

Drafting Manual for



Administrative Regulations

18th Edition..... August 2009

State of Alaska
Department of Law

FOREWORD

This manual was prepared 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 provides a basic explanation of procedural, style, and formatting requirements as well as references to related court cases.

Since this manual was last updated the interest of the public and the legislature in regulations and the regulatory process has remained high. This manual was designed to meet legal requirements, to assist state agencies in preparing regulations that are clearly written, and to further the participation of the public in the regulatory process.

The Department of Law welcomes your suggestions on improving this manual or the regulatory process.

Please note that access to an electronic version of this manual is available on the Department of Law's website at www.law.state.ak.us/doclibrary/drafting_manual.html.

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Register __, __20__ LABOR AND WORKFORCE DEV.

Header, p. 77

*New
Section,
pp.71 - 72*

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

8 AAC 05.055. Occupations prohibited to persons under age five. The text of a new regulation section is not underlined because the lead-in line says that the section is new. (Eff. __/__/__, Register __)

Authority: AS 23.05.060 AS 23.10.360 AS 23.10.365

*Lead-in Line,
pp. 70 - 76*

Numbering, pp. 55 - 57

Indentation, pp. 80 - 81

History Note, pp. 83 - 86

*Citation of
Authority, pp. 87 - 89*

*Amended
Existing
Regulation,
pp. 73 - 74*

8 AAC 05.200 is amended to read:

8 AAC 05.200. Occupations in roofing operations. All occupations in roofing operations are dangerous and prohibited to **children under 16 years of age** [MINORS]. (Eff. 10/27/73, Register 48; am __/__/__, Register __)

Authority: AS 23.05.060 AS 23.10.360 AS 23.10.365
AS 23.10.350

*Lead-in Line,
pp. 70 - 76*

*Style and Grammar,
pp. 59 - 68*

History Note, pp. 83 - 86

*Citation of
Authority, pp. 87 - 89*

*Repealed
Section,
p. 75*

8 AAC 05.220 is repealed:

8 AAC 05.220. Occupations prohibited to persons under age 21. Repealed. (Eff. 10/27/73, Register 48; repealed __/__/__, Register __)

*Lead-in Line,
pp. 70 - 76*

History Note, pp. 83 - 86

VISUAL INDEX OF KEY TERMS AND CONCEPTS
IN THE REGULATION ADOPTION PROCESS

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CHAPTER 1

INTRODUCTION TO REGULATIONS

This manual has been prepared to help state agencies adopt and maintain administrative regulations under AS 44.62, the Administrative Procedure Act (APA), and to ensure that the entire Alaska Administrative Code (AAC) is an accurate and coordinated set of regulations.

An agency that is exempt by statute from the APA should work closely with its 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 non-APA regulations projects. Appendix AA of this manual 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.

The Department of Law will help agencies comply with this manual, the APA, and other statutes and relevant court decisions. The Department of Law should be consulted early in the development of a regulations project.

It is important to understand the difference between "statutes" and "regulations." Statutes are laws passed by the legislature. Regulations are rules adopted by agencies in the executive branch of government. An agency's authority to adopt regulations comes from the legislature; this "rule-making" power is a "legislative" power that the legislature has delegated to the agency. If the proper procedure is followed in adopting a regulation, and the substance of the regulation is valid, it will have the "force and effect" of law. To adopt a regulation, an agency must follow the APA as well as any additional statutory requirements set by the legislature that apply to that agency's particular program.

WHEN ARE REGULATIONS NECESSARY?

In AS 44.62.640, the APA broadly defines "regulation" to include many provisions that a state agency would wish to enforce.

AS 44.62.640(a)(3) states:

(3) "regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, that have the effect of rules, orders, regulations, or standards of general application, and this and similar phraseology may not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public;

To decide whether a provision is a regulation, an agency must consider "whether it affects the public or is used by the agency in dealing with the public." Anything that affects the public or affects its rights must be adopted under the APA as a regulation. If an agency is in doubt, the agency should err on the side of adopting regulations under the APA. Publication of an agency standard on the Internet does not fulfill the requirements of the APA for the agency to enforce the standard as a regulation.

In the APA's definition of "regulation," an exception is provided for a provision that "relates only to the internal management of a state agency." AS 44.62.640(a)(3). An example of such a provision is a "how-to-do-it" training or procedures manual for a state public assistance worker that explains which forms to use, how many copies of forms to complete, and techniques of interviewing. That type of manual does not affect the public within the meaning of the APA and the contents need not be adopted as a regulation in order to be used by the agency.

Agency action taken in the absence of necessary regulations will be invalid. If a state agency's interpretation of an existing regulation expands a general standard, the new general standard generally must be adopted as a regulation in accordance with the APA. However, a common-sense interpretation of a statute might not require the adoption of regulation. Each agency should consult its attorney in the Department of Law as to whether it is necessary for a provision or requirement to be adopted as a regulation.

A state agency's past failure to enforce a regulation, including inaction due to lack of personnel and funding, does not prevent the agency from presently enforcing the regulation. The state agency should take care not to affirmatively assert by word or conduct that the state agency would never enforce the regulation.

CONSISTENT WITH STATUTES AND REASONABLY NECESSARY

The APA and case law require that a regulation be "consistent with the statute," "reasonable," and "reasonably necessary."

AS 44.62.030 provides:

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. [Emphasis added.]

AS 44.62.020 provides in part: "To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law." A regulation must have a reasonable relationship to the statutory objectives being implemented. However, a regulation may not take away a right clearly created in statute.

When considering the reasonableness and necessity of a proposed regulation, an agency should consider the fiscal ramifications of the regulation -- for the adopting agency itself, for other agencies, and for the public. See Chapter 14 of this manual for more details on fiscal notes for regulations.

IMPORTANT DEFINITIONS FOR THIS MANUAL

The following terms are used throughout this manual, and understanding how they are used is important:

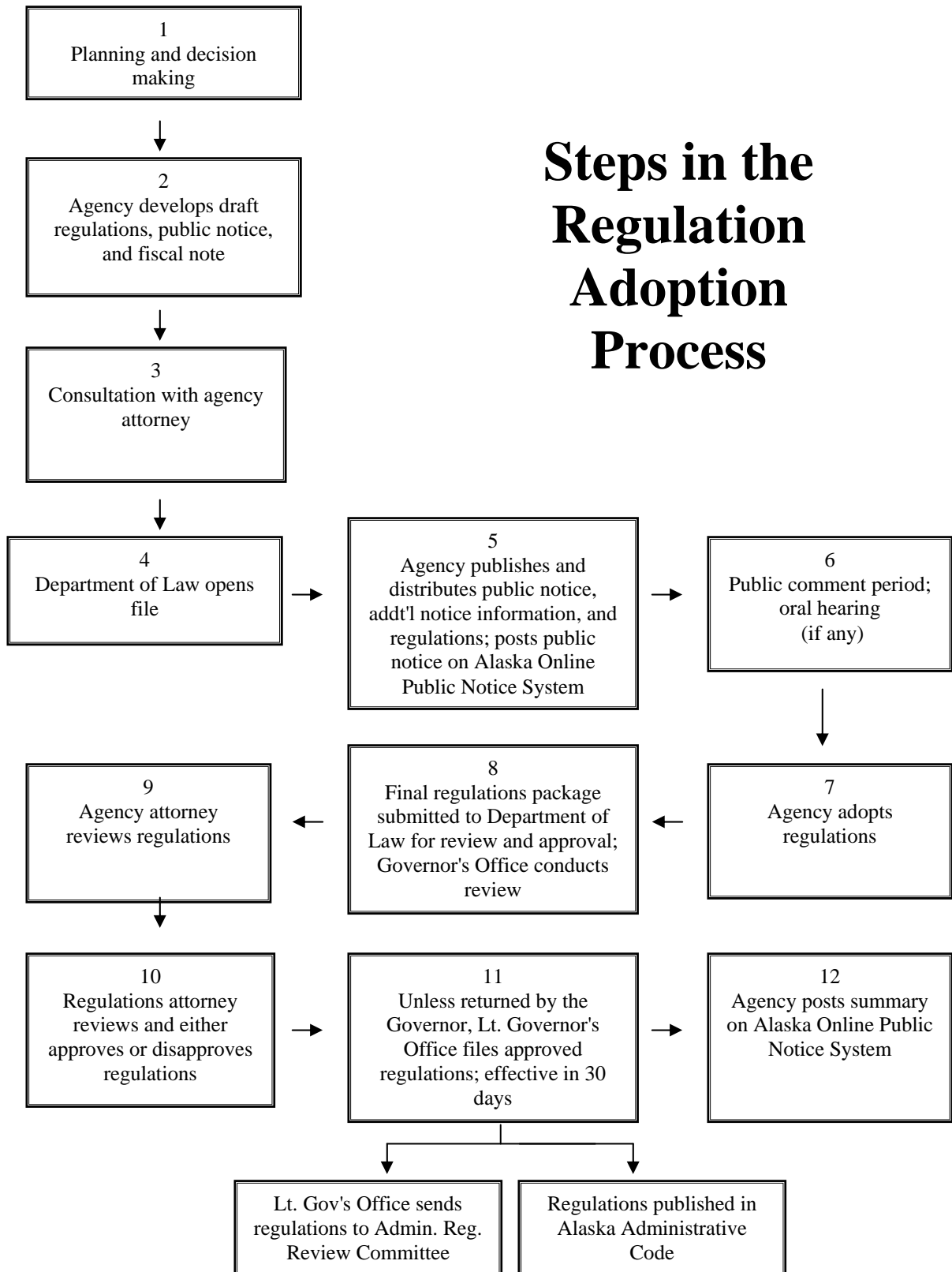
"adoption" is a general term used to describe an agency's action to adopt a new provision, adopt an amendment to an existing provision, or adopt the repeal of an unneeded provision of the AAC; a single adoption for a regulations project might cover a combination of those three agency actions;

"Legislative Legal and Research Services" is the division of legal and research services in the Legislative Affairs Agency; it provides legal advice and research to legislators and is part of the legislative branch of state government;

"regulations project" is used to describe one or more regulation changes that are covered by the same public notice and that are assigned a single Department of Law file number.

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Steps in the Regulation Adoption Process



CHAPTER 2

THE 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 of this manual contains a condensed checklist that will be useful in keeping track of these steps as you move through the regulation-adoption process. See Chapter 3 of this manual for the steps used to adopt an emergency regulation.

STEPS IN THE REGULATION ADOPTION PROCESS

STEP 1: PLANNING AND DECISION MAKING. An agency's first step in developing a regulations project is to assess the need for the regulations and to verify the agency's statutory authority to adopt and enforce those regulations. Ideas for proposals for regulatory changes can come through many sources, including

- a. newspaper advertising calling for written proposals from the public;
- b. issuing a notice of inquiry or hearing for a state board or commission to solicit ideas for solving a problem;
- c. holding a public workshop that is publicly advertised;
- d. a committee appointed by the state agency, or a subcommittee of a board or commission;
- e. formal advisory boards to the state agency;
- f. negotiated regulation making under AS 44.62.710 - 44.62.800; and
- g. a petition from an interested person under AS 44.62.220.

An agency should ask itself the following questions at the beginning of any regulations project:

- a. What did the legislature intend accomplished through the program in question?
- b. In reviewing relevant statutes, are there unanswered questions, ambiguous terms, or program details that must be clarified through regulations? Does the agency intend to allow electronic applications, submissions, or signatures?

- c. What does the agency want to accomplish by adopting regulations?
- d. What constitutional or statutory rights of individuals will be affected?
- e. Who has the statutory authority to adopt the regulations (i.e., commissioner, board, governor)?
- f. Which members of the public constitute the primary audience for the regulations and how should the regulations be organized and written to be most easily understood by them? Is there a way to write the regulations to achieve the agency's intent while keeping the public's cost of compliance low?
- g. When do the regulations need to be in effect?
- h. How will the regulations impact the agency's existing budget? Will more money be needed to implement the regulations? What are the alternatives?

STEP 2. AGENCY PREPARATION. After the initial planning and decision-making process, the agency is ready to draft the proposed regulations, prepare a public notice, and identify the fiscal information to be included with the notice. The necessary forms are set out in the appendices of this manual and are available on the Department of Law's Internet website at www.law.state.ak.us. If an agency wants the benefit of public input in drafting the regulations, 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 agency should consult the legislation and regulations section of the Department of Law for appropriate procedures.

Early in the project, the agency should prepare a timeline that sets internal deadlines, to ensure that the regulations are 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 of the Department of Law early in the preparation of the project regarding timelines. Consultation on timelines and what steps can be taken is especially important if the statutory authority necessary for adoption is not yet in effect.

As much as possible, the draft regulations should follow the organization, form, and style of regulations as discussed in Chapters 5 and 6 of this manual. The state agency must consult early with the legislation and regulations section of the Department of Law regarding the approach, and technical requirements involved, for any regulations project in which the agency is considering a comprehensive revision of a chapter or article. Also see Chapter 7 of this manual for technical format requirements and Appendix C of this manual on how regulations are to be set out. For the convenience of the public during the comment period, the agency may wish to depart from the

requirements and provide a more detailed draft of the proposed regulation changes. For example, the agency may wish to display the language of an existing regulation that is being repealed, or display all of the language of a section even though only a few subsections of it are being amended. While this is permissible for draft regulations, the form and format of the final adopted regulations must conform to this manual.

Before drafting the public notice for the proposed regulations, 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 regulations.

Deciding on an Oral Public Hearing. An agency must always provide an opportunity for submission of written comments in the regulation-adoption process. Before the agency publishes the public notice for a regulations project, the agency must decide whether it will also hold an oral hearing as provided for under AS 44.62.210(a). Generally, it is a good idea to hold an oral public hearing in order to encourage public participation in the process. Answering the following questions will help the agency make that decision:

- a. Are the regulations controversial and is there likely to be substantial public interest in them?
- b. Would those most affected by the regulations be better able to participate if an oral hearing were held?
- c. Would the agency benefit from a face-to-face or teleconferenced opportunity to receive comments on the proposed regulations from interested persons?

If the agency decides to hold an oral hearing, it 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 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.

An oral hearing should be scheduled for no sooner than 20 days into the public comment period in order to allow the public time to arrange to attend, but should occur before the end of the written comment period. This arrangement allows a participant at the oral hearing to submit final written comments after listening to other commentors at the oral hearing. A board or commission that meets infrequently, however, might wish to hold its oral hearing at the close of the public comment period so that the board or commission can 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.

The Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12101 - 12213) (ADA) requires a state agency to make reasonable accommodations to allow a qualified individual with a disability to participate in the regulatory process. Special care should be taken in choosing an oral hearing site, to ensure that it is accessible by persons with a disability. Upon the request of a qualified 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. The agency should consult its ADA coordinator for more specific information to respond to a particular situation. In setting the deadline for ADA accommodation requests, the agency should allow sufficient time to address specific requests for accommodations before the oral hearing.

Deadline for Submission of Written Comments. While the Administrative Procedure Act (APA) does not specify the minimum amount of time that must be allowed for submission of written comments, AS 44.62.190 requires that the public notice be given "at least 30 days before the adoption, amendment, or repeal of a regulation." The Department of Law recommends that, to assure adequate time for the public to review the notice, to request a copy of the regulations, and to submit written comments, there should be at least 30 days' notice before the written comment deadline. If a regulation is challenged on this issue, the court will look to see whether the length of the public comment period was reasonable under the circumstances. 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, especially if the list of interested persons includes many persons living in states other than Alaska or in foreign countries. If an agency decides to allow submission of comments by electronic mail (e-mail), or by facsimile transmission (fax), the comment deadline should specify a deadline time as well as date. Finally, a program might be subject to specific comment period requirements under federal law or under another Alaska statute that governs that program.

Contents of Public Notice. At least 30 days before the adoption of regulations, an agency must give public notice that it is proposing to adopt the regulations by complying with AS 44.62.190(a). The requirements for the contents of the public notice, including the additional regulations notice information requirement in AS 44.62.190(d), are set out in Chapter 4 of this manual. Appendix D of this manual provides a sample public notice form and Appendix E sets out the additional regulations notice information form. Before publication, the proposed notice should be reviewed by the agency attorney to avoid legal problems.

Fiscal Note. AS 44.62.195 requires that an agency prepare an estimate of the appropriation increase needed if the adoption of regulations would require such an increase. In addition, a summary of this fiscal information must be included in the public notice. See Chapters 4 and 14 of this manual for a more detailed explanation.

Negotiated Regulation Making. AS 44.62.710 - 44.62.800 provide an express statutory framework under which certain state agencies may voluntarily use negotiated regulation making in the process of developing certain state regulations. Those statutes set out the standards and requirements for the use of a negotiated regulation making committee, a convenor or negotiator, and the report of a negotiated regulation making committee. The statutes do not limit a state agency's use of workshops, hearings, or other means to obtain public participation in the development of regulations. Consult the legislation and regulations section of the Department of Law when considering the use of negotiated regulation making.

Interested Persons List. The APA 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 the furnishing of that person's notices by "regular" mail instead. Agencies may wish to update their interested persons lists to include e-mail addresses for those wishing to receive notice in that manner.

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 can be changed.

STEP 3. INITIAL AGENCY ATTORNEY CONSULTATION. Although each state agency is responsible for the initial drafting of its proposed regulations and the public notice for the regulations, 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. If more than verbal advice is required at this step in the process, the agency should request a file opening as discussed in Step 4. See Appendix G of this manual for a sample memorandum requesting file opening. Alternatively, the agency may request a file opening by sending an e-mail message to the regulations attorney in the Department of Law, so long as the e-mail contains the information specified in Appendix G of this manual.

STEP 4. DEPARTMENT OF LAW FILE OPENING. As noted in Step 5, at the time the agency publishes a notice of proposed regulations, the agency must send the Department of Law a copy of that notice and the proposed regulations. AS 44.62.190(a)(5). These copies should be sent to the regulations attorney. If a file has not been opened already as a part of Step 3, the agency should now make a request, following the instructions in Step 3. The Department of Law then will assign an assistant attorney general to the project and open a file. This manual refers to that attorney as the "agency attorney." After a file has been opened, all written correspondence with the Department of Law on that regulations project should include the Department of Law file number. The agency should alert the legislation and regulations section now (if not already done) of any urgency relating to the regulations project.

STEP 5. PUBLICATION AND DISTRIBUTION OF PUBLIC NOTICE. The public notice must be published and distributed according to the requirements of AS 44.62.190(a). That statute requires

- a. publication of the notice in a newspaper of general circulation or trade or industry publication and posting of it on the Alaska Online Public Notice System;
- b. furnishing of the notice to persons who have asked to be put on a list to receive notice of future proposed regulations;
- c. that if the agency is not a principal department, it must send the notice to the head of the department of which it is a part;
- d. when appropriate in the judgment of the agency, furnishing of the notice to any other interested or affected person or group;
- e. furnishing of the notice to the Department of Law, along with a copy of the proposed regulations;
- f. furnishing of the notice by electronic format to all incumbent state legislators;
- g. furnishing of the notice to the Legislative Affairs Agency; the Legislative Affairs Agency has designated Legislative Legal and Research Services to receive the notice; and
- h. furnishing of the notice (and the proposed regulations) by electronic format to the Legislative Affairs Agency, 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).

Please see "Publication and Distribution of Public Notice" in Chapter 4 of this manual for important details that are not included in the condensed list set out in Step 5.

Also, 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 material that accompanies the regulation notice being distributed; and the agency's Internet website.

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") that the agency requested in its advertising order (see item 1 under "Publication and Distribution of Public Notice" in Chapter 4 of this manual). The agency must retain the original of the publisher's affidavit for submission to the Department of Law with the final regulations package.

Distribution of Additional Regulations Notice Information. The additional regulations notice information mentioned in "Contents of Public Notice" in Step 2, does not have to be published in a newspaper. However, that information must be furnished to certain recipients of the public notice for the regulations project. To avoid additional mailing or other costs, and possible procedural errors, the additional regulations notice information should 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). Please see "Distribution of Additional Regulations Notice Information" in Chapter 4 of this manual for details regarding the distribution.

Affidavit of Notice. Following publication and distribution of the public notice and distribution of the additional regulations notice information, the agency should prepare an affidavit of notice (Appendix H of this manual). The affidavit must be submitted to the Department of Law with the final regulations package (see Step 8).

STEP 6. PUBLIC COMMENT PERIOD AND ORAL HEARING. The agency should retain all public comments received (this includes printing and retaining comments received by e-mail) according to the agency's records retention schedule and must make those comments available for public and Department of Law review if requested. As discussed in Step 2, the ADA requires the agency to make reasonable accommodations to allow a qualified individual with a disability to participate in the public comment process on proposed regulations.

If an oral hearing is held, the hearing should be recorded and witnesses should be asked to identify themselves and any organization they represent. 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 correspondence. Basic fairness should govern the oral 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 an oral hearing.

Following an oral hearing, the agency should prepare an affidavit of oral hearing (Appendix I of this manual). The affidavit must be submitted to the Department of Law with the final regulations package (see Step 8).

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 proposed regulations (see Step 5, item h.). AS 24.20.105 also provides for Legislative Affairs Agency review of the proposed regulations. This review could result in a written notification or other communication from the Legislative Affairs Agency to the adopting agency. Such a notification or communication would not be a public comment (see Step 7). If such 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.

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

Additionally, the state agency (other than a board or commission) must record its use or rejection of factual or other substantive information received as written 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 written comments and the agency's action on them may be prepared. For board or commission regulations, 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 regulations is taken should document that use or rejection.

A state agency must also 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 pollution regulations. 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.

Legislative Affairs Agency Review Process. If the state agency received a written notification or other communication from the Legislative Affairs Agency as a result of its review of the state agency's proposed regulations under AS 24.20.105, the state agency should have immediately discussed the notification or other communication with the agency attorney and the regulations attorney in the Department of Law (see Step 6). Before adoption of the regulations, the state agency should consider the Legislative Affairs Agency's notification or communication and the Department of Law advice regarding it. However, under AS 24.20.105(h), the Legislative Affairs Agency's review process does not affect a state 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 a state agency.

Note: Under AS 40.25.120(a)(11), a written notification from the Legislative Affairs Agency, or communication between the Legislative Affairs Agency and the affected state agency, under AS 24.20.105 is not a public record, is not subject to public inspection or copying, and thus is not a public comment. 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.

After considering all public comments, considering any Legislative Affairs Agency written notification or other communication and the Department of Law advice regarding it, and after 30 or more days have passed since the agency first published the notice for the regulations in a newspaper or other publication, the agency may take its final action on adopting the regulations. For a single official with regulation-adoption authority, this means signing and dating the adoption order. See Appendix J of this manual for a sample adoption order. As noted in Step 8, an affidavit regarding the required record of the agency's use or rejection of written comments must be submitted to the Department of Law with the final regulations package (unless the regulations were adopted by a board or commission). See Appendix K of this manual for a sample affidavit form.

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 chairperson, an acting chairperson, or the executive director of the board or commission may sign a "certification" order that states that the board or commission adopted the relevant regulations at the meeting. See Appendix L of this manual for a sample certification order. 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 be prepared and must accompany the certification order when the final regulations 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. See Appendices M and N of this manual for a sample of this staff affidavit and relevant portion of minutes.

AS 44.17.010 allows department heads to delegate their authority to adopt regulations. For example, a commissioner may delegate the commissioner's authority to adopt regulations to a deputy commissioner or a division director. The delegation must be written and must be signed by the commissioner. A commissioner may file a "standing" written delegation with the lieutenant governor's office (see sample form in Appendix O of this manual) or may state the delegation in other written form, such as a memorandum. The delegation may broadly cover all of that agency's regulations or may be specific to a particular set of regulations or a particular time period. See Appendix P of this manual 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).

The adoption or certification order should appear on one page. If the order must extend to a second page, begin the second page with the last paragraph of the main body of the order (the effective date statement). Do not place just the lieutenant governor's filing certification portion of the document 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. Additionally, the first two digits of the year of filing, followed by an underscore (20__), should be typed in, as reflected in Appendix J and Appendix L of this manual.

STEP 8. SUBMISSION OF FINAL REGULATIONS FOR LEGAL REVIEW AND APPROVAL. After adopting regulations, the agency must send the final regulations package to the Department of Law for legal review and approval. AS 44.62.060. The final regulations package is to be sent to the regulations attorney, not to the agency attorney. See Appendix Q of this manual for a sample memorandum to accompany the regulations package. The final regulations package must include

- a. the original and one copy of the final version of the regulations for the Department of Law's use;
- b. one copy of the final version of the regulations and the public notice for the Office of the Governor's use (not applicable to boards and commissions);
- c. the written adoption order (Appendix J) or certification order (Appendix L);
- d. a copy of the delegation of authority (Appendix O or Appendix P) or designation as "acting commissioner," if required;
- e. relevant minutes of the board or commission meeting, and staff affidavit, if required (Appendix M and Appendix N);
- f. a copy of the public notice (Appendix D);
- g. the additional regulations notice information that was distributed with the public notice (Appendix E);
- h. the original publisher's affidavit of publication;
- i. an original affidavit of notice of proposed regulation adoption (Appendix H);
- j. an original affidavit of oral hearing, if an oral hearing was held (Appendix I);
- k. a fiscal note, if required (Appendix F);
- l. an original affidavit of agency record of public comment (Appendix K) (not applicable to boards and commissions); and
- m. any other relevant documents (such as any material adopted by reference in the regulations).

The documents submitted with the final regulations provide evidence of compliance with the APA. The agency checklist for "regular" regulations in Appendix A of this manual also lists the documents that must be transmitted to the Department of Law in the final regulations package. Copies of additional supporting documents that will be submitted as part of the final regulations package, such as notice distribution lists or supplemental orders, should be double-sided, if possible, to reduce long-term storage costs.

An agency might 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 logically can be separated from the rest of the project, the agency can avoid delaying the whole project by dividing it into two or more parts. The adoption process can 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 regulations for those parts to the Department of Law. See Chapter 4 of

this manual for more discussion on staleness of a public notice and need for supplemental notice. To avoid confusion, the agency should confer with the legislation and regulations section of the Department of Law on the proper procedures for dividing a project.

For regulations adopted by a state agency other than a board or commission, the Department of Law will provide a copy of the adopted regulations and the public notice (included in the agency's final regulations package) to the Office of the Governor. The Office of the Governor may review the regulations under AS 44.62.040(c) and return them unfiled for specified reasons.

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, as set out in the project, for its legality, constitutionality, and consistency with other regulations; confirm the statutory authority for the regulation; review for correct language, style, and format, including clarity; confirm the adequacy of the public notice; confirm that the proper administrative procedures were followed; confirm that existing regulatory language does not need amendment to conform to current law and this manual; and confirm that all necessary documents are included in the final regulations package. See Appendix Y of this manual for the agency attorney review checklist for "regular" regulations and Chapter 15 of this manual 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 of the Department of Law, 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 of this manual 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 necessary for the regulation to be approvable, the agency must change the regulation to conform to the opinion. 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, that adoption would have to take place at a properly noticed public meeting of the board or commission. If the required 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. Regulations approved by the Department of Law, along with the originals of the supporting documents for the regulations, are submitted to the lieutenant governor's office for filing. Before filing, the governor (or the lieutenant governor, if delegated) may return regulations submitted by state agencies that are not a board or commission if the regulations are inconsistent with the faithful execution of the laws or to enable the state agency to respond to specific issues raised by the legislature's Administrative Regulation Review Committee (ARRC). After filing, the regulations 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 of the date it 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).

State agencies should consider the use of press releases, mailings, the agency's Internet website, or no-cost publications to inform the public that regulations have been filed and of the impending effective date of the changes.

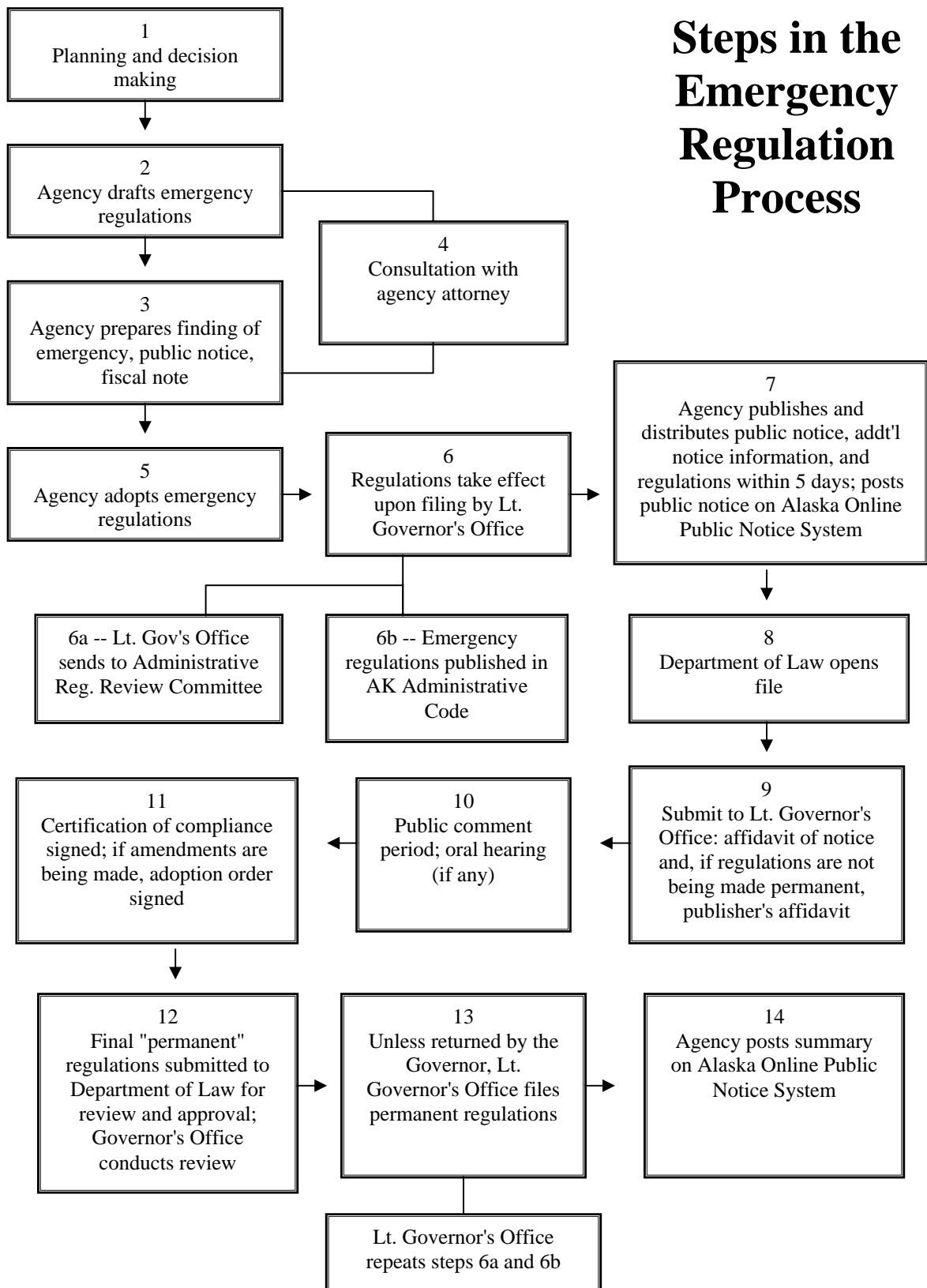
STEP 12. SUMMARY POSTED ON ONLINE PUBLIC NOTICE SYSTEM. AS 44.62.175(a)(7) and (b) require state agencies to post on the Alaska Online Public Notice System the text or a summary of the text of a regulation or order of repeal for which notice is given under AS 44.62.190(a). This provision has been interpreted to require "after-the-fact" notice that the regulation-adoption process has been completed. Please see "Post-Filing Notice Requirements" in Chapter 4 of this manual for details on how to comply with this requirement.

**CONVERTING A "REGULAR" REGULATIONS PROJECT
TO AN EMERGENCY REGULATIONS PROJECT**

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

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Steps in the Emergency Regulation Process



CHAPTER 3

EMERGENCY REGULATION ADOPTION PROCESS

Under the Administrative Procedure Act (APA), 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. See AS 44.62.250. 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 was 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 remains in effect for a total of only 120 days unless the agency follows the APA procedures required in order to make the regulation "permanent." Those procedures include providing for public comment and Department of Law review and approval of the regulation. The procedures are discussed later in this chapter.

This chapter discusses the steps in the emergency regulation adoption process. The flow chart on the preceding page illustrates this process, and a condensed agency checklist appears in Appendix B of this manual.

STEPS IN THE EMERGENCY REGULATION PROCESS

STEP 1. PLANNING AND DECISION MAKING. This step begins with the planning and decision-making process set out in Step 1 for "regular" regulations in Chapter 2 of this manual. When question "h" of that process -- "when do the regulations need to be in effect?" -- is reached, the agency must consider whether the circumstances of the project meet the "emergency" standard in AS 44.62.250 and 44.62.270, as discussed above. As part of that process, agencies are encouraged to consult with either an agency attorney or the legislation and regulations section of the Department of Law. If the regulations are urgent but the circumstances do not meet the emergency standard, the agency should follow the steps in Chapter 2 of this manual, 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 REGULATIONS. An emergency regulation is drafted and prepared in the same manner as is a regular 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 style="text-align: center;">EMERGENCY REGULATION</p> <p>Register ____, _____ 20__ FISH AND GAME</p> <p>5 AAC 38.130 is amended to read:</p> <p> 5 AAC 38.130. Fishing seasons for abalone in Registration Area A. Abalone may be taken or possessed from <u>September 15</u> [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>Authority: AS 16.05.251</p> <p>5 AAC 38 is amended by adding a new section to read:</p> <p> 5 AAC 38.136. Fishing seasons for clam in Registration Area A. 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>Authority: AS 16.05.251</p>

See Chapter 5 of this manual 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 of this manual for examples of how regulations are 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 of this manual (for a board or commission, see the finding of emergency/certification order form in Appendix S of this manual). AS 44.62.270 requires that a cautious and conservative approach be taken on the issue of what constitutes an emergency; 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. In doing so, the agency will have to decide whether the emergency regulation should be made permanent and, if the emergency regulation is going to be made permanent, whether the agency will hold an oral public hearing and what the deadline for submission of written comments will be. See Step 2 in Chapter 2 of this manual for help in deciding on whether to hold an oral public hearing and in setting the deadline for submission of written comments. That material is directed toward "regular" regulations, but is applicable to an emergency regulation.

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

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

See "Contents of Notice" and "Additional Regulations Notice Information" in Chapter 4 of this manual for discussion of the APA requirements regarding information contained in a public notice. That material is directed toward "regular" regulations, but is applicable to the public notice for an emergency regulation. See Appendix T of this manual for a sample emergency regulation public notice form and see Appendix E of this manual for a sample form for use in providing the additional regulations notice information.

The Department of Law recommends that the public notice be drafted and the additional regulations notice information be prepared at this stage, before adoption of the emergency regulation, so that the notice is 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, leaving large blanks for the dates. This ensures that the statements will not be overlooked when the final notice is prepared. 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 of this manual contains a fiscal note form for regulations. A summary of the fiscal information must be included in the public notice. See "Contents of Notice" in Chapter 4 of this manual and see Chapter 14 of this manual for more details regarding fiscal information.

STEP 4. AGENCY ATTORNEY REVIEW. 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 in the Department of Law before adoption of the emergency regulation. The agency should provide to the agency attorney a draft of the regulation, the finding of emergency, and the public notice, for review. This should help 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 REGULATIONS; SUBMISSION TO LIEUTENANT GOVERNOR'S OFFICE. The person authorized by statute to adopt an agency's regulations must sign and date the adoption order that appears below the finding of emergency. See the sample finding of emergency/adoption order form in Appendix R of this manual. If the members of a board or commission who voted on the emergency regulation are going to sign the emergency adoption order, use the form in Appendix R. If only the chairperson, acting chairperson, or executive director of the board or commission is going to sign, use the finding of emergency/certification order form in Appendix S of this manual.

The agency must deliver directly to the lieutenant governor's office the original of the signed finding of emergency/adoption order (or finding of emergency/certification order); the fiscal note, if there is one; relevant minutes of the board or commission meeting and staff affidavit (if a finding of emergency/certification order is being submitted); and 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. It is a good idea for an agency to inform the lieutenant governor's office ahead of time that emergency regulations are 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. Additionally, the first two digits of the year of the filing, followed by an underscore (20__), should be typed in, as reflected in Appendix R and Appendix S of this manual.

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 filed emergency regulations and notifies the adopting agency of the filing in the same manner as described for "regular" regulations in Step 11 in Chapter 2 of this manual. 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 Alaska Administrative Code (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 Emergency Regulations Are Set Out in the AAC," in this chapter.

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. As mentioned at the beginning of this chapter, 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 Regulations Notice Information" in Chapter 4 of this manual. That material is directed toward "regular" regulations but is applicable to the public notice for an emergency regulation. The copy of the notice (and regulations) that is to be sent to the Department of Law may be sent with the file-opening request described in Step 8, if the emergency regulation will be made permanent. Note item 9 under "Publication and Distribution of Public Notice" in Chapter 4 of this manual, regarding required distribution of the public notice and regulations 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 regulations project. See Appendix G of this manual for a sample memorandum requesting 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 regulations notice information, the agency should prepare an affidavit of notice of adoption of emergency regulations and must submit the original of the affidavit, along with the original or a copy of the public notice and additional regulations notice information, directly to the lieutenant governor's office, to be attached to the original emergency regulation. Appendix U of this manual 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. If the agency intends to make the emergency regulation permanent, the agency should retain a photocopy of the affidavit for submission to the Department of Law with the final "permanent" regulation.

After publication of the notice in a newspaper or other publication, the agency will receive from the publisher the proof-of-publication affidavit (or "publisher's affidavit") that the agency requested in its advertising order (see item 1 under "Publication and Distribution of Public Notice" in Chapter 4 of this manual). 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.

Note: 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 have been 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 state agency must pay special attention to the cost to private persons of the regulation. Additionally, the state agency (other than a board or commission) must record its use or rejection of written comments, and prepare an affidavit regarding that record, in the manner described in Step 7 in Chapter 2 of this manual for the regular regulation adoption process.

If an oral hearing was held, the agency should prepare an affidavit of oral hearing (Appendix I of this manual). 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 regulations (see Step 7), and AS 24.20.105 provides for Legislative Affairs Agency review of the regulations. This review could result in a written notification or other communication from the Legislative Affairs Agency to the adopting agency. Such a notification or communication would not be a public comment (see Step 11). If such 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.

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 its 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 were met. AS 44.62.260. Appendix V of this manual contains a certification of compliance form for this purpose. The agency person with regulation-adoption authority (including delegated authority or an "acting commissioner" designation) should sign the certification. In the case of a board or commission, consult with the Department of Law regarding signature requirements.

More often than not, when an agency makes an emergency regulation "permanent" it will need to make changes to the original emergency regulation. The changes might consist of one or more amendments to the emergency regulation language, or one or more new provisions, new amendments, or new repeals. In such 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 of this manual for the "regular" adoption order form, Appendix L for the "regular" certification order form, and Step 7 in Chapter 2 of this manual for discussion on adoption or certification order signature requirements.

Any changes 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 the regulations section of the Department of Law if changes are needed that will require a supplemental notice.

Note that changes to the original emergency regulation that are included in the final "permanent" regulation are considered "regular" regulation changes, 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, and the adoption or certification order if any, each 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. Do not place just the lieutenant governor's filing certification portion of the document 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(s). Additionally, the first two digits of the year of filing, followed by an underscore (20__), should be typed in, as reflected in Appendix V, Appendix J, and Appendix L of this manual.

Legislative Affairs Agency Review Process. If the state agency received a written notification or other communication from the Legislative Affairs Agency as a result of its review of the state agency's regulations under AS 24.20.105, the state agency should have immediately discussed the notification or other communication with the agency attorney and the regulations attorney in the Department of Law (see Step 10). Before making its decision regarding the final "permanent" regulations, the state agency should consider the Legislative Affairs Agency's notification or communication and the Department of Law advice regarding it. However, under AS 24.20.105(h), the Legislative Affairs Agency's review process does not affect a state 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 a state agency.

Note: Under AS 40.25.120(a)(11), a written notification from the Legislative Affairs Agency, or a communication between the Legislative Affairs Agency and the affected state agency, under AS 24.20.105 is not a public record, is not subject to public inspection or copying, and thus is not a public comment. 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.

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). In the "permanent" regulation, use underlining and bracketing only to indicate any new changes being made to the original "emergency" language. The lead-in line for an emergency regulation being made permanent should state whether it is also 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 which involve the same or closely related issues. (Eff. 1/10/75, Register 53; am 8/31/2009, Register 191)

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 8/31/2009, Register 191; 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 "permanent" regulations package to the Department of Law for legal review and approval. AS 44.62.060 and 44.62.260. See Appendix Q of this manual for a sample agency memorandum to accompany the package. The final "permanent" regulations package is sent to the regulations attorney in the Department of Law (not to the agency attorney) and must include

- a. the original and one copy of the final version of the "permanent" regulation for the Department of Law's use;
- b. one copy of the final version of the "permanent" regulation and the public notice for the Office of the Governor's use (not applicable to boards and commissions);
- c. the signed certification of compliance (Appendix V);
- d. a signed "regular" adoption order or certification order if changes were made to the original emergency regulation (Appendix J or Appendix L);
- e. a copy of the delegation of authority (Appendix O or Appendix P) or designation as "acting commissioner," if required;
- f. relevant minutes of the board or commission meeting, and staff affidavit, if applicable (Appendix M and Appendix N);
- g. a copy of the public notice (Appendix T);
- h. the additional regulations notice information (Appendix E);
- i. the original publisher's affidavit of publication;
- j. an affidavit of notice of adoption of emergency regulations (submit a copy of the affidavit if the original was previously sent to the lieutenant governor's office) (Appendix U);
- k. an affidavit of oral hearing, if an oral hearing was held (Appendix I);
- l. a fiscal note, if required (Appendix F);
- m. an original affidavit of agency record of public comment (Appendix K) (not applicable to boards and commissions);
- n. a copy of the filed finding of emergency, emergency adoption (or certification) order, and emergency regulation; and
- o. any other relevant documents (such as material adopted by reference in the regulation).

The documents submitted with the final "permanent" 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 regulations in Appendix B of this manual.

The final "permanent" regulations 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 its review in the same manner as described for "regular" regulations in Step 8 in Chapter 2 of this manual.

STEP 13. PERMANENT FILING. After a final "permanent" 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 "regular" regulations in Step 11 in Chapter 2 of this manual.

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

The lieutenant governor's office distributes copies of filed "permanent" regulations and notifies the adopting agency of the filing. The filed permanent regulations are maintained by the lieutenant governor's office and the state archivist in the same manner as described for "regular" regulations in Step 11 in Chapter 2 of this manual.

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. To facilitate compliance with this requirement, 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 unintentional.

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 that 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 EMERGENCY REGULATIONS ARE SET OUT IN THE AAC

When an emergency regulation is first published in the AAC, it will appear in a separate "emergency regulations" 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 regulations" 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 sets out an example of the way an emergency regulation is set out in the emergency regulations 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, 2009, unless made "permanent" by the adopting agency.)** (In effect before 1988; am 8/6/2009, Register 191)
Authority: AS 16.05.251

In this example, the effective date of the emergency regulation is stated in the history note -- "am 8/6/2009, Register 191." 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 "REGULAR" REGULATIONS PROJECT TO AN EMERGENCY REGULATIONS PROJECT

On a rare occasion, an agency will publish notice for a "regular" regulation and proceed with the regular 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, as described in this chapter. The agency must work closely with the Department of Law in order to avoid confusion regarding the status of the project. 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 emergency regulations and its publisher's affidavit, are necessary to support making the emergency regulation permanent. "Conversion" of a "regular" regulations project to an emergency one is, typically, somewhat complicated. The agency must consult and work closely with the legislation and regulations section of the Department of Law in order to assure successful completion of the project.

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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 that proposed action. One goal of a public notice is to inform the public of the agency's proposals and of the opportunity to comment on those proposals before the agency takes final action to adopt the proposals as regulations. 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 "regular" regulation. Chapter 3 of this manual describes the emergency regulation adoption process; that chapter will direct the reader to relevant information in this chapter.

CONTENTS OF NOTICE

The general contents of a public notice are specified in AS 44.62.200. AS 44.62.190(d) specifies certain additional notice information that must be provided to certain persons along with the public notice. Appendix D of this manual contains a sample public notice form and Appendix E of this manual contains a sample form for use in providing the additional regulations notice information. The additional regulations notice information requirements are discussed later in this chapter.

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 or by fax, the Department of Law recommends 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 a state agency's obligation to give reasonable notification of regulation 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.)

As a general rule, 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 or establish slightly different provisions in its final regulation.

The informative summary of proposed action should not just give the legal citation (e.g., 7 AAC 43.100) 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.

For a new regulation, the informative summary should describe its substance. For amendment of an existing regulation, the summary should describe how the change being made relates to the substance of the existing regulation. Additionally, the summary should address why the existing regulation is being changed.

For a repeal of an existing regulation, describe the provision to be repealed. In order for the public to determine whether its interests could be affected, the description should be more than a one- or two-word identifier.

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 point 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 state 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 no additional appropriation will be needed by any state agency the notice must contain a statement to that effect (and no fiscal note is required). The sample notice forms in Appendices D and T of this manual contain language for both statements. Also see Chapter 14 of this manual for more information regarding fiscal notes.

To be more "user friendly," public notices regarding regulation changes should

- a. minimize the use of technical terms not generally understood by the public;
- b. use "plain English" in describing the regulatory action;
- c. strive for clarity and clean, concise language;
- d. name a specific agency contact person for requesting information about the regulations project, including information regarding special accommodations for persons with a disability; and

- e. actively solicit comments from the affected public on the cost of compliance with the proposed regulation (the sample public notice forms in Appendices D and T of this manual contain such a statement).

The Department of Law recommends that the public notice include a statement as to how a person with a disability can request a special accommodation in procedures or facilities in order to participate in the regulatory process regarding the proposed regulation. This statement is included in the sample public notice forms in Appendices D and T of this manual.

The Department of Law recommends that the public notice alert the public that written comments received are public records and are subject to public inspection. A suggested statement is included in the footnotes to Appendices D and T of this manual.

When preparing a public notice, the agency should be sure that the notice is clear and is understandable by the public, especially the portion of the public directly affected by the regulation.

ADDITIONAL REGULATIONS NOTICE INFORMATION

AS 44.62.190(d) requires that certain "additional" information be distributed along with the public notice for a regulations project. Because this additional information is required to be furnished only to certain recipients of the public notice, the information need not be contained in the public notice itself. But the information **must** be distributed in accordance with AS 44.62.190(d) (see "Distribution of Additional Regulations Notice Information" later in this chapter). The "Additional Regulations Notice Information" form in Appendix E of this manual was designed to include all the required information and to comply with AS 44.62.190(d), and its use is **strongly** recommended.

The purpose of the additional regulations notice information required by AS 44.62.190(d) is to aid the legislature and interested persons in understanding the agency's proposed action. The information that must be provided is: (1) the reason for the regulation; (2) the costs to the agency of its implementation; (3) the name of the agency contact person; and (4) the origin of the proposed action.

Of particular note is that the fiscal information required under AS 44.62.190(d) is somewhat different from AS 44.62.195's requirement regarding estimation of increased appropriations. The mere statement in the public notice that the action is not expected to require an increased appropriation is not sufficient to comply with the requirements of AS 44.62.190(d). Under AS 44.62.190(d), the agency must provide information regarding its costs in implementing the proposed regulation even if the agency plans to absorb the costs and will not be requesting an increased appropriation. Also, AS 44.62.190(d) requires that costs be projected only for "the state

agency." 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 notice information requirements of AS 44.62.190(d) by stating anticipated costs to that agency, not to the state as a whole.

Even though the Administrative Procedure Act (APA) does not clearly require it, the additional regulations notice information form should reflect changes in revenue from one revenue source to another (as is discussed for fiscal notes in item number 3 in Chapter 14 of this manual). For example, loss of revenue to the fish and game fund that will be made up from the state general fund, as a result of a regulation change, should be reflected on the form.

PUBLICATION AND DISTRIBUTION OF PUBLIC NOTICE

The APA requires that 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 website on the Internet, 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. If a proposed regulatory action is of particular interest to a specific geographical area, effort should be made to notify the public in that area. 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 proposed regulations, the state agency might wish to consider a no-cost media campaign (of interviews, press releases, etc.) 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 of the notice. The agency should request a proof-of-publication affidavit from the publisher. The state's advertising order form provides spaces for all of this information and includes an affidavit of publication for use by the publisher. The original of the publisher's affidavit will have to be submitted to the regulations attorney in the Department of Law with the final regulations package.

2. AS 44.62.190(a)(1) also requires posting of the proposed agency action on the Alaska Online Public Notice System. Contact the lieutenant governor's office for instructions on posting notices 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 a copy of the proposed regulation 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, and should be furnished evenhandedly to all persons who request them. Each state agency must maintain a list of persons who have contacted the agency and asked to be provided with copies of notices of regulations projects. Department staff should check with its commissioner's office to determine whether a general department-wide list of persons requesting information on regulations projects exists, in addition to any list developed at the division, office, or other department level. 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. Please note that the APA requires that only the public notice, not the actual copy of the proposed regulation, be sent to persons on the list. A person receiving a public notice can then request a copy of the proposed regulation if the person is interested. Also, placing the proposed regulation on the agency's Internet website would allow the public another means of access to the regulation and might reduce requests to the agency for paper copies. Posting of a notice on a state agency's 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 who 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. When an agency determines that it is appropriate, the agency may use additional alternative ways to give public notice of a regulations 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 state agency should periodically review its lists of interested persons to help assure that a broad spectrum of interested persons is reached.
6. The state agency must furnish to the Department of Law, for its legal review, a paper copy of both the notice and the proposed regulation. AS 44.62.190(a)(5). To avoid confusion and delay, the state agency 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 of this manual).

7. A copy of the notice must be furnished by electronic format to all incumbent legislators, if the state agency has the technological capability. AS 44.62.190(a)(6).

The Legislative Affairs Agency has a list showing the correct spelling of the names of incumbent legislators and their e-mail addresses. In election years, both newly elected legislators (before they are sworn in) and incumbent legislators should be furnished a copy of the notice. Again, the Legislative Affairs Agency has the correct names and spellings of legislators-elect and appropriate mailing or e-mail addresses.

8. Under AS 44.62.190(a)(6), the state agency also must furnish a copy of the notice to the Legislative Affairs Agency. That agency has designated Legislative Legal and Research Services to receive its copy by e-mail. A state 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 state agencies (primarily the Board of Fisheries and Board of Game), the legislation and regulations section in the Department of Law has the appropriate e-mail address for the staff attorney in Legislative Legal and Research Services assigned to receive the copy.
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 committee(s) 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 REGULATIONS NOTICE INFORMATION

As mentioned earlier in this chapter, it is **strongly** recommended that the "Additional Regulations Notice Information" form in Appendix E be used to provide the required additional regulations notice information. The additional regulations notice information **must** be distributed **at the same time** the public notice for a regulations project is distributed, as follows:

1. to every person who has asked to receive notice of the agency's proposed regulation actions;
2. to a person or a group that the agency believes is interested in the proposed action; and
3. to all incumbent state legislators (in an election year, include newly elected legislators who are not yet sworn in) and the Legislative Legal and Research Services of the Legislative Affairs Agency.

To avoid additional costs and possible procedural error, it is **strongly** recommended that the additional regulations notice information be furnished **with** the public notice to those listed above. The additional regulations notice information should be furnished to a person in the same manner in which the public notice was furnished to that person (i.e., by e-mail or by "regular" mail). Newspaper publication of the additional regulations notice information form is not required.

The additional regulations notice information also should be posted on the Alaska Online Public Notice System with the public notice for the project. Contact the lieutenant governor's office for instructions.

In addition, a copy of the additional regulations notice information form should accompany the copies of the public notice and proposed regulations that are sent to the regulations attorney (see item 6 under "Publication and Distribution of Public Notice" in this chapter).

RENOTICING A REGULATIONS PROJECT

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

To help 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 effective date of the regulation, a supplemental notice should be published. The one-year period includes the time that the Department of Law needs to conduct its legal review. In planning the regulation-adoption schedule for a project, an agency should allow the Department of Law as much time as possible for review.

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

Sometimes it is necessary or advisable to publish a supplemental notice for other reasons. For example, the supplemental notice might extend the comment period or set a new date for an oral hearing, or it might correct an error in the original notice.

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 such a 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). A supplemental notice should be posted on the Alaska Online Public Notice System. Consult the legislation and regulations section of the Department of Law on whether the additional regulations 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 regulations 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 regulations package, along with the original notice and the publisher's affidavit for it.

An example of a supplemental notice appears at the end of this chapter.

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 of the Department of Law for recommendations regarding appropriate timeframes under a supplemental notice for a particular regulations project.

POST-FILING NOTICE REQUIREMENTS

The APA does not require that an "after-the-fact" 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 "after-the-fact" 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 system as soon as possible after the regulation is filed. To be meaningful, the summary should state that the regulation has been filed and should state its effective date. 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, state 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 REGULATIONS

Appendix D of this manual contains a sample public notice form for "regular" regulations. Based upon that form, 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 where an employee-employer relationship exists, and would not affect individuals engaged in the activity of a non-profit 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 such 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:

1. 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.
2. 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, Department of Commerce, Community, and Economic Development, proposes to repeal and adopt regulations in Title 3 of the Alaska Administrative Code dealing with agents, brokers, solicitors, and adjusters, including the following:

1. 3 AAC 23.050, Producing general agents, will be repealed. This regulation requires licensed general agents to secure an agent's license in order to act as a producing agent for the same or another insurer. This regulation has been superseded by the amendment of AS 21.09.280(b), which grants that authority to the general agent without having to apply for an additional license.
2. 3 AAC 23.070 will be a new section that will provide for the length of time for which an insurance licensing examination score is valid. If licensure is not obtained within that period, the applicant must retest.
3. 3 AAC 23.080 will be a new section that requires applicant retesting in certain circumstances, such as when an applicant's prior Alaska insurance license was revoked for any reason, including nonpayment of annual continuation fees.

Figure 4.4 - Repeal of Existing Material

The Department of Health and Social Services proposes to repeal 7 AAC 07.080(f), dealing with final administrative decisions for appeals under the certificate of need program. This subsection provides that the decision of a hearing officer will be the final administrative decision regarding the disposition of a matter concerning a certificate of need. To ensure proper program oversight, the intent of the repeal is to retain final decision-making in the commissioner.

Figure 4.5 - Amendment of Existing Material Only

The Department of Health and Social Services proposes to amend regulations in 7 AAC 43 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:

1. 7 AAC 43.679(a) will be amended to reflect Accounting Manual changes.
2. 7 AAC 43.686(d) will be amended to further define allowable costs included in determining a prospective rate.
3. 7 AAC 43.693 will be amended regarding facility audits.

EXAMPLE OF SUPPLEMENTAL NOTICE

Figure 4.6 shows an example of a supplemental notice that refers back to the original public notice for a regulations project.

Figure 4.6 - Supplemental Notice

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

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

1. 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.
2. 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 promulgated 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, 2009 concerning these proposed regulation revisions contained in the Department of Law file number JU2010200081. This SUPPLEMENTAL NOTICE is being issued because the Department of Labor and Workforce Development has decided to hold oral hearings on these proposed revisions. The hearings will be held as follows:

....

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CHAPTER 5

ORGANIZATION AND NUMBERING OF THE ALASKA ADMINISTRATIVE CODE

ORGANIZATION OF THE AAC

Regulations in the Alaska Administrative Code (AAC) are organized into the following classifications in much the same manner as are 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 the title 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 in which they would be used, are shown in Figure 5.1.

Figure 5.1 - Section Subdivisions		
First	--	SUBSECTIONS: designated as (a), (b), (c), etc.
Second	--	PARAGRAPHS: designated as (1), (2), (3), etc.
Third	--	SUBPARAGRAPHS: designated as (A), (B), (C), etc.
Last	--	SUB-SUBPARAGRAPHS: designated as (i), (ii), (iii), etc.

It is better to increase the number of sections than to subdivide a single section too far. Try to keep things simple and logical.

Every provision must be within a section, subsection, paragraph, subparagraph, or sub-subparagraph, and may not be left without one of those designations.

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 of this manual for examples on how to format and subdivide regulations.

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

Figure 5.2 - Series of Provisions

11 AAC 05.990. Definitions. 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. 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 of the Department of Law before departing from the standard number limitation. When designating section or chapter 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, sections should be numbered by 10's and chapters numbered by 5's, depending upon the total number of sections or chapters. If more section or chapter numbers are needed, smaller gaps may be left between numbers. A section number may be used only once in a chapter, and a chapter number may be used only once in a title.

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 subsec. (b) of a section that contains four subsections, the agency should not amend the section to move subsec. (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. Also, if an agency needs to add a new subsec. (c) among existing subsecs. (a) - (d), the entire section must be repealed and readopted.

An agency may not use the repeal and readopt method (nor 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 of the Department of Law 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. Sections within a chapter are often grouped by subject matter into "articles."

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. (Note that, with few exceptions, an agency's "findings" regarding the relevant regulatory program are not a regulation. They should not be assigned a section number or appear in the AAC.) Provisions setting relevant procedures and requirements would come next, set out generally in the order in which they will occur under the program. General provisions are last. These sections include provisions that apply generally to the program or function but are not procedural, such as provisions regarding non-discrimination, 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: (1) "applicability and eligibility," (2) "application process," (3) "department review and decision," (4) "appeals," (5) "loan terms," and then (6) "general provisions."

To avoid confusion, 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. However, as the number of sections in the chapter increases, so does the need to group the sections into articles.

Articles in a chapter must be numbered consecutively, without regard as to whether the article number corresponds to the group of 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 that article number. Do not attempt to match the article number to the section grouping by using "Article 9."

Consult the legislation and regulations section of the Department of Law early in the drafting process for advice on organizing regulation provisions.

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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. As a general rule, if there is a question as to the organization, form, or wording of a regulation, the organization, form, and style used in the Alaska Statutes are followed. The Legislative Affairs Agency's *Manual of Legislative Drafting* may prove helpful.

GENERAL RULES

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

1. Use plain English, avoid jargon, and think about each word that is written. To help ensure that the agency's desired results are achieved, the wording of a regulation must be clear, easily understood, and as accurate as possible. Remember that the public must comply with it and court and administrative law judges must apply it.
2. An amendment should match the style of the existing regulation being amended.
3. Use consistent terminology. Do not use the same word or phrase to denote different things, or different words or phrases to denote the same things.
4. Write simply and concisely, but make sure that the words selected accurately state the agency's meaning.
5. 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 by April 15. However, the department will accept a late application if it was received by April 30 and the applicant shows, to the department's satisfaction, that

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

6. Draft the regulation in a logical progression. For example, start with receipt of applications, move to agency decision on the application, and finally discuss appeal rights on denial of applications. Breaking a regulation into subsections or paragraphs may be helpful in clearly stating the steps in the process.
7. When using the word "includes," as in a definition, do not add "but is not limited to." See AS 01.10.040(b).
8. Do not rely on chapter, article, section, or subsection headings to clarify the text of the provision.

PREFERRED USAGE

1. Do not use words or phrases that are longer or more complicated than necessary to express an idea. For example, say "use" instead of "utilize."
2. Avoid "legalese" words or phrases that are used solely to make the regulation sound legal. For example:

Don't say

"provided that"

"said" or "such" as in
"said corporation shall comply"

"prior to"

"subsequent to"

"pursuant to"

"wherein"

"therein"

"in the event that"

Say

"if" or "however"

"the" or "that" or "those"

"before"

"after"

"under"

"in which"

"in it"

"if"

Don't saySay

"null and void"

"void"

"rules and regulations"

"regulations"

"cease and desist"

"stop"

3. Whenever possible, use the present tense. For example:

Don't saySay

"A permit shall be required"

"A permit is required"

4. As a general rule, use the active rather than the passive voice. For example:

Don't saySay

"A committee must be appointed
by the director"

"The director shall appoint
a committee"

5. Use the third person. For example:

Don't saySay

"You shall"

"An applicant shall"

6. As a general rule, use the singular number. For example:

Don't saySay

"Applicants shall submit
the required fees."

"An applicant shall submit
the required fee."

7. As a general rule, express ideas positively.

Don't saySay

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

"This section applies to a
person 21 years of age or
less."

8. 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.
9. Do not use masculine or feminine pronouns (e.g., "his" or "her"), and don't mix singular subject nouns with plural pronouns.

Don't say

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

Say

"An applicant must sign that person's application."

10. Use "state" instead of "Alaska."

COMMAS; USE OF "AND" AND "OR"; PUNCTUATION

1. Since courts and the public rely on punctuation, punctuate carefully but do not depend on punctuation to convey the agency's meaning.
2. 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.

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

Don't say

"The application must contain X and Y and Z."

Say

"The application must contain X, Y, and Z."

When setting out a series of elements, do not put 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 shall 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.

3. Do not use "and/or" as a connector because it is ambiguous. Use "and" or "or" as described in the discussion above.
4. 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.

5. Finally, if a paragraph contains more than one sentence, the sentences must be separated by semi-colons, 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

1. Use capitals sparingly; as a general rule use the lower case. 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.

2. 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-Sixth 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

As mentioned elsewhere in this manual, the use of an electronic means of contacting an agency or obtaining copies of proposed regulations and other material can be helpful to the public as well as to state agencies. 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 it may be used in regulation text

"by facsimile transmission"

"by electronic mail"

"Internet address"

"department's website" *

"telephone number"

Term as it may be used in related material

"by fax"

"by e-mail"

"Internet address"

"department's website" *

"phone number"

* Note that the term "homepage" is not to be used in either regulation text or in related material.

NUMBERS

1. Numbers from one through nine are written in words only:

one, two, three, four, etc.
2. Numbers over nine are written in figures only, except that if such a number is at the beginning of a sentence it is written out:

.....10
.....150
.....3,250
.....1,600,000
3. When a hyphenated phrase contains a number over nine as well as one from one through nine, use figures only:

... Election Districts 7 - 15 ...
4. The older, redundant style sometimes used in legal documents (e.g., "five (5)") should not be used.
5. Ordinal numbers follow the same rules:

first, second, third, etc.; 10th, 21st, 32nd, etc.
6. When referring to money, use figures only:

\$5 (not \$5.00), \$15, \$4.50, \$15.35, \$3,190.54
7. There is no rigid rule for fractions. For common ones like "one-half" or "three-fourths" spell them out, but for ones like "9/32" or "3 2/3" just use the figures.
8. In stating a percentage, do not use the percent symbol (%). Spell out the word:

"six percent," or "14 percent"

MAY, MUST, SHALL, AND WILL

1. Use the word "shall" only to impose a duty upon someone (e.g., "The school district shall ensure that each student is immunized."). Avoid the use of the word "should" in regulations, since it does not impose a duty, requirement, or regulatory standard.
2. Use the word "may" to grant a privilege or discretionary power (e.g., "A person may apply for a grant.>").
3. 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." Earlier versions of this manual required the use of the phrase "will, in the agency's discretion" in this situation. The change to use of "may" is not intended to be substantive -- it is stylistic, to allow the use of language that is more easily understood by the public, especially those required to comply with the particular regulation. Existing regulations filed before September 2000 using "will, in its discretion" phrasing remain valid. When those existing regulations are amended in the future, the Department of Law will review the language for possible editing to conform to this technical stylistic change.
4. 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, 2010.>").
5. When imposing a duty, granting permission, or committing to or prohibiting an action, follow the style illustrated below:

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

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

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. (Under these circumstances, no person is permitted to do the specified act (i.e., operate a vehicle) without a license.) (Do not use the "No person may . . ." phrasing.)

6. Use the word "must" rather than "shall" to state a mandatory legal requirement in the following circumstances:
 - a. Precondition -- "One member of the board must be a physician." The member's qualification as a physician is a precondition for appointment to the board, not a requirement imposed after appointment to the board.
 - b. Passive voice -- "A student must be immunized." Generally, however, the drafter should avoid passive voice construction whenever possible. See rule 4 under "Preferred Usage."
 - c. Inanimate objects -- "A state office building must have ramps for persons with disabilities." (Note: an entity made up of people, such as a corporation, school district, or state commission, is not considered an inanimate object for this purpose.)

RESTATING STATUTES

A regulation should not paraphrase or restate a statute. Paraphrasing or restating a statute

- a. does not create a regulation, nor does it 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;
- b. makes it more likely that errors will occur, 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;
- c. can mislead the reader into thinking that all pertinent law on a given subject is reflected in the regulations;

- d. 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

Often 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 regulation provision(s). 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 provision. Consult the legislation and regulations section of the Department of Law before including findings in a final set of regulations for adoption.

CHAPTER 7

WORD-PROCESSING AND FORMAT REQUIREMENTS

Standards for the preparation of regulations projects are important for maintaining a uniform administrative code that is consistent from agency to agency and from program to program within an agency. While Chapter 6 discusses general style, grammar, and wording requirements, this chapter discusses the mechanical standards of how to uniformly prepare and display regulations so that all can read and understand them. 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 of this manual for examples of how regulations are to be set out.

GENERAL WORD-PROCESSING INSTRUCTIONS

1. Spacing - Double-spacing of a draft regulation makes the regulation easier to read and edit. However, an agency might wish to single-space the version distributed for public comment, to reduce copying and postage costs. When a set of regulations 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 - An agency might wish to double-side the copies of the regulations that are distributed for public comment, to reduce copying and postage costs. The final adopted version submitted to the Department of Law for final review, however, must be single-sided.
3. Paper - Only standard quality, 8½ inch by 11 inch, 20-lb. white paper should be used.
4. Margins - Margins should be one inch on the sides, top, and bottom of the page.
5. Layout - Do not use full justification.
6. Font; print color - Use a font that is clear and easy to read (such as Courier or Times New Roman), and a print color of black. Use a font size of 11 or 12. To avoid confusion, italicize the lower-case "L" when it is being used as a subsection designation ("(*l*)"). (In Courier or Times New Roman fonts, the unitalicized lower-case "L" looks like the numeral "1" when printed.).

7. Italicizing; underlining - Except for a subsec. "(l)" designation, do not italicize or use a script-like font for the main body of the regulations (however, a book or other publication title that appears in a regulation should be italicized). Do not underline titles of court cases, treatises, books, publications, etc.
8. Headers or footers - Headers or footers with dates or version numbers should not be shown on the final adopted version of a set of regulations 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 of the Department of Law for instructions on how to display this material for printing in the Alaska Administrative Code (AAC).
10. Boldface type - Use **boldface** type in part, chapter, article, and section headings. An agency may use boldface type in subsection 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 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.

HOW TO SHOW CHANGES TO REGULATIONS

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, etc., being added, use the lead-in line to identify the material as new and do not underline or bold the material.

Figure 7.1 - New Chapter Without Articles

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

Chapter 32. Employment Rights.

Section

10. Basic statement

20. More material

6 AAC 32.010. Basic statement. Simply 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 __)

Authority: AS 18.60.020

6 AAC 32.020. More material. 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 __)

Authority: AS 18.60.020

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
- ...

Figure 7.3 - New Section

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

6 AAC 32.010. Additional requirements. Again, simply set out the new material in this section without underlining. (Eff. __/__/__, Register __)

Authority: AS 18.60.020

Amendment of Existing Section:

When amending an existing regulation section to add or amend a subdivision of the section that is a paragraph, subparagraph, or sub-subparagraph, it is helpful in the public distribution version of the proposed regulation to set out the lead-in language to that new or amended subdivision. For the final, adopted version of the regulation, however, it is preferred to set out only the subdivision being added or amended. This will not result in the repeal of existing language that is not set out. 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 that is being deleted. However, when deleting an existing statute or regulation citation that contains a reference to a subsection, do not capitalize the subsection reference; such a bracketed citation should appear as: [AS 47.10.020(a)].

When amending an existing section, language being added (underlined and bolded words) precedes 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. Incidentally, where the amending method requires using brackets, it means brackets [], not parentheses ().

Note: 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 to 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:

Don't Say

teacher[S]
teachers
t[T]he teacher

Say

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

Don't Say7 AAC 07.010 - 7 AAC 07.050 [7 AAC 07.040]open-entry [ACCESS]An o [O]ccupation[S]June 15 [1], 2009June 15, 2009 [JUNE 15, 2007]

AS 47.10.020[(a)]

Say7 AAC 07.010 - 7 AAC 07.050
[7 AAC 07.010 - 7 AAC 07.040]open-entry [OPEN-ACCESS]An occupation [OCCUPATIONS]June 15 [JUNE 1], 2009June 15, 2009 [2007]AS 47.10.020 [AS 47.10.020(a)]**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. Simply set out the new provisions [MATERIAL] and delete the old provisions [MATERIAL IN THIS SECTION]. (Eff. 2/15/2000, Register 153; 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) Simply 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. 2/15/2000, Register 153; 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. Note that 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 of this manual, and the sample regulations in Appendix C of this manual 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. 2/15/2000, Register 153;
repealed __/__/__, Register __)

6 AAC 32.020(b) is repealed:

(b) Repealed __/__/__. (Eff. 2/15/2000, Register 153; am __/__/__, Register __)

Authority: AS 23.10.360 AS 23.10.365

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

(7) repealed __/__/__;

(Eff. 2/15/2000, Register 153; 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, of this manual for illustrations of repeal and readopt format.

Multiple Changes Within One Section:

If multiple changes are being made regarding more than one subdivision of a section or subsection, set out a separate lead-in line for each subdivision's change. For example, if 6 AAC 32.030(b) is being amended, subsec. (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, para. (4) is being repealed, paras. (6) and (7) are being amended, and a new para. (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 of this manual 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. **8/5/2009** [4/15/2002], Register 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 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, changes to the section's authority citation should be shown as amendments. (See the sample regulations in Appendix C of this manual.) Note that 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

Authority:	[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 regulations. The publisher of the AAC then 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 of this manual, 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
------------------------------	---------------

For regulations being filed as emergency regulations, use the header set out in Step 2 in Chapter 3 of this manual.

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. Remember that 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 likely 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. Adding a **new** chapter or article, however, 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 upper-cased, 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. Note, however, that 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 of this manual 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 of this manual, 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 04.193 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., "7ctrl + shift + spaceAAC"). Note: 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 Paragraphing - The proper tabbing and indentation for each subdivision of a section is shown in Figure 7.9. Tabs must be set at the standard one-half inch intervals. As shown in Figure 7.9, 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 subdivision of a section (e.g., (a)) is followed by two spaces.

Figure 7.9 - Proper Indentation for Regulations

[tab] (a)
[tab][tab] (1) ...;
[indent][tab][tab] (A) ...;
[indent][indent][tab][tab] (i) ...;

Incorrect tabbing and indentation is one of the most frequent drafting errors. The example in Figure 7.10 shows how the text of a regulation appears when properly tabbed and indented. Also see the sample regulations in Appendix C of this manual.

Figure 7.10 - Example of Indentation

1 AAC 05.035. Section heading is bolded. (a) The section number is tabbed 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 tabbed in one-half inch. The first line of the next section subdivision, a paragraph, is tabbed in another half inch as shown below. 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 semi-colons, not periods;

(2) paragraphs can be further subdivided as follows:

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

(B) this is an example of a subparagraph and the sub-subparagraphs that might 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 for the regulations project 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 such 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.

In addition to any book-proofing that is necessary, the typed set of regulations must be proofread to ensure that the drafter's instructions and language are accurately set out.

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 it 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 5/19/2009").

An example of a history note as it would be printed in the AAC appears in Figure 8.1, below (the history note is shown in boldface type for example purposes only):

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)**

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). No history before that date is set out. The history note shows that after the initial July 28, 1959 date, the regulation was amended two times. Note that the register number for each amendment is shown after the effective date of the amendment. In the example above, if you wanted to research the change that took effect on December 31, 1980, you would look to regulations material filed for publication in Register 76.

Executive Order No. 103 transferred records custody and management for regulations on file in the lieutenant governor's office for more than five years to the state archivist in the Department of Education and Early Development. Therefore, to check the actual filed documents for those "older" regulations, contact the state archivist. For regulations filed within the last five years, contact the lieutenant governor's office.

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. 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, below, for an example for displaying the history note when the provision being amended is not the last provision in the section (the history note in the example is shown in boldface type for example purposes only).

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, **2009**
[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. Occupations prohibited to persons under age 21. Repealed. (Eff. 10/5/60, Register 15; am 5/20/70, Register 33; repealed __/__/__, Register __)

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 upper-cased if a subsection is being repealed and is lower-cased 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 8.4 - 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

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.

Figure 8.5 - Repeal and Readoption of Section

8 AAC 05.020 is repealed and readopted to read:

8 AAC 05.020. Occupations prohibited to persons under age 21. The new text of the readopted regulation appears here. (Eff. 10/5/60, Register 15; am 5/20/70, Register 33; am __/__/__, Register __)

Authority: AS 18.60.010 AS 18.60.100

See Appendix C of this manual 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.

There are three types of "statutory authority" for administrative regulations:

1. the general type given to an agency "to carry out the purposes of this chapter" or that given to all department heads by 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 its 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. (AS 44.17.030 should be cited only when it is the sole statutory authority for the regulation.)

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 of this manual for examples of how the citation of authority appears in a set of regulations. The particular statute subsection that provides authority

should not be included in the citation unless the statute section is unusually long and contains numerous subsections (e.g., (a) - (s)).

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 no 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 its 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 1994) 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).

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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 age 25" 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, that 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 one. 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 its 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 regulation 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 language 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 regulations, the lead-in 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 lead-in 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 this chapter, unless the context requires otherwise,
 - (1) "student" means . . . ;
 - (2) "teacher" means
- (b) In AS 14.30, unless the context requires otherwise,
 - (1) "school" means . . . ;
 - (2) "superintendent" means
- (c) In AS 14.30 and this chapter, unless the context requires otherwise,
 - (1) "child" means . . . ;
 - (2) "recess" 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 step child or foster child.

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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 "regulation" 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, the 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. The material being adopted by reference must be dated and must be in existence at the time the public notice for the proposed regulation is published and distributed. Unless the material being adopted by reference is a federal or state statute or regulation, an editor's note must appear after the regulation to tell the public where copies of that document may be inspected or obtained.

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 *National Industry Classification System Manual, United States*, adopted by reference in 8 AAC 85.290, or an electronic equivalent may be obtained by contacting the National Industrial Classification Association, 10088 South Prestwick Circle, South Jordan, UT 94095. E-mail: info@naics.com.

If a document is readily available to the public through the Internet, the agency may wish to consider placing 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/atmintro.shtml>.

An editor's note is not necessary for federal or state statutes or regulations adopted by reference because that material is generally available 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. Here are examples for typical types of material adopted by reference:

Federal regulation --

34 C.F.R. 76.401, revised as of July 1, 2009 and adopted by reference;
40 C.F.R. Part 763, revised as of July 1, 2009 and adopted by reference;

Books and Manuals --

Alaska Falconry Manual No. 8, July 1, 2008, 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 of the Department of Law for advice regarding an appropriate date.

Also, if an agency is adopting by reference its own manual or other document, that document should not repeat 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 its 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, its 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 43.032."

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 to the regulations attorney in the Department of Law for review, 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 March 2008, 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)

Authority: AS 16.05.841 AS 16.05.871 AS 16.05.901

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's website at http://www.sf.adfg.state.ak.us/SARR/AWC/AWC_catalogs.cfm.

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 website at http://www.sf.adfg.state.ak.us/SARR/AWC/AWC_ims.cfm or http://www.sf.adfg.state.ak.us/SARR/AWC/AWC_maps.cfm.

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 -- (a) a regulation of another state agency (e.g., a Department of Public Safety fire code regulation) or (b) 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." This language is intended to convey to a reader that a later amended version could be in effect at that time. Here 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 74 Fed. Reg. 4199 - 4201, revised as of January 23, 2009, 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 of the Department of Law 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. 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 in the Department of Law. When forwarding this notice to the Department of Law, also forward an affidavit of notice, to verify that the notice procedures of AS 44.62.245(b) were complied with. A sample affidavit for this purpose appears at Appendix X of this manual. 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.

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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

To cite an entire title:

in another title	-- 6 AAC
in the same title	-- say "in this title"

To cite an entire part:

(whether the citation is in the same or another part)	-- 6 AAC 10 - 6 AAC 30
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To cite an entire chapter:

in another chapter	-- 6 AAC 10
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):	-- 6 AAC 10.100 - 6 AAC 10.235
---	--------------------------------

To cite an entire section:

in another section	-- 6 AAC 10.100
in the same section	-- say "in this section"

To cite a portion of a
section:

in another section	-- 12 AAC 04.430(b)(2)(B)
in the same section	-- (b)(2)(B) of this section
in the same subsection	-- (2)(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 09.075(a), (b), and (f) [<u>not</u> 12 AAC 09.075(a)(b)(f)]
in the same section	-- (a), (b), and (f) of this section [<u>not</u> (a)(b)(f) of this section]

DO NOT SAY: in this article
in this part
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
Group of sections	-- AS 45.45.010 - 45.45.030
DO NOT SAY:	-- AS 45.45.010 - .030
DO NOT SAY:	-- AS 45.45.010, et seq.

Annual session laws	-- sec. 1, ch. 8, SLA 2009
First special session laws	-- sec. 3, ch. 1, FSSLA 2007
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 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:

11 U.S.C. 1301 - 1330 (Bankruptcy Reform Act of 1978)

42 U.S.C. 12001 - 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 are also 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, 2009; 34 C.F.R. 361.48 - 361.57 as revised as of July 1, 2009, or 40 C.F.R. Part 763 as revised as of July 1, 2009. 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., 74 Fed. Reg. 4199 - 4201 (January 23, 2009)).

CHAPTER 13

PENALTIES AND FEES

PENALTIES

Regulations should not provide for penalties for their 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 design a fee regulation, the agency must look at its statutory authority 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."

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 per hour for research). If, however, 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").

Historically, the Department of Law had interpreted a previous version of AS 37.10.050 as indicating a legislative intent to require express statutory authorization before an agency could establish a fee. An exception to that requirement had been in situations in which an agency was already charging a fee in the absence of a statute expressly authorizing it and the legislature appropriated those "program receipts" back to the agency. This appropriation was seen as an indication of legislative intent that, for the purposes of that program, the existing statutes relevant to that program were adequate authority for the agency to continue charging that fee. The current language of that statute is not clear as to how specific the required statutory authorization must be. This issue is still an open question before the Alaska courts, and consideration should be given to the decision in *Warner v. State, Real Estate Commission*, 819 P.2d 28 (Alaska 1991). If a fee regulation is based on this budget rationale, the adopting agency must submit to the Department of Law adequate evidence of legislative intent from the appropriate fiscal year's budget bill or legislative budget work documents.

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 such 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 such a 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

AS 44.62.195 requires that a fiscal note be prepared if a proposed regulation would require "increased appropriations," as follows:

Sec. 44.62.195. Fiscal notes on regulations. 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.

This law does not prohibit an agency from adopting a regulation and then seeking funding, but it does compel the state agency to think carefully about the fiscal ramifications of its action and to publicize those ramifications. Although it is not absolutely clear what the legislature intended to require through AS 44.62.195, that law should be interpreted in a common-sense way so that the true financial impact of a regulations project is considered and publicized. To determine whether a fiscal note is needed, an agency should consider the following and, if necessary, consult with its agency attorney:

1. The reality of the budget process, and likely budget shortfalls in the future, might require an agency to decide to absorb the cost of a regulatory change within its existing budget. Since the agency is not requesting an "increased appropriation" in such a case, a strong argument can be made that no fiscal impact need be shown.
2. Since AS 44.62.195 requires that "increased appropriations by the state" be shown, 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.

3. 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 appropriations 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.
4. Although AS 44.62.195 literally requires that the fiscal note cover only the fiscal year following the adoption 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.
5. The fiscal note form in Appendix F of this manual sets out the basic information required by AS 44.62.195.

At the time the proposed regulations are being drafted and prepared for public notice, an 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 a copy of the fiscal note must be provided to anyone who requests it.

The adopting agency must include a summary of the fiscal note information in its public notice on the regulations project. Failure to include that summary in a public notice of proposed regulations 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 and T of this manual (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.

The Department of Law is not in a position to audit an adopting agency when reviewing final adopted regulations. When it adopts its final regulations, the agency must re-look at whether increased appropriations are anticipated to be required, and must provide to the Department of Law a statement regarding appropriations. Appendices J and R of this manual (adoption order forms) and Appendices L and S of this manual (certification orders for board or commission adoptions) contain a statement referring to a fiscal note (if appropriations will be required) and a statement that no increased appropriations are expected. The agency should use the appropriate statement, and must attach a fiscal note if appropriations are anticipated to be required.

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 it makes in developing increased appropriation estimates and should analyze the justification for any appropriation increase, whether to itself or another agency.

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.

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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 included in the notice;
3. the deadline date and address for submission of written comments is clearly stated; if e-mailed or faxed comments will be accepted, a deadline time for receipt of the comments is 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 separately listed; sufficient details are given regarding the address(es) of the hearing site(s);
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. any regulation being repealed is adequately described and not just listed by citation number;
7. fiscal information is properly stated; if another state agency would be directly impacted by the proposed regulation, the statement regarding fiscal information covers that impact;
8. the notice includes an informative statement about how an individual can 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;
9. 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
10. there are no obvious constitutional or statutory problems.

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 of this manual.

At this time, the agency attorney also should remind the agency of the need to provide the additional regulations notice information required by AS 44.62.190(d) and to properly distribute it. The AS 44.62.190(d) requirement applies to both "regular" regulations and emergency regulations. See Chapter 4 of this manual for more discussion regarding the additional regulations notice information.

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. its 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. its clarity, simplicity of expression, and absence of possibility of misapplication; and
4. compliance with the drafting manual for administrative regulations.

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 regulations package" is logged in, the regulations attorney forwards the final regulations package to the agency attorney. The agency attorney first checks to make sure that the publication of notice is not "stale" and that all necessary documentation is included. See Step 8 in Chapter 2 of this manual for "regular" regulations and Step 12 in Chapter 3 of this manual for emergency regulations. If the notice is stale, the agency attorney will instruct the agency to publish and distribute a supplemental notice that provides for an additional comment period and to subsequently readopt the regulation.

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 the proper ones to legally support the project; this includes checking newly filed regulations that have not yet been published in the Alaska Administrative Code (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. for federal programs, checking 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, however, the agency attorney will mark them on a copy of the final regulation. After completing the review, the agency attorney will draft a memorandum or note recommending approval (or disapproval) and forward the final regulations package and the project 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 of the Department of Law reviews the final regulations 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). The final editing is done on the original of the regulation. Once approved by the regulations attorney or designee (or the attorney general or designee), the edited regulation, supporting documentation, and approval memorandum (or "opinion") are submitted to the lieutenant governor's office. The legislation and regulations section sends a duplicate original of the approval memorandum and a copy of the final edited regulation to the adopting agency and sends a copy of the memorandum and a copy of the regulation to the agency attorney.

If the Department of Law disapproves a regulation on legal grounds, it will provide a memorandum (or "opinion") to the agency stating its disapproval in accordance with 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 Alaska Administrative Code (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 routinely 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. A "clean" version of the regulation will appear in a subsequent quarterly register of the AAC. If an agency does reproduce its edited filed regulation by retyping it, extreme care must be taken to ensure complete accuracy.

The following notice should be displayed on any "clean" 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. PAPER COPIES OF THE REGULATIONS AS ORIGINALLY FILED BY THE LIEUTENANT GOVERNOR ARE AVAILABLE FROM THE [AGENCY].

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."

The Department of Law does not maintain electronic versions of "old" regulations. An agency that wants to retain electronic versions may wish to contact the Legislative Affairs Agency (LAA) to obtain an electronic copy of the agency's regulations from the LAA's electronic AAC database before the database is updated to incorporate the next register's new regulation changes.

TECHNICAL REVISIONS AFTER FILING

AS 44.62.125(b)(6) authorizes the regulations attorney in the Department of Law 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 section or subsection titles, or delete subsection titles, and change 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 "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. The regulations attorney will determine whether the change can be made under that authority. If it cannot, the agency must start a new regulations project. If the agency knows that a needed change is "substantive" rather than a technical correction that can be made by the regulations attorney, the agency should start a new regulations project.

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.

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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, provisions related to the Alaska Administrative Code (AAC) and Alaska Administrative Register, and the procedure for adopting regulations are set out in AS 44.62.040 - 44.62.290 of the Administrative Procedure Act (APA). 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).

AS 44.62.130(b) requires the "Department of Law" to "prescribe a uniform system of indexing, numbering, arrangement of text, and citation of authority and history notes" for the AAC. The AAC, which is the compilation of the state's administrative regulations, is divided into 23 titles: one for general provisions, one for the governor's office, one for professional and vocational regulations, one for miscellaneous boards and commissions having an independent status (such as the Commercial Fisheries Entry Commission), one for the ombudsman, one for the office of victims' rights, and the remainder for the major departments of the executive branch of state government. The regulations of each state agency become part of the unified administrative code. Adherence to this manual ensures that unification and helps meet the requirements of AS 44.62.060(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. Consequently, some of the rules of statutory construction set out in AS 01.10.020, 01.10.040, 01.10.050, and 01.10.060 have been interpreted as applying to regulations. Agencies should keep in mind, however, that a "right clearly

created by statute cannot be taken away by regulation." *Mueller v. Alaska State Bd. of Pers.*, 425 P.2d 145, 149 (Alaska 1967); *e.g.*, *Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003).

WHEN ARE REGULATIONS NECESSARY AND THE AUTHORITY FOR REGULATIONS

Agency action taken in the absence of necessary regulations will be invalid. *See U.S. Smelting, Refining & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140, 142 (Alaska 1971). In that case, agency action recommending changes to the Nome boundary in the absence of any regulatory standards was ruled invalid. 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).

If an agency policy is not validly adopted under the APA, the court will generally invalidate the policy until the procedures of the APA are followed. *See Wickersham v. State Commercial Fisheries Entry Comm'n*, 680 P.2d 1135, 1140 (Alaska 1984).

In cases where due process requirements are met and the statute is clear, the court will allow enforcement of the statute without regulations, since regulations were not "reasonably necessary" under the circumstances. *See generally Herscher v. State, Dep't of Commerce*, 568 P.2d 996, 1003, 1004 (Alaska 1977).

Likewise, the court has recognized that although the definition of "regulations" is broad, it does not encompass every routine, predictable interpretation of a statute by an agency. The court further noted that 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).

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); *see also Warner v. State, Real Estate Comm'n*, 819 P.2d 28 (Alaska 1991) (a regulation placing a one-year statute of limitations on claims against the real estate surety fund was found invalid because the statutes contained neither explicit nor broad grants of rulemaking authority on this subject from the legislature).

The court reviews emergency regulations in the same way as it reviews other agency regulations. Emergency regulations adopted in accordance with 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).

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 (Alaska 1977).

The Alaska Supreme Court has not yet reached the issue of whether standards adopted by reference may include all future amendments. *See generally Area Dispatch, Inc. v. City of Anchorage*, 544 P.2d 1024, 1026 n.10, 1027 n.4 (Alaska 1976). 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 requirements of AS 44.62.245 are met. AS 44.62.245 provides a simplified process for adopting future amendments of certain material by reference. Chapter 11 of this manual (adoption by reference) explains the process in more detail.

PENALTIES

There is a split of authority among the state courts on the question of 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, Sutherland Statutory Construction*, 5th 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 School 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 the state agency as part of the regulations process are subject to the Alaska Public Records Act at AS 40.25.100 - 40.25.295. 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 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. K. Davis, *Administrative Law Treatise*, sec. 7.22, at 105-08 (2d ed., 1979).

Rose v. Commercial Fisheries Entry Comm'n, 647 P.2d 154, 161 (Alaska 1982); see, e.g., *Simpson v. State, Commercial Fisheries Entry Comm'n*, 101 P.3d 605, 609 (Alaska 2004); *Crivello v. State, Commercial Fisheries Entry Comm'n*, 59 P.3d 741, 744 (Alaska 2002).

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). 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.

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 (Alaska 2005); *State v. Alyeska Pipeline Serv. Co.*, 723 P.2d 76, 78 (Alaska 1986).

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); also see 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 was 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 (Alaska 2002).

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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 court cases and readings that may be helpful. This material is listed according to the relevant chapters in this manual.

CHAPTER 1. INTRODUCTION TO REGULATIONS

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 in accordance with the Administrative Procedure Act (APA).
4. *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.
5. *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) -- the court generally takes an expansive view of the term "regulation," but the provisions of a state manual pertaining to this case were merely paraphrases of statutes, and thus were exempt as falling within the scope of the "internal management" exception.

6. *Reichmann v. State, Department of Natural Resources*, 917 P.2d 1197, 1201 (Alaska 1996) -- regulations encompass many statements made by administrative agencies, including policies and guides to enforcement.
7. *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983) -- regulations are subject to statutory requirements.
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. *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000) -- presents an interesting discussion of the legal effect of substantial compliance by an administrative agency with its own regulation.
12. *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."
13. *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.
14. *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.
15. *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.

16. Michael Asimow, *Guidance Documents in the States: Toward a Safe Harbor*, 54 Admin. L. Rev. 631, 651 (2002) -- provides an interesting discussion on states' approaches to requiring guidance documents to be adopted under the Administrative Procedure Act; the article discusses Alaska's broad definition of a regulation.
17. 1 Davis & Pierce, *Administrative Law Treatise*, 3d ed., sec. 6.5 (Little, Brown and Co., 1994) -- discusses "when rules are binding on agencies."

When are Regulations Necessary?

1. *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.
2. *Coghill v. Boucher*, 511 P.2d 1297 (Alaska 1973) -- "early count" election regulations were invalid because they were not mere "internal management" matters and should have complied with the APA.
3. *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.
4. *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.
5. *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.
6. *Keystone Services, Inc. v. Alaska Transportation Commission*, 568 P.2d 952, 956 n.9 (Alaska 1977) -- the court expressed grave reservations concerning the Alaska Transportation Commission's authority to act before adopting suitable regulations.

7. *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 182-83 (Alaska 1986) -- the Department of Community and Regional Affairs' interpretation of "population" in the tax-limitation statutes should have been adopted as a regulation because it falls within the statutory definition of a regulation. Regulations are invalid "because they were premised on an interpretation which was not properly adopted as a regulation."
8. *Mukluk Freight Lines, Inc. v. Nabors Alaska Drilling, Inc.*, 516 P.2d 408, 415 (Alaska 1973) -- action taken by Alaska Transportation Commission in absence of a necessary procedural regulation was invalid.
9. *Noey v. Department of Environmental Conservation*, 737 P.2d 796, 800-01 (Alaska 1987) -- greater specificity in regulations was not required in the face of a challenge that the regulations adopted were not sufficient to guide action in a particular setting.
10. *Port Valdez Co., Inc. v. City of Valdez*, 522 P.2d 1147, 1152 (Alaska 1974) -- the failure to adopt standards by the Local Boundary Commission made the annexation null and void unless validated by some overriding doctrine.
11. *Reichmann v. State, Department of Natural Resources*, 917 P.2d 1197, 1201 (Alaska 1996) -- criteria in state agency procedures manual that was intended to provide guidance with respect to decisions on whether to grant preference rights in a particular case should have been adopted as a regulation if agency felt that it was bound to follow the manual.
12. *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.
13. *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 to govern decision, which gave interested parties a fair opportunity to present evidence. The lack of procedural regulations did not invalidate its substantial implementation decision.
14. *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.
15. *State v. Hebert*, 743 P.2d 392, 396, 397 (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.

16. *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.
17. *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.
18. *State v. Weidner*, 684 P.2d 103, 109 (Alaska 1984) -- a policy statement in a departmental report could not be relied upon by the commissioner since it was not properly adopted as a regulation.
19. *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. *Beran v. State*, 705 P.2d 1280, 1287 n.8 (Alaska App. 1985) -- the Alaska Court of Appeals found AS 44.62.020 and 44.62.030 of the APA were based on California law and no helpful California cases interpreting those statutes had been found.
3. *Board of Trade, Inc. v. State, Department of Labor*, 968 P.2d 86 (Alaska 1998) -- the court found that reasonable necessity is not a requirement separate from consistency and the scope of review of a regulation should center around consistency with the authorizing statute.
4. *Brooks Range Exploration Co. v. Gordon*, 46 P.3d 942 (Alaska 2002) -- if literal interpretation of a statute leads to absurd results, a court may interpret the statute to agree with legislative intent.
5. *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 statutes' purpose.

6. *Chalovich v. State, Department of Natural Resources*, 104 P.3d 125, 135 (Alaska 2004) -- a challenged regulation concerning the Department of Natural Resources regarding the department's receipt of payment-in-lieu for mining claim was unreasonable and violated the department's stated goal of equal treatment.
7. *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.
8. *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.
9. *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.
10. *Kalmakoff v. State, Commercial Fisheries Entry Commission*, 693 P.2d 844, 853 (Alaska 1985) -- "If . . . a regulation is consistent with a statute's purposes and reasonably necessary to carry them out, we will not overturn it, provided it is reasonable and not arbitrary."
11. *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.
12. *Miners Advocacy Council, Inc. v. State, Department of Environmental Conservation*, 778 P.2d 1126, 1138 (Alaska 1989) -- in applying the "reasonable basis test," the court will not likely interfere with administrative agency's interpretation of statutes and regulations that bear on agency discretionary determinations within the agency's area of expertise.
13. *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.
14. *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.

15. *O'Callaghan v. Rue*, 996 P.2d 88, 98, 98 n.45 (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." Also, if it determined that a proper nexus exists between the challenged regulation and the statutory purpose, the court generally does not separately inquire into whether a regulation is necessary as a means to a legislative end; to do so would mire the court in questions of public policy and the advisability of possible alternatives.
16. *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.
17. *Trustees for Alaska v. State, Department of Natural Resources*, 795 P.2d 805, 812 (Alaska 1990) -- the court looks to whether the regulation is consistent with the authorizing statute and reasonably necessary to carry out the statute's purpose.
18. *Vail v. Coffman Engineers, Inc.*, 778 P.2d 211, 214 (Alaska 1989) -- regulation adopted by an administrative agency must be consistent with and reasonably necessary to carry out the purpose of the authorizing statute; a regulation is consistent with statute if it bears reasonable relationship to statutory objective.

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. *Interior Alaska Airboat Ass'n v. State, Board of Game*, 18 P.3d 686, 692 (Alaska 2001) -- the court strongly suggests the need for adequate decisional documents, but they are not mandated in non-adjudicative decisions such as the adoption of regulations.
3. *Kelso v. Rybachek*, 912 P.2d 536, 539-40 (Alaska 1996) -- petitions for regulatory revisions do not impose a burden on the state to generate information in support of decision to maintain the existing regulation, so long as the decision on the petition is reasonable and not arbitrary.
4. *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 . . ."

5. *United Cook Inlet Drift Ass'n v. State, Board of Fisheries*, 3KN-96-278 CI (May 23, 1997) -- discusses briefly the requirement contained in AS 44.62.210(a) to consider the cost to private persons of the proposed regulatory action.
6. 1 Pierce, *Administrative Law Treatise*, 4th ed., sec. 7.2 (Aspen Law & Business, 2002) -- discusses the principle that a statutory requirement of hearing may be satisfied by written comments without an opportunity to present oral evidence.
7. Reed Dickerson, *The Fundamentals of Legal Drafting*, 2d ed., sec. 4.13, p. 71 (Little, Brown and Company, 1986) -- summarizes the steps in legal drafting.

CHAPTER 3. EMERGENCY REGULATION ADOPTION PROCESS

1. *O'Callaghan v. State, Director of Elections*, 6 P.3d 728, 730 - 731 (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."
2. Bonfield, *State Administrative Rule Making* sec. 6.15.2 (Little, Brown and Co., 1986) -- discusses exceptions to notice and hearing procedures for emergency rules.
3. 1 Pierce, *Administrative Law Treatise*, 4th ed., sec. 7.10 (Aspen Law & Business, 2002) -- discusses the exceptions to the notice and hearing provisions for rulemaking.

CHAPTER 4. PUBLIC NOTICE

1. *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 929-30 (Alaska 1983) -- discusses the scope of the public notice when the final version of the regulation differs from the draft.
2. *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1011 - 1012 (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.
3. *Kachemak Bay Watch, Inc. v. Noah*, 935 P.2d 816, 825 (Alaska 1997) -- the purpose of notice and comment opportunities is to reinforce public participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies.

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) -- 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. *Natural Resources Defense Council v. United States Environmental Protection Agency*, 279 F.3d 1180 (9th Cir. 2002) -- discusses use of public comments received under a public notice under federal Administrative Procedure Act.
8. *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.
9. Bonfield, *State Administrative Rule Making* (Little, Brown and Co., 1986) sec. 6.6.2 -- discusses the time of adoption of regulations.

CHAPTER 6. STYLE, GRAMMAR, AND WORDS

1. *Boyd v. State*, No. 2220, ___ P.3d ___, 2009 WL 18131CI, at *3 (Alaska App. June 26, 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.
2. *Exxon Corp. v. State*, 40 P.3d 786 (Alaska 2001) -- discusses that passive voice can be ambiguous.
3. *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.
4. *Gerber v. Juneau Bartlett Memorial Hospital*, 2 P.3d 74 (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.
5. *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.

6. *Lakosh v. Alaska Department of Environmental Conservation*, 49 P.3d 1111, 1119 (Alaska 2002) -- applies the "well recognized rule of statutory construction" 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. An agency is not free to disregard any of the standards in statutory requirement that the legislature has articulated.
7. *Petitioners for Incorporation of City & Borough of Yakutat v. Local Boundary Commission*, 900 P.2d 721, 724 (Alaska 1995) -- the term "may" in a statute was apparently intended to allow the state agency a measure of discretion that would otherwise be denied if the mandatory word "shall" had been employed.
8. *South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Board of Adjustment*, 172 P.3d 768 (Alaska 2007) -- discusses the use of "shall" as a mandatory or directory term.
9. *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.
10. Reed Dickerson, *The Fundamentals of Legal Drafting*, 2d ed., sec. 9.1 - 9.9, pp. 207-219 (Little, Brown and Co., 1986) -- miscellaneous suggestions on specific wording.

CHAPTER 9. CITATION OF AUTHORITY

Chevron U.S.A., Inc. v. LeResche, 663 P.2d 923 (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, "that 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 (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 International Construction, Inc. v. Earth Movers of Fairbanks*, 697 P.2d 626, 633 (Alaska 1985) -- applied a deferential standard of review to an agency's interpretation of its highway construction standard bid specifications.
3. *Alaska International Industries v. Musarra*, 602 P.2d 1240, 1245 n.9 (Alaska 1979) -- the principle of the presumption of validity of regulation was reaffirmed. The challenger of the regulation bears the burden of demonstrating its invalidity.
4. *Alaska Public Utilities Commission v. Municipality of Anchorage*, 555 P.2d 262, 266 (Alaska 1976) -- a commission's decision to interpret an ambiguous statute having little to do with the commission's expertise or particular knowledge will be given some weight, but it is not binding on the courts.
5. *Alaska State Employees Ass'n./AFSCME Local 52 v. State*, 990 P.2d 14, 20 (Alaska 1999) -- where an agency interprets its own regulations, a deferential standard of review properly recognizes that the agency is best able to discern its own intent in promulgating the regulation at issue.
6. *Anchorage School District v. Hale*, 857 P.2d 1186, 1188-89 (Alaska 1993) -- the court will not substitute its judgment for that of the agency with respect to the efficacy of a regulation nor review the "wisdom" of a particular regulation.
7. *Anderson v. State, Department of Revenue*, 26 P.3d 1106, 1109 (Alaska 2001) -- in reviewing an agency's interpretation of its own regulation, the court will employ a "reasonable but not arbitrary test" and will uphold the agency's interpretation if it is a reasonable one under this differential standard.
8. *Beers, Inc. v. Robison*, 708 P.2d 65, 68 (Alaska 1985) -- discusses the "reasonable basis" standard of review of regulations involving complex subject matter and fundamental policy formulations.
9. *Brodigan v. Alaska Department of Revenue*, 900 P.2d 728, 732 (Alaska 1995) -- discusses the "reasonable basis" standard of review of regulations when an agency adopts a regulation.
10. *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 929-30 (Alaska 1983) -- the court applied the "substantial failure" rule to uphold 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.

11. *Church v. State, Department of Revenue*, 973 P.2d 1125 (Alaska 1999) -- the court applies substitution of judgment standard to issues not involving agency expertise, such as statutory interpretation and constitutional claims. However, the court will not substitute its judgment for that of the agency with respect to the efficacy of a regulation nor review the wisdom of a particular regulation.
12. *Citizens for the Preservation of the Kenai River, Inc. v. Sheffield*, 758 P.2d 624, 625 (Alaska 1988) -- a regulation is presumptively valid; therefore, the burden of proving invalidity is on the party challenging the regulation.
13. *Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003) -- a regulation cannot authorize a state agency to waive statutory requirements.
14. *Crivello v. State, Commercial Fisheries Entry Commission*, 59 P.3d 741, 744 (Alaska 2002) -- the court will review an agency's interpretation of its own regulations under the reasonable basis standard.
15. *Diaz v. Silver Bay Logging, Inc.*, 55 P.3d 732, 736 (Alaska 2002) -- the court noted that an agency's interpretation of its own regulation is normally given effect unless it is plainly erroneous or inconsistent with the regulation. The court reviews in some detail the weight to be given an agency's interpretation of its own regulations.
16. *Dominish v. State, Commercial Fisheries Entry Commission*, 907 P.2d 487, 494 (Alaska 1995) -- in challenging a regulation, extremely broad and vague arguments regarding the relationship of a state agency's regulations to the purpose of the underlying legislation are considered as waived by the courts.
17. *Earth Resources Co. of Alaska v. State, Department of Revenue*, 665 P.2d 960, 964-65 (Alaska 1983) -- discusses the principal standards of judicial review of administrative decisions.
18. *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.
19. *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004) -- when a regulation conflicts with a statute, it is the regulation that must yield.
20. *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.

21. *Grunert v. State*, 109 P.3d 924, 928-29 (Alaska 2005) -- 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."
22. *Halliburton Energy Services v. State, Department of Labor*, 2 P.3d 41 (Alaska 2000) -- explains the standard for evaluating whether a regulation is unconstitutionally void for vagueness.
23. *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.
24. *Hood v. State, Workmen's Compensation Board*, 574 P.2d 811, 813-15 (Alaska 1978) -- an agency's decision to interpret an ambiguous statute is not binding on the courts.
25. *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.
26. *Jager v. State*, 537 P.2d 1100, 1107 (Alaska 1975) -- discusses the principal standards of judicial review of administrative decisions.
27. *Kelso v. Rybachek*, 912 P.2d 536, 540 (Alaska 1996) -- a regulation has the presumption of validity and the challenger of the regulation has the burden of demonstrating invalidity. In order to be valid, a regulation must be consistent with the authorizing legislation and be reasonable and not arbitrary. Further, the court does not substitute its judgment for that of the agency with respect to the efficacy of a regulation, nor does it review the wisdom of a particular regulation.
28. *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."

29. *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.
30. *Kuitsarak Corp. v. Swope*, 870 P.2d 387, 394 (Alaska 1994) -- the court must uphold a state agency's interpretation of its own regulation where the proffered interpretation is not plainly erroneous.
31. *Lauth v. State*, 12 P.3d 181, 184 (Alaska 2000) -- the court exercises its independent judgment in determining the validity of an administrative regulation and in interpreting the underlying statute, but the court will not substitute its judgment for that of the agency with regard to the efficacy or wisdom of the regulation.
32. *Libertarian Party of Alaska, Inc. v. State*, 101 P.3d 616, 622 (Alaska 2004) -- the court reaffirms the standards for review of regulations, including affirming that reasonable necessity for the regulations is not a requirement separate from consistency with statute and so avoids the court being required to judge whether a regulation is desirable as a matter of policy.
33. *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.
34. *May v. State, Commercial Fisheries Entry Commission*, 175 P.3d 1211, 1215-16 (Alaska 2008) -- the court applies a "reasonable basis" standards when reviewing an agency's interpretation of its own regulation. The court defers to the agency unless the "interpretation is plainly erroneous and inconsistent with the regulation."
35. *Mechanical Contractors of Alaska, Inc. v. State, Department of Public Safety*, 91 P.3d 240, 246 (Alaska 2004) -- the court will use the rational basis standard to review whether a regulation is reasonably necessary to implement a statute since it is a fundamental policy determination.
36. *Native Village of Elim v. State*, 990 P.2d 1, 5 (Alaska 1999) -- the court interprets the constitution and Alaska law according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters.
37. *Northern Alaska Environmental Center v. State, Department of Natural Resources*, 2 P.3d 629 (Alaska 2000) -- the court reviews the agency's interpretation of non-technical statutory terms under the substitution of judgment standard.

38. *Owsichuk 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.
39. *Palmer v. Municipality of Anchorage, Police & Fire Retirement Board*, 65 P.3d 832, 837 (Alaska 2003) -- when agency's expertise or questions of fundamental policy are involved, the court will give some weight to what the agency has done, especially where the agency interpretation is long standing. When agency interprets its own regulations, the court will presume that the agency is best able to discern its intent in promulgating the regulations at issue.
40. *Powers v. State, Public Employees' Retirement Board*, 757 P.2d 65, 67 (Alaska 1988) -- agency's decision to interpret an ambiguous statute will be given some weight, but it is not binding on the courts.
41. *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.
42. *Simpson v. State, Commercial Fisheries Entry Commission*, 101 P.3d 605, 609 (Alaska 2004) -- 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.
43. *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.
44. *State v. Aleut Corp.*, 541 P.2d 730, 736-37 n.15 (Alaska 1975) -- an agency's decision to interpret an ambiguous statute will be given some weight, but it is not binding on the courts.
45. *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."
46. *State v. Otness*, 986 P.2d 890 (Alaska App. 1999) -- in reviewing regulations, the court must not overrule a state agency's construction of the statute "except for weighty reasons." When adopting a regulation, a state agency is not required to employ strict construction of a statute, but to adopt regulations that are consistent with the purposes of the legislation.

47. *State, Alaska Board of Fisheries v. Grunert*, 139 P.3d 1226, 1232 (Alaska 2006) -- where highly specialized agency expertise is involved in connection with a regulation being challenged, the court will not substitute its own judgment for the agency. The court's role is to ensure only that the agency has "taken a hard look at the salient problems and has genuinely engaged in reasoned decision making."
48. *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.
49. *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."
50. *State, Department of Revenue v. Merriouns*, 894 P.2d 623, 627 (Alaska 1995) -- although administrative agency's interpretation of its own rules is entitled to great weight, ultimate resolution of a regulation's meaning is a question for the courts.
51. *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 (Alaska 2000) -- The court reviews an agency's interpretation of its own regulation under the reasonable and not arbitrary standard. The court indicated that the "reasonable and not arbitrary standard is not demanding."
52. *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903-04 (Alaska 1987) -- discusses the rational basis test and substitution of judgment test when reviewing an interpretation of a statute in an order, not in a regulation.
53. *Tunley v. Municipality of Anchorage School District*, 631 P.2d 67, 78 n.30 (Alaska 1980) -- an agency's interpretation of its own regulations is "normally given effect unless it is plainly erroneous or inconsistent with the regulation."
54. *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.

55. *United Parcel Service Co. v. State, Department of Revenue*, 1 P.3d 83 (Alaska 2000) -- addresses the role of the superior court acting as an intermediate court of appeal and discusses the court's substitution of judgment for that of the agency if a case concerns "statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience." Additionally, the decision addresses the application of the plain meaning of the statute, legislative history of the statute, and the administrative history of the regulation in the review of the regulation.
56. *United States v. Alexander*, 938 F.2d 942, 947 (9th Cir. 1991) -- a criminal defendant may challenge the validity of a state fishing regulation allegedly violated, even though that defendant had failed to petition the board to change its regulations before the defendant acted.
57. *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.
58. *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."
59. *Wilber v. State Commercial Fisheries Entry Commission*, 187 P.3d 460, 464-65 (Alaska 2008) -- to determine whether a regulation is consistent with and reasonably necessary to implement the statute authorizing the regulation's adoption, the court considers (1) whether the state agency exceeded its statutory authority in adopting the regulation; (2) whether the regulation is reasonable and not arbitrary; and (3) whether the regulation conflicts with other statutes and constitutional provisions.
60. *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.

APPENDICES

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AGENCY CHECKLIST -- "REGULAR" REGULATIONS**DRAFTING**

- _____ Discuss 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 regulations drafted and reviewed by agency in accordance with law and this manual. (See Step 2 in Ch. 2.)
- _____ Prepare fiscal note, if necessary. (See Ch. 4 and 14.) Appendix F.
- _____ Draft the public notice of proposed regulations; prepare additional regulations 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 regulations; (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 and E.
- _____ Request the regulations attorney to open Department of Law file (Appendix G) and agency attorney review of draft regulations and draft public notice. (See Steps 3 and 4 in Ch. 2.)

PUBLICATION AND DISTRIBUTION OF NOTICE

- _____ Published in newspaper of general circulation or trade publication; request return of affidavit of publication from newspaper or trade publication. (See Ch. 4.)
- _____ Furnished to the head of the department in which adopting agency is located (if adopting agency is not a principal department). (See Ch. 4.)
- _____ Furnished to all persons on "interested persons" list and others thought to be interested. (See Ch. 4.)
- _____ Furnished to the regulations attorney in the Department of Law (along with proposed regulations). (See Ch. 4.)
- _____ Electronically transmitted to all incumbent (and newly elected) state legislators; **electronically** furnished to Legislative Affairs Agency (Legislative Legal and Research Services). (See Ch. 4.)
- _____ Electronically furnished, along with the proposed regulations, to the Legislative Affairs Agency, the chairs of the appropriate legislative standing committee(s), the Administrative Regulation Review Committee, and the legislative council (not applicable to Board of Fisheries or Board of Game regulations). (See Ch. 4.) Appendices CC and DD.
- _____ Additional regulations notice information sent with notice to interested persons, legislators, Legislative Affairs Agency (Legislative Legal and Research Services), and regulations attorney. (See Ch. 4.) Appendix E.
- _____ Notice and additional regulations notice information posted on the Alaska Online Public Notice System. (See Ch. 4.)
- _____ Prepare affidavit of notice of proposed regulation adoption. (See Step 5 in Ch. 2.) Appendix H.

PUBLIC COMMENT

- _____ 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 comments is documented (not applicable to boards and commissions). (See Step 7 in Ch. 2.)

LEGISLATIVE AFFAIRS AGENCY REVIEW

- _____ 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 7 in Ch. 2.)

ADOPTION OF REGULATIONS

- _____ Final version of regulations is prepared in proper final format (see Ch. 7 and sample regulations in Appendix C).
- _____ Agency formally adopts regulations by signing adoption order or, for a board or commission, voting to adopt during a properly noticed public meeting; certification order prepared, if appropriate. (See Step 7 in Ch. 2.) 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 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 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, any particular issues regarding the project, noting any urgency or requested effective date, and requesting review and approval; Appendix Q;
 - _____ 2. original and one copy of final version of regulations for Department of Law's use;
 - _____ 3. one copy of final version of regulations and public notice for the governor's office use (not applicable to boards and commissions);
 - _____ 4. original signed adoption order or certification order;
 - _____ 5. a copy of any delegation of authority or "acting commissioner" designation;
 - _____ 6. relevant minutes of board or commission meeting and staff affidavit, if a certification order is being submitted;
 - _____ 7. a full-size original or copy of public notice;
 - _____ 8. additional regulations notice information form that was distributed with the public notice;
 - _____ 9. fiscal note, if required;
 - _____ 10. original affidavit of notice of proposed regulation adoption;
 - _____ 11. original publisher's affidavit of publication;
 - _____ 12. original affidavit of oral hearing, if one was held;
 - _____ 13. original affidavit of agency record of public comment (not applicable to boards and commissions);
 - _____ 14. any other relevant documents (such as material adopted by reference).

FILING AND EFFECTIVE DATES

- _____ Date of Department of Law approval of regulations. (See Steps 9 and 10 in Ch. 2.)
- _____ Date regulations 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 regulations. (See Step 11 in Ch. 2.)
- _____ Summary of text of filed regulations, indicating the effective date, posted on the Alaska Online Public Notice System as soon as possible after filing of the regulations. (See Step 12 in Ch. 2.)

AGENCY CHECKLIST -- EMERGENCY REGULATIONS**DRAFTING**

- _____ Proposed emergency regulations drafted and reviewed by agency in accordance with law and this manual. (See Ch. 3.)
- _____ Draft a factual finding of emergency/adoption order (Appendix R) or finding of emergency/certification order (Appendix S). (See Step 3 in Ch. 3.)
- _____ Prepare fiscal note, if necessary. (See Ch. 14.) Appendix F.
- _____ Draft the notice of adoption of emergency regulations; prepare additional regulations 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 regulations; (3) informative summary (not text) of regulations; (4) summary of fiscal information; (5) if regulations are 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 and T.
- _____ Consult with agency attorney in Department of Law; request review of draft documents. (See Step 4 in Ch. 3.)

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

- _____ Agency formally adopts emergency regulations 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 regulations, 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

- _____ Publication in newspaper of general circulation or trade publication within five days after filing. (See Step 7 in Ch. 3.)
- _____ Request immediate publication and return of affidavit of publication from newspaper or trade publication. (See Step 7 in Ch. 3.)
- _____ Furnished to the head of the department in which adopting agency is located (if adopting agency is not a principal department). (See Step 7 in Ch. 3.)
- _____ Furnished to all persons on "interested persons" list and others thought to be interested. (See Step 7 in Ch. 3.)
- _____ Furnished to the regulations attorney in the Department of Law (if emergency regulations will be made permanent, send copy of regulations also and request file opening (Appendix G)). (See Step 8 in Ch. 3.)
- _____ Electronically transmitted to all incumbent (and newly elected) state legislators. (See Step 7 in Ch. 3.)
- _____ Furnished to Legislative Affairs Agency (electronic copy, to Legislative Legal and Research Services). (See Step 7 in Ch. 3.)
- _____ Electronically furnished, along with the regulations, to the Legislative Affairs Agency, the chairs of the appropriate legislative standing committee(s), the Administrative Regulation Review Committee, and the legislative council (not applicable to Board of Fisheries or Board of Game regulations). (See Step 7 in Ch. 3.) Appendices CC and DD.
- _____ Notice and additional regulations notice information posted on the Alaska Online Public Notice System. (See Step 7 in Ch. 3.)
- _____ Additional regulations notice information sent with notice to interested persons, legislators, Legislative Affairs Agency (Legislative Legal and Research Services), and regulations attorney. (See Step 7 in Ch. 3.) Appendix E.
- _____ Following publication and distribution of public notice, prepare and submit to lieutenant governor's office an original affidavit of notice of adoption of emergency regulations (Appendix U), and an original or copy of the public notice and the additional regulations notice information. (See Steps 7 and 9 in Ch. 3.)

PUBLISHER'S AFFIDAVIT OF PUBLICATION

- _____ Forward original directly to lieutenant governor's office if regulations will not be made permanent. (This is the last step if regulations will not be made permanent.) (See Step 9 in Ch. 3.)
- _____ Retain original for submission to the regulations attorney in the Department of Law with final regulations package if regulations will be made permanent. (See Step 9 in Ch. 3.)

PUBLIC COMMENT

- _____ 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 comments is documented (not applicable to boards and commissions). (See Step 10 in Ch. 3.)

LEGISLATIVE AFFAIRS AGENCY REVIEW

- _____ 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 regulations are needed (for a board or commission, this occurs during properly noticed public meeting). (See Step 11 in Ch. 3.)
- _____ Final "permanent" regulations are 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 original emergency regulations 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 boards and commissions).

TRANSMITTAL OF FINAL PERMANENT REGULATIONS 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, any particular issues regarding the project, and requesting review and approval; Appendix Q;
 - _____ 2. original and one copy of the final permanent regulations for Department of Law's use;
 - _____ 3. one copy of final permanent regulations and public notice for governor's office use (not applicable to boards and commissions);
 - _____ 4. original signed certification of compliance;
 - _____ 5. a signed, original, regular adoption order or certification order if changes were made to the original emergency regulations;
 - _____ 6. a copy of any delegation of authority or "acting commissioner" designation;
 - _____ 7. relevant minutes of the board or commission meeting, and staff affidavit, if a certification order is being submitted;
 - _____ 8. a full-size copy of public notice of adoption of emergency regulations (submit original if not already submitted to the lieutenant governor's office);

- _____ 9. additional regulations notice information form that was distributed with the public notice (submit original if not already submitted to the lieutenant governor's office);
- _____ 10. copy of fiscal note, if required;
- _____ 11. copy of affidavit of notice (original already submitted to the lieutenant governor's office);
- _____ 12. original publisher's affidavit of publication;
- _____ 13. original affidavit of oral hearing, if an oral hearing was held;
- _____ 14. original affidavit of agency record of public comment (not applicable to boards and commissions);
- _____ 15. copy of the filed finding of emergency, emergency adoption or certification order, and emergency regulations;
- _____ 16. any other relevant documents (such as material adopted by reference).

PERMANENT FILING AND EFFECTIVE DATES

- _____ Date Department of Law approved regulations for permanent filing. (See Step 12 in Ch. 3.)
- _____ Date permanent regulations are 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 made in the permanent regulations, if any. (See Step 13 in ch. 3.)
- _____ Summary of text of filed regulations, indicating that the emergency regulations have 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.¹

8 AAC 05.020 is repealed:

²**8 AAC 05.020. Occupations prohibited to persons under age 21.** Repealed. (Eff. 10/5/60, Register 15; am 5/20/70, Register 33; repealed __/__/__, Register __)³

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 __/__/__.⁴

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

(d) An employer shall 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 7/11/2000, Register 155; am __/__/__, Register __)⁵

Authority: AS 23.10.355 AS 23.10.365 AS 44.31.020⁶
AS 23.10.360

Register _____, _____ 20__ LABOR AND WORKFORCE DEV.¹

8 AAC 05.040(3) is repealed:

(3) repealed __/__/__.⁴ (Eff. 10/5/60, Register 15; am 4/15/68, Register 26;
am __/__/__, Register __)⁵

Authority: AS 23.10.360 AS 23.10.365⁶

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

8 AAC 05.043. Occupations prohibited to persons under age five. All occupations
are prohibited to a minor under age five. (Eff. __/__/__, Register __)

Authority: AS 23.10.360 AS 23.10.370 AS 23.10.410
AS 23.10.365 AS 23.10.385 AS 23.10.900⁶
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 2/15/2000, Register 153; am __/__/__, Register __)

Authority: AS 23.10.360 AS 23.10.365⁶

Register _____, _____ 20__ LABOR AND WORKFORCE DEV.¹

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 4/15/68, Register 26; am 5/5/87, Register 102; am __/__/__,

Register __)⁵

Authority:	AS 23.10.360	<u>AS 23.10.375</u>	AS 23.10.400
	AS 23.10.365	AS 23.10.380	AS 23.10.410 ⁶
	[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. 10/27/73, Register 48; am __/__/__, Register __)

Authority: AS 23.10.350 **AS 23.10.360⁶**

Register _____, _____ 20__ LABOR AND WORKFORCE DEV.¹

The lead-in language of 8 AAC 05.260(b) is amended to read:⁷

(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:

• • •⁸

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 __)

Authority: AS 23.10.350 AS 23.10.360

¹ Headers are explained in Chapter 7.

² Indentation and margins are explained in Chapter 7.

³ 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 regulations are filed and the effective date is determined).

⁴ 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 regulations are filed and the effective date is determined.

⁵ 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.

⁶ Authority citations, and how to format them, are explained in Chapter 9.

⁷ If the lead-in 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 lead-in language of the provision, using the lead-in line shown. This approach also may be used if the lead-in language is being amended and some, but not all, of the paragraphs in the provision are being changed under separate lead-in lines.

⁸ Ellipses are used to indicate omitted language when a section's or subsection's lead-in language is being set out as described in footnote 7, above. The ellipses should appear at the left margin on the line following the amended lead-in language. Ellipses must be in boldface type and must be in a large-size font (16 or 18), in order to be visible to the public and to the publisher of the AAC.

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NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF [name of agency]

The [name of agency] proposes to adopt regulation changes in Title _____ of the Alaska Administrative Code, dealing with _____, including the following:

- (1) _____ is proposed to be changed as follows:

[Here give informative summary of proposed amendment or new material. Describe the change from existing regulations.]

- (2) _____, which _____, 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] _____ [additional contact information may be inserted here].¹ The comments must be received no later than _____, m.² on _____ [month and day] _____, 20____.

[Oral or written comments also may be submitted at a hearing to be held on ____ [month and day] ____, 20____, in Room ____, ____ [physical address, including city] _____. The hearing will be held from _____.m. to _____.m. and might be extended to accommodate those present before _____.m. who did not have an opportunity to comment.]³

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] ⁴ no later than [date] ⁵ to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact [name of agency or agency representative] at [mailing address or phone number].⁶ [or go to www. _____].⁷

After the public comment period ends, the [name of agency] will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**⁸

Statutory Authority: AS _____; AS _____; AS _____⁹

Statutes Being Implemented, Interpreted, or Made Specific: AS _____; AS _____; AS _____¹⁰

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 __, ____.]¹¹

DATE: _____

[official's name and title, typed]^{12, 13}

¹ If your agency wishes to allow the written comments also to be submitted by e-mail, fax, or TDD, provide the appropriate contact information here, in addition to the required mailing address for written comments.

² It is recommended that your agency specify a deadline time, as well as a deadline date, for written comments. This is especially important if your agency is allowing comments to be submitted by e-mail or fax.

³ Use these bracketed sentences only if your agency has decided to hold an oral public hearing.

⁴ If your agency wishes also to allow contact by e-mail, fax, or TDD for this purpose, provide the appropriate contact information here, in addition to the standard telephone number.

⁵ This date should be before the written comment deadline and any oral public hearing. In choosing a date, your 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.

⁶ If your agency wishes also to allow contact by e-mail, fax, or TDD for this purpose, provide the appropriate contact information here, in addition to the standard mailing address or telephone number.

⁷ If your agency will have the proposed regulations available on its website, use the wording in this block in addition to the standard mail or phone contact information.

⁸ It is recommended that in the notice your agency alert the public that written comments received by your agency are public records and are subject to public inspection. The following sentence could be included at the end of this paragraph: "Written comments received are public records and are subject to public inspection."

⁹ Do NOT cite a provision of AS 44.62 (the Administrative Procedure Act). Cite the statute(s) that give your agency authority to adopt the proposed regulations. Note: This is a separate requirement of the APA. DO NOT combine it with the statutes being implemented, interpreted, or made specific.

¹⁰ Cite the statutes that your agency is implementing, interpreting, or making specific through the proposed regulations. Note: This is a separate requirement of the APA. DO NOT combine it with the "statutory authority" provisions.

¹¹ Use the appropriate bracketed sentence.

¹² 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 your agency who has some responsibility for regulations adoption in your agency.

¹³ To encourage readers to request placement on your 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's/division's] 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."

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: _____
2. General subject of regulation: _____
3. Citation of regulation (may be grouped): _____
4. 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: (please list) _____
5. RDU/component affected: _____

6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year	Subsequent
	FY _____	Years
Operating Cost	\$ _____	\$ _____
Capital Cost	\$ _____	\$ _____
Federal receipts	\$ _____	\$ _____
General fund match	\$ _____	\$ _____
General fund	\$ _____	\$ _____
General fund/ program receipts	\$ _____	\$ _____
General fund/ mental health	\$ _____	\$ _____
Other funds (specify)	\$ _____	\$ _____

7. The name of the contact person for the regulations:

Name _____
 Title _____
 Address _____
 Telephone _____
 E-mail address _____

8. The origin of the proposed action:

_____ staff of state agency
 _____ federal government
 _____ general public
 _____ petition for regulation change
 _____ other (please list) _____

9. Date: _____ Prepared by: _____

[signature]

Name (typed) _____

Title (typed) _____

Telephone: _____

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FISCAL NOTE*

1. State agency: _____
2. General subject of regulation: _____
3. Citation of regulation (may be grouped): _____
4. RDU/Component: _____
5. Estimated appropriations required (in thousands of dollars): _____ Component No.: _____

	Current FY____	Next FY ____	Next FY ____	Next FY ____
OPERATING EXPENDITURES				
PERSONAL SERVICES				
TRAVEL				
CONTRACTUAL				
SUPPLIES				
EQUIPMENT				
LAND AND STRUCTURES				
GRANTS AND CLAIMS				
MISCELLANEOUS				
TOTAL				

CAPITAL EXPENDITURES				
-----------------------------	--	--	--	--

CHANGE IN REVENUES ()				
------------------------------------	--	--	--	--

6. Funding Source (in thousands of dollars):

1002 Federal Receipts				
1003 General Fund Match				
1004 General Fund				
1005 General Fund/Program Receipts				
1037 General Fund/Mental Health				
Other (Specify Type)				
TOTAL				

7. Positions:

FULL-TIME				
PART-TIME				
TEMPORARY				

8. Analysis (attach a separate page if necessary):

9. Date: _____

Prepared by: _____ [signature]

_____ [name & title, typed]

_____ [division/department]

Telephone: _____

* An agency's fiscal staff should be involved in the determination of whether a fiscal note is needed and in the preparation of one.

Regulations Attorney
Legislation/Regulations Section
Department of Law

[DATE]

NEW PROJECT

John S. Smith¹
Regulations Contact
Department of _____

File-opening request for new²
regulations project on

(xx AAC xx.xxx - .xxx)

We are requesting that you open a new file for a regulations project regarding
_____ [subject of project and citation for regulations]³ for [affected division of agency].

[Attached are a draft of the regulations and a draft public notice, for your review.] [The regulations are emergency regulations that were filed by the lieutenant governor's office on _____, _____. Attached are copies of the regulations, the finding of emergency and adoption order, and the public notice. This department intends to make the regulations permanent.]⁴

[This department wishes to alert you of an urgency related to this project as follows:

_____. We hope to have the regulations in effect by _____ [date] _____.]⁵

Please assign an assistant attorney general to this project. [We have worked with Assistant Attorney General _____ on this topic.]⁶

Our contact person for the project is _____ [insert the name of the contact person for your agency] at _____ [phone number or e-mail address] _____.

¹ In some departments, the commissioner has specified that regulation file requests be sent only under that commissioner's signature. Check with your commissioner's office regarding the practice for your agency.

² 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.

³ The regulation citation should be as specific as possible.

⁴ Use whichever of the bracketed material is appropriate for the regulations project.

⁵ Use this paragraph if there is some urgency related to the regulations project or if a specific effective date is planned.

⁶ 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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STATE OF ALASKA)
) ss.
 [No.]¹ JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF PROPOSED ADOPTION OF REGULATIONS
 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 [as shown on the attached list];²
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulations;
- (5) electronically transmitted to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Legislative 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 regulations, to the Legislative Affairs Agency, the chair of the _____ Committee³ of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.⁴

As required by AS 44.62.190(d), additional regulations notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons [as shown on the attached list]⁵ and those in (5) and (6) of the list above. The additional regulations notice information also has been posted on the Alaska Online Public Notice System.

DATE: _____
 [city where dated]

 [signature]⁶
 [name and title, typed]

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____.⁷

[NOTARY SEAL]

 Notary Public in and for the
 State of Alaska
 My commission expires: _____.

¹ The number of the judicial district you insert must be the one for the city in which the affidavit is being signed.

² Use this bracketed language only if a list is attached.

³ Fill in the blank with the name of the appropriate standing committee(s). Usually, only one committee in each house need be furnished the notice and proposed regulations. See Appendices CC and DD.

⁴ Omit item #8 for Board of Fisheries or Board of Game regulations.

⁵ Use the bracketed language only if a mailing list is attached regarding item (2) in the numbered list in the form. (A separate, duplicate mailing list is not necessary).

⁶ 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 regulations project. However, it must be signed by the person named in the first line.

⁷ The date of the affiant's signature and of the notary statement must match.

STATE OF ALASKA)
) ss.
_____[No.]____ 1 JUDICIAL DISTRICT)

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]____,² I presided over a public hearing held in accordance with AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to _____[citation and description of regulations]____.³

DATE: _____
[city where dated]

_____ [official's signature] 4
[official's name and title, typed]

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

[NOTARY SEAL]

Notary Public in and for the
State of Alaska
My commission expires: _____.

¹ The number of the judicial district you insert must be the one for the city in which the affidavit is being signed.

² 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] ..."

3 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 . . ."

4 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 footnote 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.

⁵ The date of the affiant's signature and of the notary statement must match.

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ORDER ADOPTING CHANGES TO
REGULATIONS OF _____ [name of agency] _____

The attached ____ page[s] of regulations, dealing with _____,¹ [is] [are] adopted and certified² to be a correct copy of the regulation changes that the _____ [name of agency] _____ adopts under the authority of AS _____³ 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.]⁴

[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.]^{5,6}

The regulation changes adopted under this order take effect [on the 30th day after they have been filed by the lieutenant governor] [on _____, _____],⁷ as provided in AS 44.62.180.

DATE: _____
_____ [city where dated] _____

[official's signature]
[official's name and title, typed]⁸

FILING CERTIFICATION

I, _____,⁹ Lieutenant Governor for the State of Alaska, certify that¹⁰ on _____, 20____, at _____.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor

Effective: _____.

Register: _____.

¹ In just a few words, state the basic subject of the regulations. A general citation (e.g., 2 AAC 44) is advisable too.

² 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.

³ Do NOT cite a provision of the Administrative Procedure Act itself. Cite your statutory authority to adopt the regulations and the statutes your agency is implementing, interpreting, or making specific.

⁴ Select the appropriate bracketed sentence.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ An adoption order must be signed by the agency person with regulation-adoption authority. See Step 7 in Chapter 2 of this manual 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."

⁹ Please type in the name of the lieutenant governor.

¹⁰ The blanks below this line will be filled in by the lieutenant governor's office.

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

Notary Public in and for the
State of Alaska
My commission expires:_____

¹ The number of the judicial district you insert must be the one for the city in which the affidavit is being signed.

² Use the appropriate bracketed sentence, depending on whether written public comments were received on the regulations. Note: A written notification or communication from the Legislative Affairs Agency under AS 24.20.105 is not a public comment.

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF _____ [name of board/commission] _____¹

The attached _____ page[s] of regulations, dealing with _____,² [is] [are] certified³ 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 _____⁴ 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.]⁵

[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.]⁶

The regulation changes described in this order take effect [on the 30th day after they have been filed by the lieutenant governor] [on _____, _____],⁷ as provided in AS 44.62.180.

DATE: _____
[city where dated]

[official's signature]
[official's name and title, typed]⁸

FILING CERTIFICATION

I, _____,⁹ Lieutenant Governor for the State of Alaska, certify that¹⁰ on _____, 20____ at _____m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor

Effective: _____.

Register: _____.

¹ Use this form for certifying the adoption action of a board or commission when the executive director, chairperson, or acting chairperson will be signing the order (also see footnote 3, below).

² In just a few words, state the basic subject of the regulations. A general citation (e.g., 12 AAC 44) is advisable too.

³ 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, chairperson, or acting chairperson 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.

⁴ Do NOT cite a provision of the Administrative Procedure Act itself. Cite the board's or commission's statutory authority to adopt the regulations and the statutes that entity is implementing, interpreting, or making specific.

⁵ Select the appropriate bracketed sentence.

⁶ 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.

⁷ 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.

⁸ The certification order should be signed by the executive director, chairperson, or acting chairperson 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 of this manual for guidance regarding signatures.

⁹ Please type in the name of the lieutenant governor.

¹⁰ 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, 2009
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 17, 2009 draft regulations."

The motion carried unanimously.

[This page intentionally left blank.]

STATE OF ALASKA)
) ss.
 [No.]¹ JUDICIAL DISTRICT)

AFFIDAVIT OF [BOARD] [COMMISSION] ACTION

I, [name]², [title] for the [name of board or commission], being duly sworn, state the following:

The attached motion dealing with [subject of regulations dealt with at meeting] was passed by the [name of board or commission] during its [date] meeting.

Date: _____
 [city where dated]

 [signature]
 [name and title, typed]

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____.

[NOTARY SEAL]

 Notary Public in and for the
 State of Alaska
 My commission expires:_____

¹ The number of the judicial district you insert must be the one for the city in which the affidavit is being signed.

² 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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STATE OF ALASKA
DEPARTMENT OF _____
P.O. BOX _____
_____, ALASKA _____

DELEGATION OF AUTHORITY

IN ACCORDANCE WITH 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.

SIGNED: _____

(Please print name)

SIGNED AND SWORN TO before me this _____ day of _____, _____.

[NOTARY SEAL]

Notary Public in and for the
State of Alaska
My commission expires: _____.

[This page intentionally left blank.]

STATE OF ALASKA
DEPARTMENT OF _____
P.O. BOX _____
_____, ALASKA _____

**LIMITED DELEGATION OF AUTHORITY
FOR ADOPTING REGULATIONS¹**

IN ACCORDANCE WITH 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____],² ARE DELEGATED TO _____ [name] _____,
_____ [position] _____.

SIGNED: _____
Commissioner

(Printed name)

SIGNED AND SWORN TO before me this _____ day of _____, _____.

[NOTARY SEAL]

Notary Public in and for the
State of Alaska
My commission expires:_____.

¹ 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.

² Use the appropriate bracketed language to describe the desired limitation.

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Regulations Attorney
Legislation/Regulations Section
Department of Law

[DATE]

xxx-xx-xxxx¹

John S. Smith²
Regulations Contact
Department of _____

Request for Legal Review of
Regulations Project on _____

(xx AAC xx.xxx - .xxx)

We are requesting legal review and approval of the attached final ["permanent"]³ regulations on [topic of regulations], which were adopted [originally as emergency regulations]⁴ by [name of agency].

Enclosed are the following documents:

1. the original and one copy of the final regulations for the Department of Law's use;
2. one copy of the final regulations and the public notice for governor's office use;⁵
3. the original of the signed and dated adoption document;⁶
4. the original signed and dated certification of compliance and a copy of the [finding of emergency/adoption order] [finding of emergency/certification order];⁷
5. [a copy of the delegation of authority to adopt regulations] [a copy of the designation as acting commissioner];⁸
6. [the original] [a copy] of the public notice;
7. [the original] [a copy] of the additional regulations notice information form distributed with the notice;
8. the original of the publisher's affidavit of publication;
9. [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
10. the original of the affidavit of oral hearing;¹⁰
11. the original of the affidavit of agency record of public comment;¹¹
12. [relevant minutes] [transcript pages] from the _____, _____ meeting;¹²
13. staff affidavit for the [relevant minutes] [transcript pages];¹³
14. fiscal note;¹⁴
15. material adopted by reference in the regulations.¹⁵

[The regulations must be in effect by [date], for the following reason(s):
_____.]¹⁶ [The emergency regulations expire
_____.]¹⁷

We have worked with Assistant Attorney General _____ on the project.

[Upon completion of your review, please forward the regulations to the lieutenant governor for filing.]
[Please complete your review and forward the "permanent" regulations to the lieutenant governor's office for filing before the expiration date of the emergency regulations.]¹⁸

-
- ¹ Set out the Department of Law file number that has been assigned to the project.
- ² In some departments, the commissioner has indicated that a memorandum transmitting final regulations may be signed only by that commissioner. You should check with your commissioner's office to determine the practice for your agency.
- ^{3,4} Use the bracketed language if the project is an emergency regulation being made permanent.
- ⁵ Do not include this item if the regulations were adopted by a board or commission.
- ⁶ For "regular" regulations or for emergency regulations being made permanent with change, either an adoption order or certification order must be submitted. See Step 7 in Chapter 2, Appendix J, and Appendix L of this manual for guidance as to which document is appropriate.
- ⁷ This item applies only to emergency regulations being made permanent (either with or without change). Use whichever of the bracketed terms is appropriate.
- ⁸ 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.
- ⁹ Use the first bracketed language for a "regular" regulations project; use the second bracketed language for an emergency regulation being made permanent.
- ¹⁰ Include this item only if there was an oral hearing.
- ¹¹ Do not include this item if the regulations were adopted by a board or commission.
- ¹² Include this item if a board or commission adopted the regulations and a certification order rather than an adoption order is being submitted. Use the appropriate bracketed language.
- ¹³ Include this item, selecting the appropriate bracketed term, only if draft or unapproved minutes are being submitted under item 12.
- ¹⁴ Include this item if required by AS 44.62.195.
- ¹⁵ Include this item if material is adopted by reference in the regulations.
- ¹⁶ If there is an urgency regarding the project, or a specific effective date that is desired, include this sentence and explain the circumstances.
- ¹⁷ Use this sentence if the regulations are emergency regulations being made permanent.
- ¹⁸ Use whichever of the bracketed sentences is appropriate.

FINDING OF EMERGENCY¹

The _____ [name of agency] _____ finds that an emergency exists and that the attached regulations are 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]²

ADOPTION ORDER

Under the authority of AS _____,³ the attached _____ pages of regulation changes are therefore adopted as emergency regulations to take effect [immediately upon filing by the lieutenant governor] [_____, _____],⁴ 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.]⁵

DATE: _____
 _____ [city where dated]

_____ [official's signature] _____⁶
[official's name and title, typed]

FILING CERTIFICATION

I, _____,⁷ Lieutenant Governor for the State of Alaska, certify⁸ that on _____, 20____, at _____ .m., I filed the attached regulations according to the provisions of AS 44.62.

Lieutenant Governor

Effective: _____.

Register: _____.

¹ Use this form for emergency regulations when a single official is authorized to take the adoption action or when the members of the board or commission that adopted the emergency regulations will be signing the order at the adoption meeting.

² See Step 3 in Chapter 3 of this manual for guidance regarding the necessary statement.

³ This citation should be of the statute(s) 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.

⁴ Use whichever of the bracketed phrases is appropriate.

⁵ Use the appropriate one of these bracketed sentences.

⁶ An adoption order must be signed by the agency person with regulation-adoption authority. See Step 7 in Chapter 2 of this manual 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."

⁷ Please type in the name of the lieutenant governor.

⁸ The blanks below this line will be filled in by the lieutenant governor's office.

FINDING OF EMERGENCY¹

The _____ [name of board/commission] finds that an emergency exists and that the attached regulations are 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]²

ORDER CERTIFYING ADOPTION

I certify that the _____ [name of board/commission], under the authority of AS _____,³ adopted at its _____ [date] meeting the attached _____ pages of regulation changes as emergency regulations to take effect [immediately upon filing by the lieutenant governor] [_____, _____],⁴ 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.]⁵

DATE: _____
_____ [city where dated]

_____ [official's signature] ⁶
[official's name and title, typed]

FILING CERTIFICATION

I, _____,⁷ Lieutenant Governor for the State of Alaska,⁸ certify that on _____, 20____, at _____m., I filed the attached regulations according to the provisions of AS 44.62.

Lieutenant Governor

Effective: _____.

Register: _____.

¹ 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, chairperson, or acting chairperson of the board or commission will be signing the order rather than the members signing.

² See Step 3 in Chapter 3 of this manual for guidance regarding the necessary statement.

³ This citation should be of the statute(s) 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.

⁴ Use whichever of the bracketed phrases is appropriate.

⁵ Use the appropriate one of these bracketed sentences.

⁶ The certification order must be signed by the executive director, chairperson, or acting chairperson of the board or commission who attended the adoption meeting and has actual knowledge that the board or commission adopted the regulations. See Step 7 in Chapter 2 of this manual for guidance regarding signatures.

⁷ Please type in the name of the lieutenant governor.

⁸ The blanks below this line will be filled in by the lieutenant governor's office.

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS
OF _____ [name of agency]

On ____ [month and day] ____, 20____,¹ the ____ [name of agency] ____ adopted, as emergency regulations, changes in Title ____ of the Alaska Administrative Code dealing with _____, including the following:

- 1) _____ was changed to _____.
- 2) _____, which _____, was added.
- 3) _____, which _____, was repealed. The effect of the repeal is to _____.

The emergency regulations [took] [take] effect ____ [month and day] ____, 20____² and will expire ____ [month and day] ____, 20____.³ The ____ [name of agency] ____ [intends] [does not intend]⁴ to make the emergency regulations permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes, by submitting written comments to ____ [name of agency or agency representative] ____ at [mailing address] ____ [additional contact information may be inserted here] ____.⁵ The comments must be received no later than ____ .m.⁶ on ____ [month and day] ____, 20____.⁷

[Oral or written comments also may be submitted at a hearing to be held on ____ [month and day] ____, 20____ in Room ____, ____ [physical address, including city] ____ . The hearing will be held from ____ .m. to ____ .m. and might be extended to accommodate those present before ____ .m. who do not have an opportunity to comment.]⁸

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] ____⁹ no later than ____ [date] ____¹⁰ to ensure that any necessary accommodations can be provided.¹¹

For a copy of the emergency regulations, contact ____ [name of agency or agency representative] ____ at ____ [mailing address or phone number] ____¹² [, or go to www.____].¹³

The language of the permanent regulations may be different from that of the original emergency regulations, and may include other provisions dealing with the same subject. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**^{14, 15}

Statutory Authority: AS _____; AS _____; AS _____¹⁶

Statutes Being Implemented, Interpreted, or Made Specific: AS _____; AS _____; AS _____¹⁷

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 ____, ____; FY ____, ____].¹⁸

DATE: _____

[official's signature]
[official's name and title, typed]^{19, 20}

¹ Insert the date that the emergency adoption order was signed, or, for a board or commission, the date that the adoption vote was taken.

² DO NOT say "immediately." Insert the effective date given you 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).

³ Insert the expiration date given you by the lieutenant governor's office.

⁴ Use the appropriate bracketed language.

⁵ If your agency wishes to allow written comments also to be submitted by e-mail, fax, or TDD, provide the appropriate contact information here, in addition to the required mailing address for written comments.

⁶ It is recommended that your agency specify a deadline time, as well as a deadline date, for written comments. This is especially important if your agency is allowing comments to be submitted by e-mail or fax.

⁷ Omit this paragraph if the emergency regulations will NOT be made permanent.

⁸ Use these bracketed sentences only if your agency will be making the emergency regulations permanent AND has decided to hold an oral public hearing.

⁹ If your agency wishes also to allow contact by e-mail, fax, or TDD for this purpose, provide the appropriate contact information here, in addition to the standard mailing address or telephone number.

¹⁰ This date should be before the written comment deadline and any oral public hearing. In choosing a date, your 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.

¹¹ Omit this paragraph if your agency will NOT be making the emergency regulations permanent.

¹² If your agency wishes also to allow contact by e-mail, fax, or TDD for this purpose, provide the appropriate contact information here, in addition to the standard mailing address or telephone number.

¹³ If your agency will have the emergency regulations available on its website, use the wording in this block in addition to the standard mail or phone contact information.

¹⁴ It is recommended that in the notice your agency alert the public that written comments received by your agency are public records and are subject to public inspection. The following sentence could be included at the end of this paragraph: "Written comments received are public records and are subject to public inspection."

¹⁵ Omit this paragraph if your agency will NOT be making the emergency regulations permanent.

¹⁶ DO NOT cite a provision of AS 44.62 (the Administrative Procedure Act). Cite the statute(s) that gave your agency authority to adopt the emergency regulations. Note: This is a separate requirement of the APA. DO NOT combine it with the statutes being implemented, interpreted, or made specific.

¹⁷ Cite the statutes that your agency is implementing, interpreting, or making specific through the emergency regulations. Note: This is a separate requirement of the APA. DO NOT combine it with the statutory authority provisions.

¹⁸ Use the appropriate bracketed sentence.

¹⁹ 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 your agency who has some responsibility for regulations adoption in your agency.

²⁰ To encourage readers to request placement on your 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's/division's] 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."

[This page intentionally left blank.]

STATE OF ALASKA)
) ss.
 [No.]¹ JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF ADOPTION
OF EMERGENCY REGULATIONS
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]² emergency changes to [regulations citation and short statement of subject] has been given in accordance with AS 44.62.190(a) by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons [as shown on the attached list];³
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the regulations;
- (5) electronically transmitted to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Legislative 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 _____ Committee⁴ of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.⁵

As required by AS 44.62.190(d), additional regulations notice information regarding the [date]⁶ emergency changes to the regulations described above has been furnished to interested persons [as shown on the attached list]⁷ and furnished to those in (5) and (6) of the list above. The additional regulations notice information also has been posted on the Alaska Online Public Notice System.

DATE: _____
 [city where dated]

 [signature]⁸
 [name and title, typed]

SUBSCRIBED AND SWORN TO before me this ____ day of _____, _____.⁹

[NOTARY SEAL]

 Notary Public in and for the
 State of Alaska
 My commission expires: _____.

-
- ¹ The number of the judicial district you insert must be the one for the city in which the affidavit is being signed.
- ² The relevant date is the effective date of the emergency regulation, as supplied by the lieutenant governor's office.
- ³ Use this bracketed language only if a list is attached.
- ⁴ Fill in the blank with the name of the appropriate standing committee(s). Usually, only one committee in each house need be furnished the notice and regulations. See Appendices CC and DD.
- ⁵ Omit item #8 for Board of Fisheries or Board of Game regulations.
- ⁶ Same information as in footnote 2, above.
- ⁷ Use the bracketed language if a mailing list is attached regarding item (2) in the numbered list in the form. (A separate, duplicate mailing list is not necessary.)
- ⁸ 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 regulations project. However, it must be signed by the person named in the first line.
- ⁹ The date of the affiant's signature and of the notary statement must match.

CERTIFICATION OF COMPLIANCE¹

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 regulations:

_____ [citation and short statement of subject] _____²

These regulations originally were filed as emergency regulations on _____, _____.

[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.]^{3,4}

DATE: _____
_____ [city where dated]

_____ [official's signature] _____⁵
[official's name and title, typed]

FILING CERTIFICATION

I, _____,⁶ Lieutenant Governor for the State of Alaska,⁷ certify that on _____, 20____, at _____m., I filed the attached regulations according to the provisions of AS 44.62.

Lieutenant Governor

Register: _____.

¹ This form is to be used only to make emergency regulations permanent. If the final regulations are different from the original emergency regulations, an adoption order or a certification order, in addition to this form, is necessary. See Step 11 in Chapter 3 of this manual.

² Give identifying information, including the citation of the regulations and a concise statement of their basic subject matter. Often the section heading or chapter heading will suffice. Indicate repeals if appropriate.

³ Select the appropriate bracketed sentence, depending on whether the agency received any comments on the emergency regulations. Note: A written notification or communication from the Legislative Affairs Agency under AS 24.20.105 is not a public comment.

⁴ 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.

⁵ 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.

⁶ Please type in the name of lieutenant governor.

⁷ 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 _____,¹ under authority of _____,² and dealing with _____,³ [is] [are] [will be] in effect:

[Identify the amended version of the material adopted by reference by title, edition number (if appropriate), and date]

[A copy] [Copies] of the above material [is] [are] available for public review at the following locations:

[Address of state agency where material is available, and addresses of other review sites as applicable]

[Additionally, [a copy] [copies] of the above material may be obtained [for a fee] by contacting _____ [name and address of publisher or issuer] _____.]⁴

The effective date for the amended version[s] of the material described above is _____.⁵

For more information, please contact _____ [name of agency representative, address, and phone number] _____.

DATE: _____

[official's signature] _____⁶
[official's name and title, typed]

¹ Cite the regulation that contains the pertinent adoption by reference.

² Unless the material adopted by reference is a regulation of another Alaska state agency, cite the statute that explicitly authorizes your agency to adopt by reference future amendments of the material.

³ In just a few words, state the basic subject of the regulation that contains the pertinent adoption by reference.

⁴ Use this bracketed sentence if applicable, with the appropriate wording.

⁵ Consult the legislation and regulations section of the Department of Law to determine an appropriate effective date.

⁶ 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 regulations adoption in that agency.

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STATE OF ALASKA)
) ss.
[No.] ¹ JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF AMENDED VERSION
OF MATERIAL PREVIOUSLY ADOPTED BY REFERENCE

I, _____, _____, of _____, 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) published in a newspaper of general circulation or trade or industry publication or in a regularly published agency newsletter or similar printed publication;
- (2) furnished to interested persons [as shown on the attached distribution list];²
- (3) 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: _____
[city where dated]

3

[signature]
[official's name and title, typed]

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____.⁴

[NOTARY SEAL]

Notary Public in and for the
State of Alaska
My commission expires:_____.

¹ The number of the judicial district you insert must be the one for the city in which the affidavit is being signed.

² Use the bracketed language only if a list is attached.

3 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.

⁴ 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" REGULATIONS)

DOCUMENTS IN FINAL REGULATIONS PACKAGE

- ___ Clean (unmarked) original, and one copy, of the regulations.
- ___ 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 notice (Appendix D).
- ___ Additional regulations notice information form (as distributed with the public notice) (Appendix E).
- ___ Original agency affidavits, signed by affiant, and notarized:
 - ___ affidavit of notice (Appendix H);
 - ___ affidavit of oral hearing (if appropriate) (Appendix I);
 - ___ affidavit of agency record of public comment (not applicable to boards and commissions) (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 final regulations.
- ___ Adequately describes changes that were made in regulations.
- ___ Allowed sufficient timeframe for written comments and for any oral hearing.
- ___ 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).
- ___ Meets all requirements of AS 44.62.190(a) and (b) and 44.62.200(a).
- ___ AS 44.62.190(d) additional regulations 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 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 regulations.

FOR A CERTIFICATION ORDER FOR BOARD OR COMMISSION

- ___ Signed by executive director, chairperson, or acting chairperson 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 regulations.

MECHANICS

- ___ Correct numbering system used, with no duplication.
- ___ Amendments amend current version of right section (check AAC and unpublished filed regulations).
- ___ Adoptions-by-reference contain 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 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 regs in project).
- ___ Logically developed and organized (with "general provisions" distinguished from "miscellaneous provisions" and located at the back).
- ___ Only necessary and helpful definitions are included.
- ___ Agency's intended effect is clear; regulations are not vague or ambiguous.

ITEMS FOR SUBMITTAL TO LEGISLATION/REGULATIONS SECTION

- ___ Agency's final regulations package.
- ___ Review memorandum from agency attorney to regulations attorney.
- ___ Any recommended corrections, marked on a separate copy of the regulations.
- ___ The blue regulations project file.

**AGENCY ATTORNEY REVIEW CHECKLIST
(FOR EMERGENCY REGULATIONS)**

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. Is there an emergency? Are the facts supporting the emergency regulations 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 regulations project file if the emergency regulations are to be made permanent.

* * * * *

AFTER FILING, IF EMERGENCY REGULATIONS ARE TO BE MADE PERMANENT**DOCUMENTS IN FINAL REGULATIONS PACKAGE**

- ___ Original certification of compliance (Appendix V).
- ___ Original adoption order (Appendix J) or certification order (Appendix L) (if changes were made to the emergency regulations).
- ___ 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" regulations.
- ___ Copy of public notice (Appendix T).
- ___ Additional regulations notice information form (as distributed with the public notice) (Appendix E).
- ___ 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 boards and commissions) (Appendix K).
- ___ Original publisher's affidavit.
- ___ Copy of filed finding of emergency, emergency adoption or certification order, and emergency regulations.
- ___ Copy of any material adopted by reference.

PUBLIC NOTICE

- ___ "Subject matter" covers everything included in final "permanent" regulations.
- ___ Adequately describes changes that were made in emergency regulations and any changes to the emergency regulations.
- ___ Allowed sufficient timeframe 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) additional regulations 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 regulations.

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 regulations.

FOR A CERTIFICATION ORDER FOR BOARD OR COMMISSION, IF CHANGES

- Signed by executive director, chairperson, or acting chairperson 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 regulations.

MECHANICS

- Correct numbering system used, with no duplication.
- Amendments amend current version of right section (check AAC and unpublished filed regulations).
- Adoptions-by-reference contain 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).
- Bookproof against emergency regulations as filed and verify that any new changes to the emergency regulations 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 regs in project).
- Logically developed and organized (with "general provisions" distinguished from "miscellaneous provisions" and located at the back).
- Only necessary and helpful definitions are included.
- Agency's intended effect is clear; regulations are not vague or ambiguous.

ITEMS FOR SUBMITTAL TO LEGISLATION/REGULATIONS SECTION

- Agency's final "permanent" regulations package.
- Review memorandum from agency attorney to regulations attorney.
- Any recommended corrections, marked on a separate copy of the regulations.
- The pink regulations project file.

ORDER CHANGING REGULATIONS
OF _____ [name of agency] _____¹

The attached _____ page[s] of regulations, dealing with _____,²
[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 _____.³

The attached regulations are exempt from the adoption procedures of the Administrative
Procedure Act and take effect [immediately upon filing by the lieutenant governor]
[_____, _____].⁴

DATE: _____
_____ [city where dated]

_____ [official's signature]
[official's name and title, typed]⁵

FILING CERTIFICATION

I, _____,⁶ Lieutenant Governor for the State of Alaska, certify that⁷
on _____, 20____, at _____m., I filed the attached regulations.

Lieutenant Governor

Effective: _____.

Register: _____.

¹ 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.

² In just a few words state the basic subject of the regulations. A general citation is advisable too (e.g., AS 47.45).

³ Cite the statutory authority to adopt the regulations and the statutes being implemented, interpreted, or made specific.

⁴ Select the wording that accurately states the date that the regulations will take effect under the relevant program statutes.

⁵ Generally, the adoption order must be signed by the agency person with regulation-adoption authority. See Step 7 in Chapter 2 of this manual 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."

⁶ Please type in the name of the lieutenant governor.

⁷ The blanks below this line will be filled in by the lieutenant governor's office.

ORDER CERTIFYING THE CHANGES TO REGULATIONS
OF _____ [name of board/commission]¹

The attached _____ page[s] of regulations, dealing with _____,²
[is] [are] certified to be a correct copy of the regulation changes that the _____ [name of
board/commission] _____ adopted at its [date]³ meeting under the authority of
AS _____.⁴

The attached regulations are exempt from the adoption procedures of the Administrative
Procedure Act and take effect [immediately upon filing by the lieutenant governor]
[_____, _____].⁵

DATE: _____
_____ [city where dated]

_____ [official's signature]
[official's name and title, typed]⁶

FILING CERTIFICATION

I, _____,⁷ Lieutenant Governor for the State of Alaska, certify that⁸
on _____, 20____, at _____m., I filed the attached regulations.

Lieutenant Governor

Effective: _____.

Register: _____.

¹ Use this form for certifying the adoption action of a board or commission when the executive director, the chairperson, or acting chairperson, will be signing the order.

² In just a few words state the basic subject of the regulations. A general citation is advisable too (e.g., AS 47.45).

³ Specify the date of the adoption meeting and attach the relevant portion of the minutes or a transcript.

⁴ Cite the statutory authority to adopt the regulations and the statutes being implemented, interpreted, or made specific.

⁵ Select the wording that accurately states the date that the regulations will take effect under the relevant program statutes.

⁶ Generally, the certification order must be signed by the executive director, chairperson, or acting chairperson of the board or commission who attended the adoption meeting and has personal knowledge that the board or commission adopted the regulations.

⁷ Please type in the name of the lieutenant governor.

⁸ The blanks below this line will be filled in by the lieutenant governor's office.

ALASKA STATE LEGISLATURE
UNIFORM RULES
(As Amended as of 2009)

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 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 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
FOR PURPOSES OF AS 24.20.105 AND AS 44.62.190(a)(7)

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 regulations
- Administrative Regulation Review Committee
- legislative council.

Each group address includes one Senate and House standing committee, plus 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 Leg. Council	craregs@legis.state.ak.us
House & Senate Education Committee, plus LAA, ARRC, and Leg. Council	eduregs@legis.state.ak.us
House & Senate Finance Committees, plus LAA, ARRC, and Leg. Council	finregs@legis.state.ak.us
House & Senate HSS Committees, plus LAA, ARRC, and Leg. Council	hssregs@legis.state.ak.us
House & Senate Judiciary Committees, plus LAA, ARRC, and Leg. Council	judregs@legis.state.ak.us
House & Senate Labor & Commerce Committees, plus LAA, ARRC, and Leg. Council	l+cregs@legis.state.ak.us Note: Use the small letter <i>l</i> , not the number 1, at the beginning of this email address.
House & Senate Resources Committees, plus LAA, ARRC, and Leg. Council	resregs@legis.state.ak.us
House & Senate Rules Committees, plus LAA, ARRC, and Leg. Council	rlsregs@legis.state.ak.us
House & Senate State Affairs Committees, plus LAA, ARRC, and Leg. Council	staregs@legis.state.ak.us
House & Senate Transportation Committees, plus LAA, ARRC, and Leg. Council	traregs@legis.state.ak.us

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