law).
- \_\_\_\_\_ Additional regulation notice information sent with notice to interested persons, legislators, and regulations attorney (Appendix E-1 and E-2).



## APPENDIX B - AGENCY CHECKLIST EMERGENCY REGS

- \_\_\_\_\_ 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).

### **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

- \_\_\_\_\_ Cover memo to the regulations attorney stating the Department of Law file number, identifying the date the adopted regulations were furnished to the Office of the Governor and the Office of the Lieutenant Governor. Furnishing adopted regulations is not applicable to the RCA, the AOGCC, the Board of Fisheries, or the Board of Game.
- \_\_\_\_\_ Identify any particular issues regarding the project, and request review and approval by Department of Law (Appendix Q);
- \_\_\_\_\_ Original and one copy of the final permanent regulation for Department of Law's use;
- \_\_\_\_\_ Original signed certification of compliance;
- \_\_\_\_\_ A signed, original, regular adoption order or certification order if changes were made to the original emergency regulation;
- \_\_\_\_\_ A copy of any delegation of authority or acting commissioner designation;

## APPENDIX B - AGENCY CHECKLIST EMERGENCY REGS

- \_\_\_\_\_ Relevant minutes of the board or commission meeting, and staff affidavit, *if* a certification order is being submitted;
- \_\_\_\_\_ 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);
- \_\_\_\_\_ Additional regulation notice information form that was distributed with the public notice (submit original if not already submitted to the lieutenant governor's office);
- \_\_\_\_\_ Copy of fiscal note, if required;
- \_\_\_\_\_ Copy of affidavit of notice (original already submitted to the lieutenant governor's office);
- \_\_\_\_\_ Original publisher's affidavit of publication;
- \_\_\_\_\_ Original affidavit of oral hearing, if an oral hearing was held;
- \_\_\_\_\_ Original affidavit of agency record of public comment (not applicable to exempted boards and commissions);
- \_\_\_\_\_ Copy of the filed finding of emergency, emergency adoption or certification order, and the emergency regulation;
- \_\_\_\_\_ 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).

Appendix H – Affidavit of Notice of Proposed Regulations

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 every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

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 persons in (2), (4), 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]  
[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]

**APPENDIX Q - AGENCY REQUEST FOR FINAL REVIEW**

TO: [Name], Regulations Attorney  
Legislation and Regulations Section  
Department of Law

DATE: [Date]

FILE NO.: 20\_ \_ \_ \_ \_

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 request legal review and approval of the attached final regulation on topic of regulation that was adopted by name of agency. *On insert date the adopted regulations were electronically furnished to the regulations specialists at the Office of the Governor and the Office of the Lieutenant Governor.*

Enclosed are the following documents:

- (1) the original and one copy of the final regulation for use by the Department of Law;
- (2) the original of the signed and dated adoption document;
- (3) the original signed and dated certification of compliance and a copy of the [finding of emergency/adoption order] [finding of emergency/certification order];
- (4) [a copy of the delegation of authority to adopt regulations] [a copy of the designation as acting commissioner];
- (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)];
- (9) the original of the affidavit of oral hearing;
- (10) the original of the affidavit of agency record of public comment;
- (11) [relevant minutes] [transcript pages] from the \_\_\_\_\_, \_\_\_\_\_ meeting;

- (12) staff affidavit for the [relevant minutes] [transcript pages];
- (13) fiscal note;
- (14) material adopted by reference in the regulation.

We have worked with Assistant Attorney General \_\_\_\_\_ on the project. [We request that the regulations be in effect by [date] because: \_\_\_\_\_.] [The emergency regulation expires \_\_\_\_\_, \_\_\_\_\_.]

[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.]

Appendix U–Affidavit of Notice of Adoption of Emergency Regulations

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] 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 every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the regulation;
- (6) electronically transmitted to incumbent State of Alaska legislators;
- (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);

As required by AS 44.62.190, additional regulation notice information regarding the [date] emergency changes to the regulation described above has been furnished to interested persons and furnished to those in (2), (4) 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]  
[affiant's name and title, typed]

Subscribed and sworn to before me at \_\_\_\_\_ on

\_\_\_\_\_.<sup>6</sup>

[date]

\_\_\_\_\_  
[notary signature]  
Notary Public in and for the State of Alaska

[NOTARY SEAL]

Appendix X– Affidavit of Notice of Amender Version of Material Previously Adopted by Reference

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; and
- (4) furnished to the regulations attorney in the Department of Law.

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>

\_\_\_\_\_  
[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]

APPENDIX Y - AGENCY ATTY REVIEW CHECKLIST REGS

**AGENCY ATTORNEY FINAL REVIEW CHECKLIST  
(FOR REGULAR REGULATION)**

**DOCUMENTS IN FINAL REGULATION PACKAGE**

- \_\_\_ Clean (unmarked) original and one copy 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.



## APPENDIX Y - AGENCY ATTY REVIEW CHECKLIST REGS

### **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**

- \_\_\_ Review memorandum from agency attorney to regulations attorney; confirm that adopted regulations were furnished to the Office of the Governor, and Office of the Lieutenant Governor..
- \_\_\_ *Indicate in your agency memorandum if you have made corrections to the regulations.* Please make recommended corrections directly on a separate copy of the regulation. (The agency attorney memorandum and corrections may be emailed to the regulations attorney and the legal editor responsible for regulations.)
- \_\_\_ Return original materials adopted by reference (if any).

APPENDIX Z - AGENCY ATTY REVIEW CHECKLIST EMERG REGS

**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.

APPENDIX Z - AGENCY ATTY REVIEW CHECKLIST EMERG REGS

**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 (assure adopted regulations were furnished to the Office of the Governor, and the Office of the Lieutenant Governor. Review memorandum from agency attorney to regulations attorney.
- \_\_\_ Make recommended corrections directly on a separate copy of the regulation.

Sample e-mail

**TO:** [gov-regs@list.state.ak.us](mailto:gov-regs@list.state.ak.us)

**Cc:** **Subject:** Adopted regulations of [Dept. of Law file number] [name of agency]  
[short description]<sup>i</sup>

**Attachments:** .Pdf of adoption order or certification of adoption order *and* of the adopted regulations<sup>ii</sup>

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Attached are adopted regulations of the **[insert name of agency] (Department of Law file number)**. The regulations concern **[insert short description of subject matter.]** You are receiving these adopted regulations under AS 44.62.040(c).

**[Contact information of person sending the email]**

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<sup>i</sup> Keep the subject line short but descriptive, for example "Adopted regulations: JU2016200208 DHSS, Child Care Assistance Program." Include the Department of Law file number in both the subject line and the body of the email.

<sup>ii</sup> *Attach* a .pdf of the adoption order or certification of adoption order and the adopted regulations. We recommend you also attach a copy of the notice of proposed regulations.