

Drafting Manual for Administrative Regulations



**State of Alaska
Department of Law
2022 (23rd Edition)**

**DRAFTING MANUAL FOR
ADMINISTRATIVE REGULATIONS
2022 (23rd Edition)**

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**An electronic version of this manual and accompanying appendices are available on the
Department of Law's website at**

http://www.law.alaska.gov/doclibrary/drafting_manual.html

**For any questions about the regulatory process or this manual, please email the
Department of Law at law.regulations@alaska.gov.**

PREFACE

Welcome to the 23rd edition of the *Drafting Manual for Administrative Regulations*, published by the Alaska Department of Law. The *Drafting Manual for Administrative Regulations* is prepared and published by the Legislation, Regulations, and Legislative Research Section, Alaska Department of Law, to comply with AS 44.62.050 and to be used by state officials and agency staff in the development and adoption of state administrative regulations. The manual is designed to meet legal requirements, assist state agencies in preparing clearly written regulations, and to further public participation in the regulatory process.

This manual is designed for both state agencies and the attorneys advising them, as it includes a step-by-step overview of the regulatory process under the Alaska Administrative Procedure Act, extensive direction on drafting and formatting regulations, an overview of legal principles and key cases related to regulations, and directions for state agencies that adopt regulations under statutes other than the Administrative Procedure Act.

The manual can be searched for keywords to help agency personnel find discussion of a particular topic. Furthermore, the electronic version of the manual available on the Department of Law website provides hyperlinks to enable easy navigation through the text.

Appendices are provided at the end of the manual that must be used by state agencies in the regulatory process. The use of these appendices will ensure agencies comply with the statutory requirements for proposing and adopting regulations.

The manual is kept current to reflect changes in the law that affect the regulatory process.

The Department of Law is available to assist state agencies with any questions.

ACKNOWLEDGEMENTS

This 23rd edition of the *Drafting Manual for Administrative Regulations* would not be possible without the help of the dedicated employees of the Legislation, Regulations, and Legislative Research Section. Their contributions included adding new chapters, providing input, and revising existing material. Our amazing legal editors deserve special recognition, as they were responsible for keeping the project moving through revisions, reorganization, and proofreading. This edition of the manual would not have happened without the efforts and dedication of these individuals to develop a document that better meets the needs of state agencies involved in the regulatory process.

I would also like to thank the many assistant attorneys general and agency regulation contacts for their thoughtful review and helpful suggestions during the drafting process. Their input was instrumental in creating a more user-friendly document.

Rebecca C. Polizzotto
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CHAPTER 1

INTRODUCTION TO REGULATIONS

Administrative Procedure Act (AS 44.62). As governmental agencies use special expertise to ensure the smooth functioning of a modern and complex society, those agencies also must ensure that their actions are transparent to the public and satisfy due process of law guaranteed in the United States and Alaska constitutions. In Alaska, the legislature by statute provides the structure for agency decision-making, so that agencies do not operate in a vacuum. If a governmental body meets to deliberate on, advise on, or decide a matter, the Open Meetings Act (AS 44.62.310 - 44.62.319) ensures that the meeting, to the greatest extent possible, has a public audience. Similarly, most agency records are available to the public through the Alaska Public Records Act (AS 40.25.100 - 40.25.295). The Administrative Procedure Act (AS 44.62 (APA)), often in tandem with AS 44.64 (hearing officers and office of administrative hearings), provides due process protections when agencies act as adjudicators. Finally, the APA provides the structure by which most state agencies adopt regulations and ensures that the public has a meaningful opportunity to comment on and ask questions about those regulations when they are proposed. The APA also provides special procedures for the development of regulations through negotiated rulemaking (AS 44.62.710 - 44.62.800).

Authority and process for regulations. An agency's adoption of regulations requires coordination between the agency, the Office of the Lieutenant Governor, and the Department of Law. Working together, executive branch agencies and the Department of Law strive to ensure that regulations meet the legal requirements to be filed by the Office of the Lieutenant Governor and published in the Alaska Administrative Code (AAC).

An agency's power to adopt regulations starts with the legislature. As part of its law-making power, the legislature may delegate, by statute, the authority to create rules and standards to executive branch agencies, boards, and commissions (for readability, this manual uses "agency" to refer to state agencies, boards, commissions, and public corporations, unless otherwise stated). These rules and standards are regulations, adopted by agencies to supplement laws passed by the legislature and enacted into law. Statutes delegating rulemaking authority are discussed further in [Chapter 2](#).

Statutes often make it clear that the legislature expects the entity to adopt regulations by stating the agency "shall" adopt regulations to set program standards. Other times, statutes authorize but do not require regulations, by stating the agency "may" adopt regulations. A regulation has the force and effect of law only if the agency has the statutory authority to act and adopts, amends, or repeals the regulation using the proper procedure. The regulatory procedures for most agencies are set out in the APA, in AS 44.62.040 - 44.62.290. These procedures are designed to ensure the public is notified and afforded an opportunity to meaningfully comment on an action before it is adopted as a final regulation.

The regulatory procedures for some state entities, typically public corporations or authorities, are set out in statutes relevant to that entity. Further, certain agencies may adopt some regulations

using the APA and other regulations using a non-APA process. We refer to these entities as "non-APA agencies" and discuss them further in [Chapter 11](#). Generally, non-APA procedures share the same purpose as those of the APA: to notify the public and provide an opportunity for meaningful comment before a regulation is adopted.

In limited circumstances, an agency may adopt emergency regulations, temporarily bypassing the public notice and comment process. Emergency regulations may be of short duration—not more than 120 days—or may be made permanent following notice and comment. Except for the initial emergency adoption process, notice and permanent adoption of emergency regulations follows substantially the same process as non-emergency regulations. Emergency regulations are discussed further in [Chapter 9](#).

What is a regulation? Applying the APA process to an agency's proposed regulation ("proposed action") always begins with the same question: is the proposed action regulatory? The answer requires two successive determinations. First, determine whether the proposed action fits within the definition of a regulation as set out on the next page. Then, if the proposed action meets the definition, consult the agency and program statutes to determine whether the proposed action is within the agency's authority. If the action meets the definition of a regulation and is within the agency's authority, it is regulatory. The Department of Law is available to advise state agencies on both of these factors.

Under AS 44.62.640, a regulation is defined as

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 on 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;

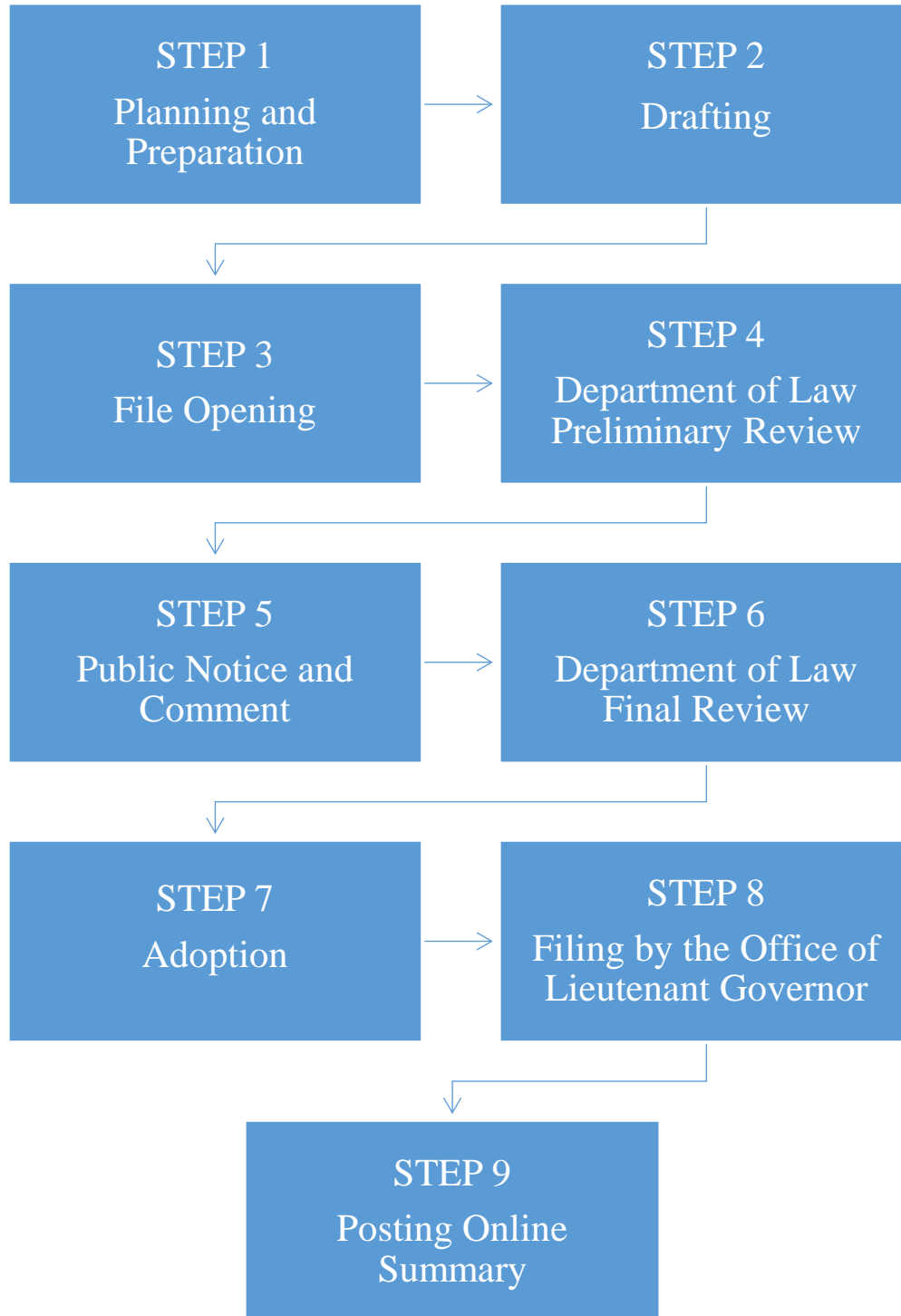
In plain English, a regulation can be defined as

a standard of general application or an amendment to a standard of general application adopted by a state agency

to either implement, interpret, or make specific a law; or govern the agency's procedure, but not its internal management; and

that affects the public or is used by the agency in dealing with the public.

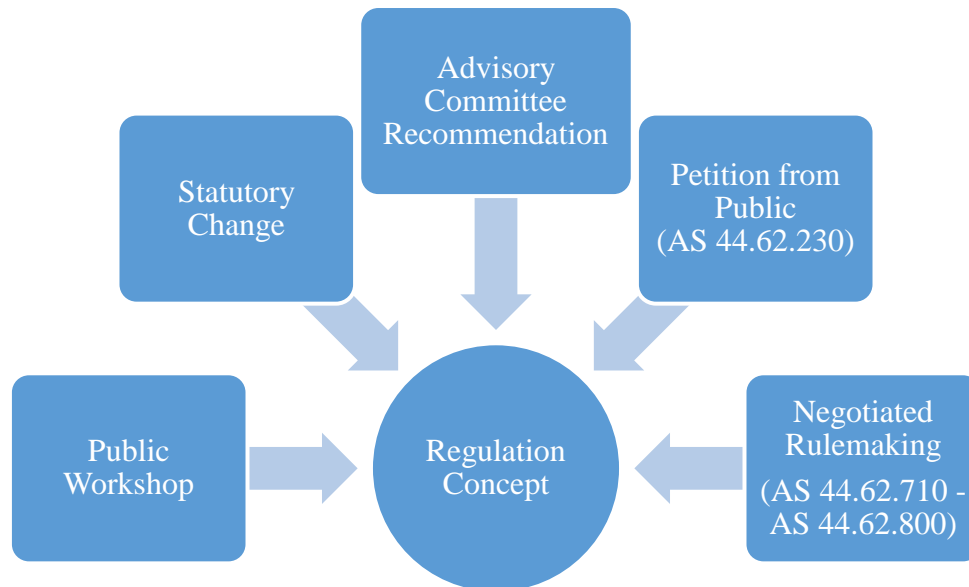
CHAPTER 2
REGULATION PROCESS



Step 1: Planning and Preparation

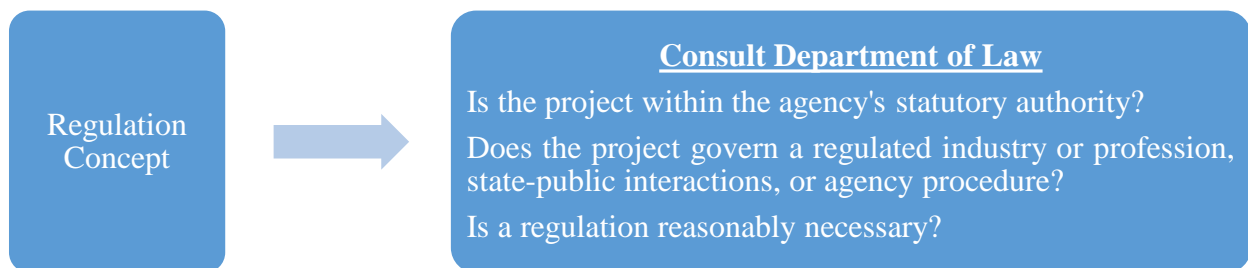
Ideas. A regulation project begins with an idea for regulatory change. An idea may come through any number of sources, as shown below. In developing an idea, agencies are welcome to consult with the Department of Law to determine whether the concept for a regulation is necessary to effect the intended change and within the agency's statutory authority.

Figure 2.1 – Ideas for regulatory change



Once the agency has developed a concept, the Department of Law can assist to determine whether the concept is an appropriate subject matter for a regulation.

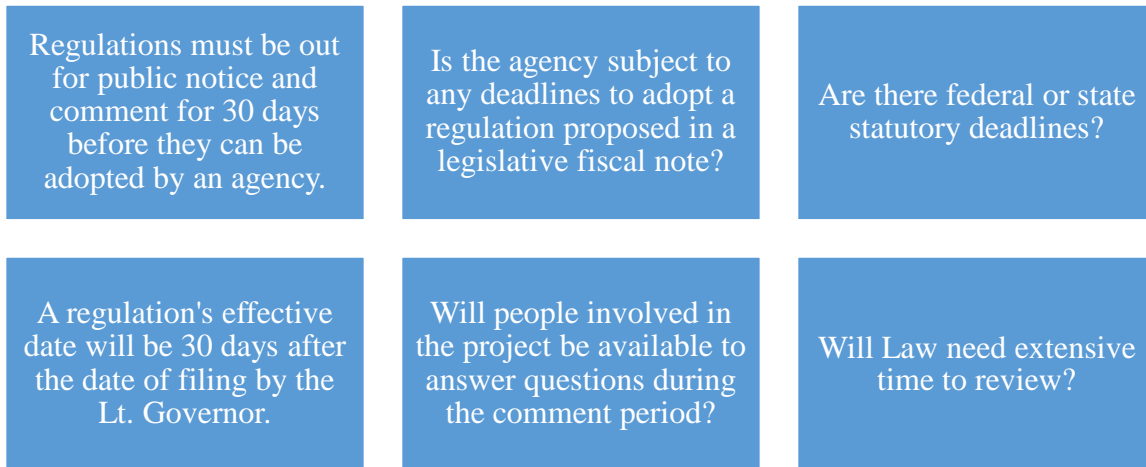
Figure 2.2 – Determining whether concept is appropriate for regulation



During this initial planning stage, if the agency determines it needs to adopt an emergency regulation, it should proceed to [Chapter 9](#) for a discussion of the emergency regulation process.

Timing. After determining that a concept is appropriate for a regulation, the agency should consider timing needs and deadlines for completing the project.

Figure 2.3 – Timing considerations



Costs. In addition to timing, an agency should consider potential costs of a regulation project. Estimating costs in advance will help the agency complete the paperwork that accompanies the public notice.

Figure 2.4 – Cost considerations



Public contact. Contacting members of the public before noticing a regulation can help an agency gather relevant information for developing the project. Alaska law specifically authorizes agencies to contact persons about the development of a regulatory action while the agency is developing that action. AS 44.62.213(a). Contact with the public may include the following:

- *Informational contacts.* An agency may contact a member of the public about the development of a regulation, as well as answer questions relevant to the development of the project. The Department of Law recommends keeping a record of any pre-notice contacts. The contact record would be considered a public record, but the contacts' names and any identifiers are not required to be published.
- *Release of draft regulation.* An agency must ensure all members of the public have an opportunity to provide input. Draft regulations must be distributed equitably and made available to all interested persons who have requested notice of agency regulation projects.

Consult the Department of Law before allowing any member of the public to see a draft regulation. Infrequently, an agency may be required to comply with additional federal regulations with respect to distributing drafts.

Step 2: Drafting

Regulations must adhere to the drafting standards set out in this manual. AS 44.62.050. Although each agency is responsible for the initial drafting of a proposed regulation and the accompanying documents, the agency should seek the advice of the Department of Law in the drafting process, particularly for a complex regulation project. The agency attorney who is assigned to assist the agency with a regulation project should work with the Legislation, Regulations, and Legislative Research Section to ensure that each proposed regulation meets these standards. Additionally, when the agency needs to copy material from the current AAC into the agency's proposed regulations, the legal editor for regulations is available to confirm that the agency is working with the most recently updated version of the AAC. See [Chapter 4](#) for details on drafting.

Step 3: File Opening

Once an agency decides to distribute a regulation for public notice and comment, it must request that the regulations attorney open a file with the Department of Law using the file opening request provided as [Appendix A](#). In the file opening request, the agency must alert the Department of Law to any urgency in adopting and filing the regulation, and must note the reason for any urgency and requested effective date. In the request, do not state that the agency wants the regulation "in place by" because that phrase is ambiguous as to whether the agency means the *filing* date or the *effective* date of the regulation. Instead, identify the date the agency requests the regulations be effective. If there is a requested effective date, please indicate when the agency plans on publishing the public notice. **A copy of the proposed regulations and notice documents must be submitted with the file opening request for Department of Law preliminary review.** The preliminary legal review will assist in identifying any major issues before the project goes out for public notice.

Step 4: Department of Law Preliminary Review*

** Due to their unique regulatory process, regulation projects for the Board of Game and Board of Fisheries are exempt from the preliminary review step.*

The Legislation, Regulations, and Legislative Research Section will conduct a preliminary review of the proposed regulations and notice documents to identify and correct major issues before public notice. In the preliminary review, a legal editor may make technical edits for clarity and conformance to drafting conventions without changing the meaning of the regulation. Technical edits include correcting comma placement, removing redundant language, changing verbiage to active voice, and adding clarifying language.

The regulations attorney, in consultation with the agency attorney, will review the draft regulations to ensure they are:

- Within the scope of regulation-adoption authority;
- Consistent with statutes;
- Reasonably necessary to carry out the purpose of the statute; and
- Valid under state and federal constitutions.

Step 5: Public Notice and Comment

After receiving initial approval from the Department of Law, an agency must give public notice of the proposed regulation at least 30 days before adoption. AS 44.62.190. The APA sets out the content, publication, and distribution requirements for the notice. The forms provided by the Department of Law—included as appendices to this manual and available on the Department of Law website—are designed to meet the legal requirements of the APA and must be used in the public notice process.

The agency's own statutes, or statutes covering a relevant program, may have specific notice requirements that apply in addition to the APA. See, for example, specific hearing requirements for the Division of Insurance in AS 21.06.090(a). The agency should consult with the Department of Law if requirements in addition to the APA apply.

Contents of notice. Agencies that adopt regulations under the APA must use the public notice appendices ([Appendix B-1](#) and [B-2](#); or [Appendix B-3](#) for the Regulatory Commission of Alaska, Board of Fisheries, Board of Game, and Alaska Oil and Gas Conservation Commission (hereafter called "exempt boards and commissions")). The appendices include the items necessary to comply with the APA. AS 44.62.200. The items below are important features of the notice document.

1. Title

The title is centered and in all capital letters at the top of the notice. It should clearly identify the agency making the regulatory change and the subject matter of the project.

2. Brief description

The brief description appears after the title. It should be one to two sentences long and allow a reader without a legal background to quickly understand the purpose of the project. The brief description does not need to be included in the newspaper version of the notice. The brief description is not included on the notice for exempt boards and commissions.

3. Informative summary of the subject of the proposed agency action

The informative summary should provide enough detail to give the public reasonable notice of the agency's proposed action without being so specific that the agency will not have the flexibility to revise the regulation before adoption in response to concerns raised by the public or by the agency itself.

The agency must balance being specific enough that a reader can determine if the project will affect their interests, and thereby merit reviewing and commenting on the proposal, with being general enough that an agency can make changes to the draft. An agency should carefully consider this balance when choosing to identify specific regulatory sections or

actions. If identifying specific sections, the agency should also describe the subject matter of the regulation. This will avoid difficulties if, for instance, the legal citation contains a typographical error or if the agency decides to amend a different regulation that deals with the same subject. Below is a comparison of the two types of informative summaries: one that identifies the *specific* provisions being amended and one that *summarizes* the subject of the proposed amendment. Either approach complies with the APA.

Figure 2.5 – Types of informative summaries

Identifying specific regulations	<p>The Department of Military and Veterans' Affairs proposes to amend, adopt, and repeal regulations in 10 AAC 50, dealing with unidentified, non-terrestrial technology to implement changes made to AS 26.35, including:</p> <ul style="list-style-type: none"> • 10 AAC 50.005 will be amended to add a new subsection related to unidentified flying objects. • 10 AAC 50.090(5) will be repealed; the regulation is not needed as the definition of "non-terrestrial" is now provided in AS 26.35.990.
Summarizing subject	<p>0 AAC 00 that regulates dog walkers is proposed to be amended to address licensing fees, required safety and education standards, and noise abatement requirements.</p>

4. Public comment information

The public notice must next indicate how the public can comment on the proposed action. This must include the following:

- *The method by which the public can submit comments.* This must include a mailing address *and* an e-mail address. If the agency plans to accept comments through an electronic comment portal or through the Alaska Online Public Notice System (AS 44.62.175(a)), that also must be indicated here.
- *The deadline for submission of comments.* The deadline must be **at least 30 days after the public notice is published in the newspaper**. To ensure compliance with this requirement, we recommend adding a few days to the 30-day comment period. The deadline must include the date (e.g., January 10, 2020). The agency may allow for comments up until 11:59 p.m. on the deadline date. If the agency wants to stop receiving comments at a specific time, it must specify a time in the notice no earlier than 4:30 p.m. The agency may not set a deadline on a weekend or holiday.
- *The announcement of any oral hearing, if the agency intends to hold one.* This must include the date, time, and location of the hearing. AS 44.62.210. The notice must state whether the hearing is to be held by teleconference. Also, the notice must state whether the public can submit oral or written comments at the hearing or whether oral comments only will be accepted. The agency must explain the options and include any information that the public needs to participate. See page 17 for more details on oral hearings.

5. Information regarding questions

Except for exempt boards and commissions, agencies must also describe how the public can submit questions and how those questions will be managed. AS 44.62.213(b). The description must include the following:

- *The email and mailing address to which the questions can be sent.*
- *A statement that the questions must be received at least 10 days before the close of the comment period. The agency must be prepared to answer, in writing, written questions submitted at least 10 days before the end of the comment period. The agency may, but is not required to, answer questions submitted after the 10-day cut-off date.*
- *A statement that the agency will aggregate its responses to substantially similar questions and make the questions and responses available to the public on the Alaska Online Public Notice System and, if the agency chooses, on the agency's website. The agency must make the questions and answers public and may combine answers to substantially similar questions into a single response.*

6. Americans with Disabilities Act

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

7. Obtaining a copy of the proposed regulations

The notice must state where the public can obtain a copy of the proposed regulations. Except for exempt boards and commissions, the agency must provide a complete copy of the proposed regulations, including each proposed adoption, amendment, or repeal, on the Alaska Online Public Notice System by an electronic attachment or link to the complete text. Unless protected by copyright, or otherwise not feasible, the agency must also provide a link to any materials adopted by reference.

8. Helpful signals to public

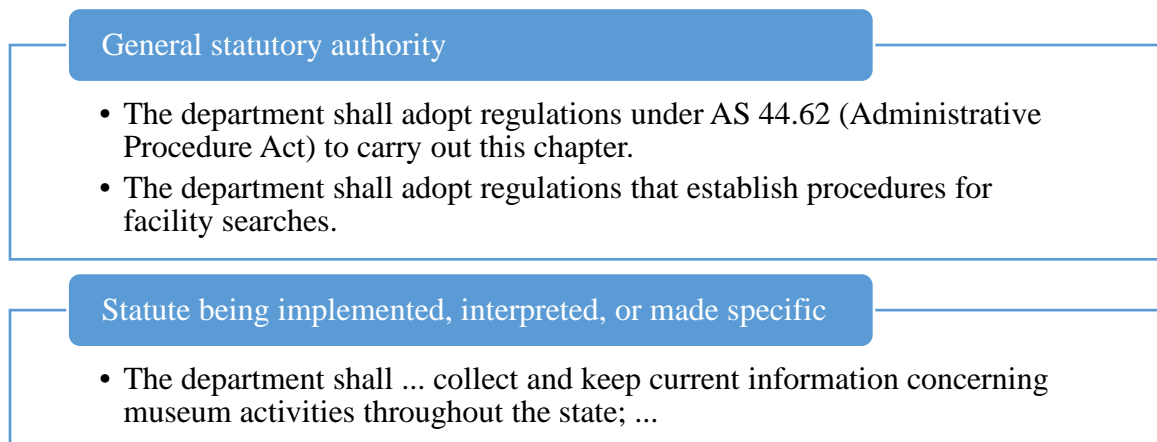
Though not required by the APA, the following statements are helpful signals to the public to encourage general understanding that comments become public records and can have a real effect on the final version of a regulation.

- *A statement that the final regulation, adopted after the comment period ends, may vary from what was first proposed.* The agency should include a statement that the agency might not adopt regulations at all, and signal that a member of the public should comment if the member's interests might be affected. This statement is included in the relevant appendices.
- *A statement that public comments are public records.* A signal about the public nature of comments is particularly helpful if the subject of the regulation is sensitive to the public, if a company prefers not to divulge trade secrets, or if the agency routinely posts all public comments on, for example, the Alaska Online Public Notice System.

9. Statutory authority

The agency must include both the *general* statutory authority for the proposed regulation and the *specific* statute sections that the agency is implementing, interpreting, or making specific through the regulation. AS 44.62.200(a)(2). Sometimes the general statutory authority and the statutes being implemented, interpreted, or made specific are the same. The Department of Law can assist if an agency is uncertain whether a statute identifies general or specific authority.

Figure 2.6 – Examples of general statutory authority and statute implemented by regulation



10. Fiscal information

If the adopting agency *or another state agency* anticipates that it will need to request increased appropriations from the legislature if the proposed regulation takes effect, each potentially affected agency must prepare a fiscal note and the public notice must contain a brief, one or two-line summary of the fiscal note amounts. AS 44.62.195. Conversely, if it is anticipated that an additional appropriation will not be needed, the notice must contain a statement to that effect, but a fiscal note is not required. The fiscal information may not contain any statement of *reduced* costs. Regulatory fiscal notes are not common; the agency should contact its agency attorney if uncertain whether a regulatory fiscal note is necessary.

To see how fiscal information is summarized in a public notice, see the notice templates provided as [Appendix B-1](#), [B-2](#), and [B-3](#); for a fiscal note template, see [Appendix D](#). See [Chapter 7](#) for further information on fiscal notes.

11. Placing a member of the public on the interested persons list

Some agencies supply information about how a member of the public may request to be added to the agency's list of interested parties. Interested parties directly receive notices published by the agency. AS 44.62.190. Stock language regarding interested parties is provided in the notice appendices.

12. Date and signature

Finally, the agency must date and sign the notice. The public notice does not need to be signed by the agency officer with regulation-adoption authority, so long as it is signed by an officer or employee of the agency who has some responsibility for regulation adoption in the agency.

Additional Regulation Notice Information. Once the agency has completed the draft public notice, it should prepare the additional regulation notice information ("additional regulation notice"). The additional regulation notice provides specific information required by law. AS 44.62.190(d). The additional regulation notice does not need to be published in the newspaper, but must be provided to certain recipients and posted on the Alaska Online Public Notice System. See distribution requirements in the following pages. The agency must use the Additional Regulation Notice Information form provided as [Appendix C-1](#).

If the adopting agency is the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission, it must use [Appendix C-2](#). AS 44.62.190(g). The main difference for these boards and commissions is that they do not need to provide information on the estimated compliance costs to private persons, other agencies, and municipalities related to the proposed action.

The figure below explains how to complete each line of the additional regulation notice.

Figure 2.7 – Additional regulation notice information

Additional regulation notice information (as presented on Law's form)	1 - 4. Basic information, including the adopting agency, subject matter, citation to AAC, and Law file number;
	5. The reason for the proposed action - no more than 1-2 sentences, including, if applicable, an identification of any federal law, or federal or state court decision that is the basis for the action;
	6. Appropriation/Allocation - use the lookup tool provided by the Legislative Finance Division, found here: http://www.legfin.akleg.gov/FiscalNotes/CompNumLookup.php
	7. Estimated annual costs - a good faith effort to determine the long-term costs of the proposed regulatory action using the information an agency has available; costs for private persons, state agencies, and municipalities to comply with the proposed action should be estimated and aggregated; APA-exempt agencies are not required to estimate these annual costs;
	8. Initial cost to the agency to implement the proposed action; this includes only the costs needed to put the change into place, not the costs over time;
	9. The name of the agency contact;
	10. The origin of the proposed action, such as agency staff, the federal government, or the general public.

The additional regulation notice requires the estimated annual cost to private persons, other state agencies, and municipalities. Below is an example of how such costs could be estimated for a project on a new vaccine series.

Figure 2.8 – Example of estimating annual costs for line 7

Private persons:	<ul style="list-style-type: none"> Information from the agency's files indicates that the three-shot vaccination series would cost \$200 for an adult, but the cost to an individual will vary according to whether an individual's health insurance covers all or part of the cost.
Other state agencies:	<ul style="list-style-type: none"> The State of Alaska's public health clinics expect an increase in clients seeking vaccinations at state expense, and an increase in public health nurses and other health care providers at state facilities receiving vaccinations themselves, resulting in an aggregate annual cost to the Department of Health of \$100,000.
Municipalities:	<ul style="list-style-type: none"> Local community health clinics expect an increase in clients seeking vaccinations at state expense, and an increase in public health nurses, community health aides, and other health care providers at municipal facilities receiving vaccinations themselves, resulting in an aggregate annual cost to municipalities of \$100,000.

Once the public notice and additional regulation notice are drafted, the agency must submit the draft documents with the file opening request to the regulations attorney in the Legislation, Regulations, and Legislative Research Section for preliminary review.

Publication and distribution. The APA has specific requirements for distributing and publishing information about proposed regulatory actions. AS 44.62.190. The adopting agency must publish and distribute the public notice as follows:

1. Publish in newspaper

Include: Notice only

The adopting agency must publish notice "in the newspaper of general circulation or trade or industry publication that the state agency prescribes." Publication in a newspaper must occur at least once. An agency attorney may be helpful in determining whether there are additional, specific publication requirements in the agency's authorizing statutes. This publication requirement is only for the public notice document, not the additional regulation notice.

When an agency sends a public notice to a newspaper or other publication, the agency must tell the publisher the date the notice is to appear in the publication and request a *proof-of-publication affidavit*. The state's advertising order form provides spaces for all this information and includes an affidavit of publication for use by the publisher. The agency will submit a copy of this affidavit to the Department of Law when requesting final review.

2. Post on the Alaska Online Public Notice System (AS 44.62.175(a))

Include: Notice, additional regulation notice, and draft regulations

In addition to publication, the adopting agency must post the public notice and additional regulation notice on the Alaska Online Public Notice System. Except for exempt boards and commissions, an agency must also include the complete text of the proposed regulation and, if feasible and not prohibited by copyright, the complete text of any document or other material proposed to be adopted by reference. The agency may provide the text of the proposed regulation as an electronic attachment or link to the complete text. Contact the Department of Law if uncertain whether posting is feasible or whether material is protected by copyright.

The Alaska Online Public Notice System has a specific category and subcategory for posting notices of proposed regulations. All notices should be posted under the category "Regulations" and subcategory "Notice of Proposed Regulations." For emergency regulations, use the subcategory "Emergency." After posting, the agency should verify that the notice appears on the Alaska Online Public Notice System and that any Internet links to obtain documents function properly. Attachments to the online notice must be provided as PDF files, not in Microsoft Word or other editable formats.

3. Distribute to incumbent state legislators

Include: Notice and additional regulation notice

A copy of the notice and additional regulation notice must be furnished by email to all incumbent legislators. For the current email address for group emailing to incumbent legislators, contact the Department of Law.

4. Distribute to interested parties

Include: Notice and additional regulation notice

The agency must provide a copy of the notice and additional regulation notice to the following parties:

- | | |
|--|---|
| (1) Persons on the agency's interested-persons list. | Notice by e-mail unless regular mail is requested. |
| (2) Persons not otherwise listed who the agency believes may be interested in the proposed action. | Notice by various methods, including publication through agency, board, or commission; a business newsletter; or otherwise. |

5. Distribute to appropriate state officials

Include: Notice only

If the adopting agency is within a principal department, the agency must furnish the public notice to the head of its principal department.

Public comments. The agency must retain all public comments according to the agency's records retention schedule and, if requested, make those comments available for public and Department of Law review. AS 44.62.210. The agency's retention of public comments includes retaining comments received by email, through an electronic comment portal, or through the Alaska Online Public Notice System. After the public comment period closes, the agency must

- fully consider all comments;
- pay special attention to the cost of the proposed action to private persons;
- record its use or rejection of factual or other substantive information contained in comments and relevant to the proposed action; and
- comply with any additional requirements of state or federal law for considering comments.

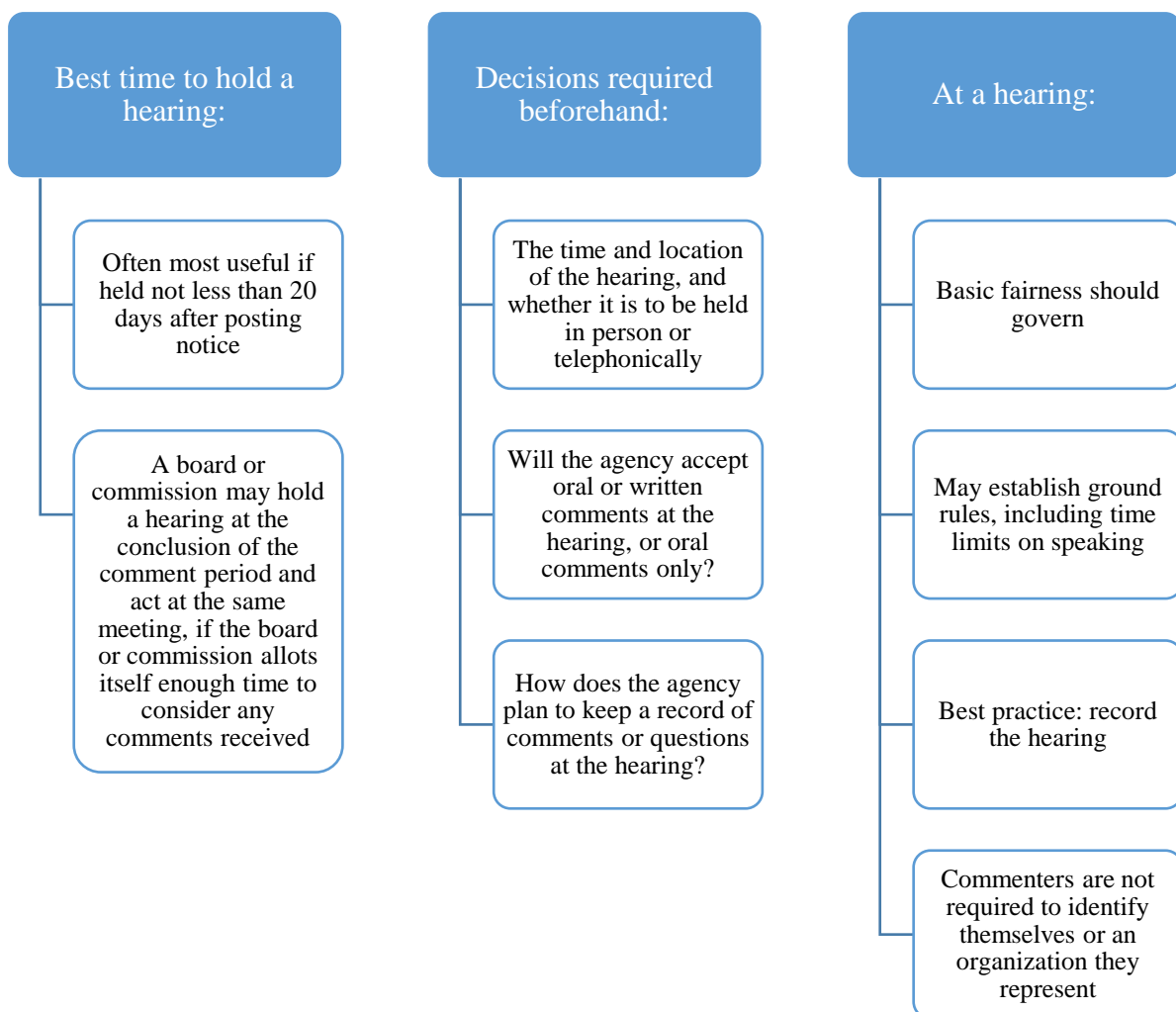
For the recording of the use or rejection of comments, the record may consist of

- a spreadsheet of comments and responses;
- notations on the physical comments submitted; or
- board or commission meeting minutes showing a discussion of comments, the use or rejection of comments, and the final action.

An agency does not need to create a decisional document, but the agency's complete record regarding the regulation should at least explain the reasons for the agency's action.

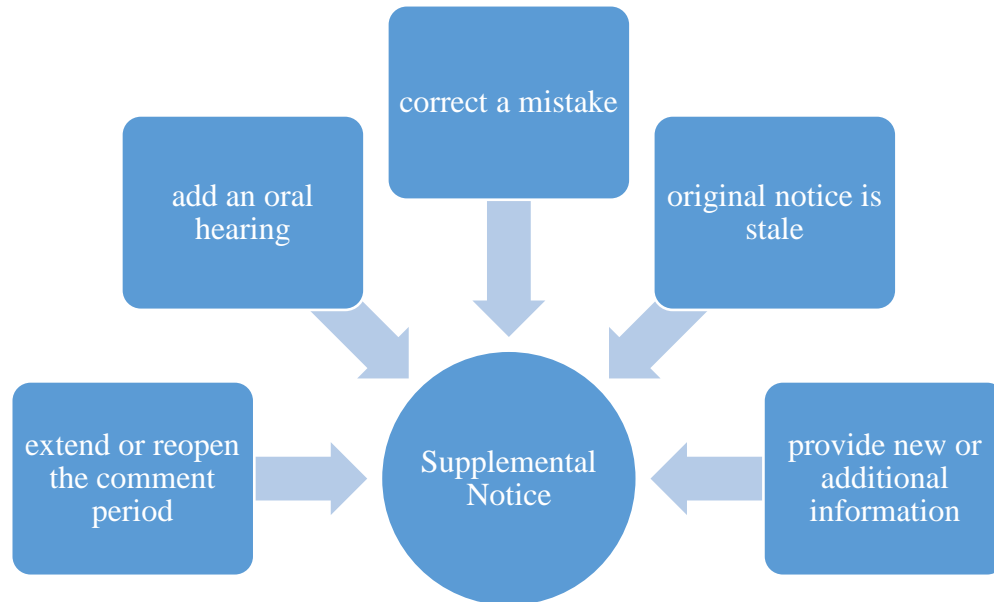
Oral hearings. As noted earlier, if an agency intends to hold an oral hearing on a proposed regulation, the public notice must include the date, time, location, and any call-in information for the hearing. AS 44.62.210. The agency may hold an oral hearing by teleconference. See AS 44.62.930; cf. AS 44.62.310(a) (allowing teleconferences under the Open Meetings Act). But if the agency proposes to hold an oral hearing primarily through an Internet conference service—such as WebEx, Microsoft Teams, or Zoom—the agency still needs to provide a telephone audio option for someone who lacks reliable Internet access or computer skills. If the agency decides to add an oral hearing after the public notice was already published and distributed, it must issue a supplemental notice announcing the hearing. Details on supplemental notice requirements are discussed in the next section.

Figure 2.9 – Oral hearings



Supplemental notice or re-noticing a project. As noted earlier, the public notice process is important to ensure that the public is appropriately informed of certain agency actions and has the opportunity to meaningfully comment. If a regulation project changes since the original public notice or after the end of the comment period, the agency may need to notify the public through a supplemental notice. The APA does not address supplemental notices, but the Department of Law is available to assist in determining whether a supplemental notice is advisable. Below are some possible scenarios in which an agency may need to issue a supplemental notice.

Figure 2.10 – When to issue a supplemental notice



Staleness. The Department of Law has a flexible one-year staleness rule to ensure that the public is not surprised when a regulation goes into effect. If a year or more has elapsed between the original publication date and anticipated filing date, an agency should discuss the need for a supplemental notice with the Legislation, Regulations, and Legislative Research Section. The section will consider the nature and significance of the regulation project, as well as other means by which the agency has kept the public informed during the intervening time period.

Public comment. If an agency provides a supplemental notice, the agency may also need to reopen the public comment period. If the original notice already provided at least 30 days for public comment within the preceding 12 months, the public comment period in the supplemental notice may be less than 30 days. The number of days for public comment should be reasonable in light of the complexity of the material and other factors relevant to the public's ability to meaningfully comment. The Legislation, Regulations, and Legislative Research Section is available to help agencies make this determination.

Content. A supplemental notice looks similar to the original notice, but it should have the word "supplemental" in the title, clearly mention the relationship to the earlier notice, and clearly state the reason for the supplemental notice. Consult with the Legislation, Regulations, and Legislative

Research Section to determine whether the Additional Regulation Notice Information should also be updated and redistributed.

Figure 2.11 – Example language for a supplemental notice

...

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES issued on July 21, 2020, concerning the above-proposed revisions, contained in Department of Law File No. 2020200999. The department has released this SUPPLEMENTAL NOTICE to advise the public that the department will take oral and written testimony at oral hearings on the proposed revisions. The hearings will be held as follows:

...

Distribution. A supplemental notice must be distributed in the same manner and to the same categories of recipients as the original public notice. If the Additional Regulation Notice Information is updated, it must also be redistributed in the same manner as the original.

Step 6: Department of Law Final Review

Submission of final regulation packet. After considering all comments and deciding on a final version of the regulations, *and before adoption*, the agency must send the final regulation packet to the regulations attorney in the Legislation, Regulations, and Legislative Research Section for legal review and approval. The final packet will provide evidence of compliance with the APA. The packet must be emailed to law.regulations@alaska.gov and include the documents listed below. The agency should refer to the final review checklist in [Appendix Z-1](#).

Must include:	Required, if applicable:	Appendix
(1) Final review request;		Appendix E
(2) a copy of the final regulations in Microsoft Word format;		N/A
(3) a copy of each public notice;		Appendix B-1 and B-2; or B-3
(4) the Additional Regulation Notice Information that was distributed with the public notice;		Appendix C-1 or Appendix C-2
(5) the publisher's affidavit of publication;		N/A
(6) the certification of notice of proposed regulation;		Appendix F

Must include:	Required, if applicable:	Appendix
	(7) the certification of oral hearing;	Appendix H
	(8) a fiscal note;	Appendix D
(9) the certification of agency record of public comment (not required for exempt boards and commissions);		Appendix G
	(10) any other relevant documents, such as material adopted by reference in the regulation.	N/A

Department of Law final review. Upon receipt of the final regulation packet, the Department of Law will review and process the regulations and accompanying paperwork as follows:

1. Process review

A paralegal from the Legislation, Regulations, and Legislative Research Section will review the regulation packet to ensure the regulatory process was properly followed.

2. Legal editor review

A legal editor will compare and contrast the regulations submitted for preliminary review and final review to identify changes made in the regulations. The legal editor will review any changes to identify whether additional technical edits are needed.

3. Final legal review

The regulations attorney or that person's designee will conduct the final level of legal review. In the final review, the regulations attorney, in consultation with the agency attorney as needed, will ensure the agency considered comments, properly responded to Department of Law advice, and is on track to adopt the regulations within any timeline proposed under AS 24.08.035. If the regulations are approved, the agency will be asked to prepare the adoption or certification order for the final regulations in accordance with Step 7 on the next page. The agency must then send the completed adoption or certification order to the Legislation, Regulations, and Legislative Research Section for final processing and delivery to the lieutenant governor's office.

4. Approval and submission to the lieutenant governor

Upon receiving the completed adoption or certification order, the regulations attorney will prepare a legal opinion for the lieutenant governor, approving or disapproving the regulation. If the regulation is disapproved for legal reasons, the Legislation, Regulations, and Legislative Research Section will work with the agency to bring the project into compliance. If the agency makes changes at the request of the Department of Law, the agency may need a new adoption order or certification order to show that the agency also

adopted the changes. In the case of a board or commission, adoption must take place at a properly noticed public meeting of the board or commission. If the changes do not exceed the description in the original public notice, additional public notice is not required before adoption of the revised regulation.

If the regulation is approved, the Legislation, Regulations, and Legislative Research Section delivers the legal opinion approving the regulations, the final adopted regulations, and the supporting paperwork to the Office of the Lieutenant Governor.

Step 7: Adoption

After the passage of 30 or more days since an agency first published notice of the proposed change, after the consideration of all public comments, *and after receiving final approval from the Department of Law under Step 6*, the agency may take final action to adopt a regulation. After adopting the regulation as set out below, the agency must send the adoption or certification order, and any accompanying documents, to the Legislation, Regulations, and Legislative Research Section for forwarding to the lieutenant governor's office.

Adoption order. To adopt the regulation, the official who has regulation-adoption authority signs and dates an adoption order ([Appendix I](#)).

For boards and commissions, adopting a regulation means moving, voting on, and passing a regulation in a properly noticed public meeting. If the meeting is by teleconference, the decision must be taken by a roll-call, voice vote. AS 44.62.310(a). Additional requirements for boards and commissions are as follows:

- If an *adoption order* is used, it must be signed at the meeting by the members of the board or commission who were present at the time the regulation was adopted.
- As an alternative, the chair, an acting chair, or the executive director of the board or commission may sign a *certification order* that states that the board or commission adopted the relevant regulation at the meeting ([Appendix J](#)).
- When submitting a *certification order*, a board or commission must include a transcript or copy of the minutes of the portion of the public meeting in which the board or commission voted on the regulation (example provided as [Appendix N](#)). Additionally, a certification order must be accompanied by a staff certification of board action ([Appendix M](#)), describing the board or commission action and signed by an agency staff person who attended the meeting and has knowledge of the action taking place.

Signatures. For the adoption order, certification order, and accompanying certifications, the Department of Law accepts two types of signatures: (1) a copy of a handwritten signature; or (2) an electronic signature executed through DocuSign, the certificate-based and password-protected signature function in Adobe Acrobat, or through a similar type of electronic signature verification program.

Delegation. A department head may delegate authority to adopt regulations by signing a written delegation ([Appendix K](#) or [L](#)). A delegation made by the head of a principal department must be posted on the Alaska Online Public Notice System. AS 44.62.175. A board or commission may not delegate its authority to adopt regulations unless a statute specifically authorizes the delegation.

Figure 2.12 – Delegations

<p>Form of delegation</p> <ul style="list-style-type: none"> • "Standing" written delegation filed with the Office of the Lt. Governor • Memo delegating regulations authority • Memo designating a person acting commissioner (does not require separate regulation delegation)
<p>Breadth</p> <ul style="list-style-type: none"> • May broadly cover all agency regulations • May apply to specific project or length of time
<p>Filing</p> <ul style="list-style-type: none"> • A copy of the delegation document must be included with the adoption order signed under the delegation.
<p>Form of signature under delegation</p> <ul style="list-style-type: none"> • A state official may sign an adoption order "for" the department head, with the commissioner's name typed under the signature line. • A state official may sign an adoption order in the state official's own name, with that person's name and title typed under the signature. • An acting commissioner may sign an adoption order in the acting commissioner's name, with that person's name and "acting commissioner" title.

Review by the governor. Except for certain exempt boards and commissions, an agency, board, or commission must submit a copy of the adopted regulations, public notice document, and Additional Regulation Notice Information to the governor for review. AS 44.62.040. The agency must email the material to the Office of the Governor and the Office of the Lieutenant Governor at gov-regs@list.state.ak.us. If attempting to use this email address for the first time, the agency should contact the regulations specialist at the lieutenant governor's office.

A governor may delegate the duty to review only to the lieutenant governor. A governor may return the regulations to the agency if they are "inconsistent with the faithful execution of the laws" (AS 44.62.040(c)).

Step 8: Filing by the Office of the Lieutenant Governor

If accepted for filing, 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 or certification order. The Office of the Lieutenant Governor typically notifies the adopting agency that a regulation has been filed, the date the regulation takes effect, and the quarterly register of the AAC in which it will first appear.

The regulation and supporting documents are maintained at the lieutenant governor's office for five years before they are transferred to the state archivist in the Department of Education and Early Development for permanent retention.

Step 9: Posting Online Summary

After an agency receives notice that a regulation has been filed, the agency must post the text or a summary of the filed regulations on the Alaska Online Public Notice System (AS 44.62.175(a)). Most agencies choose to use a sentence or two to summarize the subject matter of the regulations. See template provided as [Appendix O](#).

Posting the summary of the filed regulations on the Alaska Online Public Notice System is the final step in the regulation adoption process.

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

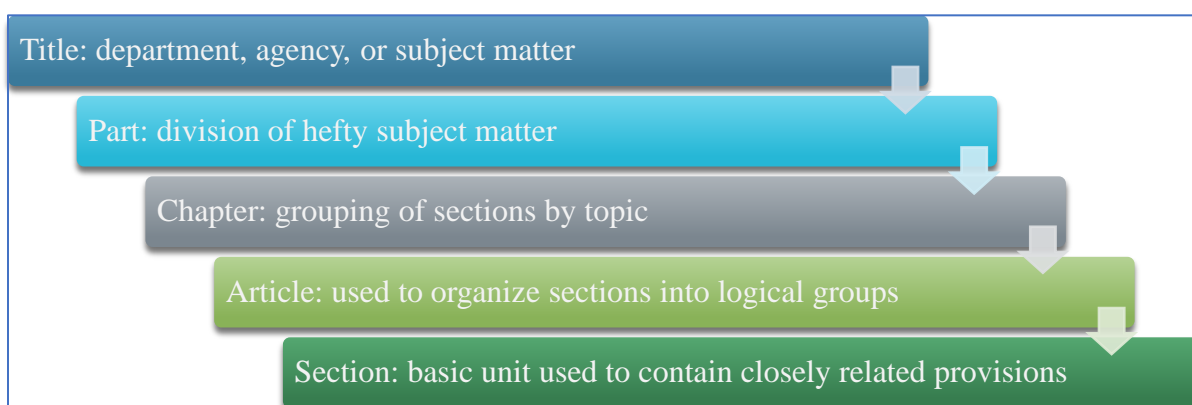
CHAPTER 3

ORGANIZATION OF THE ALASKA ADMINISTRATIVE CODE

Once a regulation is adopted, filed, and effective, the Office of the Lieutenant Governor arranges for its publication in the Alaska Administrative Code (AAC): the official compilation of state agency regulations, just as statutes are codified in the official Alaska Statutes.

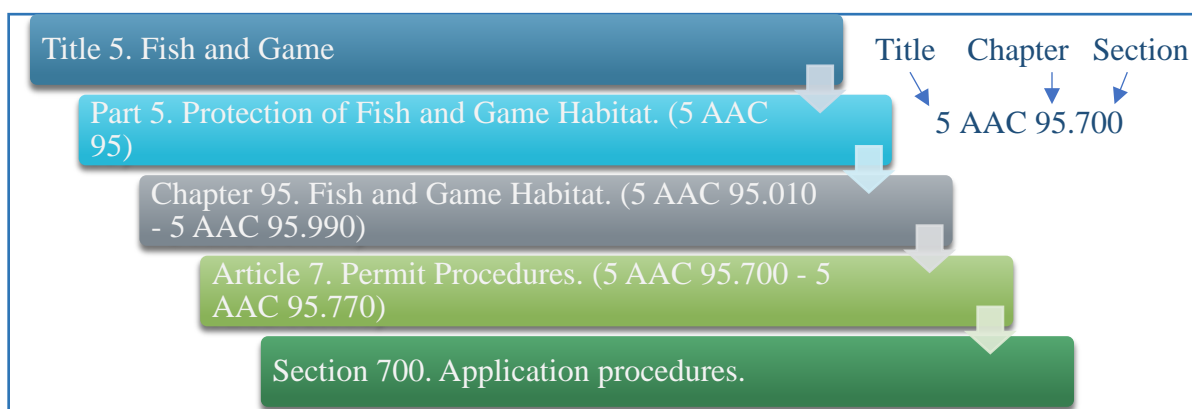
As shown below, regulations are organized in the AAC in much the same manner as Alaska Statutes.

Figure 3.1 – Basic organization of the AAC



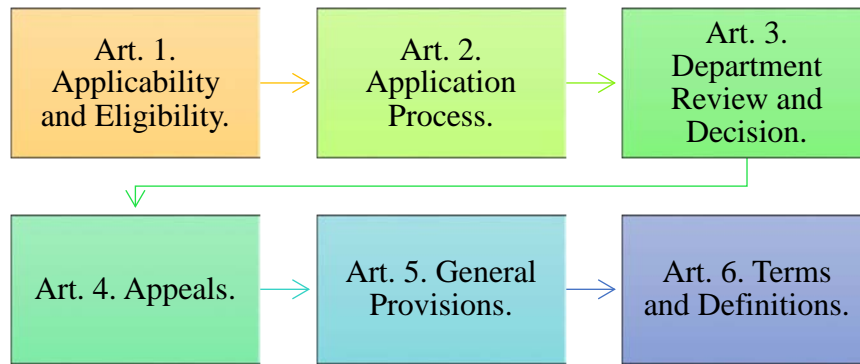
For consistency, each chapter is identified with a two-digit number and each section with a three-digit number. Only when a title is "full" is it permissible to use more than two digits for a chapter number, and only when a chapter is "full" is it permissible to use more than three digits for a section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

Figure 3.2 – Example organization from Title 5



Organization of a chapter. Material in a chapter is organized into logical groupings of subject matter. The arrangement of sections and articles in a chapter results in a logical flow from the first section to the last. Logical flow moves a program, function, or subject from beginning to end. The beginning usually covers the purpose of the regulations and to whom the regulations apply. The middle provisions set relevant procedures and requirements, which may be inserted chronologically following the timeline of a program. The final provisions are more general and typically include the definitions section of a chapter, as well as nondiscrimination provisions or department waivers of certain requirements.

Figure 3.3 – Logical flow of articles in chapter



Organization of a section. A regulation may be all one section with no subdivisions, or it may be divided into subsections, paragraphs, subparagraphs, or sub-subparagraphs.

Figure 3.4 – Section subdivisions

(a) Subsection (1) paragraph; (A) subparagraph; (i) sub-subparagraph; (ii) sub-subparagraph; <i>(no designation smaller than this)</i> (B) subparagraph; (2) paragraph. (b) Subsection.	Subsection	(a) (b) (c) ...
	Paragraph	(1) (2) (3) ...
	Subparagraph	(A) (B) (C) ...
	Sub-subparagraph	(i) (ii) (iii) ...

If a section is subdivided as shown above, there must be two or more subdivisions at each level—in other words, there is no (a) without (b), no (1) without (2), and so forth.

The paragraphs of a section are considered a *continuation* of a sentence and are therefore separated by semicolons. The final paragraph, because it brings the sentence to its conclusion, is punctuated with a period. As shown below, the lead-in language from the main provision forms a complete and grammatical sentence with each subdivision below it.

Figure 3.5 – Subdivisions of section

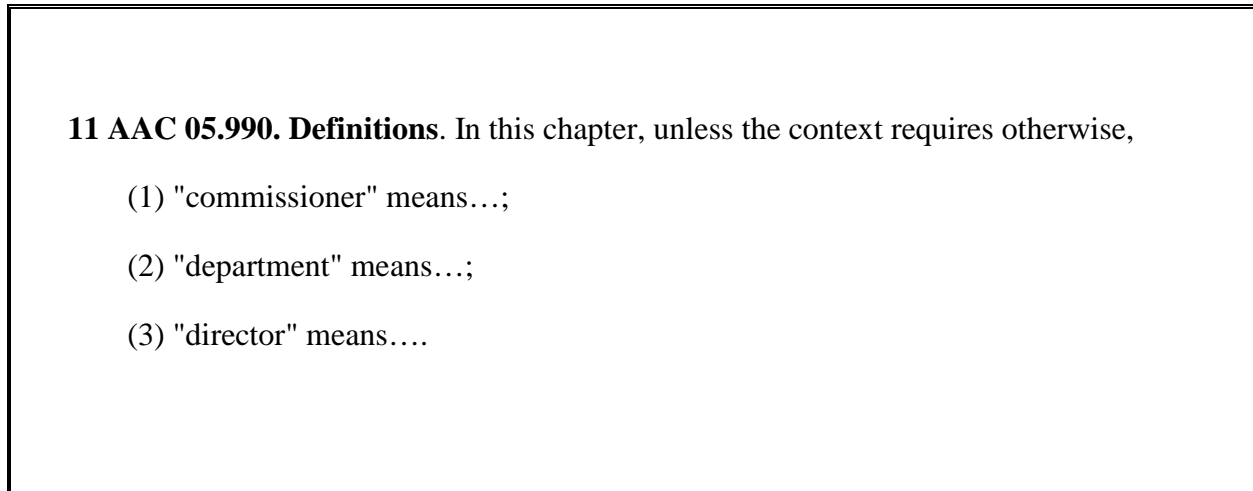
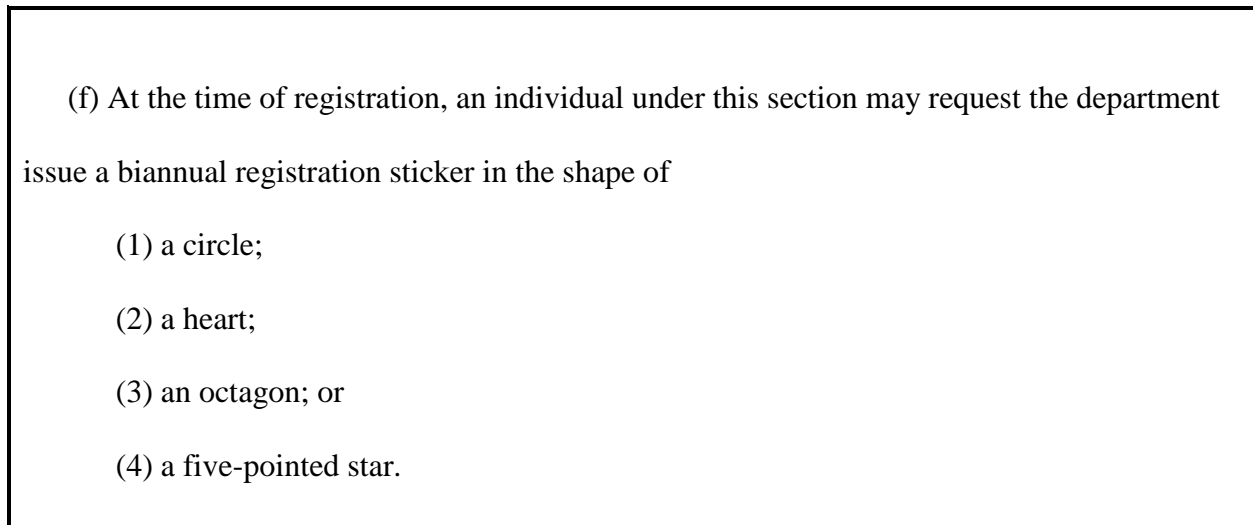


Figure 3.6 – Subdivisions of subsection



CHAPTER 4

DRAFTING A REGULATION

This chapter sets out the mechanical standards for preparing and displaying a regulatory amendment. Adherence to these standards from the beginning of a project will avoid the need for revisions later and will expedite the Department of Law's review.

Resources

Copy of current regulations. The agency must start with the most up-to-date regulations; this is especially important for agencies that frequently adopt regulations. Regulations are published quarterly, which means that an amendment to a regulation may be filed with the lieutenant governor and effective well before its publication in the register.

In addition to the hard copies, an electronic version of the AAC is available on the Alaska State Legislature's website at www.akleg.gov/basis/aac.asp. The website may or may not keep pace with the published pamphlets and should therefore be used with caution. The online database is not the official version of the AAC, so its text may include errors and omissions that deviate from the official bound version. If there is uncertainty about the correct text of a regulation, the agency should always consult the official bound version of the AAC or check with the legal editor in the Legislation, Regulations, and Legislative Research Section. The legal editor can assist in locating the most current, official version of the regulatory text.

Statutory authority. We suggest having the relevant Alaska Statutes on hand to reference while drafting. This will assist the agency in not exceeding its statutory authority and not repeating language already in statute.

Proposed changes. Whether adding, amending, or repealing provisions, it helps to have the project concept and changes listed nearby.

Setting up the Page – Basic Formatting

To begin, some basic formatting requirements apply to all regulation projects:

Double spaced; Single-sided	One inch margins, margins left-justified, and one space between sentences	Times New Roman 12-point font; black ink (no links), on white 8.5" x 11" paper
Boldface for provision headings and for "Authority" and "Editor's note" headings	Page header: Register [number], [month] [year] [AAC volume title]	Page footer: centered page number

With the basic formatting requirements applied, a typical page of amendments will resemble the example below. Note the header (register information, AAC volume title) and footer (page number, bottom center). For an additional example, see [Appendix Y](#).

Figure 4.1 – Example page of amendments

Register _____, _____ 20__	[AAC VOLUME TITLE]
1 AAC 23.456(a) is amended to read:	
(a) A person [PEOPLE] shall provide to the department a quarterly report detailing all puns, dad jokes, and other attempts of the person [INDIVIDUAL] to lighten the mood in violation of 1 AAC 23.789 – 1 AAC 23.987 [1 AAC 23.789 – 1 AAC 23.888].	
1 AAC 23.456 is amended by adding a new subsection to read:	
(c) If available, a person shall submit, as an attachment to the report required by (a) of this section, the source or origin of the material being reported or state the material’s status as original. (Eff. 11/12/99, Register 115; am __/ __/ ____, Register ____)	
Authority: AS 49.38.270	
1 AAC 23.460 is repealed:	
1 AAC 23.460. Prohibited puns. Repealed. (Eff. 3/19/2019, Register 218; repealed __/ __/ ____, Register ____)	
1 AAC 23.465 is repealed and readopted to read:	
1 AAC 23.465. Allowable dad jokes. (a) A person may attempt a dad joke only if the joke	
(1) is fewer than seven words in length; and	
(2) references a chicken.	
(b) A dad joke made under (a) of this section must be included in the report required by	
1 AAC 23.456. (Eff. 11/12/99, Register 115; am __/ __/ ____, Register ____)	
Authority: AS 49.38.270	
1	

The proper indentation for each type of provision is shown below. Note that when a subsection "(a)" follows the section heading, it is not indented.

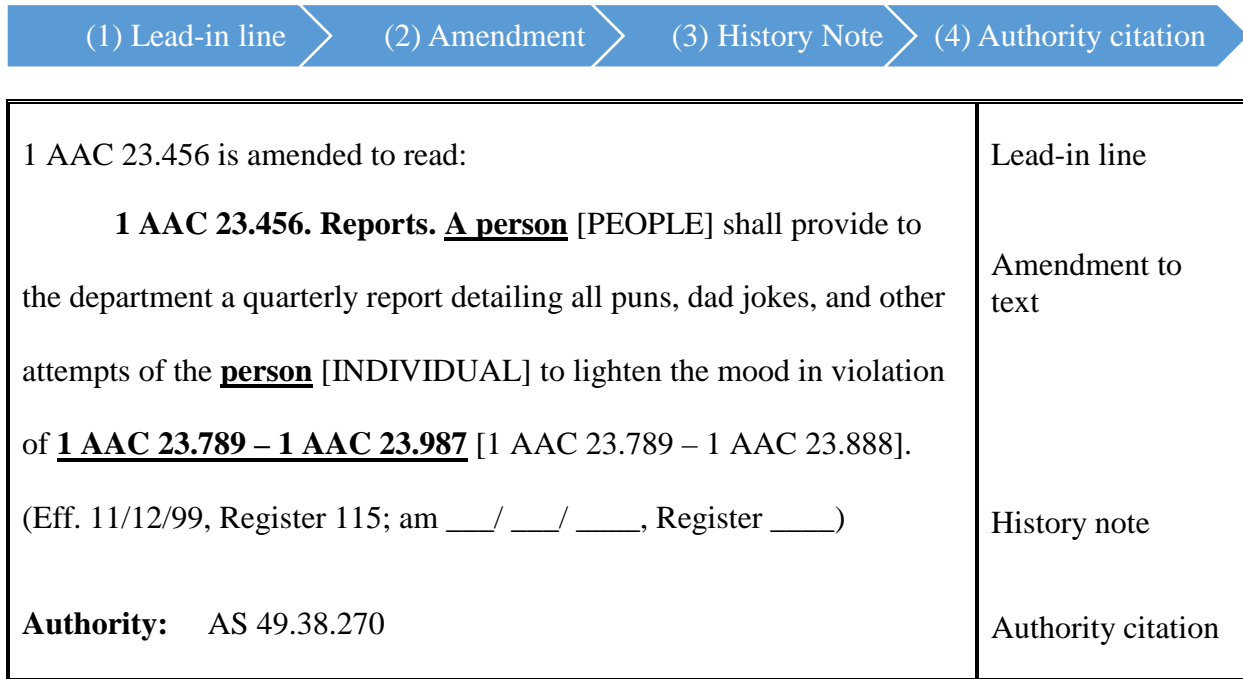
Figure 4.2 – Indentation

(left indent 0.5 inches)
1 AAC 00.000. Section heading. (a)(Section)
(left indent 0.5 inches)
(b)(Subsection)
(left indent 1.0 inches)
(1)(Paragraph)
(left indent 1.5 inches; second line 0.5 inches)
(A)(Subparagraph)
(left indent 2.0 inches; second line 1.0 inch)
(i)(Sub-subparagraph)

Components to an Amendment

A properly drafted amendment will include four basic components.

Figure 4.3 – Components to an amendment



Lead-In Line

The lead-in line introduces the amendment to the reader. The table below provides the appropriate lead-in line for each type of amendment.

New content	
Chapter:	[title number] AAC is amended by adding a new chapter to read:
Section(s):	[title number] AAC [chapter number] is amended by adding a new section to read: OR [title number] AAC [chapter number] is amended by adding new sections to read:
Subsection:	[title number] AAC [chapter number] [section number] is amended by adding a new subsection to read:
Parts of a subsection:	The same format as above should be followed for adding a paragraph, subparagraph, or sub-subparagraph.

Amendments	
Existing section:	[title number] AAC [chapter number] [section number] is amended to read:
Subsection:	[title number] AAC [chapter number] [section number] [subsection letter] is amended to read:
Parts of a subsection:	The same format as above should be followed for amendments specific to a paragraph, subparagraph, or sub-subparagraph.
Repeals	
Existing section:	[title number] AAC [chapter number] [section number] is repealed:
Subsection:	[title number] AAC [chapter number] [section number] [subsection letter] is repealed:
Parts of a subsection:	The same format as above should be followed for repeals of a paragraph, subparagraph, or sub-subparagraph.
Repeal and readopt:	[title number] AAC [chapter number] [section number] is repealed and readopted to read:
Emergency regulations being made permanent	
Emergency regulation being made permanent:	The emergency amendment of [title number] AAC [chapter number] [section number] is made permanent to read:
Made permanent and amended:	The emergency amendment of [title number] AAC [chapter number] [section number] is made permanent and is further amended to read:
	The same format as above should be followed for amendments specific to a subsection, paragraph, subparagraph, or sub-subparagraph.
Uncommon changes	
Introductory language:	The introductory language of [title number] AAC [chapter number] [section number] is amended to read:
History note error:	The history note to [title number] AAC [chapter number] [section number] is changed to read:
Authority citation:	The authority citation to [title number] AAC [chapter number] [section number] is changed to read:
Editor's note:	The editor's note to [title number] AAC [chapter number] [section number] is changed to read:
Chapter name:	The chapter heading for [title number] AAC [chapter number] is changed to read:

Amendment to Text: Available Actions

After introducing the amendment with the appropriate lead-in line, the amendment itself is set out. Four types of amendments are available to the drafter:

1. Amendment to existing regulation.
2. Addition of a new regulation.
3. Repeal of existing regulation.
4. Repeal and readopt.

Amendment to existing regulation. When amending an existing provision, new language is bolded and underlined and deleted language is bracketed and capitalized. The new language comes before the deleted language.

Figure 4.4 – Amending existing section

<p>1 AAC 23.456 is amended to read:</p> <p style="padding-left: 40px;">1 AAC 23.456. Reports. <u>A person</u> [PEOPLE] shall provide to the department a quarterly report detailing all puns, dad jokes, and other attempts of the <u>person</u> [INDIVIDUAL] to lighten the mood in violation of <u>1 AAC 23.789 – 1 AAC 23.987</u> [1 AAC 23.789 – 1 AAC 23.888].</p> <p>(Eff. 3/19/2019, Register 218; am 8/24/2019, Register 220; am ___/___/____, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>Lead-in line indicates the section being amended.</p> <p>New language is bolded and underlined; deleted language is bracketed and capitalized.</p> <p>New language comes before deleted language.</p>
--	--

Figure 4.5 – Amending existing section and adding new subsection

<p>1 AAC 23.456 is amended to read:</p> <p style="padding-left: 40px;">1 AAC 23.456. Reports. (a) <u>A person</u> [PEOPLE] shall provide to the department a quarterly report detailing all puns, dad jokes, and other attempts of the <u>person</u> [INDIVIDUAL] to lighten the mood in violation of <u>1 AAC 23.789 – 1 AAC 23.987</u> [1 AAC 23.789 – 1 AAC 23.888].</p> <p style="padding-left: 40px;"><u>(b) If available, a person shall submit, as an attachment to the report required by (a) of this section, the source or origin of the material being reported or state the material's status as original.</u></p> <p>(Eff. 3/19/2019, Register 218; am 8/24/2019, Register 220; am ___/___/____, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>Lead-in line indicates the section being amended.</p> <p>New language is bolded and underlined; deleted language is bracketed and capitalized; new language comes before deleted language.</p> <p>If the entire section is amended, a new provision can be added as indicated here.</p>
--	--

When drafting an amendment in this format, be mindful of the following errors:

INCORRECT	CORRECT	EXPLANATION
teacher[S] teachers t[T]he teacher	<u>teacher</u> [TEACHERS] <u>teachers</u> [TEACHER] <u>the</u> [THE] teacher	An amendment to a word's capitalization or plurality must amend the entire word.
World- <u>building</u> World- <u>building</u>	<u>World-building</u> [WORLD BUILDING]	An amendment to a hyphenated term must amend the full term.
1 AAC 23.450 - <u>1 AAC 23.490</u> [1 AAC 23.495]	<u>1 AAC 23.450 - 1 AAC 23.490</u> [1 AAC 23.450 - 1 AAC 23.495]	An amendment to a span of statutory or regulatory sections must amend the entire span.
May <u>31</u> [15], 2019 <u>May 31, 2019</u> [May 31, 2015]	<u>May 31</u> [MAY 15], 2019 May 31, <u>2019</u> [2015]	An amendment to part of a date must amend month and day together or year alone.

Addition of a new regulation. When adding an entire new section, group of sections, or chapter, set out all the new material. For an entirely new section, group of sections, or chapter being added, use the lead-in line to identify the material as new and do not underline or bold the material.

When adding a new chapter or article, set out a content list with the relevant headings of the chapter, articles, or sections, as shown in Figure 4.10. The content list need only be set out for new material. The publisher of the AAC will make any necessary changes to the content list if a regulation project ultimately results in a need for changes.

If adding a new subsection, it must be added after the existing subsections. If an agency would like to insert a new subsection in between existing subsections, the entire section must be repealed and readopted.

If adding or amending a paragraph or smaller subdivision, the agency may set it out alone. Alternatively, the agency may amend the subsection or surrounding subdivision, or may repeal and readopt it. The best approach depends in part on the value the agency places on displaying the existing text, especially if only one small part changes. Setting out existing text will provide context for the public in a public notice draft of a regulation. But if setting out the new text alone, use the format illustrated in Figure 4.8. Also, rather than following the rule for subsections, the agency may insert a new paragraph or smaller subdivision in the middle of an existing series; but the agency must, in this case, display the text of the surrounding provision. Finally, in long lists, such as lists of definitions, the accepted approach is to set out only the item in the list that changes.

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

Figure 4.6 – Adding new section

<p>1 AAC 23 is amended by adding a new section to read:</p> <p style="padding-left: 40px;">1 AAC 23.456. Reports. A person shall provide to the department a quarterly report detailing all puns, dad jokes, and other attempts of the person to lighten the mood in violation of 1 AAC 23.789 – 1 AAC 23.987. (Eff. ___/___/____, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>Lead-in line identifies new material.</p> <p>History note includes blanks for effective date.</p> <p>New language is <i>not</i> bolded or underlined.</p>
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Figure 4.7 – Adding new subsection

<p>1 AAC 23.456 is amended by adding a new subsection to read:</p> <p style="padding-left: 40px;">(b) If available, a person shall submit, as an attachment to the report required by (a) of this section, the source or origin of the material being reported or state the material's status as original. (Eff. 3/19/2019, Register 218; am 8/24/2019, Register 220; am ___/___/____, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>The lead-in line identifies the section to which the subsection is added.</p> <p>When adding subsection (b), the publisher will label the current material as "(a)."</p> <p>New language is <i>not</i> bolded or underlined.</p>
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Figure 4.8 – Adding new paragraph

<p>1 AAC 23.460(b) is amended by adding a new paragraph to read:</p> <p style="padding-left: 40px;">(4) visual puns referring to a taboo subject matter.</p> <p>(Eff. 3/19/2019, Register 218; am 8/24/2019, Register 220; am ___/___/____, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>The lead-in line identifies the subsection to which the paragraph is added.</p> <p>The publisher will adjust the location of relevant punctuation or connecting words.</p> <p>New language is <i>not</i> bolded or underlined.</p>
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Figure 4.9 – Adding new article

<p>1 AAC 23 is amended by adding new sections to read:</p> <p>Article</p> <p>1. Application and Eligibility for Certificate of Fitness (1 AAC 23.010 – 1 AAC 23.090)</p> <p><u>2. Renewal and Cancellation (1 AAC 23.100 – 1 AAC 23.130)</u></p> <p><u>3.</u> General Provisions (1 AAC 23.900 – 1 AAC 23.990)</p> <p style="text-align: center;">Article 2. Renewal and Cancellation.</p> <p>Section</p> <p>100. Renewal of certificate of fitness</p> <p>110. Cancellation of certificate of fitness</p> <p>120. Hearing on cancellation of certificate of fitness</p> <p>130. Appeal of denial of renewal</p> <p style="text-align: center;">1 AAC 23.100. Renewal of certificate of fitness. The department will mail ...</p>	<p>Because articles are not part of the regulation citation, add them as a span of sections.</p> <p>Add the new article in the logically appropriate place, using bold and underline to indicate the location of the new sections.</p> <p>Set out the sections of the new article as new language; no bold or underline.</p> <p>Set out the text of sections as new language; no bold or underline.</p>
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Figure 4.10 – Adding new chapter

<p>1 AAC is amended by adding a new chapter to read:</p> <p style="text-align: center;">Chapter 23. Comedian Certificate of Fitness.</p> <p>Article</p> <p>1. Application and Eligibility for Certificate of Fitness (1 AAC 23.010 – 1 AAC 23.090)</p> <p>2. Renewal and Cancellation (1 AAC 23.100 – 1 AAC 23.130)</p> <p>3. General Provisions (1 AAC 23.900 – 1 AAC 23.990)</p> <p style="text-align: center;">Article 1. Application and Eligibility for Certificate of Fitness.</p> <p>Section</p> <p>10. Application for certificate of fitness</p> <p>20. Eligibility for certificate of fitness</p> <p>30. Appeal from denial of certificate</p> <p style="text-align: center;">1 AAC 23.010. Application for certificate of fitness. An individual may apply for a comedian certificate of fitness by submitting the relevant fee and the following information on a form prescribed by the department:</p> <p>...</p>	<p>Clear lead-in line.</p> <p>Set out articles (if applicable).</p> <p>Article headings are in title case.</p> <p>Section numbers for each article in parentheses.</p> <p>Section headings lowercase, except initial capital.</p> <p>Set out the sections as new text; no bold and no underline.</p>
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Repeal of existing regulation. When repealing an existing provision, the repealed language is not displayed on the page. Instead, the language of the provision is replaced by the word "repealed." The format of the repeal notation differs depending on whether an entire section or subdivision of a section is being repealed. The following examples demonstrate a repeal for each type of provision.

Figure 4.11– Repealing section

<p>1 AAC 23.460 is repealed:</p> <p style="text-align: center;">1 AAC 23.460. Prohibited puns. Repealed. (Eff. 3/19/2019, Register 218; repealed ___/___/____, Register ___)</p>	<p>Clear lead-in line.</p> <p>Use section number and section heading.</p> <p>Text of section is replaced by the word "Repealed," without a date.</p> <p>History note is retained with "repealed" notation; blank spaces for the date of the repeal.</p> <p>Authority citation is removed.</p>
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Figure 4.12 – Repealing subsection

<p>1 AAC 23.460(f) is repealed:</p> <p style="text-align: center;">(f) Repealed ___/___/____. (Eff. 3/19/2019, Register 218; am ___/___/____, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>Clear lead-in line.</p> <p>Text of subsection includes spot for date of repeal.</p> <p>History note has "am" notation to show repeal.</p> <p>Authority citation retained.</p>
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Figure 4.13 – Repealing paragraph, subparagraph, or sub-subparagraph

<p>1 AAC 23.460(a)(1) is repealed:</p> <p style="padding-left: 40px;">(1) repealed ___/___/___;</p> <p>1 AAC 23.460(a)(2)(C)(iv) is repealed:</p> <p style="padding-left: 40px;">(iv) repealed ___/___/___ (Eff. 3/19/2019, Register 218; am ___/___/___, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>Clear lead-in line.</p> <p>The word "repealed" is lowercase; text includes spot for date of repeal.</p> <p>History note has "am" notation to show repeal.</p> <p>Authority citation is retained.</p>
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While the language of a repealed provision is removed from the final adopted regulations before filing, it is sometimes helpful to set out that repealed language—in brackets and in all caps—in the draft regulations released for public notice. Including the repealed language alongside other proposed changes will help the public provide meaningful comments on the proposed regulations.

Repeal and readopt. Repealing and readopting a regulation section allows an agency to extensively reorganize or revise a section. By repealing and readopting a regulation, an agency may also move material around within a section or insert a new subsection between existing subsections.

However, a repeal and readoption should not be used to change the basic subject matter of a section or a subsection that is not otherwise being repealed and readopted. A different or new subject matter must go into a new section and the existing section must be repealed, if necessary.

Comprehensive revisions. To avoid legal problems, the agency must contact the Legislation, Regulations, and Legislative Research Section before starting a regulation project that comprehensively revises a chapter or title. Generally, an agency may not use a comprehensive revision to re-use existing section numbers or delete the history of the sections that those numbers represent. Instead, new subject matter must go into new sections and the existing sections must be repealed, if necessary.

Figure 4.14 – Repeal and readopt

<p>1 AAC 23.456 is repealed and readopted to read:</p> <p style="padding-left: 40px;">1 AAC 23.456. Reports. A person shall provide to the department a quarterly report detailing all puns, dad jokes, and other attempts of the person to lighten the mood in violation of 1 AAC 23.789 – 1 AAC 23.987. (Eff. 03/19/2019, Register 218; am ___/___/____, Register ___)</p> <p>Authority: AS 28.60.070 AS 28.60.080</p>	<p>Clear lead-in line.</p> <p>Present the text as new material.</p> <p>Keep existing history note; use "am" to represent the repeal and readoption.</p> <p>Authority citation.</p>
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Multiple changes within one section. If multiple changes are being made to more than one part of a section or subsection, but not to the entire section, set out a separate lead-in line for each amendment. The history note and authority citation for the section should be set out only once, after the last part of the section being amended.

Figure 4.15 – Showing multiple changes within one section

<p>2 AAC 92.363(b) is amended to read:</p> <p style="padding-left: 40px;">(b) The [AN] applicant must be a registered owner of the motor vehicle and the vehicle must be currently registered in this state.</p> <p>2 AAC 92.363(d) is repealed:</p> <p style="padding-left: 40px;">(d) Repealed ___/___/____.</p> <p>2 AAC 92.363 is amended by adding a new subsection to read:</p> <p style="padding-left: 40px;">(f) At the time of registration, an individual under this section may request the department issue a biannual registration sticker in the shape of</p>	<p>Each part should have a separate lead-in line when changes are not made to the entire section, even if all the affected parts are being changed in the same way.</p> <p>For example, if (b), (d), and (f)(4) are all being repealed, each would still have a separate lead-in line.</p>
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<p>(1) a circle;</p> <p>(2) a heart;</p> <p>(3) an octagon; or</p> <p>(4) a five-pointed star. (Eff. 10/10/2014, Register 212; am 11/11/2015, Register 217; am ___/___/____, Register ____)</p> <p>Authority: AS 28.05.011 AS 28.10.021 AS 28.10.181</p>	<p>The history note and authority citation are set out only once, at the end of the section being amended.</p>
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Conforming amendments. When a regulation is proposed for repeal, the agency must always search the current AAC for cross-references to that repealed provision and amend the cross-references accordingly. Additionally, if an amendment reorganizes subsections or paragraphs so that the lettering or numbering designations change, the AAC must be reviewed for references to those subdivisions that may need to be updated. These types of changes are called "conforming amendments." The easiest way to determine whether conforming amendments are necessary is to search for the relevant provision using the electronic version of the AAC on the Alaska Legislature's website. Keep in mind, however, the online version of the AAC is unofficial and may not be updated with the most current register published in the official pamphlets.

History Note

Each section in the AAC is followed by a history note in parentheses indicating when the regulation first took effect, when amendments to the regulation took effect, and, if it was repealed, the date the repeal took effect.

The placement of the history note and its notation differ depending on the provision being amended. If the provision being amended is only a portion of a section (i.e., a subsection, paragraph, subparagraph, or sub-subparagraph) and it is the last provision of the entire section, the history note begins two spaces after the end of the text, in the same place it will appear in the AAC. If the portion of the section being adopted, amended, or repealed is not the last provision of the section, the history note begins on the next line down at the far left-hand margin.

Figure 4.16 – History note: New section

<p>1 AAC 23 is amended by adding a new section to read:</p> <p style="text-align: center;">1 AAC 23.456. Reports. A person shall provide to the department a quarterly report detailing all puns, dad jokes, and other attempts of the person to lighten the mood in violation of 1 AAC 23.789 – 1 AAC 23.987. (Eff. ___/___/____, Register ___)</p>	<p>Place the history note at the end of the section text.</p> <p>Leave space for the Lt. Governor's office to write in the effective date and register number.</p>
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Figure 4.17 – History note: Amending existing section

<p>1 AAC 23.456 is amended to read:</p> <p style="text-align: center;">1 AAC 23.456. Reports. <u>A person</u> [PEOPLE] shall provide to the department a quarterly report detailing all puns, dad jokes, and other attempts of the <u>person</u> [INDIVIDUAL] to lighten the mood in violation of 1 AAC 23.789 – 1 AAC 23.987 [1 AAC 23.789 – 1 AAC 23.888]. (Eff. 3/19/2019, Register 218; am 8/24/2019, Register 220; am ___/___/____, Register ___)</p>	<p>Set out the current history note at the end of the section text.</p> <p>Leave space for the Lt. Governor's office to write in the effective date and register number.</p>
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Figure 4.18 – History note: Amending subdivision that is the last part of a section

<p>1 AAC 23.456(b) is amended to read:</p> <p>(b) If available, <u>a person</u> [PEOPLE] shall submit, as an attachment to the report required by (a) of this section, the source or origin of the material being reported or state the material's status as original. (Eff. 3/19/2019, Register 218; am 8/24/2019, Register 220; am ___/___/____, Register ___)</p>	<p>When amending the last provision of a section, the history note begins immediately after the text of the section.</p>
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Figure 4.19 – History note: Amending subdivision that is not the last part of a section

<p>1 AAC 23.456(b) is amended to read:</p> <p style="padding-left: 40px;">(b) If available, a person [PEOPLE] shall submit, as an attachment to the report required by (a) of this section, the source or origin of the material being reported or state the material's status as original.</p> <p>(Eff. 3/19/2019, Register 218; am 8/24/2019, Register 220; am ___/___/____, Register ___)</p>	<p>When amending a provision that is not the last provision of a section, the history note begins on the next line down.</p> <p>In this example, (b) is followed by subsection (c), which is not being amended.</p>
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Figure 4.20 – History note: Repealing section

<p>1 AAC 23.450 is repealed:</p> <p style="padding-left: 40px;">1 AAC 23.450. Prohibited puns. Repealed. (Eff. 3/19/2019, Register 218; repealed ___/___/____, Register ___)</p>	<p>If an entire section is being repealed, the repeal notation in the history note reads "repealed," followed by blank spaces for the effective date of the repeal.</p>
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Figure 4.21 – History note: Repealing subsection

<p>1 AAC 23.450(f) is repealed:</p> <p style="padding-left: 40px;">(f) Repealed ___/___/____. (Eff. 3/19/2019, Register 218; am ___/___/____, Register ___)</p> <p>OR</p> <p style="padding-left: 40px;">(f) Repealed ___/___/____.</p> <p>(Eff. 3/19/2019, Register 218; am ___/___/____, Register ___)</p>	<p>If only a subsection is being repealed, the history note shows the change as an amendment and reads "am" instead of "repealed." The repeal is shown as an amendment because the other provisions of the section remain.</p>
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Figure 4.22 – History note: Repealing paragraphs, subparagraphs, or sub-subparagraphs

<p>1 AAC 23.450(a)(1) is repealed:</p> <p style="padding-left: 40px;">(1) repealed ___/___/___;</p> <p>(Eff. 3/19/2019, Register 218; am ___/___/___, Register ___)</p> <p>OR</p> <p>1 AAC 23.450(a)(2)(C)(iv) is repealed:</p> <p style="padding-left: 40px;">(iv) repealed ___/___/___ (Eff. 3/19/2019, Register 218; am ___/___/___, Register ___)</p>	<p>Same as above. If only a subdivision of a section is being repealed, the history note shows the change as an amendment and reads "am" instead of "repealed." The repeal is shown as an amendment because the other provisions of the section remain.</p>
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Figure 4.23 – Making correction to history note

<p>...</p> <p>(Eff. <u>8/5/2015</u> [4/15/2002], Register <u>207</u> [191]; am 3/19/2019, Register 218; am ___/___/___, Register ___)</p>	<p>If the agency is aware of an error in a history note, and the section is being amended or repealed and readopted, the agency should indicate the necessary corrections to the history note by using the standard underlining/bolding and bracketing technique.</p>
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Authority Citation

State law requires a citation to the general statutory authority under which a regulation is adopted and a citation to specific statutory sections being implemented, interpreted, or made specific. AS 44.62.060. Accordingly, the statutory authority must be listed following each regulation section. These are shown in the AAC after each regulation section as the "**Authority**" citation. The citation of authority must

- begin at the left-hand margin on the line following the history note for the regulation;
- be set out numerically by column, in three columns;
- be double-spaced; and
- be set out in numerical order, even when adding or deleting citations.

Additions and deletions to an authority citation should be shown as if they were amendments to existing material in the body of a regulation. A new authority citation must be set out in boldface type and underlined (e.g., **AS 47.07.050**); and a deleted authority must be bracketed (e.g., [AS 47.07.050]). Regardless of whether the regulation section itself is being amended or repealed and readopted, a change to the section's authority citation must always be shown as an amendment. The statutes listed in an authority citation are always set out numerically by statute, regardless of whether a particular statute is being added to or deleted from the list.

Figure 4.24 – Authority citation

.... (Eff. 11/12/60, Register 20; am 6/8/66, Register 32; am 7/30/2001, Register 154)			
Authority:	AS 28.60.070	AS 28.60.080	
<u>For three authorities:</u>			
Authority:	AS 28.60.070	AS 28.60.080	AS 28.60.090
<u>For four authorities:</u>			
Authority:	AS 28.60.070	AS 28.60.090	AS 44.21.020
	AS 28.60.080		
<u>For five authorities:</u>			
Authority:	AS 28.60.070	AS 28.60.090	AS 44.21.160
	AS 28.60.080	AS 44.21.020	
<u>For five authorities with amendments</u> (additions and deletions are still listed numerically by column):			
Authority:	[AS 28.60.070]	AS 28.60.090	AS 44.21.160
	<u>AS 28.60.080</u>	<u>AS 44.21.020</u>	

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

Figure 4.25 – Authority with Alaska Constitution citation

Authority:	Art. II, sec. 1, Ak Const.	Art. III, sec. 24, Ak Const.
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A session law (e.g., sec. 1, ch. 2, SLA 2015) generally should not be cited as an 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).

Figure 4.26 – Authority with session law citation

Authority:	AS 28.60.070	AS 28.60.090	sec. 34, ch. 5, SLA 2015
	AS 28.60.080	AS 44.21.020	

Editor's Note

An editor's note can be used to provide helpful information that is not appropriate for inclusion in the text of a regulation. For example, an editor's note may be used to inform the public of where forms may be obtained or an address to which applications may be sent. An editor's note may not, however, set out a requirement or standard that belongs in the body of a regulation. If there is an editor's note, it will appear at the end of the section below the authority citation. The heading of an editor's note is bolded and the first line and subsequent paragraphs are indented one tab (one-half inch).

If an amendment does not require a change to the existing editor's note for the section, do not set out the text of the editor's note. If there is a change to the editor's note, use the standard drafting conventions for showing an amendment (i.e., bold and underline new text and capitalize and bracket deleted text).

Also, if already amending the regulation, any changes to the editor's note do not require a separate lead-in line. On the unusual occasion where changes might be made to an editor's note alone, any lead-in line would state that the editor's note is "changed to read," not "amended to read," since the editor's note does not contain substantive material and the history note does not change.

Figure 4.27 – Editor's note

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

Drafting Specific Types of Regulation Sections

Series. Certain regulations may not require separate subsections, but instead consist of a series with a brief sentence or two to introduce the subject of the series. These sections typically include lists of fees, application materials, or qualifications. The introductory language provides detail in addition to the section's subject heading. For these sections, the text following the section number and heading does not begin with a designation of subsection "(a)." The introductory text immediately follows the period after the heading and each element in the series is numbered as a paragraph. If the elements in the paragraphs are not part of a continuous standard, such as a list of fees, no connector is needed. General rules when drafting such a section include:

Do not	Do
use a connector ("and" or "or") between each element in a series	use a connector, if one is necessary, between the final two elements in a series
use a mixture of "and" and "or" between elements	put the constant element in the introductory language leading into a series
use "and/or"	consider using subsections for longer series, separating the "and" elements into one subsection and "or" into another subsection
follow the series with "hanging" or "dangling" text meant to be common to each preceding item in the series	consider using a subsection, with a proper cross-reference, for text common to the preceding series

Definitions section. A definitions section defines words or groups of words used in the regulations, the program statutes, or both. Often, a definitions section is essential to make the regulations or statutes precise and to avoid confusion. When drafting a definition, begin by asking the following questions:

Is the word defined by statutes governing the program or chapter?	
If a word used in a regulation is defined in the program statute, the definition should not be repeated in regulation.*	If an agency feels that confusion will result without a regulation definition, it may adopt a definition that refers to the statutory cite.
Is the word defined in AS 01.10.060?	
AS 01.10.060 provides a general list of definitions that already apply to basic terms commonly used throughout the statutes.	Ex: AS 01.10.060 defines "month" as "a calendar month unless otherwise expressed."
Does the definition apply to the section, span of sections, or chapter?	
A definitions section is located at the end of the title, chapter, or article in which the defined terms are used.	If a word has an uncommon or special meaning only as it is used in a particular section, put the definition of that word in its own subsection at the end of that section.
Does the definition include substantive or operative provisions?	
A definition <i>may not</i> include substantive or operative provisions, as that would hide the information from the regulated public.	Ex: "clown" means a person certified to amuse under AS 08, and each clown must serve a term on the board.
Is the definition strained or artificial?	
Words should not be given strained or artificial definitions that are out of keeping with customary usage and other regulations.	Ex: It would be inappropriate to define the term "minor child" as "including persons up to 25 years of age."

*Exceptions to the general rule against repeating statutory definitions: Definitions used for identification can be repeated in regulation. For example,

- (1) "commissioner" means the commissioner of health;
- (2) "department" means the Department of Health.

Also, If the agency decides that a statutory definition must be interpreted or made clear, the statutory definition might have to be repeated in the regulation definition. If so, the regulation must contain both the term and the section containing the statutory definition, but not a subsection or paragraph number. The revisor of statutes periodically rennumbers paragraphs within statutory definitions sections, which could make the paragraph reference in the regulation inaccurate.

Example: "airport" has the meaning given in AS 02.25.110 and includes

Confirm with the Department of Law that the situation merits an exception and that the regulation does not impermissibly broaden or narrow the scope of the statutory definition.

A definitions section or subsection will always begin with introductory language.

Figure 4.28 – Introductory language in definitions sections

<p>3 AAC 14.159. Definitions. In this chapter, ...</p> <p>OR</p> <p>3 AAC 14.159. Definitions. In 3 AAC 14.010 - 3 AAC 14.159, ...</p> <p>OR</p> <p>(g) In this section, ...</p>	<p>This introductory language identifies where the definition applies; it may apply to a whole chapter,</p> <p>...a span of sections (or article), or</p> <p>....a single section.</p>
<p>3 AAC 14.159. Definitions. In AS 02.65, unless the context requires otherwise, ...</p> <p>OR</p> <p>3 AAC 14.159. Definitions. In AS 02.65 and this chapter, unless the context requires otherwise, ...</p>	<p>The introductory language may need to identify whether the terms being defined are used in the regulations, in the program statute and require clarification, or both.</p>
<p>3 AAC 14.159. Definitions. (a) In AS 02.65, unless the context requires otherwise, ...</p> <p>(b) In AS 02.65 and this chapter, unless the context requires otherwise, ...</p>	<p>If an agency needs to define terms for these separate reasons, each grouping should have its own subsection and introductory language.</p>

A definitions section may use subsections to separate definitions applicable to the regulation and those applicable to the program statutes. But most often, the section will simply be introductory language, without subsections, followed by the defined terms set out in paragraphs.

Figure 4.29 – Definitions section with no subsections

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

After drafting the introductory language for a definitions section, all terms being added should be alphabetized. With a new definitions section, terms are placed in alphabetical order. Frequently, however, definitions must be added to an already existing definitions section. For a lengthy definitions section, the agency should simply add the new definitions to the end of the section, even though it will no longer be in alphabetical order.

Figure 4.30 – Adding new definition to existing list

The existing section list	The amendment adding definition
<p>3 AAC 14.159. Definitions. In this chapter,</p> <p>(1) "a" means ...;</p> <p>(2) "b" means ...;</p> <p>(3) "d" means</p>	<p>3 AAC 14.159 is amended by adding a new paragraph to read:</p> <p>(4) "c" means</p>

Once a definitions section has a number of new terms out of alphabetical order, an agency has two options. First, the agency can repeal and readopt the entire definitions section, placing the terms in alphabetical order. If an agency chooses this option, the drafter should make certain no terms are accidentally excluded. Second, the agency may request that the regulations attorney reorder the section through a publisher's memorandum. See [Chapter 10](#) for details on the authority of the regulations attorney to make technical changes to the AAC through memoranda to the publisher.

We do not suggest the "repeal and readopt" method if adding only one or two terms to a definitions section because doing so makes it challenging to track the historical development of a section.

For certain complex terms, it may be helpful to provide a list of words that are included or excluded from the defined term.

Figure 4.31 – Defining complex term

<p>(41) "ruminant"</p> <p>(A) means an animal that has more than one stomach and that swallows food and then brings it back up again to continue chewing it;</p> <p>(B) does not include frogs, crocodiles, or that gecko on television;</p>
--

Board of Game tables. Certain regulations adopted by the Board of Game are presented in tables that delineate geographic units, bag limits, and open hunting seasons for resident and nonresident hunters. Given their unique format, these regulations may be amended using ellipses and publisher's notes to indicate unchanged language within paragraphs.

Figure 4.32 - Board of Game regulation presented in tables

5 AAC 85.050(a)(1) is amended to read:

Units and Bag Limits	Resident Open Season (Subsistence and General Hunts)	Nonresident Open Season
(1)		
Unit 18, Nunivak Island	<u>Aug. 1 - Sept. 30</u>	<u>Aug. 1 - Sept. 30</u>
1 bull by drawing permit only; up to 110 permits may be issued; or 1 musk ox by registration permit only	[SEPT. 1 - SEPT. 30] (General hunt only) <u>Jan. 15 - Mar. 31</u> [FEB. 1 - MAR. 15] (General hunt only)	[SEPT. 1 - SEPT. 30] <u>Jan. 15 - Mar. 31</u> [FEB. 1 - MAR. 15]
Unit 18, Nelson Island	<u>Feb. 1 - Mar. 31</u>	<u>Feb. 1 - Mar. 31</u>
1 musk ox by registration permit only	[FEB. 1 - MAR. 25] (General hunt only)	[FEB. 1 - MAR. 25]
...		
(((Publisher: The remainder of 5 AAC 85.050(a)(1) is unchanged.)))		
(Eff. 8/20/89, Register 111; am 12/30/89, Register 112; am 8/9/90, Register 115; am 12/27/90, Register 116; am 6/16/91, Register 118; am ___/___/___, Register___)		
Authority:	AS 16.05.255	AS 16.05.258
		AS 16.05.346

For all other regulations, the only instance in which ellipses may be used is when amending introductory language—that is, amending the language of a provision that comes before paragraphs but not amending the paragraphs themselves (see example of introductory language amendment on page 176).

CHAPTER 5

STYLE, GRAMMAR, AND WORD CHOICE

An agency must make its regulations clear, direct, and understandable to the public, especially to those who need to comply with the regulations. The key is to use plain English, a consistent style, correct grammar, and precise words.

The following rules apply to all effective writing, but are especially important to regulation drafting.

Figure 5.1 – General rules

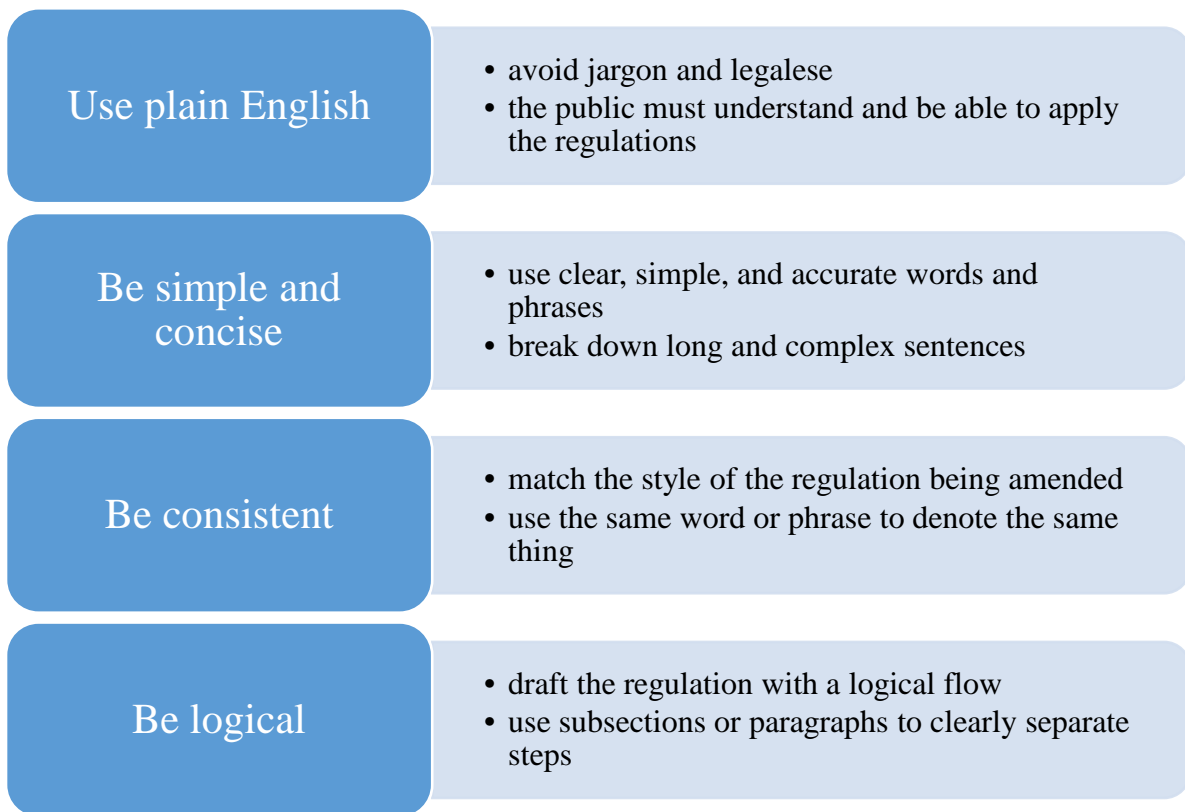
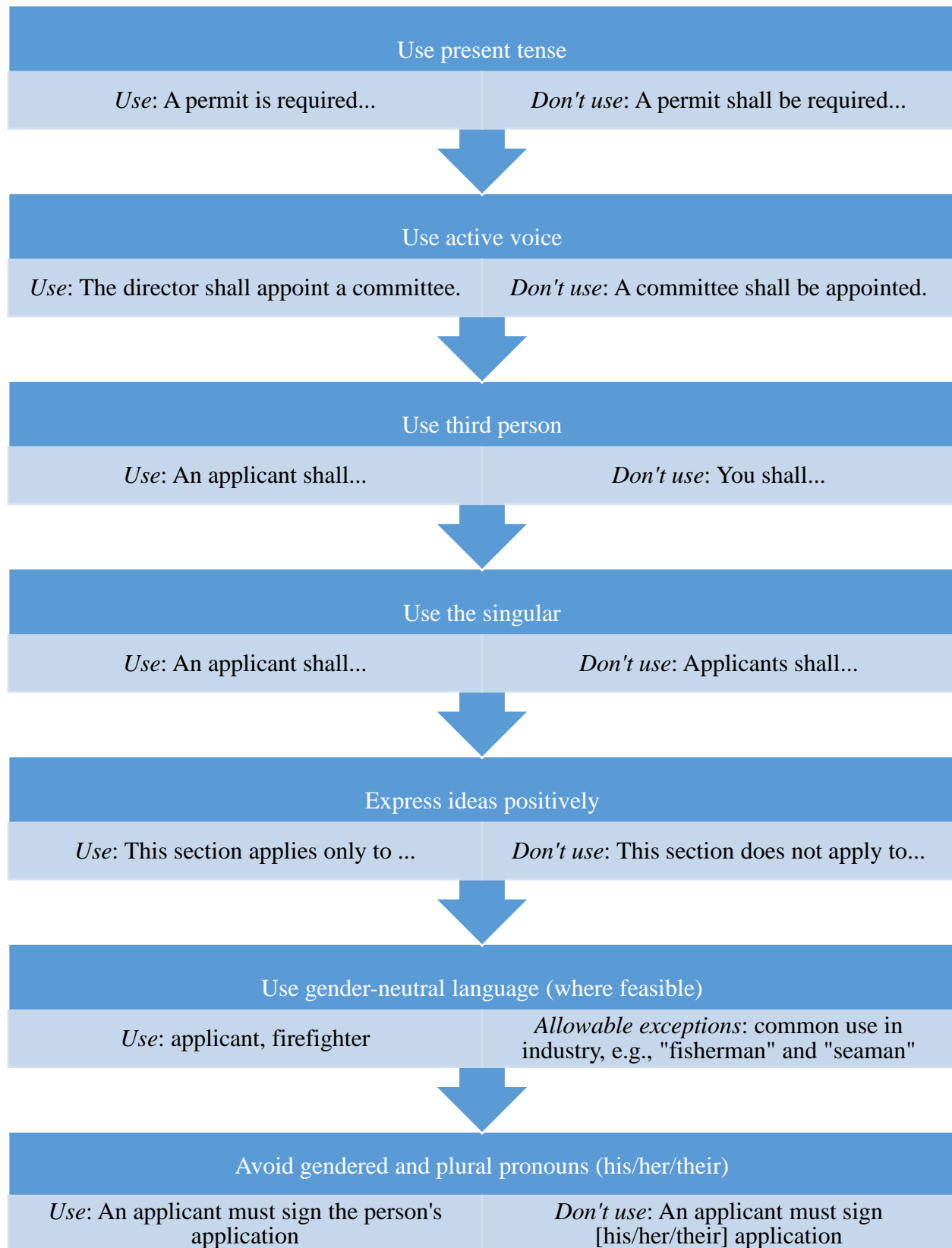


Figure 5.2 – Specific rules



Style and Word Choice

Abbreviations. Abbreviations should be used sparingly. 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 "DOT&PF" are not acceptable in a regulation.

Capitalization. In general, use capitalization sparingly. Refer to the table below.

Do not capitalize	Capitalize
constitution; legislature; state; president	Act, when used in the sense of a statute; Constitution of the State of Alaska; Alaska Administrative Code
divisions or sections of departments	President, when referring to the President of the United States
position titles such as: lieutenant governor, governor, commissioner, chief justice, judge	the full official title of a department, board, commission, or committee, such as the Department of Education and Early Development or the Alaska Workers' Compensation Board
substitutes for official titles such as: board, commission, committee, supreme court, superior court, code	Twenty-Ninth Alaska State Legislature or Legislature of the State of Alaska

Citations. When setting out a spanned citation, 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"

Electronic terminology. Because the use of electronic media is now commonplace to access regulations, to comment on a project, and for various other purposes, references are also commonplace in the text of regulations and related materials. In regulation, these references should be formalized. In related materials, including editor's notes, the references may be informal. Refer to the table below.

Regulation text (formal):	Related materials (informal):
by facsimile transmission	by fax
by electronic mail	by email
Internet address	Internet address (same)
department's Internet website	department's website
telephone number	phone number

Fees.

Rule:	Example:
State a fee either as a specific dollar amount or as a rate.	\$30 application fee \$25 an hour for research
If an exact fee amount cannot be set, the agency must at least adopt in regulation the formula or standard for establishing the fee.	Standard: "the amount billed to the state by X for Y" Formula: "the total amount charged by the printer divided by the number of copies"

Numbers.

Rule:	Example:
Write numbers and ordinals from one through nine in words.	one, two, three, four, etc.; first, second, third, etc.
Write numbers and ordinals greater than nine in figures.	10, 11, 12, 13, etc.; 10th, 11th, 12th, etc.
Use figures for a hyphenated phrase that contains a number over nine and a number from one through nine.	Election Districts 7 - 15
Write a number at the beginning of a sentence as a word.	Twenty-five percent of the total...
Write a number as either a word or a figure, not both.	NOT: "five (5)"
Use words for simple fractions.	one-half; three-fourths; two-thirds
Use figures for complex fractions.	9/10; 28/100; 70/100
Use size 12 font rather than superscript.	Use: 10th NOT: 10 th
Spell the word "percent" instead of using the symbol (%).	Six percent 15 percent
When expressing ages,	Use: "under 18 years of age," "younger than 18 years of age," "at least 18 years of age" "at least 18 years of age and under 21 years of age" NOT: "less than" "age 18" "more than" "years old" "age 18 - 21" "18 - 21"
When referring to money, use figures only.	Use: \$.25 \$5 \$5.50 \$5.85 \$15 NOT: \$0.25 25¢ \$5.00

Shall, must, may, and will: mandatory and discretionary language.

When drafting language that requires, allows, or prohibits an action, the drafter must pay close attention to the verb.

SHALL

imposes a duty on a person or entity composed of people

- The director *shall*...
- The school board *shall*..

MUST

expresses a requirement related to an object, such as forms or criteria; sets out preconditions

- The application *must* include...
- A building *must* have...
- One member of the board *must* be ...

MAY

grants a privilege or discretionary power; gives option to take action authorized by statute

- A district *may* apply...
- The department *may* inspect...

MAY NOT (*not* "must not" or "shall not")

imposes a prohibition

- The board *may not* issue a license if...
- A person *may not* operate the system...

WILL

commits actor to particular course of action under specified circumstances

- The department *will* provide a hearing if...

Do not overuse "shall." Often, if no duty is being imposed on a person or entity, the "shall" is unnecessary. For example:

DO NOT USE	USE
The commissioner <i>shall have</i> the right...	The commissioner <i>has</i> the right...
An applicant <i>shall be</i> entitled to	An applicant <i>is</i> entitled to

Technical terms. Although complex and technical terms are sometimes necessary, use simple expressions where possible. Refer to the table below.

USE	DO NOT USE	USE	DO NOT USE
If	in the event that	money	monies
state, as appropriate	Alaska	a person may not	no person shall
Alaska	Alaskan as an adjective	not more than, not later than	no more than, no later than
a, an, the	any	void	null and void
when	at the time	get	obtain
about	approximately	by	on the part of
try	attempt	each, a	per
attorney fees	attorney's fees	a year	per annum
because	by reason of	percent	per cent
stop	cease	have	possess
chair	chairman	before	prior to
begin, start	commence	adopt	promulgate
consider, determine	deem	if	provided that
during	for the duration of	under	pursuant to
immediately	forthwith	rest	remainder
consider	give consideration to	regulations	rules and regulations
know	have knowledge of	the	said
the person's, the individual's	his, her, his or her	set out	set forth
including	including, but not limited to	may not	shall not
effect	impact	after	subsequent to
instead of	in lieu of	a, that, the	such
to	in order to	not later than 10 days after	within 10 days of

Telephone numbers and website addresses. When listing a telephone number, use the full 10-digit number including the area code. For a website address, provide the website address in plain text and not as a hyperlink. For example, use "http://law.alaska.gov." Do not use "<http://law.alaska.gov>."

Grammar

Active and passive voice. Generally, voice refers to whether the subject performs the action expressed by the verb (active voice) or receives the action expressed by the verb (passive voice). For instance, the following sentence is in the active voice: "The board shall approve the application." This is in the active voice because the subject (the board) *does* the action of the verb (approve). The same sentence can be expressed in the passive voice: "The application shall be approved." This sentence is now in the passive voice because the subject (the application) *receives* the action of the verb (being approved). The active voice is preferred when drafting regulatory language because passive sentences tend to be ambiguous. In the passive sentence above, for example, we do not know who is required to approve the application.

Colons.

Use a colon when introducing a list with the words "as follows" or "the following."

Example:

- (a) An initial application must include the following:
- (1) the name, address, and date of birth of the applicant; and
 - (2) an identification of other licenses held in the state by the applicant over the previous three years.

Do not use a colon when introducing a list without "as follows" or "the following."

Example:

- (a) An initial applicant must complete
- (1) six hours of X education; and
 - (2) three hours of professional ethics.

Commas.

Use the Oxford comma:

If a series contains three or more elements not set out in separate paragraphs, use a comma after each element except the last one.

Example:

A workout may include hiking, yoga, or cycling.

Use commas, instead of parentheses, to set out parenthetical text.

Example: The agent, or the agent's representative, may...

NOT: The agent (or the agent's representative) may...

Conjunctions: "and" and "or"

Only use "and" or "or" before the final element in a series.

Example: The application must include X, Y, and Z.

NOT: The application must include X and Y and Z.

Avoid ambiguity: if one or more elements are required and one or more elements are optional, set them out clearly.

Example: The application must include X and either Y or Z.

Alternative:

- (a) The application must include X.
- (b) The applicant must provide either Y or Z.

Do not use "and/or." The conjunction "or" is read *inclusively* in regulations, meaning that "A or B" means "A or B or A and B".

Linking paragraphs, subparagraphs, and sub-subparagraphs:

Example:

One continuous standard should be linked by a conjunction before the final segment.

- (a) An initial applicant must complete
 - (1) six hours of X education;
 - (2) three hours of professional ethics; and
 - (3) a minimum of one hour of Y.
- (b) An applicant for renewal must complete
 - (1) two hours of X education;
 - (2) two hours of professional ethics; or
 - (3) one hour of Y.

The first letter of each segment is lowercase because it is a continuation of the sentence.

If the series is not a continuous standard, no conjunction is needed.

Example:

Fees for an initial application are as follows:

- (1) application fee, \$25;
- (2) background check fee, \$50;
- (3) permit fee, \$20.

In this section,

- (1) "commissioner" means the commissioner of health;
- (2) "department" means the Department of Health.

Semicolons.

Use a semicolon to separate sentences within a series divided by paragraphs.

Use a semicolon at the end of each element of the series. The semicolon precedes the "and" or "or" in the second to last paragraph.

Use a semicolon to separate independent clauses within a paragraph.

Example:

- (a) An initial applicant must complete
 - (1) six hours of X education;
 - (2) three hours of professional ethics; and
 - (3) a minimum of one hour of Y.

 - (a) A person may not
 - (1) practice telekinesis without a permit issued under this section; in this paragraph, "telekinesis" means the movement or manipulation of an object or body through the power of thought without the application of physical force;
 - (2)...
-

CHAPTER 6

PENALTIES AND FEES

Penalties. A regulation should not provide for penalties for a violation unless there is express statutory authority to do so. An example of 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. Under AS 37.10.050, an agency may set out a fee in regulation for providing a state service only if

- (1) the fee is set or otherwise authorized by statute;
- (2) the regulations meet APA standards; and
- (3) the fee does not exceed estimated annual costs of providing the service, unless otherwise provided in statute.

When drafting a fee regulation, an agency should contact the Legislation, Regulations, and Legislative Research Section if

- the agency has questions about the statutory authority authorizing the fee regulation;
- the fee is charged under a regulation adopted before July 1, 1987, under the authority of a statute that does not expressly authorize a charge for services;
- the agency wishes to set a higher fee amount for a nonresident than an Alaska resident; unless the program statute specifically authorizes the fee differentials, the agency must provide detailed evidence to the Department of Law to support the differing treatment of residents and nonresidents; or
- the agency is considered a "resource agency" that provides "designated regulatory services" under AS 37.10.052 - 37.10.058 and must comply with special statutory provisions for the development of fees for those services.

Determining the amount of a fee is an important step, and an agency should take a close look at its estimated actual costs in administering the activity or providing the service, then compare those costs to the estimated aggregate of fees the agency will collect to make sure the fees collected do not exceed the cost. If an agency cannot determine an exact fee amount, the agency must at least determine a formula or standard for establishing the fee.

Each state agency is required by statute to annually review fees and charges collected by the agency and to recommend adjustments to fees set by statute. If fees set in regulation need to be amended, the agency must follow the regulation process set out in [Chapter 2](#) and adopt the amendments in compliance with the APA.

A fee adopted in regulation should look something like one of these:	\$15 a day per person
	\$25 an hour
	\$100 nonrefundable fee
	\$1 for each foot of length in excess of 200 feet
	application fee for initial license, \$200
	the amount billed to the state by the Federal Bureau of Investigation for fingerprint evaluation
	the total amount charged by the printer divided by the number of copies

CHAPTER 7

FISCAL NOTES

The APA requires public notice and disclosure of fiscal ramifications of a proposed regulation, including costs to private persons and to other state agencies. AS 44.62.195. Although agencies are not prohibited from adopting a regulation with fiscal ramifications, the agency must carefully consider and publicize those ramifications. We recommend consultation with the agency attorney if uncertain whether a regulatory fiscal note is needed.

When is a fiscal note required? A fiscal note is required if a proposed regulation would require an "increased appropriation" by the state.

In other words: Would any state agency need to ask the legislature for additional money in that agency's annual budget to implement the regulations?

Who completes a fiscal note? An agency may need a fiscal note if its own proposed regulation would require the agency to purchase supplies or increase agency staff to implement a program. Note that this is different from a legislative fiscal note; a regulatory fiscal note considers costs created by the regulation, not its statutory authority. For example:

If the legislature passes a bill creating specific requirements for hover boards, including a requirement to have the Department of Labor and Workforce Development inspect and issue permits for hover boards over a certain size, the bill will have a fiscal note accounting for inspection staff and permit fees. When the department issues regulations implementing the program, it does not need a new fiscal note reflecting a need for a staff increase.

An agency may find it self-evident when its own budget will need to be supplemented; however, the agency must address its own increased appropriation needs and the needs of other state agencies that are impacted by a regulation. For example:

If the Department of Environmental Conservation proposes a regulation to increase the number of litter and recycling receptacles required in public places, it should request fiscal notes from the Department of Natural Resources, the Department of Transportation and Public Facilities, and the Alaska Department of Fish and Game, which all manage areas that will need to purchase, place, and maintain more receptacles.

If no increased appropriation is needed. The public notice document and additional regulation notice must reflect this determination. The documents must still consider and disclose whether the proposed action will result in costs to the agency proposing the action and to other agencies.

If the agency decides to absorb funds. The reality of the budget process and possible future budget shortfalls may require an agency to decide to absorb the cost of a regulatory change within the existing budget. This may negate the need for a separate fiscal note; however, the agency will still need to consider and disclose the initial cost to the agency of implementation and the estimated annual costs to the agency and to other agencies to comply with the proposed action. This information is still required on the additional regulation notice.

If the agency decides to shift funds. Alaska Statute 44.62.195 is not clear on whether a shift in funding sources requires a fiscal note. We recommend that an adopting agency complete a fiscal note reflecting changes of state revenue that would require an increase in appropriation from another revenue source to maintain the activity. For example:

If an agency is making a policy change through the adoption of a regulation that would make a program eligible for federal receipts, the fiscal note must show the resulting offset of state general fund money by federal receipts.

Likewise, the fiscal note must reflect 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.

If a fiscal note is required.

Preparation. The agency's fiscal staff should be involved in determining whether a fiscal note is needed and in its preparation. Because fiscal notes take time to prepare, an agency should consider whether a fiscal note is required at the beginning of a regulation project. Only an estimate is required, so the adopting agency should carefully review the assumptions made in developing increased appropriation estimates and should analyze the justification for any appropriation increase, whether to itself or another agency.

Public notice. If the agency will need an increased appropriation, the adopting agency must include a summary of the fiscal note information in its public notice of the regulation project. Failure to include that summary in a public notice of a proposed regulation could contribute to a finding that an adopted regulation is invalid. Alaska Statute 44.62.300(a)(1) provides that a court may declare a regulation invalid for a "substantial failure" to comply with the relevant provisions of the APA. The fiscal note itself, however, does not need to be published or distributed with the public notice documents.

The public notice appendices in this manual each contain a statement regarding the dollar amount of anticipated appropriations and a statement that no increased appropriations are expected. The agency must choose the appropriate statement.

Fiscal note form. Although AS 44.62.195 does not require a special format, the fiscal note template provided as [Appendix D](#) is based on fiscal notes for legislation and sets out the basic information required by AS 44.62.195.

Covered time period. A fiscal note must cover the fiscal year following the adoption of regulations and at least two succeeding fiscal years. We suggest that an agency also incorporate an estimate of any additional money needed during the current fiscal year. While the literal language of the statute only requires information for the years following 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.

CHAPTER 8

MATERIAL ADOPTED BY REFERENCE

Under certain circumstances, an agency may adopt a regulation that requires adherence to other existing material. AS 44.62.245. Adopting, or incorporating, other material "by reference" avoids setting out in full the 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 AAC, such as maps of anadromous streams or technical documents created by the agency itself. Material adopted by reference does not need to follow the word-processing requirements for codified regulations.

General Requirements

Adopting material by reference in a regulation makes that material itself a regulation. Thus, as with any other regulation, general requirements apply.

- The agency must have statutory authority to adopt the material as a regulation.
- The material must meet the standards of the APA.
- The agency must give notice to the public of its intent to adopt the material.
 - *Any agency*, at the time the notice is published and distributed, must have on hand the material it wishes to adopt by reference so that the material is available to the public for review during the public comment period and after the regulations are adopted and take effect.
 - *An agency other than* the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission must make available on the Alaska Online Public Notice System, if feasible and not prohibited by copyright, a complete copy of any document or material adopted by reference.
- The regulation must clearly state that a particular dated version of the material is being adopted by reference. For example:

Federal regulation

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

Books and Manuals

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

- If an agency is adopting by reference its own manual or other document, that document should not summarize or paraphrase the agency's regulations that are printed in the AAC.
- A copy of the material, regardless of the size or cost, must accompany the final regulation packet that is submitted for review to the Department of Law, unless the material is a readily available federal or state statute or regulation.

Public Access to Material

If a document adopted by reference can be obtained by email request or is readily available to the public on the Internet, the agency should provide the email address and Internet website in the editor's note, as demonstrated below.

Figure 8.1 – Public access to material adopted by reference (email)

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

Figure 8.2 – Public access to material adopted by reference (Internet website)

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* may also be viewed on 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 to the public in state libraries and court system libraries throughout Alaska and on the Internet.

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 must follow certain procedural steps.

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

Figure 8.3 – Future amended versions of material

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

Second, when a future amended version of material adopted by reference becomes available, the agency must make the amended version available to the public for review. To comply with this requirement, the agency could have the document available at one or more of its offices for public inspection, place a copy in the state library on interlibrary loan, or, if not copyrighted, put an electronic copy on the state agency's Internet website.

Third, the agency must post notice on the Alaska Online Public Notice System *and* publish notice in a newspaper of general circulation, or in a trade or industry publication or 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 interprets 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.

The public notice must include at least three elements (use template provided as [Appendix U](#)):

- (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.

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, Regulations, and Legislative Research Section for assistance in selecting an appropriate date.

Fourth, the agency 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.

Fifth, the agency must send the notice to the regulations attorney in the Legislation, Regulations, and Legislative Research Section. When sending the notice to the regulations attorney, include a certification of notice ([Appendix V](#)) and a proof-of-publication affidavit from the newspaper to verify compliance with the notice procedures of AS 44.62.245(b). 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 material adopted by reference and supporting documents to lieutenant governor's office for its records. The regulations attorney will insert an editor's note after the regulation containing the adoption by reference stating the effective date of the amended version of the material.

The agency must notify the regulations attorney if the title of the material adopted by reference changes. Under the 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. This 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.

CHAPTER 9

EMERGENCY REGULATIONS

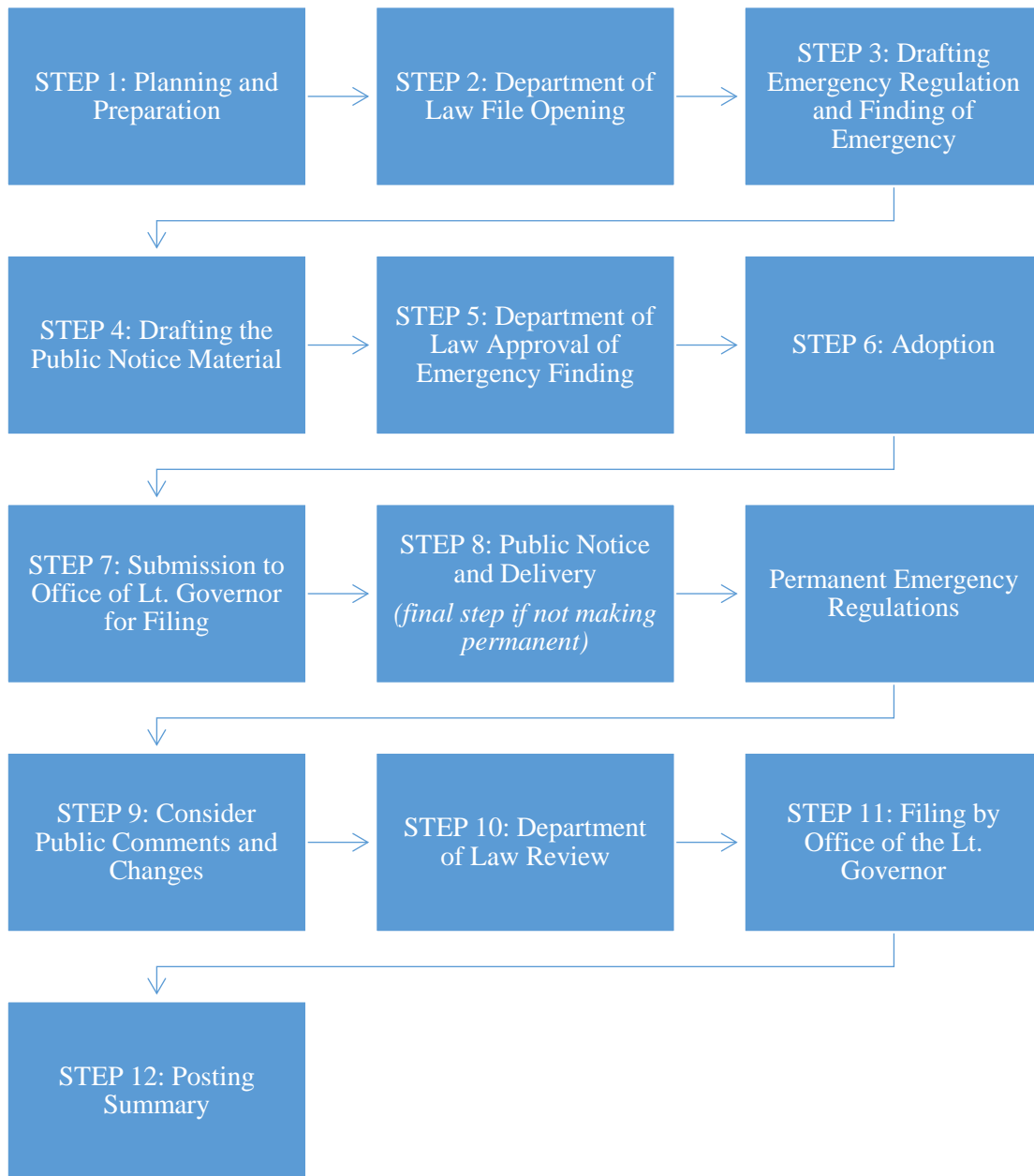
If a threat to the public peace, health, safety, or general welfare requires immediate action, an agency may adopt an emergency regulation without first following the normal APA procedures of publishing notice and waiting for public comment. Emergency regulations are held to a minimum, however, because they take effect without the public having the opportunity to comment or receive advance notice of their effect. The agency must therefore look critically at whether (1) the public peace, health, safety, or general welfare is truly at risk, and (2) the use of the emergency regulation procedure is absolutely necessary. AS 44.62.250. The agency must contact the Department of Law early on in this process to ensure that the regulations are within the agency's statutory authority and meet the emergency regulation standard. Before an agency may adopt an emergency regulation, an emergency finding must be approved by the Department of Law.

An emergency regulation remains in effect for no more than 120 days. If the agency does not make the emergency regulation permanent, the regulation expires and the version of that regulation in effect before the emergency regulation was adopted, if any, is automatically reinstated. Regardless of whether an agency intends to let an emergency regulation expire after the 120-day mark or make the regulation permanent, the agency must follow certain steps. The steps for permanent and non-permanent emergency regulations are covered in the following pages.

Figure 9.1 – Emergency vs. Non-Emergency Regulations

Emergency Regulations	Non-Emergency Regulations
require finding of emergency and necessity of project	do not require explanatory document
do not require notice and comment period before filing	require notice and 30-day comment period
emergency finding must be approved by Law before adoption	require review by Law before filing
are effective immediately after filing	are effective 30 days after filing
expire after 120 days	do not expire

Figure 9.2 - Steps in the Emergency Regulation Process

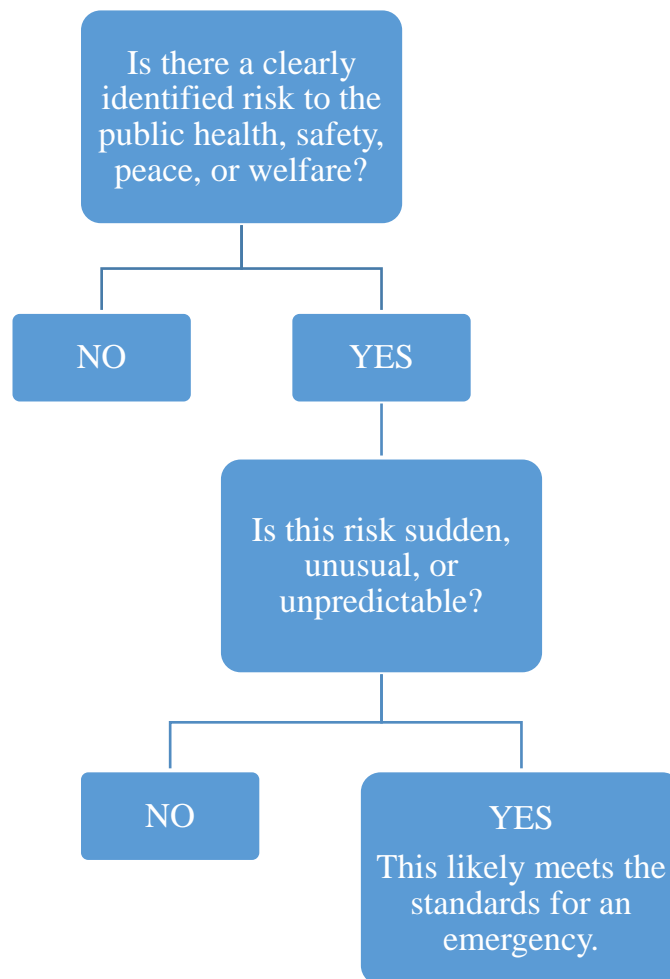


Step 1: Planning and Preparation

As noted above, an agency considering an emergency regulation must first determine (1) whether the public peace, health, safety, or general welfare is truly at risk; and (2) whether the use of the emergency regulation procedure is absolutely necessary. AS 44.62.250. In making this determination, the agency must consult with the Department of Law. The Legislation, Regulations, and Legislative Research Section will assist in determining whether the regulation concept is necessary, within the agency's statutory authority, and meets the standard for an emergency regulation. An emergency regulation may not proceed until the Department of Law approves the agency's finding of emergency.

The figure below illustrates the process for determining whether an emergency exists. If the response to any question below is "no," then the project does not meet the emergency regulation standard. In this case, the agency should instead follow the steps set out in [Chapter 2](#) and work with the Department of Law to proceed with a non-emergency regulation project.

Figure 9.3 –Requirements for meeting emergency regulation standard



Step 2: Department of Law File Opening

After planning and preparation, an agency must open a file with the Department of Law using the file opening request provided as [Appendix A](#). If the requesting agency does not already have a designated agency attorney, one will be assigned to assist with legal questions at this stage.

Step 3: Drafting Emergency Regulation and Finding of Emergency

Draft the emergency regulation in the same format as a non-emergency regulation. The only difference is that the words "EMERGENCY REGULATION" must be centered in the header above the register and department information. Refer to [Chapter 4](#) for drafting requirements.

Figure 9.4 – Emergency regulation format (header example)

<p>EMERGENCY REGULATION</p> <p>Register _____, _____ 20__ FISH AND GAME</p> <p>5 AAC 38.130 is amended to read:</p> <p style="padding-left: 40px;">5 AAC 38.130. Fishing seasons for abalone in Registration Area A. Abalone may be taken or possessed from September 15 [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 style="padding-left: 40px;">5 AAC 38.136. Fishing seasons for clams 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.</p> <p>(Eff. ___/___/___, Register ___)</p> <p>Authority: AS 16.05.251</p>
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Finding of emergency. An agency must identify the emergency by preparing a written finding of emergency ([Appendix P](#); or [Appendix Q](#) for boards and commissions). The finding must include all factors that support the agency's conclusion that the emergency exists. The finding will be released along with the public notice and draft regulation. The finding must be approved by the Department of Law before filing.

Figure 9.5 – Finding of emergency

<p>Clearly identified risk</p> <ul style="list-style-type: none"> • Public health, safety, peace, or welfare • Sudden, unusual, unpredictable
<p>Relevant facts</p> <ul style="list-style-type: none"> • Identify: who, what, where, when, why, and how • Not: beliefs, opinions, anecdotes • Relate facts to the agency's regulatory authority to govern
<p>Emergency regulation is necessary</p> <ul style="list-style-type: none"> • Protection of the public from an immediate risk • Directly addresses the risk • No reasonable alternative

After drafting the finding of emergency, the agency should determine whether it will make the regulation permanent. This determination will affect the public notice documents and process. If the agency is unsure whether it will make the regulation permanent, it should immediately consult with the Department of Law.

Step 4: Drafting the Public Notice Material

Public notice material. When drafting the notice for an emergency regulation, the agency should use [Appendix R-1](#) and [R-2](#), or [Appendix R-3](#) for exempt boards and commissions. While the notice for an emergency project includes some additional information, the general requirements of the public notice are the same as those for a non-emergency regulation, including the additional regulation notice and fiscal note requirements. See [Chapter 2](#) for further details.

The agency must state in the public notice whether the emergency regulation will be made permanent. If the agency intends to make the emergency regulation permanent, the notice must provide for a 30-day comment period.

The Department of Law recommends that the public notice and additional regulation notice for an emergency regulation be drafted and 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 will not yet be known, the statements regarding those dates should be included in the draft public notice with blanks for the dates. The blanks will be filled in later when

the agency receives the filing notification from the lieutenant governor's office. The agency should submit the draft notice documents to the Department of Law for review.

Step 5: Department of Law Approval of Finding of Emergency

After a file is opened, the Legislation, Regulations, and Legislative Research Section will review the proposed emergency regulation and finding of emergency. 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 requires that the agency discuss the matter and receive approval by the regulations attorney. AS 44.62.125. This ensures that the proper procedures are followed, that the finding of emergency and the substance of the regulation are legally defensible and constitute an emergency, and that the public notice is adequate.

Step 6: Adoption

After approval from the regulations attorney, an emergency regulation may be adopted by the person or body authorized by statute to adopt regulations by signing and dating the adoption or certification order included below the finding of emergency ([Appendix P](#); or [Appendix Q](#) for boards and commissions). A board or commission may only adopt an emergency regulation at a publicly noticed meeting and may either sign an adoption order or arrange for the signing of a certification order.

Step 7: Submission to Office of the Lieutenant Governor for Filing

The agency must alert the lieutenant governor's office that an emergency regulation packet is on the way and **furnish final copies of the documents by email to the Department of Law**. The agency must submit the following to the lieutenant governor's office:

- (1) signed finding of emergency/adoption order (or finding of emergency/certification order);
- (2) fiscal note, if applicable;
- (3) relevant minutes of the board or commission meeting and staff certification (if a finding of emergency/certification order is being submitted);
- (4) emergency regulation;
- (5) a copy of a delegation or designation of authority, if applicable.

Note: The finding of emergency, order adopting the emergency regulations, and the filing certification are all contained in one document; however, it must be clear that the lieutenant governor's signature is affixed to the specific regulations. If the filing certification extends onto a new page, make sure some part of the order appears on that page, too.

Effective date. Once filed by the lieutenant governor's office, the emergency regulation takes effect immediately, unless the agency specified a later date in the adoption order.

After filing, the lieutenant governor's office distributes copies of the emergency regulation and notifies the adopting agency of the filing. The agency will now be able to fill in the emergency regulation's effective and expiration date to complete the draft public notice.

Step 8: Public Notice and Delivery

Where permanent and non-permanent regulations diverge

Publication and distribution. After an emergency regulation has been filed, the agency must inform the public of the emergency action by publishing and distributing the public notice. The public notice must be published by the fifth day after filing. There is a five-day grace period, but *if notice is not given by the 10th day after filing, the emergency regulation is automatically repealed at the end of that 10th day.* AS 44.62.250.

The public notice and additional regulation notice, along with any other necessary documentation, must be published and distributed as directed for non-emergency regulations in [Chapter 2](#). As noted earlier, if the regulation will be made permanent, the public notice must provide for a 30-day comment period.

After publishing notice, the agency must obtain the proof-of-publication affidavit from the newspaper or trade journal, which shows the agency complied with the 10-day notice requirement. The agency should then prepare the certification of notice of adoption of emergency regulation ([Appendix S](#)). The agency must then submit to the lieutenant governor's office:

- (1) a copy of the proof-of-publication affidavit;
- (2) a copy of the certification of notice; and
- (3) a copy of the public notice and additional regulation notice.

Note: Additional copies of these documents will be submitted to the Department of Law later if the regulations are to be made permanent.

If the emergency regulation is not going to be made permanent, this is the final step in emergency regulation process. If, however, the agency intends to make the regulation permanent, proceed on to the next steps.

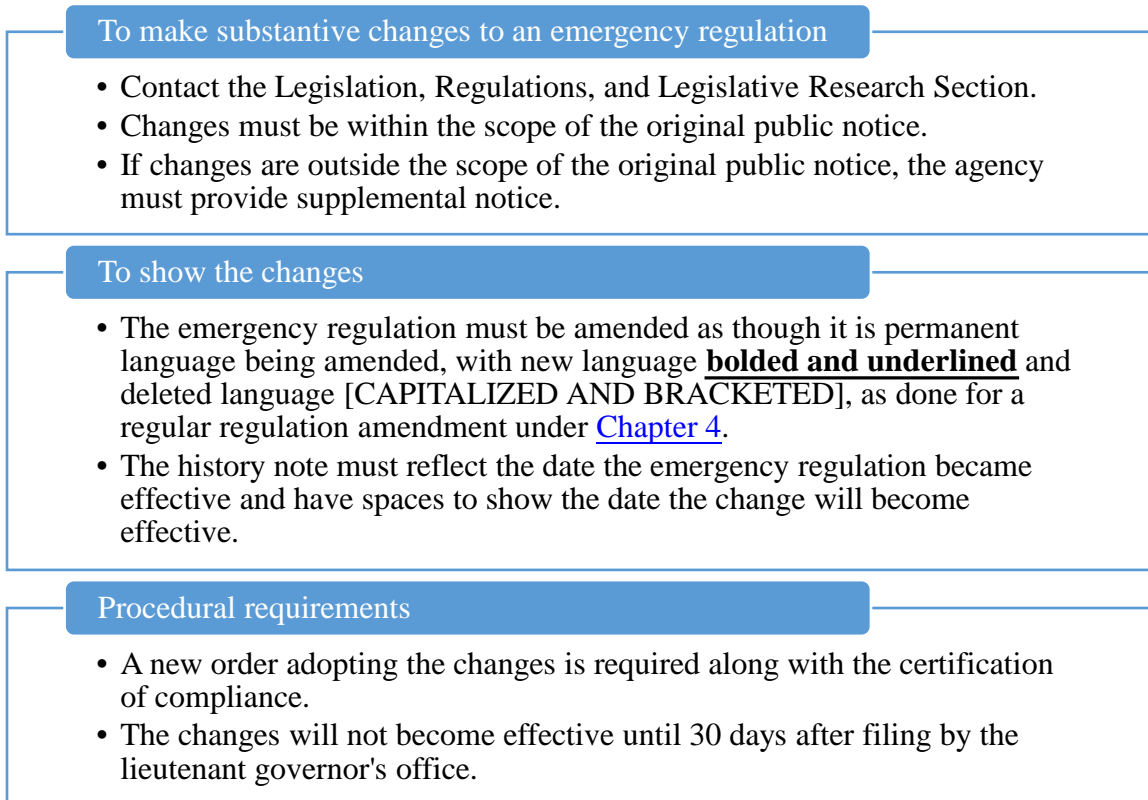
Step 9: Consider Public Comments and Changes

When an agency decides to make an emergency regulation permanent, the public notice must provide for a comment period and inform the public if the agency will hold an oral hearing on the emergency regulation. After the comment period closes, the agency must follow the requirements for considering comments and request review of the packet by the Department of Law using the final review request provided as [Appendix E](#).

If the agency decides to make substantive changes to the emergency regulation, see below. If there are no substantive changes, proceed to the next step.

Substantive changes. These are changes suggested by the Department of Law or the adopting agency that amend the language or meaning of the emergency regulation, add new provisions, remove language, or change repeal provisions. These do not include technical changes, such as adding a comma or changing "7" to "seven" to conform the regulations with drafting conventions.

Figure 9.6 – Changes to an emergency regulation being made permanent



What if an agency decides to make a regulation permanent after providing notice? If an agency decides to make an emergency regulation permanent after it provided notice of adopting the emergency regulation, the agency must provide a supplemental notice to the public and provide for a full 30-day comment period. See [Chapter 2](#) for supplemental notice requirements.

Certification of compliance and adoption order. Once the agency decides on the final language of the permanent regulation, it must prepare a certification of compliance ([Appendix T](#)). The agency person with regulation-adoption authority (or the delegated authority or an "acting commissioner" designee) must sign the certification. If the agency is making substantive changes to the regulations, it must also prepare an adoption or certification order ([Appendix I](#) or [Appendix J](#)).

In the final draft of the emergency regulation, the words "emergency regulation" should be removed from the header, and the lead-in language for each amendment should indicate whether the regulation is made permanent *with* or *without* changes, as shown below.

Figure 9.7 – Emergency regulation made permanent without changes

<p>The emergency amendment of 5 AAC 38.130 is made permanent to read:</p> <p style="text-align: center;">5 AAC 38.130. Fishing seasons for abalone in</p> <p>Registration Area A. Abalone may be taken or possessed from September 15 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 12/10/2020, Register 236)</p> <p>Authority: AS 16.05.251</p>	<p>Lead-in line indicates that the amendment is made permanent; no changes made.</p> <p>The permanent regulation is displayed with no bold and underline or bracketed language, indicating that the text from emergency adoption is made permanent as is.</p> <p>History note has effective dates from the original filing.</p>
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Figure 9.8 – Emergency regulation made permanent with changes

<p>The emergency adoption of 5 AAC 38.136 is made permanent and that section is further amended to read:</p> <p style="text-align: center;">5 AAC 38.136. Fishing seasons for clams in</p> <p>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 <u>must</u> [MAY] specify the species to be harvested, method of fishing, area of operation, harvest levels, and other related information. (Eff. 12/10/2020, Register 236; am ___/___/___, Register ___)</p> <p>Authority: AS 16.05.251</p>	<p>Lead-in line indicates changes.</p> <p>The new changes are in standard amendment format (bold and underlined new material; bracketed and capitalized deleted material).</p> <p>History note has effective dates from the original filing and blank spaces for the effective date of the additional changes.</p>
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Step 10: Department of Law Review

As soon as possible after signing the certification of compliance, and, if applicable, an adoption order, the agency must (1) email the adopted regulations to the regulations specialists in the governor's and lieutenant governor's office and (2) email the final regulations and accompanying documents to the regulations attorney at the Department of Law at law.regulations@alaska.gov. The packet must include the same documents as required for a regular regulation project, including the proof-of-publication affidavit and all public notice documents, with the addition of the following:

- (1) the signed certification of compliance ([Appendix T](#));
- (2) a signed adoption order or certification order if changes were made to the original emergency regulation ([Appendix I](#) or [Appendix J](#));
- (3) a copy of the filed finding of emergency, emergency adoption or certification order, and emergency regulation;
- (4) a certification of notice of adoption of emergency regulation ([Appendix S](#));
- (5) if applicable, relevant minutes of the board or commission meeting where the regulations were made permanent and staff certification; also include a copy of the minutes and staff certification that were originally sent to the lieutenant governor when the emergency regulation was first adopted.

In compiling the final packet, the agency should use the checklist for emergency regulations provided as [Appendix Z-2](#).

Step 11: Filing by the Office of the Lieutenant Governor

After review, the Department of Law submits the final regulation packet to the Office of the Lieutenant Governor for filing.

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

The lieutenant governor's office distributes copies of the filed regulation and notifies the adopting agency of the filing. The filed regulation is maintained by the lieutenant governor's office and the state archivist in the same manner as described for a non-emergency regulation.

Step 12: Posting Summary

The final step is for the agency to post the brief summary or text of the permanent regulation on the Alaska Online Public Notice System ([Appendix O](#)).

How an Emergency Regulation Appears in the AAC

When an emergency regulation is first published in the AAC, it will appear in a separate "emergency regulation" section at the back of either the appropriate title pamphlet or its supplement pamphlet. In the public electronic database, an emergency regulation will appear at the end of the appropriate title; for example, a Board of Fisheries emergency regulation will appear at the end of 5 AAC. To find the most current language of a regulation, the emergency regulation section at the end of each title 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 as an emergency regulation. The notation in the history note for an emergency amendment that expired is "em am."

Converting a Regulation Project into an Emergency Project

On rare occasion, an agency will begin a non-emergency regulation project and determine, at any step, that the regulation must take effect sooner than the regular process allows. If the agency concludes that the circumstances of the project meet the emergency standard discussed at the beginning of this chapter, the agency must contact the Legislation, Regulations, and Legislative Research Section to discuss the complicated process of converting the project.

To prepare, the agency should draft a finding of emergency and complete the forms to adopt the regulation as an emergency regulation. If the agency already held a public comment period, a separate public notice must be prepared regarding the emergency adoption and effective date, explaining the situation clearly and referencing the earlier notice and comment period. The Legislation, Regulations, and Legislative Research Section will assist the agency in completing these forms and following the appropriate process for adoption.

CHAPTER 10

ROLE OF THE DEPARTMENT OF LAW

The Department of Law must review and approve an adopted regulation before it may be submitted to the Office of the Lieutenant Governor for filing. AS 44.62.060. Additionally, the department is available to assist agencies at any stage of a regulation project.

When an agency requests that the Department of Law open a regulation file, the regulations attorney will assign an agency attorney to the project. The agency attorney will have expertise in the subject matter of the regulation and be able to assist the agency throughout the project.

Preliminary Review Before Public Notice

To avoid errors in the public notice or regulations that may require a costly supplemental notice, the Department of Law must review a draft of the proposed regulations, the public notice, and the additional regulation notice before the notice may be published and distributed.

Public notice document. In the preliminary review, the Legislation, Regulations, and Legislative Research Section will review the public notice documents. A properly completed public notice will

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- (1) clearly identify the adopting agency;
 - (2) set out in separate notations, as required by statute, the statutory authority *and* the statutes being implemented, interpreted, or made specific;
 - (3) set out an informative summary of the proposed regulation, clear and specific enough to adequately inform the public but general enough to allow the flexibility to respond to comments;
 - (4) if required under AS 44.62.200(d), include a brief description of the changes in a sentence or two in clear, easily readable language that a person without a legal background can understand;
 - (5) adequately describe the substance of a regulation being repealed and not just list regulations to be repealed by AAC number;
 - (6) clearly state the deadline and manner for submission of written comments (by mail, email, facsimile, or through the Alaska Online Public Notice System);
 - (7) if an oral hearing is to be held, clearly identify the time, place, and procedures for the oral hearing; and, if teleconferencing will be offered, the details for participation, including any physical sites;
 - (8) properly state all fiscal information through the additional regulation notice information, or if needed, a regulatory fiscal note;
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- (9) include an informative statement about how an individual may request a special accommodation under the Americans with Disabilities Act (ADA) in order to participate in the comment process; and
- (10) 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).

Additional Regulation Notice Information. At this time, the Legislation, Regulations, and Legislative Research Section will remind the agency under AS 44.62.190(d)—or for the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission, under AS 44.62.190(g)—of the need to provide and properly distribute the additional regulation notice. The requirements of AS 44.62.190(d) and (g) apply to both regular regulations and emergency regulations. See [Chapter 2](#) for details on the additional regulation notice.

Review of proposed regulation. The agency attorney will review the proposed regulation to ensure there are no obvious constitutional or statutory problems. This review is intended to identify obvious issues and is not a final approval of the project. The legal editor in the Legislation, Regulations, and Legislative Research Section will review and edit the regulations for conformance with this manual.

Publication. The Legislation, Regulations, and Legislative Research Section will confirm with the client agency that the notice will be published in a newspaper a sufficient number of days before the written comment deadline and before any oral hearing, and in an appropriate number of newspapers, and otherwise properly distributed as required by the APA.

Emergency regulation. For an emergency regulation, the Legislation, Regulations, and Legislative Research Section will review the finding of emergency before the agency adopts the emergency regulation to confirm that the situation meets the requirements of AS 44.62.250. See [Chapter 9](#) for more on emergency findings.

For an emergency regulation that will be made permanent, the Legislation, Regulations, and Legislative Research Section will review the public notice documents the same as for a non-emergency regulation project.

Agency Attorney Review

The agency attorney review occurs during the Department of Law's preliminary review. The regulations attorney will forward the draft regulation packet to the agency attorney and set a due date for the agency attorney review.

The agency attorney will then conduct an in-depth review of the substance of the regulation. Depending on the complexity of the regulations, the substantive review may require review of relevant court opinions or attorney general opinions.

After completing the review, the agency attorney will submit to the regulations attorney a memorandum recommending approval or disapproval. The agency attorney memorandum will identify any legal problems and necessary corrections. Depending on the nature and extent of any necessary corrections, the regulations may need to be returned to the agency for revision and resubmission to the regulations attorney.

For all regulation projects, the agency attorney review will

- (1) confirm that the regulation is consistent with applicable statutory authority, i.e., that the regulation is within the scope of the statutes and reasonably necessary to implement the statutes, reasonable and not arbitrary, and consistent with statutes;
- (2) confirm that statute citations are appropriate to legally support the project;
- (3) identify whether the adopted regulation contains any constitutional problems, including possible due process or equal protection concerns;
- (4) confirm consistency with the text of an existing regulation, not just the amendment to the regulations, and with other regulations; this includes checking newly filed regulations that have not yet been published in the AAC;
- (5) if the regulation must conform with a federal law, confirm consistency with that federal law; and
- (6) confirm that the regulation is clearly written and substantively expresses the agency's intent, and if not, suggest edits to more clearly set out the agency's intent.

In-Depth Review

Before a regulation adopted under the APA may be submitted to the Office of the Lieutenant Governor for filing, the Department of Law will review the regulation for

- (1) 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) clarity, simplicity of expression, and absence of possibility of misapplication; and

-
- (4) compliance with this manual. AS 44.62.060.
-

Once approved by the regulations attorney or that person's designee, the edited regulation, supporting documentation, and approval memorandum are submitted to the lieutenant governor's office. The Legislation, Regulations, and Legislative Research Section sends an approval memorandum and a copy of the final edited regulation to the adopting agency and to the agency attorney.

For an emergency regulation being made permanent, this review occurs after the emergency regulation has been filed by the Office of the Lieutenant Governor as an emergency regulation, but before the end of the 120-day life of the emergency regulation. See [Chapter 9](#) on the process for making an emergency regulation permanent.

Process for Disapproval of All or Part of a Regulation

If the Department of Law disapproves a regulation on legal grounds, it will provide a memorandum to the agency stating its disapproval under AS 44.62.060. Under AS 44.62.060(c), a disapproved regulation may not be filed by the lieutenant governor's office. 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 only part of a set of final regulations is disapproved, 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, will not take effect or be published in the AAC. The agency attorney should carefully review the regulations attorney's approval memorandum and attached edited copy of the final regulation in order to advise the agency accordingly.

Technical Revisions

Though substantive changes in regulations require compliance with the notice-and-comment steps of the APA, the regulations attorney is authorized to edit and revise a regulation after filing to make certain technical revisions. The regulations attorney makes these technical revisions by sending a memorandum—often called a "revisor's memo" or "publisher's memo"—to the publisher of the AAC.

Without changing the meaning of a regulation, the regulations attorney is authorized to

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- (1) renumber sections, parts of sections, articles, chapters, and titles;
 - (2) change the wording of a section or provide new titles for articles, chapters, and titles;
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- (3) change capitalization for the purpose of uniformity;
 - (4) substitute proper designations for such phrases as "the preceding section";
 - (5) substitute the proper calendar date for the effective date of a regulation and other phrases of similar import;
 - (6) strike out figures if they are merely a repetition of written words or vice versa, or substitute figures for written words or vice versa for the purpose of uniformity;
 - (7) correct manifest errors that are clerical, typographical, or errors in spelling, or errors by way of additions or omissions;
 - (8) correct manifest errors in references to laws;
 - (9) rearrange sections, combine sections or parts of sections, 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;
 - (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; and
 - (12) make changes to editor's notes as necessary.
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If an agency wishes to request a technical correction to a regulation, it should contact the regulations attorney at law.regulations@alaska.gov.

CHAPTER 11

AGENCIES NOT SUBJECT TO APA PROCESS

This chapter applies to agencies the legislature has expressly excluded from compliance with the Administrative Procedure Act (APA) when adopting regulations. These agencies are different from the "exempt boards and commissions" because non-APA agencies are, by and large, completely exempted from the APA regulations process, rather than being exempted from a limited number of provisions.

Why are some agencies not subject to the APA regulations process? Most commonly an entity is exempt because it must retain market participation flexibility or because the area of regulation relates to specialized internal management.

The following agencies should refer to this chapter when adopting regulations:

Agency	Statutory exemption	Details or exceptions
Alaska Aerospace Corporation	AS 26.27.110	Non-APA, even for procurement, though subject to AS 36.30.015
Alaska Industrial Development and Export Authority	AS 44.88.085	APA governs procurement (AS 36.30.015(f)), or when acting as the Alaska Energy Authority
Alaska Housing Finance Corporation	AS 18.56.088	APA governs procurement (AS 36.30.015(f))
Alaska Gasline Development Corporation	AS 31.25.130	
Alaska Permanent Fund Corporation	AS 37.13.120 and 37.13.206	
Alaska Railroad Corporation	AS 42.40.180 – 42.40.205 and 42.40.920(b)(12)	Non-APA for procurement, though subject to AS 36.30.015(e)
Alaska Retirement Management Board	AS 37.10.240	Non-APA for procurement, though the non-APA regulations are subject to AS 36.30.015(f)
Personnel Board: State Personnel Act	AS 39.25.140	Limited to personnel rules for employees
Department of Administration		
Public Employees' Retirement System	AS 39.35.005	DOA commissioner; internal management of state agencies
Teachers' Retirement System	AS 14.25.003 and 14.25.005	DOA commissioner; internal management of state agencies
Judicial Retirement System	AS 22.25.027	DOA commissioner; internal management of state agencies

What processes do these agencies follow?

In place of the APA, the legislature has enacted statutory requirements specific to each non-APA agency to follow when adopting non-APA regulations. Further, the legislature may make a non-APA agency subject to the APA when the agency adopts regulations in specified subject areas, for example, procurement of goods and services.

Are the non-APA agencies subject to the same legal requirements?

For uniformity and to avoid legal challenges, such as due process issues, the guidelines set out in this manual should still be followed for a non-APA regulation project, in addition to the specific statutes that apply to the agency's adoption of regulations. A non-APA agency must follow the public notice requirements in the statutes applicable to that agency; follow public participation requirements, including making accommodations for those with disabilities; and make proposed regulations available to the public.

Agencies that are exempt from the provisions of the APA for the purposes of adopting regulations are typically still subject to the Open Meetings Act (AS 44.62.310 - 44.62.319) when conducting meetings. The agency should therefore consider its meeting schedule when planning the timing of a project.

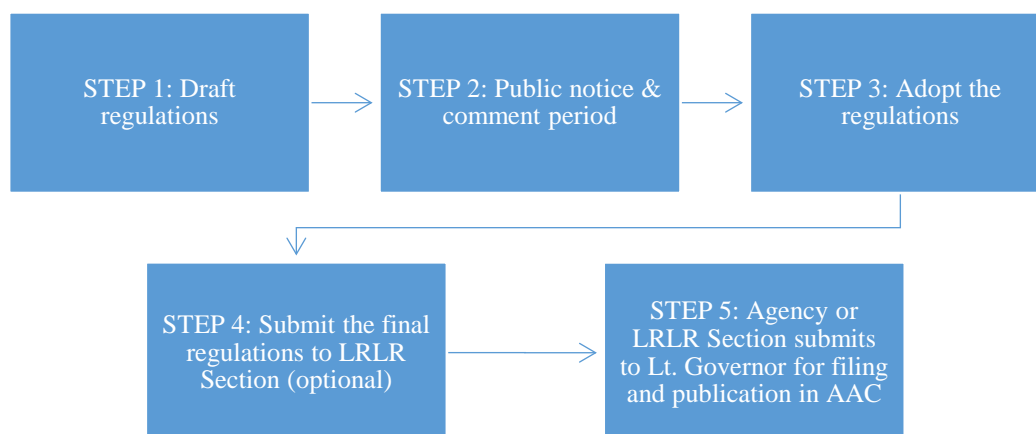
Can non-APA agencies use the appendices in this manual?

The Department of Law is available to assist non-APA agencies in conforming the appendices provided in this manual to their needs. The agency should not modify these documents independently. A non-APA agency using an appendix for the agency's supporting documents should work closely with the agency attorney to ensure that the documents are tailored to the non-APA agency's specific statutes.

What steps does a non-APA agency follow to adopt regulations?

Because of the differences between non-APA agency statutes, we provide general guidelines below for proposing and adopting non-APA regulations. The Department of Law is available to provide additional advice to a particular agency.

Figure 11.1 – Non-APA regulations process



Steps in the Non-APA Regulations Process

1. Draft regulations must meet the formatting and drafting guidelines set out in [Chapter 4](#) of this manual. Non-APA entities each have statutes authorizing the adoption of regulations. Most entities are authorized to adopt regulations to carry out the purposes of the entity's mission. Some entities have explicit statutory direction on the scope of the entity's regulations. For example, see the Alaska Housing Finance Corporation statute, AS 18.56.088.

2. The public notice and comment process involves the following:
 - Timing of public notice.* Identify how many days of public notice the agency must provide before it adopts a regulation. Some entities need only provide 15 days' notice before acting (*see* AS 26.27.110); other entities require at least 30 days' notice before adopting a regulation (*see* AS 39.35.005).
 - Public participation requirements.* Identify the statutory requirements for the public to comment on proposed regulations and whether the agency is required to accept oral comments at a public hearing. The governing statute may also require a minimum hearing time. For example, AS 44.88.085(d) requires that a public meeting to take comments on regulations be at least one hour.
 - Publication, distribution, and posting requirements.* Identify the statutory requirements for providing public notice of the proposed regulation. The notice provisions vary across these requirements, but typically require newspaper notice and notice to interested parties. Some agency statutes, such as AS 37.13.206 for the Alaska Permanent Fund Corporation, require notice to incumbent legislators. However, the Department of Law recommends that incumbent legislators be considered interested parties and receive notice of proposed regulation changes by email, even if not explicitly required by statute. Contact the Department of Law for the group legislator email address.
 - Supporting documents.* To avoid future questions about whether proper processes were followed, provide certifications based on the appendices in this manual.

3. A non-APA agency should use the adoption order provided as [Appendix W](#) or, for boards and commissions, the certification order provided as [Appendix X](#). In finalizing the order for a regulation project, consider the following:
 - Adopting authority and method.* Determine whether the adopting authority is an individual commissioner or a board, commission, authority, or other body that must take official action only through a properly noticed public meeting. Determine whether a specific format for adoption is required. For example, the Alaska Industrial Development and Export Authority may adopt regulations by "motion or by resolution or in any other manner permitted by its bylaws." AS 44.88.085.

Effective date. Identify the effective date of the regulations. Non-APA regulations are typically effective immediately upon adoption, 30 days after adoption, or at a time set by the entity. When preparing the adoption order, include the date the regulations are effective.

4. Submission of the adopted regulations to the Department of Law for review before submission to the Office of the Lieutenant Governor is optional, but recommended to ensure correct numbering and technical formatting.
5. Filing by Office of the Lieutenant Governor

Emergency Non-APA Regulations

Each entity listed above also has authority to adopt emergency regulations. Except for Department of Administration regulations, which are permanent upon adoption, non-APA emergency regulations that an entity wants to be made permanent must be adopted as permanent regulations not later than 120 days after adoption as emergency regulations.

Finding of emergency. Identify the statutory standard to adopt an emergency regulation. For example, emergency regulations related to the state retirement plans must be "necessary for the immediate preservation of the orderly operation of the system." AS 39.35.005.

Other entities, like the Alaska Industrial Development and Export Authority, may adopt emergency regulations upon a finding that it is "necessary for the orderly operation of the authority's programs." AS 44.88.085.

A finding of emergency must clearly set out the facts of the emergency. Refer to the discussion of emergency findings in [Chapter 9](#).

Publication. Like APA agencies, non-APA agencies must publish notice of an emergency regulation within 10 days of adoption in the manner required by the agency's statute. Each non-APA agency should refer to its statutory authorization for publication requirements. For example, AS 44.88.085 requires publication of an emergency regulation within 10 days of adopting and in the same manner of publishing notice to adopt a non-emergency regulation.

Emergency regulations to be made permanent. Also, like with most APA agencies, non-APA agency emergency regulations expire unless the agency adopts the regulations as permanent within 120 days. Each non-APA agency should refer to its statutory authorization for the requirements to make an emergency regulation permanent.

Summary. The legislature has directed that some agencies adopt regulations using a process other than that set out in the APA. Although the details differ between agencies, there are the common requirements of notice to the public and opportunity for public participation. Accordingly, many of the appendices provided in this manual for APA regulations will be helpful with some modifications.

CHAPTER 12

LEGAL GUIDANCE AND AUTHORITY

To simplify the use of this manual, legal guidance related to interpretation of the APA and the regulation process is consolidated into this single chapter. This chapter presents and summarizes judicial highlights to assist in research into various categories of regulations-related legal questions. The summaries below are provided for general guidance; the language of an applicable statute will control in the event of a dispute regarding a particular regulation.

When reviewing the legal guidance below, note that the requirements for filing and publication of regulations, the uniform codification in the Alaska Administrative Code and Alaska Administrative Register, standards for development and adherence to this manual, and the procedure for adopting regulations are set out in AS 44.62.040 - 44.62.290 of the APA. Relevant definitions, including those for "lieutenant governor," "regulation," and "state agency," are set out in AS 44.62.640(a).

This chapter is organized into the following subsections:

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What is a Regulation?

The definition of "regulation" is broad: it can reach any agency standard that "affects the public or is used by the agency in dealing with the public." AS 44.62.640. Still, a regulation does not encompass every routine, predictable interpretation of a statute by an agency: obvious, common-sense interpretations of statutes do not require rulemaking. *See Alyeska Pipeline Serv. Co. v. State, Dep't of Env'tl. Conservation*, 145 P.3d 561, 573 (Alaska 2006); *see also Squires v. Alaska Bd. of Architects, Eng'rs & Land Surveyors*, 205 P.3d 326 (Alaska 2009).

***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).

***Chevron U.S.A., Inc., v. State, Department of Revenue*,
387 P.3d 25 (Alaska 2016)**

- The Department of Revenue's interpretation of "economically interdependent" through an administrative decision was not a regulation because it was a commonsense interpretation of the statute.
- The court noted that agency actions may not be "commonsense interpretations" of existing laws when the agency adds requirements of substance, interprets a statute in an expansive or unforeseeable way, or alters a previous interpretation.

***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.

***Estrada v. State*,
362 P.3d 1021 (Alaska 2015)**

- Exercising its independent judgment to determine if an agency action is a regulation for purposes of the APA, the court determined that specific subsistence fishing harvest limits have the core characteristics of a regulation and must be adopted through the notice and comment procedures of the APA.
- Since the harvest limits were not adopted according to APA procedures, they were not enforceable against the affected members of the public.

Friends of Willow Lake, Inc. v. State, Department of Transportation & Public Facilities,
280 P.3d 542, 549 (Alaska 2012)

- A use plan for a float plane facility was a common sense interpretation of an agency's existing regulations to ensure the facility's safe and secure operation.
- If any slight change in runways, taxi lanes, or other general rules required regulations, ossification of airport operations would result.

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.

Jerrell v. State, Department of Natural Resources,
999 P.2d 138 (Alaska 2000)

- Discusses the standards for (1) applying estoppel against a state agency's enforcement of a regulation and (2) determining when a state agency's interpretation of an existing regulation establishes a new general standard that must be adopted as a regulation under the APA.

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.

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.
-

Levi v. State, Department of Labor and Workforce Development,
433 P.3d 1137, 1145 (Alaska 2018)

- The court states that an agency handbook does not control over a statute and points out that the handbook in this case contained an express disclaimer that the information therein was based on, but did not replace, the applicable statutes and regulations. The court notes that even absent this disclaimer, the statute always controls.

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.

Messerli v. Department of Natural Resources,
768 P.2d 1112, 1117 (Alaska 1989), *overruled on other grounds by Olson v. State, Department of Natural Resources, 799 P.2d 289, 292-93 (Alaska 1990)*

- Provisions of a state manual pertaining to this case were merely paraphrases of statutes and thus fell within the "internal management" exception.

Smart v. State, Department of Health & Social Services,
237 P.3d 1010, 1017-18 (Alaska 2010)

- Although the definition of "regulation" is broad, it does not encompass every routine, predictable interpretation of a statute by an agency.
- The Department of Health and Social Services' interpretation of "statistically valid sampling methods," through a protocol to govern audits of Medicaid service providers, is a "common sense interpretation" of a regulation. It does not impose any new substantive requirements.

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.

State v. A.L.I.V.E. Voluntary,
606 P.2d 769, 777 (Alaska 1980)

- A regulation is a law in every meaningful sense.
 - Annuling any regulation effects a change in the law.
-

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.

State, Department of Natural Resources v. Nondalton Tribal Council,
268 P.3d 293, 305 (Alaska 2012)

- A state land use plan such as the Bristol Bay Area Plan is neither required to be nor precluded from being adopted as regulations by statute.
- It does not affect the public nor is it used by the state agency in dealing with the public because it is not enforceable against the public in a meaningful way until implemented by further agency action.

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.

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."

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.

Wien Air Alaska, Inc. v. Department of Revenue,
647 P.2d 1087, 1097 (Alaska 1982), limited on other grounds by *Louisiana-Pacific Corp. v. State, Department of Revenue,* 26 P.3d 422, 428 (Alaska 2001)

- A state agency letter interpreting a statute may be a regulation, but that letter did not serve to make the regulation binding on the department.
-

When is a Regulation Necessary vs. Discretionary?

Agency action taken in the absence of "necessary" regulations will be invalid. *See U.S. Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140, 142 (Alaska 1971). However, the absence of statutorily mandated regulations does not result in a grant of any personal right to an individual. *See State v. Eluska*, 724 P.2d 514, 516 (Alaska 1986). The court is hesitant to require an agency to convert each statutory interpretation into a regulation, especially regarding a matter that the agency would have had difficulty foreseeing; rather than require an agency to engage in "counterproductive" rulemaking for every eventuality, the court recognizes agency discretion to set policy by adjudication instead. *See Marathon Oil Co. v. State, Dep't of Natural Res.*, 254 P.3d 1078, 1086-87 (Alaska 2011). Additionally, if an agency interpretation is not longstanding, the court will accord it little deference based on longevity. *See State, Dep't of Health & Soc. Servs. v. Gross*, 347 P.3d 116, 121-23 (Alaska 2015).

***Alyeska Pipeline Service Co. v. State*,
288 P.3d 736, 742 (Alaska 2012)**

- When a state agency's interpretation does not add substantive requirements to the statute but simply interprets the statute according to its own terms, the agency may employ adjudication and is not required to adopt the interpretation as a regulation under the Administrative Procedure Act.

***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.

***Estrada v. State*,
362 P.3d 1021, 1024-25 (Alaska 2015)**

- In comparing non-regulatory action (establishment of brown bear hunt areas) to the action in dispute in this case (determination of harvest limits in a permit), the court concluded that the harvest limits were archetypal regulations because they added specific, concrete content to the general rule and clearly altered the rights of the parties.

***Marathon Oil Co. v. State, Department of Natural Resources*,
254 P.3d 1078, 1086-87 (Alaska 2011)**

- The court discusses when an agency may interpret a statute by adjudication rather than regulation, "especially in matters that the agency would have difficulty foreseeing," or where adopting "regulations on every possible eventuality" would be "counterproductive."
-

Mukluk Freight Lines, Inc. v. Nabors Alaska Drilling, Inc.,
516 P.2d 408, 415 (Alaska 1973)

- Action taken by a commission in absence of a necessary procedural regulation was invalid, even though the commission was exempt from the APA.

Rubey v. Alaska Commission on Postsecondary Education,
217 P.3d 413, 417 (Alaska 2009)

- Alaska Commission on Postsecondary Education's decision to eliminate medical cancellations in promissory notes was within the scope of the state agency's discretionary business judgment and cannot fairly be considered a policy requiring compliance with formal rulemaking procedures.

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.

Sisters of Providence in Washington, Inc. v. Department of Health & Social Services,
648 P.2d 970, 977-78 (Alaska 1982)

- Although the agency had not adopted procedural regulations, the agency had adopted regulations specifying criteria governing decisions, which gave interested parties a fair opportunity to present evidence.
- The lack of procedural regulations did not invalidate its substantial implementation decision.

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.

State v. Hebert,
743 P.2d 392, 396-97 (Alaska App. 1987)

- The Court of Appeals mentioned the distinction between agency adjudication and agency rule-making.
- The court held that an agency is not limited to the agency record when deciding to adopt regulations and may rely on its experience, expertise, and any facts known from whatever source.

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.
-

Regulations as Delegations of Authority

When an agency adopts a regulation, it is acting in place of the legislature, usually by virtue of the legislature's general delegation of that power in a specified area. A regulation cannot waive or disregard a statutory requirement. *See, e.g., Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227, 1229 (Alaska 2003); *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983). Absent evidence of bad faith, the governor, department head, or a board or commission member is not held personally liable for adopting and enforcing a regulation that is later held unconstitutional. *See Lebert v. Hammond*, 661 P.2d 635, 638 (Alaska 1983). Department heads are authorized to delegate their authority to adopt regulations under AS 44.17.010.

***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.

***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.

***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.

***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."

***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.
-

Statutory Authority Required to Adopt Regulations

A citation of statutory authority is required to adopt regulations. The citation of authority must be included in the public notice for a proposed regulation and listed following each regulation.

Alaska Statute 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 repealed.

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

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

- (1) general authority given to an agency "to carry out the purposes of this chapter" or that is given to all department heads under AS 44.17.030 for "administration of the department" (e.g., AS 47.05.010 requires the Department of Health 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 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.

When appropriate, all three types of authority must be cited. Sometimes there will be no specific authority and only the general authority can be cited.

A session law (e.g., sec. 1, ch. 2, SLA 2015) should generally not be cited as an 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.

Alaska Airlines, Inc. v. Darrow,
403 P.3d 1116, 1131 (Alaska 2017)

- The court expressed concern that the regulation at issue did not cite to a statute that appeared to have interaction with the subject covered by the regulation.
-

Chevron U.S.A., Inc. v. LeResche,
663 P.2d 923, 926-28 (Alaska 1983)

- Upholds regulations based on a general grant of authority and the assignment of responsibility for the function to the agency.
-

Davis v. State,
235 P.3d 1017, 1020 (Alaska App. 2010)

- The state has the authority to adopt and enforce commercial motor vehicle regulations patterned on corresponding federal regulations, if the legislature directed the state agency to adopt regulations necessary to implement requirements imposed by federal statutes or regulations relating to commercial motor vehicles, in order to avoid the loss or withholding of federal highway money.
-

Rutter v. State,
668 P.2d 1343, 1349 (Alaska 1983)

- Regulations are subject to statutory requirements and cannot disregard them.
-

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.
-

Sagoonick v. State,
503 P.3d 777 (Alaska 2022)

- Regulations must be consistent with and reasonably necessary to implement the statutes authorizing their adoption, and a regulation is invalid if it conflicts with other statutes. The court found that the Department of Environmental Conservation could conclude that the regulation proposed by a rule-making petition was inconsistent with the legislature's statutory policies and thus outside its delegated authority. A denial of the petition is therefore based in law and within the department's power.
-

Consistent with Statutes,
Reasonable, and Reasonably Necessary

The APA and case law require that a regulation be "consistent with the statute," "reasonable," and "reasonably necessary." *See Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 930-32 (Alaska 1983). In *State v. Alyeska Pipeline Serv. Co.*, 723 P.2d 76, 78 (Alaska 1986), the court further posited that "[a] regulation is consistent with a statute if it has a reasonable relation to statutory objectives."

To determine whether a regulation conflicts with statute, the court will use a reasonable and common-sense construction consonant with the objective of the legislature. The intent of the legislature must govern and the policies and purposes of the statute should not be defeated. *Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004). The Alaska Supreme Court has not required "a showing that the regulation is the only or most effective means of carrying out department goals." *State v. Anderson*, 749 P.2d 1342, 1346 (Alaska 1988). The court has observed that revising regulations for the purpose of eliminating ambiguity is not arbitrary or unreasonable. *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 806-07 (Alaska 1975). If a regulation conflicts with a statute, the regulation must yield. *Frank v. State*, 97 P.3d 86, 91 (Alaska App. 2004).

***Alaska Airlines, Inc. v. Darrow*,
403 P.3d 1116 (Alaska 2017)**

- Although a regulation attempted to address a legislative drafting mistake, the regulation was found invalid as inconsistent with the statutory authority; here the court found the regulation effectively rewrote the statute to substitute "impairment" for "disability."

***Alaska Ass'n of Naturopathic Physicians v. State, Department of Commerce, Community, & Economic Development*,
414 P.3d 630 (Alaska 2018)**

- Determination of a regulation's consistency with its enabling statute is a question of law to which courts apply the appropriate standard of review.
 - Here the regulatory definitions do not implicate agency expertise. Applying the substitution of judgment standard, the regulation was found consistent with the enabling statute.
-

Alaska Fish & Wildlife Conservation Fund v. State,
347 P.3d 97 (Alaska 2015)

- Board of Game regulations were upheld against constitutional challenges and satisfied the "reasonable and not arbitrary" standard of review.
- The court considered regulatory history, not to substitute its judgment for that of the board, but to assure the board had taken a "hard look" at the issue and engaged in reasoned decision making.

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.

Brooks Range Exploration Co. v. Gordon,
46 P.3d 942, 945-46 (Alaska 2002)

- If literal interpretation of a statute leads to absurd results, a court may interpret the statute to agree with legislative intent.

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.
- The court again rejects the plain meaning rule of statutory construction in favor of construction in light of the statute's purpose.

City of Valdez v. State,
372 P.3d 240 (Alaska 2016)

- The court invalidated a long-standing Department of Revenue regulation as not consistent with the underlying statute.
- The court held that no agency expertise was implicated, and thus the court would apply the substitution of judgment standard. The court continued with its long-standing approach to statutory interpretation by considering legislative history.

Frank v. State,
97 P.3d 86, 91 (Alaska App. 2004)

- When a regulation conflicts with a statute, the regulation must yield.
-

K.L.F. v. State,
790 P.2d 708, 711 (Alaska App. 1990)

- A 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.

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.

Maves v. State, Dep't of Public Safety,
479 P.3d 399, 402-05 & n.51 (Alaska 2021)

- Construing an older version of the state's statutory requirements for registration by convicted sex offenders, a statutory provision for the adoption of regulations "necessary" to implement the statute, and the absence of a statutory definition, at the time, for the term "conviction," the court invalidated a Department of Public Safety regulatory definition of the term.
- Applying the test that a regulation be consistent with and reasonably necessary to implement the statute, the court held that the regulation did not meet this standard, because the legislature expressly limited the agency's authority to the regulations "necessary" to carry out the statute's purposes, and the definition was not necessary given the strong liberty interest that the appellant had at stake.
- In striking down the regulation, the court also overruled a 1999 Court of Appeals decision that had upheld the regulation.

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.

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.

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.
-

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.
-

The Regulation Adoption Process

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.*

Fiscal note. Alaska Statute 44.62.195 requires that an agency prepare an estimate of the appropriation increase needed if the adoption of a regulation would require an increase.

Considering cost to the public. The agency must pay special attention to the cost to private persons of the proposed regulation. AS 44.62.210(a).

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

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

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

Public Notice & Comment

Contents of public notice. Alaska Statute 44.62.200 addresses the requirements for the contents of the public notice, while the additional regulation notice information requirement is addressed in AS 44.62.190(d) (for most agencies) and (g) (for exempt boards and commissions).

Alaska Statute 44.62.190(a) requires that public notice of a proposed regulation be given "at least 30 days before the adoption, amendment, or repeal of a regulation." Therefore, the Department of Law recommends there be at least 30 days' notice before the written comment deadline.

The agency must decide whether it will hold an oral hearing as provided for under AS 44.62.210(a). If the agency decides to hold an oral hearing, the agency must publish the time and place of the hearing as part of the public notice (*see* AS 44.62.200(a)(1)) and inform the public as to how a person may comment or ask questions at the oral hearing. Teleconferencing of an oral hearing is specifically authorized under AS 44.62.210 and 44.62.930.

Contact information for asking questions; requirement to answer. The agency is allowed to "aggregate substantially similar questions and agency responses and provide a single consolidated response to substantially similar questions." AS 44.62.213(b).

Publication and distribution of public notice. Alaska Statute 44.62.190(a) requires

- (1) publication of the notice in a newspaper of general circulation or trade or industry publication and posting of the notice on the Alaska Online Public Notice System;
- (2) furnishing of the notice to persons who have asked to be put on a list to receive notice of future proposed regulations;
- (3) that, if the agency is not a principal department, the agency send the notice to the head of the department of which it is a part;
- (4) when appropriate, in the judgment of the agency, furnishing of the notice to any other interested or affected person or group ("interested persons");
- (5) furnishing of the notice to the Department of Law, along with a copy of the proposed regulation; and
- (6) furnishing of the notice by electronic format to all incumbent state legislators.

Comments; use or rejection. The agency must record its use or rejection of factual or other substantive information received as written or oral comments and relevant to the proposed regulation. AS 44.62.215.

1 Pierce, *Administrative Law Treatise*, 5th ed., sec. 7.2 (Wolters Kluwer Law & Business, 2010)

- Discusses the principle that a statutory requirement of hearing may be satisfied by written comments without an opportunity to present oral evidence.

***Alaska Fish & Wildlife Conservation Fund v. State*, 347 P.3d 97, 108 (Alaska 2015)**

- If the final agency regulations vary from the action proposed in the public notice, the APA is satisfied if the subject matter remains the same and the notice assured reasonable notification that the proposed agency action might affect the public's interests.

***Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923, 929-30 (Alaska 1983)**

- The court presents an in-depth analysis regarding the scope of the public notice when the final version of the regulation differs from the draft.

***City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1011-12 (Alaska 2000)**

- Discusses the standards for a newspaper of general circulation. While the decision concerns a notice of a hearing for a local tax ordinance, and not for a regulation adoption, it is helpful in evaluating whether a newspaper meets the standard set out in the decision to be a newspaper of general circulation in that context.

***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 the APA for regulations.

***Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1119 (9th Cir. 2002), *overruled on other grounds by Wilderness Society v. U.S. Forest Service*, 630 F.3d 1172, 1178-80 (9th Cir. 2011) (en banc)**

- Though developed in the context of federal scoping process and rulemaking, this case provides an interesting discussion of the role of notice and comment in rulemaking, especially when arguments that the periods were too brief were used even though the process complied with legal minimums; the case also discusses the value of widely distributing copies of the regulations and posting copies on an Internet website to meet notice requirements.
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Moore v. State,
553 P.2d 8, 21-22 (Alaska 1976)

- Discussion of "newspaper of general circulation" for a public notice of proposed regulations.

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.
-

Post-Adoption Regulatory Review

After adopting a regulation, the agency must (1) furnish the adopted regulation to the regulations specialists at the governor and lieutenant governor's office and (2) send the final regulations and supporting documents to the Department of Law for legal review and approval. AS 44.62.060.

Governor's review. The adopting agency must provide a copy of the adopted regulation, the additional regulation notice, and the public notice to the governor's office to comply with AS 44.62.040(c), providing the opportunity for gubernatorial review.

Legal review. The Department of Law prepares an opinion approving or disapproving the regulation under AS 44.62.060 after the regulation has been reviewed by the agency attorney and regulations attorney. 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.

Legislative review. The Legislative Affairs Agency, legal services division, was previously authorized to review and issue a written confidential communication on a proposed regulation under former AS 24.20.105 and AS 40.25.120(a)(11). This statutory authority was repealed effective August 1, 2018 (ch. 7, SLA 2018). Despite the repeal, any communication from the Legislative Affairs Agency issued under former AS 24.20.105 remains confidential. The confidential memoranda issued under former AS 24.20.105 are from legislative counsel (not the Department of Law) and reference former AS 24.20.105 and AS 40.25.120(a)(11). If uncertain whether a document is a public comment or a confidential memorandum, contact the Department of Law.

A permanent legislative interim committee, called the Administrative Regulation Review Committee, was authorized to review proposed and adopted regulations. This committee was repealed by the same legislation as the legislature's legal review, effective August 1, 2018.

Under AS 24.05.182, enacted in 1982, and amended in 2018, a standing committee of the legislature may, consistent with the committee's jurisdiction, review a proposed or adopted regulation to determine if it "properly implements legislative intent." AS 24.05.182(b). It is possible, therefore, that a standing committee schedule a hearing on a proposed regulation.

While the legislature may enact a bill to annul a regulation, a committee of the legislature does not have authority to suspend or otherwise take legal action that would affect a regulation. *See State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980). If contacted by a standing committee about a pending or adopted regulation, an agency may wish to contact the Department of Law for a review of the legislative standing committee process.

Emergency Regulations

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

O'Callaghan v. State, Director of Elections,
6 P.3d 728, 730-31 (Alaska 2000)

- The court found that it was appropriate for the division of elections to adopt emergency regulations to implement a new United States Supreme Court decision concerning the Republican ballot, since the primary election was less than two months away and the legislature was not in session to act.
 - The court reasoned that temporary action was needed to ensure a timely and constitutional primary and such action was "solidly rooted in the principle of necessity and in the division's statutory powers of supervision over elections."
-

Court Interpretation of Regulatory Language

Courts construe regulations similarly to how they construe statutes. *See State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984, 998 & n.84 (Alaska 2019); *Wilson v. State, Dep't of Corrections*, 127 P.3d 826, 829 (Alaska 2006). Accordingly, courts use the same canons of construction that apply to statutes. *See State, Dep't of Highways v. Green*, 586 P.2d 595, 603 n.24 (Alaska 1978). The rules of statutory construction in AS 01.10 thus apply equally to regulations.

Grammar and Style.

***Adamson v. Municipality of Anchorage*,
333 P.3d 5, 16 (Alaska 2014)**

- When interpreting a statute, the court presumes that the legislature intends every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.

***Boyd v. State*,
210 P.3d 1229, 1232 (Alaska App. 2009)**

- If the meaning of a regulation is clear and unambiguous, the court will not consider its section heading. *See also* AS 01.05.006.

***Exxon Corp. v. State*,
40 P.3d 786, 794 (Alaska 2001)**

- Discusses that passive voice can be ambiguous.

***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.

***Gerber v. Juneau Bartlett Memorial Hospital*,
2 P.3d 74, 76 (Alaska 2000)**

- In contrast to the term "shall" in a statute, the term "may" generally denotes permissive or discretionary authority and not a mandatory duty.
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Haar v. State, Department of Administration,
349 P.3d 173, 180 (Alaska 2015)

- The court found that a statute's use of "may" gave the agency "some measure of discretion in determining whether a vehicle meets requirements for titling and registration"; the court thus applied the deferential "reasonable basis" standard of review to the agency decision.

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.

South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Board of Adjustment,
172 P.3d 768, 771-72 (Alaska 2007)

- Discusses the use of "shall" as a mandatory or directory term.

State v. Schmidt,
323 P.3d 647, 652-53, 665-66 (Alaska 2014)

- Though only the heading of a regulation, "Eligibility" implied that the text related to eligibility for a municipal tax exemption, but where all parties to the litigation read the substantive text of the regulation to address eligibility, the court assumed the parties' reading to be correct for purposes of the appeal.
- Also, when interpreting statutes and regulations, the court will harmonize seemingly conflicting provisions, unless the resulting interpretation would be at odds with statutory purpose.

State, Department of Revenue v. Nabors International Finance, Inc.,
514 P.3d 893, 901 - 02 (Alaska 2002)

- The court interpreted AS 43.20.145(a)(5) to have the missing conjunction "or" between AS 43.20.145(a)(5)(A) and (B), determined that statute was not void for vagueness, and distinguished this decision from cases that disallow rewriting a statute to correct a drafting error.

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.

Tweedy v. Matanuska-Susitna Borough Board of Adjustment & Appeals,
332 P.3d 12, 18 (Alaska 2014)

- The title of a statutory provision or code section is relevant only if legislative meaning is left in doubt.

Rules and canons for construction of statutes (and regulations).

***Basey v. State, Department of Public Safety,*
462 P.3d 529, 536 (Alaska 2020)**

- The court applies the rule of statutory construction in AS 01.10.040(b): the word "including" is read as though followed by the phrase "but not limited to."

***In the Matter of Jacob S.,*
384 P.3d 758, 770-71 (Alaska 2016)**

- The court construed a four-condition series in the definition of "competent," for the purposes of whether a mental health patient was competent to make treatment decisions, to mean that the patient's failure to meet any single condition supported a finding of incompetency, because the word "and" linked the four conditions in the statute.

***Mouritsen v. Mouritsen,*
459 P.3d 476, 480-81 (Alaska 2020)**

- Where the statute lacked a definition for whether someone "permanently resides" in this state, the court determined that the general definition of "residency" in AS 01.10.055 applies, as part of the general definitions and rules of statutory construction that apply to all Alaska statutes unless, as stated in AS 01.10.020, those definitions and rules would be inconsistent with the legislature's manifest intent.
- The court did not find anything in the language or legislative history with respect to the statute to indicate legislative intent to depart from the general definition of "residency" in AS 01.10.055.

***Snook v. State,*
404 P.3d 202, 203-04 (Alaska App. 2017)**

- Construing a municipal ordinance, the court applies the canon of *ejusdem generis*: where a statute sets out a list of two or more things, and especially if the list ends with general words, a court construes a person or thing in that list by looking to the other members of the list, so as to preserve the common unifying principle, and applies the general words to persons or things of the same general kind or class specifically mentioned.
 - The court also applies the associated-words canon, or *noscitur a sociis*: where a word's meaning is unclear in one part of a statute but clear in another part, the court can impart the clear meaning to the unclear usage on the assumption that the word means the same thing across the statute.
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State v. Fyfe,
370 P.3d 1092, 1099-1101 (Alaska 2016)

- Construing a statute that required the doubling of "fines, or maximum fines" in traffic safety corridors, the court interpreted "or" to be disjunctive: so that the statute applied to set fines, where the judge had no discretion to increase or decrease the fine, or maximum fines as a distinct alternative, where the statute limited a judge's discretion to increase the fine.
 - Applying the canon that the expression of one thing implies the exclusion of others, or *expressio unius est exclusio alterius*, the court determined that the statute excluded a third type of fines: minimum fines where the judge had discretion to double or not to double.
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Specific Types of Regulation Sections

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."

Alaska Spine Center v. Valley Medical Center,
440 P.3d 176, 181-82 (Alaska 2019)

- When drafting a statutory exemption, the legislature's choice of "community," over the broader term "service area" from agency regulations, showed the legislature's intent to give "community" a narrower plain meaning.
- Accordingly, an agency decision that treated "service area" and "community" as synonymous was invalid.

Ellingson v. Lloyd,
342 P.3d 825, 830-33 (Alaska 2014)

- The court invalidated as arbitrary a regulation defining "feral" where the Board of Game disregarded dictionary and scientific definitions of the term, to the point where the court concluded that the board failed to consider important policy factors.

Jones v. Biggs,
508 P.3d 1121, 1126 (Alaska 2022)

- The court accepted the superior court's reasoning that a definition of "misconduct in office" from an earlier edition of BLACK'S LAW DICTIONARY, in print when the corresponding statutory definition was enacted, controlled whether a petition correctly sought recall for misconduct in office.
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Penalties. State courts are split on whether a statute that merely authorizes an agency to adopt regulations also gives the agency authority to adopt sanctions for violations of those regulations. *See Singer & Singer, Sutherland Statutory Construction*, 7th ed., sec. 4.26. To avoid this issue, it is best to have the penalty for violation of a regulation set out in the statutes, such as in AS 28.90.010(c).

***Ahmasuk v. State, Dep't of Commerce, Community & Economic Development,*
478 P.3d 665, 666-67, 677 & n.59 (Alaska 2021)**

- Alaska Supreme Court rejected an agency decision that a letter to the editor, penned by a shareholder of an Alaska Native corporation (ANCSA corporation) and published in a local newspaper, was a proxy solicitation for which the shareholder could incur civil penalties for failure to disclose the solicitation.
- As part of its decision, the court determined that the agency's broad interpretation of regulations defining "proxy" and "solicitation" was vulnerable to uneven enforcement and was not specific enough for affected individuals to determine what conduct was prohibited.

***Alaska Public Offices Commission v. Stevens,*
205 P.3d 321, 326 (Alaska 2009)**

- Holding that, as the court has for criminal penalties, "imprecise, indefinite, or ambiguous statutory or regulatory requirements must be strictly construed in favor of the accused before an alleged breach may give rise to a civil penalty."

***Alleva v. State,*
479 P.3d 405, 407-09 (Alaska App. 2020)**

- The court reviewed the conviction of a person who, in violation of state environmental statutes that provided for criminal penalties, improperly applied a substance within the statutory and regulatory definitions of "pesticide."
- Because the statutory and regulatory definitions used common parlance to cover substances "intended for" use against pests, and because the term is commonly understood to mean the intent of the manufacturer, as stated on the label of the product, and not the subjective intent of the individual applying it, the court rejected a claim that the definitions were unconstitutionally void for vagueness.

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.

Adoption by Reference

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

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

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

The Alaska Supreme Court has not yet reached the issue of whether standards adopted by reference may include all future amendments. *See id.* Because this type of adoption by reference raises unresolved constitutional issues, the Department of Law recommends that any future amendments be made by formal adoption of the amended version in a new regulation project, unless the simplified process in AS 44.62.245 is available. For more detail, see [Chapter 8](#).

***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.

***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.

***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.
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Judicial Review

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

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

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

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

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

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

The court has also noted:

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

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

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

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

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

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

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

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

Alaska Airlines, Inc. v. Darrow,
403 P.3d 1116 (Alaska 2017)

- The court engaged in a detailed review of legislative history to make sense of unclear statutory language and associated regulations.

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.

Alaska Police Standards Council v. Parcell,
348 P.3d 882, 886-88 (Alaska 2015)

- The deferential "reasonable basis" standard, not the "substitution of judgment" standard, was the correct standard of review for the agency's application of the agency's own regulation defining "good moral character."

Angelica C. v. Jonathan C.,
459 P.3d 1148, 1157-58 (Alaska 2020)

- The court independently decides whether an amendment to a statute changes the statute's effect or merely clarifies the statute's meaning, because ascertaining the legislature's opinion regarding a statute passed by an earlier legislature is no more persuasive than that of a knowledgeable commentator.

Blas v. Department of Labor & Workforce Development,
331 P.3d 363, 371-75 (Alaska 2014)

- Absent a definition of the term in statute, the court applied the "substitution of judgment" standard of review to construe the meaning of the term "knowingly"; applying the "sliding scale" analysis—in which the plainer the language of the statute, the more convincing contrary legislative history must be—the court construed "knowingly" in accordance with the criminal law definition in AS 11.81.900, to require subjective intent to defraud. The court held the agency made the required showing by a preponderance of evidence.

Chevron U.S.A., Inc. v. LeResche,
663 P.2d 923, 929-30 (Alaska 1983)

- The court applied the "substantial failure" rule to uphold the final version of regulations that differed from the draft regulations published because the subject matter remained the same and the original notice assured reasonable notification to the public that its interests might be affected.
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Cora G. v. State, Department of Health & Social Services,
461 P.3d 1265, 1280-82 (Alaska 2020)

- If the court cannot determine the meaning of a statutory term by its plain language, the court examines legislative history from a variety of sources.
- The court lists examples of legislative history available, including testimony from the Department of Law, and bases the value of those sources on reliability.
- The court finds the testimony of the Department of Law to be most reliable in determining the meaning of the statutory term at issue.

Crawford & Co. v. Baker-Withrow,
73 P.3d 1227, 1229 (Alaska 2003)

- A regulation cannot authorize a state agency to waive statutory requirements.

Davis Wright Tremaine LLC v. State, Department of Administration,
324 P.3d 293, 301 (Alaska 2014)

- The court reviews an agency's interpretation of its own regulation under the reasonable basis standard, deferring to the agency unless the interpretation is plainly erroneous and inconsistent with the regulation.

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.

Ellingson v. Lloyd,
342 P.3d 825, 830-33 (Alaska 2014)

- The court invalidated as arbitrary a regulation defining "feral" where the Board of Game disregarded dictionary and scientific definitions of the term, to the point where the court concluded that the board failed to consider important policy factors.

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.
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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.
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Grunert v. State,
109 P.3d 924, 928-29 (Alaska 2005) (*Grunert I*)

- The court discusses the standards for presumption of validity of regulations and the principal standards for judicial review of administrative regulations.
 - The court reiterates the "hard look" at the salient problems and reasoned decision making standard of review where "specialized agency expertise is involved."
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Halliburton Energy Services v. State, Department of Labor,
2 P.3d 41, 50 (Alaska 2000)

- Explains the standard for evaluating whether a regulation is unconstitutionally void for vagueness.
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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.
-

Hidden Heights Assisted Living, Inc. v. State, Department of Health & Social Services,
222 P.3d 258, 268-69 (Alaska 2009)

- The failure of a state agency to separately inform a regulated entity that a record-keeping regulation might one day be enforced does not constitute the assertion of a position that the regulations would never be enforced.
 - Equitable estoppel argument failed in this case because the regulated entity failed to show that the state entity asserted a position contrary to enforcement of the regulation.
-

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.
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Jager v. State,
537 P.2d 1100, 1107 (Alaska 1975)

- Discusses the principal standards of judicial review of administrative decisions.
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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."
-

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.
-

Lauth v. State, Department of Health & Social Services,
12 P.3d 181, 185-86 (Alaska 2000)

- When determining the validity of an administrative regulation, the court may apply a deferential review even if the agency's expertise in adopting a particular regulation is implicit rather than explicit, and the agency did not directly invoke that expertise.
-

Lynden Transport, Inc. v. State,
532 P.2d 700, 716 (Alaska 1975)

- Because the legislature has spoken as a whole once a law is enacted, the court will not consider the post-enactment recollections of any individual legislator, even the prime sponsor, as relevant to a determination of legislative intent.
-

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.

Mechanical Contractors of Alaska, Inc. v. State, Department of Public Safety,
91 P.3d 240, 246-47 (Alaska 2004)

- If a regulation is consistent with the statutory purpose, the court will not generally require a separate showing of reasonable necessity. The agency record documented a "hard look" at salient problems and reasoned decision making.

Northern Alaska Environmental Center v. State, Department of Natural Resources,
2 P.3d 629, 633-34 (Alaska 2000)

- The court reviews the agency's interpretation of non-technical statutory terms under the substitution of judgment standard.

O'Callaghan v. Rue,
996 P.2d 88, 98 (Alaska 2000)

- The inquiry to determine whether a regulation is reasonable and not arbitrary is whether the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making.

Owsichek v. State, Guide Licensing & Control Board,
763 P.2d 488, 498 (Alaska 1988)

- Regulations assigning exclusive guide areas were held invalid (along with the statutes under which they were adopted) for violating the Alaska Constitution.
-

Pacifica Marine, Inc. v. Solomon Gold, Inc.,
356 P.3d 780 (Alaska 2015)

- In upholding a commissioner's decision that interpreted the regulatory standard of "immaterial or due to excusable inadvertence," the court addresses the standards for deference to an agency's interpretation of its own regulation, noting that as a general matter, "[w]e review an agency's interpretation and application of its own regulations using the reasonable basis standard of review."
- The court cautions that deference in the interpretation of a term that has already been interpreted by the courts is a complicated question.

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.

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.

State v. Aleut Corp.,
541 P.2d 730, 736-37 & n.15 (Alaska 1975)

- The court will apply the independent judgment standard if a statutory term is not technical, because an agency's mere familiarity with the term's application does not make the agency better able than the court to discern legislative intent.

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."

State v. Jouppi,
-- P.3d --, 2022 WL 4394382 (Alaska App. 2022)

- Reviewing, among other matters, communications from the Department of Law to the House Finance Committee co-chair for the purposes of the governor's 2004 crime bill, the court found that legislation regarding forfeiture penalties for bootlegging plainly intended stricter rules for forfeiture of aircraft than for forfeiture of vehicles and watercraft.

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.
-

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."
-

State, Department of Revenue v. Cosio,
858 P.2d 621, 624-25 (Alaska 1993)

- When reviewing whether a regulation is reasonable and not arbitrary, the court gives the agency considerable deference. The court does not substitute its judgment for the agency regarding the efficacy of the regulation or review the wisdom of a particular regulation.
-

Tea ex rel A.T.,
278 P.3d 1262, 1265 (Alaska 2012)

- When a regulation's interpretation is challenged, the court applies the same standards that the court applies to statutory interpretations.
 - When construing statutes, the court considers three factors: the language of the statute, the legislative history, and the legislative purpose behind the statute. The court has held that the plainer the language of the statute, the more convincing any contrary legislative history must be to overcome the statute's plain meaning.
-

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.
-

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.

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)

- While an agency's "contemporaneous administrative construction is a valuable aid in determining the meaning of the statute, it is not conclusive."

Weaver v. ASRC Federal Holding Co. & Arctic Slope Regional Corp.,
464 P.3d 1242, 1257 (Alaska 2020)

- "We review an agency's interpretation of its own regulation using the reasonable basis standard and its application of that regulation to the facts of a case for abuse of discretion."

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.
-

Attorney General Opinions

Opinions may be issued by the attorney general in response to requests by state agency officials and state legislators to help them perform their duties. These opinions are not law, but rather they advise state officials on questions of law and on how the law applies to particular fact situations. The attorney general may not issue opinions or provide legal advice to local government officials, private individuals, or private entities.

Attorney general opinions are letters of legal advice that are not confidential or otherwise privileged, and that are considered to have significance as applied to other circumstances. Attorney general opinions express a well-considered opinion that may or may not be agreed with by a court faced with the same issue at a later date. The attorney general may reevaluate and, if necessary, revoke or modify prior opinions. Additionally, because the attorney general's obligation to publicly provide advice may at times collide with the attorney general's obligation to represent the State of Alaska as litigation counsel, the attorney general may be required to take a litigation position at odds with a prior opinion.

The following attorney general opinions apply to Alaska Administrative Code regulations and Alaska's regulation adoption process:

1992 Inf. Op. Att'y. Gen. (Jan. 24; 663-92-0325)

- Nature of lieutenant governor's duty to file regulations. After adoption of a regulation, the office of the lieutenant governor performs a ministerial role of filing the adopted regulation and has no authority to refuse to file a duly adopted regulation.

1992 Inf. Op. Att'y. Gen. (March 31; 663-92-0387)

- Relating to the scope of a board's authority to discipline and regulate a licensee, specifically the Big Game Commercial Services Board's authority to discipline and regulate transporters.

1992 Inf. Op. Att'y. Gen. (October 23; 663-93-0088)

- Relating to the Americans with Disabilities Act and the implementing of regulations. Boards and departments must ensure that their regulations and policies do not preclude persons with disabilities from meaningful opportunity to participate in state regulated programs or services, such as hunting and fishing in Alaska. ADA exemptions or modifications are not necessary where existing regulations or policies do not impose artificial barriers upon persons with disabilities, or where such exemptions would fundamentally alter the program, service, or benefit at issue, or cause undue administrative burdens or expense.
-

1996 Inf. Op. Att'y. Gen. (July 12; 663-97-0053)

- Whether the Department of Environmental Conservation has the authority to eliminate its subdivision plan review program. Since plan review is not mandated, the department is free to eliminate its subdivision plan approval requirement. The department may not, prior to repeal of the regulations, unequivocally and finally refuse to review plans but may postpone plan review until requisite money and personnel are available. If the repeal becomes effective before such resources become available, the department may return to developers those plans it has not reviewed.

1998 Alaska Op. Att'y. Gen. No. 2 (May 1; 663-97-0427)

- Department of Law disapproval of regulations as unconstitutional. Relating to the Division of Elections' proposed regulations to implement material from Ballot Measure 4, "the Congressional Term Limits Act of 1996." A regulation can have no more validity than the statutes upon which it rests. Where, as here, the underlying statutes (AS 15.15.510, 15.15.515, 15.15.520, and 15.15.525 from Ballot Measure No. 4) were found to be unconstitutional; thus, the proposed implementing regulations, if allowed to become law, would also be unconstitutional.

1999 Inf. Op. Att'y. Gen. (April 30; 663-99-0225)

- Deals with the constitutionality of state regulations in conflict with federal regulations, and correction of an unconstitutional regulation by an emergency repeal and adoption of an emergency regulation that conforms to the requirements of the law. The Alaska Department of Revenue (DOR) adopted regulations on eligibility of nonimmigrant aliens for Alaska Permanent Fund dividends that were found in conflict with federal law. The Department of Law advised DOR to cease implementation of the regulation and concluded that DOR could adopt a broader interpretation of the statute on dividend eligibility, AS 43.23.005(a)(5)(B). This would avoid a conflict with federal law by allowing a nonrestricted, nonimmigrant alien to receive a dividend if the alien is otherwise qualified for a dividend. The Department of Law further determined it would be appropriate for DOR to adopt such a regulation on an emergency basis and then make the regulation permanent.

2001 Inf. Op. Att'y. Gen. (Dec. 12; 663-02-0090)

- Relating to board authority absent regulations establishing standards and procedures. Specifically, whether the Local Boundary Commission (LBC) has the authority to require truncation of terms of elected officials of an annexing municipality. If so, can the LBC exercise such authority in the short term absent regulations establishing standards and procedures for truncation of terms? The Department of Law concluded that the LBC does not, absent regulations, have discretionary authority to require truncation of terms of the city council of Homer as a condition to approving the petition for annexation presently being considered. The department further found that LBC has the authority to promulgate regulations to establish standards and procedures dealing with truncation of terms to be applied in future boundary change petition reviews.
-

2006 Inf. Op. Att'y. Gen. (Aug. 9; 661-07-0127)

- Whether a department can adopt regulations setting different fees for different industries receiving the same service even though the cost to the state is the same. Specifically, whether the Department of Environmental Conservation (DEC) can adopt regulations setting different fees for paralytic shellfish poisoning (PSP) testing. The Department of Law concluded that DEC may not charge varied fees to different recipients of identical state services without statutory authorization. DEC has statutory authority to adopt regulations that prescribe reasonable fees to cover the direct costs of providing PSP testing. However, DEC does not have statutory authority to charge different fees based upon the nature of a PSP test recipient's business or the species of shellfish tested. Absent such authority, DEC must charge one fee for PSP testing.

2006 Inf. Op. Att'y. Gen. (Nov. 17; 661-03-0536)

- An opinion regarding which state enforceable policies are applicable to timber sales in the Tongass National Forest pursuant to the Alaska Coastal Management Program ("ACMP"). The Department of Law concluded federal timber sales must comply with the resource protection provisions of the Forest Resources and Practice Act ("FRPA") and the regulations promulgated under those provisions in order to be consistent with the ACMP. The ACMP expressly required that both FRPA and the regulations adopted under FRPA be applicable to the harvest and processing of timber, with no distinction made between provisions applicable to federal versus state lands. Therefore, in order to comply with the ACMP, federal timber sales must be consistent with both FRPA and the regulations adopted under FRPA. For these reasons, the regulations implementing the applicable provisions of FRPA are state policies that are enforceable for timber sales on federal land under the ACMP.

2008 Inf. Op. Att'y. Gen. (Aug. 21; 661-08-0388)

- An opinion addressing the applicability of the Executive Branch Ethics Act, AS 39.52, for personal use of a state-owned device. The Department of Law concluded that questions regarding personal use of certain state equipment involved matters of general applicability and, therefore, the standards should be addressed by promulgation of regulations by the Department of Law in order to set standards for determining when personal use of certain state equipment is presumed not to violate the Ethics Act.
-

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APPENDICES

Introduction to Appendices

The following appendices must be used in the regulatory process to ensure that state agencies comply with all legal requirements for the adoption of regulations and to provide a clear and accurate record of that compliance.

The appendices are arranged to parallel the steps in the regulatory process, beginning with the file opening and preliminary review request and then ending with the online summary. Appendices that relate to one single step—for instance, public notice and comment—are grouped together under a single heading in the *Table of Appendices* on the following page. Similarly, those appendices that pertain to emergency regulations and to non-APA regulations are grouped into separate sections.

Within each appendix, blank spaces and bracketed linguistic cues (for example, "[e-mail address]") indicate text that the agency must modify to meet the needs and subject matter of each project. No blanks or bracketed language should remain in the final version of a document. For instance, in the public notice of proposed regulations, there is included language for in-person and telephonic oral hearings. Depending on whether the agency will hold an oral hearing, and whether that hearing will be in-person, telephonic, or both, the language needs to be adjusted. To facilitate this process, editable MS Word versions of each appendix are available on the Department of Law website: http://www.law.alaska.gov/doclibrary/drafting_manual.html.

Note that the affidavits from previous versions of this manual have been replaced with certifications. Instead of completing a notarized affidavit, the agency will now certify the correctness of the provided information under penalty of perjury

The final appendices are checklists for regular and emergency regulations. These checklists do not need to be submitted to the Department of Law for review, but should be used for each regulation project to ensure that no steps or documents are missed.

All appendices submitted for Department of Law review must be emailed to the Legislation, Regulations, and Legislative Research Section at law.regulations@alaska.gov.

For any questions or assistance, the agency is encouraged to reach out to the Legislation, Regulations, and Legislative Research Section.

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APPENDIX A: File Opening and Preliminary Review Request

TO: Legislation, Regulations, and
Legislative Research Section
State of Alaska, Department of Law
Law.regulations@alaska.gov

DATE:

FROM:

SUBJECT: File opening and
preliminary review request
for regulation project.

AAC citation: (Example: 11 AAC 33.401 - 11 AAC 33.900)	
General description of project:	
Urgent: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, state reason and any legal deadlines:	Emergency regulation project: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, will agency make regulation permanent: Yes <input type="checkbox"/> No <input type="checkbox"/>
Proposed date for public notice:	Proposed date for regulations to be effective:
Name of Department of Law attorney who has assisted agency on this or similar project (if any):	Agency contact who can answer technical questions about the content of the regulations (name, phone, email):
Attachments: <i>Must include copy of notice materials and proposed regulations. Boards and commissions must include a copy of current board or commission meeting schedule. If project is a proposed emergency regulation, include copy of emergency finding for approval.</i>	
Additional notes:	

NOTICE OF PROPOSED CHANGES ON [SUBSTANCE OF REGULATION]
IN THE REGULATIONS OF [NAME OF AGENCY]

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

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

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address].] [Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link.] The comments must be received not later than [time] on [month and day, year].

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

[You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on [month and day, year] by calling [phone number]. There will not be in-person attendance provided at the hearing site, so please prepare to share your oral comments by telephone only. The hearing is scheduled from [time] to [time] and priority will be given to commenters on the line before the beginning of the hearing. The hearing may be extended to accommodate those on the line before [time] who did not have an opportunity to comment. Before the start of the hearing, [name of agency][chair of the Board] may limit the time allotted for each person providing oral testimony, as reasonably necessary to conclude the hearing in the time provided.]

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

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

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

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

After the public comment period ends, the [name of agency] will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS _____; AS _____; AS _____

Statutes being implemented, interpreted, or made specific: AS _____; AS _____; AS _____

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 ____, _____.]

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

Individuals can also sign up to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>.

Date: _____

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

NOTICE OF PROPOSED CHANGES ON [SUBSTANCE OF REGULATION]
IN THE REGULATIONS OF [NAME OF AGENCY]

BRIEF DESCRIPTION

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

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

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

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address]. [Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link.] The comments must be received not later than [time] on [month and day, year].

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

[You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on [month and day, year] by calling [phone number]. There will not be in-person attendance provided at the hearing site, so please prepare to share your oral comments by telephone only. The hearing is scheduled from [time] to [time] and priority will be given to commenters on the line before the beginning of the hearing. The hearing may be extended to accommodate those on the line before [time] who did not have an opportunity to comment. Before the start of the hearing, [name of agency][chair of the Board] may limit the time allotted for each person providing oral testimony, as reasonably necessary to conclude the hearing in the time provided.]

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

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact [name of agency representative at e-mail address and phone number]

not later than [month and day, year] to ensure that any necessary accommodations can be provided.

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

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

After the public comment period ends, the [name of agency] will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS _____; AS _____; AS _____

Statutes being implemented, interpreted, or made specific: AS _____; AS _____; AS _____

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 ____, _____.]

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

Individuals can also signup to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>.

Date: _____

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

APPENDIX B-3: Notice of Proposed Regulations
(Board of Fisheries, Board of Game, AOGCC, and RCA)

NOTICE OF PROPOSED CHANGES ON [SUBSTANCE OF REGULATION]
IN THE REGULATIONS OF [NAME OF AGENCY]

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

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

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address]. [Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link.] The comments must be received not later than [time] on [month and day, year].

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

[You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on [month and day, year] by calling [phone number]. There will not be in-person attendance provided at the hearing site, so please prepare to share your oral comments by telephone only. The hearing is scheduled from [time] to [time] and priority will be given to commenters on the line before the beginning of the hearing. The hearing may be extended to accommodate those on the line before [time], who did not have an opportunity to comment. Before the start of the hearing, [name of agency][chair of the Board] may limit the time allotted for each person providing oral testimony, as reasonably necessary to conclude the hearing in the time provided.]

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

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

After the public comment period ends, the [name of agency] will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the

proposed regulation. You should comment during the time allowed if your interests could be affected.

Statutory authority: AS _____; AS _____; AS _____

Statutes being implemented, interpreted, or made specific: AS _____; AS _____; AS _____

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 ____, _____.]

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

Individuals can also sign up to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>.

Date: _____

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

APPENDIX C-1: Additional Regulation Notice Information

ADDITIONAL REGULATION NOTICE INFORMATION

(AS 44.62.190(d))

1. Adopting agency: _____
2. General subject of regulation: _____
3. Citation of regulation (may be grouped): _____
4. Department of Law file number, if any: _____

5. Reason for the proposed action:

- () Compliance with federal law or action (identify): _____
- () Compliance with new or changed state statute
- () Compliance with federal or state court decision (identify): _____
- () Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation: _____

7. Estimated annual cost to comply with the proposed action to:

A private person: _____

Another state agency: _____

A municipality: _____

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

	Initial Year FY _____	Subsequent Years
Operating Cost	\$ _____	\$ _____
Capital Cost	\$ _____	\$ _____
1002 Federal receipts	\$ _____	\$ _____
1003 General fund match	\$ _____	\$ _____
1004 General fund	\$ _____	\$ _____
1005 General fund/ program	\$ _____	\$ _____
Other (identify)	\$ _____	\$ _____

9. The name of the contact person for the regulation:

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

10. The origin of the proposed action:

_____ Staff of state agency
_____ Federal government
_____ General public
_____ Petition for regulation change⁷
_____ Other (identify): _____

11. Date: _____ Prepared by: _____

[signature]

Name (printed): _____

Title (printed): _____

Telephone: _____

APPENDIX C-2: Additional Regulation Notice Information
(Board of Fisheries, Board of Game, AOGCC, and RCA)

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(g))

1. Adopting agency: _____
2. General subject of regulation: _____
3. Citation of regulation (may be grouped): _____
4. Department of Law file number, if any: _____

5. Reason for the proposed action:
 - () Compliance with federal law
 - () Compliance with new or changed state statute
 - () Compliance with court order
 - () Development of program standards
 - () Other (identify): _____

6. Appropriation/Allocation: _____

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

	Initial Year FY _____	Subsequent Years	
Operating Cost	\$ _____	\$ _____	
Capital Cost	\$ _____	\$ _____	
1002 Federal receipts	\$ _____	\$ _____	
1003 General fund match	\$ _____	\$ _____	
1004 General fund	\$ _____	\$ _____	
1005 General fund/ program	\$ _____	\$ _____	
Other (identify)	\$ _____	\$ _____	

8. The name of the contact person for the regulation:
 - Name: _____
 - Title: _____
 - Address: _____
 - Telephone: _____
 - E-mail address: _____

9. The origin of the proposed action:

- _____ Staff of state agency
- _____ Federal government
- _____ General public
- _____ Petition for regulation change
- _____ Other (identify)_____

10. Date:_____ Prepared by:_____ [signature]

Name (printed)_____

Title (printed):_____

Telephone:_____

APPENDIX D: Fiscal Note

FISCAL NOTE

Agency: _____

Appropriation/Allocation: _____

General subject of regulation: _____

Citation of regulation: _____

Estimated appropriations required (in thousands of dollars) _____

Expenditures/Revenues

	FY __ Appropriation Requested	(Thousands of Dollars)	
OPERATING EXPENDITURES	FY__	FY __	FY __
Personal Services			
Travel			
Services			
Commodities			
Capital Outlay			
Grants & Benefits			
Miscellaneous			
TOTAL OPERATING			

FUNDING SOURCE		(Thousands of Dollars)		
1002	Federal Receipts			
1003	GF Match			
1004	General Fund			
1005	GF/Program (DGF)			
1007	I/A Rcpts (Other)			
1037	GF/MH (UGF)			

POSITIONS			
Full-time			
Part-time			
Temporary			

CHANGE IN REVENUES			

Date _____

Prepared by: _____ [Signature] _____

_____ [name and title, printed]

_____ [division/department]

Phone No.: _____

APPENDIX E: Department of Law Final Review Request

TO: Legislation, Regulations, and
Legislative Research Section
State of Alaska, Department of Law
Law.regulations@alaska.gov

DATE:

FROM:

SUBJECT: Final review request

Department of Law file number and project description:

Have changes been made to the regulations since public comment period:

Yes No

If yes, identify all changes in detail (attach extra pages if necessary):

If emergency regulation, provide date the regulation expires:

Attachments:

See checklist in [Appendix Z-1](#), step 6, for all required items. If emergency regulation, see [Appendix Z-2](#), step 10.

Additional notes:

APPENDIX F: Certification of Notice of Proposed Regulation

CERTIFICATION OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, [name], [title], of [name of agency], under penalty of perjury, certify the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to [regulation title, chapter, and short statement of its subject] has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to persons in (2), (4), and (6) of the list above. The additional regulation notice information has also been posted on the Alaska Online Public Notice System.

I certify under penalty of perjury that the foregoing is true.

Date: _____

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

State of Alaska
[City, town, or village], [Borough or Municipality]

APPENDIX G: Certification of Agency Record of Public Comment

CERTIFICATION OF AGENCY RECORD OF PUBLIC COMMENT

I, [name], [title] for the [name of agency], under penalty of perjury, state the following:

[In compliance with AS 44.62.215, the [name of agency] has kept a record of its use or rejection of factual or other substantive information that was submitted in writing [and orally] as public comment and that was relevant to the accuracy, coverage, or other aspect of the [name of agency] regulation on [subject of regulation].] [The [name of agency] did not receive any factual or other substantive information that was submitted in writing or orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the [name of agency] regulation on [subject of regulation].]

I certify under penalty of perjury that the foregoing is true.

Date: _____

[certifier's signature] _____
[name and title, typed]

State of Alaska
[City, town, or village], [Borough or Municipality]

APPENDIX H: Certification of Oral Hearing

CERTIFICATION OF ORAL HEARING

I, [name], [title] of [name of agency], under penalty of perjury, state the following:

On [date], at [time], in room _____, [physical address, including city], I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to [regulation title, chapter, and short statement of its subject] .

I certify under penalty of perjury that the foregoing is true.

Date: _____

[certifier's signature]

[name and title, typed]

State of Alaska
[City, town, or village], [Borough or Municipality]

APPENDIX I: Adoption Order

ORDER ADOPTING CHANGES TO REGULATIONS
OF [name of agency]

The attached ___ page[s] of regulations, dealing with _____, [is] [are] adopted and certified to be a correct copy of the regulation changes that the [name of agency] adopts under the authority of AS _____ and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

[It is estimated that this action will require increased appropriations as shown on the attached fiscal note.] [This action is not expected to require an increased appropriation.]

[In considering public comments, the [name of agency] paid special attention to the cost to private persons of the regulatory action being taken.] [Although no public comments were received, the [name of agency] paid special attention to the cost to private persons of the regulatory action being taken.]¹

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

Date: _____

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

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on _____, 20____, at _____m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

[signature]
Lieutenant Governor

Effective: _____.

Register: _____.

¹ 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."

APPENDIX J: Certification Order

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

The attached ____ page[s] of regulations, dealing with _____, [is] [are] certified 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 _____ 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.]

[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.]

The regulation changes described in this order take effect [on the 30th day after they have been filed by the lieutenant governor] [on _____, 20____], as provided in AS 44.62.180.

Date: _____

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

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on _____, 20____ at _____m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

[signature]
Lieutenant Governor

Effective: _____.

Register: _____.

**LIMITED DELEGATION OF AUTHORITY
FOR ADOPTING REGULATIONS**

Under as 44.17.010, the authority and responsibility for adopting regulations of the Department of _____ under the Alaska Administrative Procedure Act [, dealing with _____,] [during the period _____, 20____, through _____, 20____], is delegated to [name], [position].

Date: _____

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

State of Alaska
[City, town, or village], [Borough or Municipality]

DELEGATION OF AUTHORITY

Under as 44.17.010, the authority and responsibility for adopting regulations of the Department of _____ under the Alaska Administrative Procedure Act are delegated to [name], [position].

Date: _____

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

State of Alaska
[City, town, or village], [Borough or Municipality]

APPENDIX M: Staff Certification of Board / Commission Action

CERTIFICATION OF [BOARD] [COMMISSION] ACTION

I, [name], [title] for the [name of board or commission], under penalty of perjury, state the following:

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

I certify under penalty of perjury that the foregoing is true.

Date: _____

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

State of Alaska
[City, town, or village], [Borough or Municipality]

State Board of Education and Early Development Meeting
June 16, 2017 Excerpt from Unapproved Minutes

Board member Lois Luck moved and member Chuck Jones seconded the following motion:

"I move to adopt 4 AAC 11.111 and 4 AAC 11.112 as written in the March 18, 2017, draft regulation."

The motion carried unanimously.

NOTICE OF ADOPTED AND FILED REGULATIONS OF
[NAME OF AGENCY]

On [date], [name of agency] adopted regulations in [title and chapter of regulation]. The regulations concern [brief description of regulations].

The regulations were reviewed and approved by the Department of Law, signed and filed by the Office of the Lieutenant Governor on [date], and are effective on [date]. Attached is a copy of the filed regulations.

The regulation changes will first appear in Register [number], [date of publication], of the Alaska Administrative Code.

APPENDIX P: Finding of Emergency and Adoption Order

FINDING OF EMERGENCY

The [name of agency] finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

[STATEMENT OF FACTS]

ADOPTION ORDER

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

Date: _____

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

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on _____, 20____, at _____ .m., I filed the attached regulation according to the provisions of AS 44.62.

[signature]
Lieutenant Governor

Effective: _____.

Register: _____.

APPENDIX Q: Finding of Emergency and Certification Order

FINDING OF EMERGENCY

The [name of board/commission] finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

[STATEMENT OF FACTS]

ORDER CERTIFYING ADOPTION

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

Date: _____

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

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on _____, 20____, at _____m., I filed the attached regulation according to the provisions of AS 44.62.

[signature]
Lieutenant Governor

Effective: _____.

Register: _____.

NOTICE OF ADOPTION OF EMERGENCY REGULATION
ON [SUBSTANCE OF REGULATION] OF [NAME OF AGENCY]

On [month and day, year], the [name of agency] adopted, as an emergency regulation, changes in [AAC Title] of the Alaska Administrative Code dealing with [the general subject, expressed in a few words], including the following:

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

The emergency regulation [took] [takes] effect [month and day, year], and will expire [month and day, year]. The [name of agency] [intends] [does not intend] to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes, by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address].] [Comments also may be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link.] The comments must be received not later than [time] on [month and day, year].

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

[You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on [month and day, year] by calling [phone number]. There will not be in-person attendance provided at the hearing site, so please prepare to share your oral comments by telephone only. The hearing is scheduled from [time] to [time] and priority will be given to commenters on the line before the beginning of the hearing. The hearing may be extended to accommodate those on the line before [time] who did not have an opportunity to comment. Before the start of the hearing, [name of agency] [chair of the Board] may limit the time allotted for each person providing oral testimony, as reasonably necessary to conclude the hearing in the time provided.]

You may submit written questions relevant to the proposed action to [name of agency representative by e-mail and physical address]. The questions must be received at least 10 days before the end of the public comment period. The [name of agency] will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System [and agency website]. The [name of agency] may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

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

A copy of the emergency regulation is available on the Alaska Online Public Notice System [and/or through the electronic link to the complete text] and by contacting [name of agency representative at phone number and e-mail address].

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

The language of the permanent regulation may be different from that of the original emergency regulation and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS _____; AS _____; AS _____

Statutes being implemented, interpreted, or made specific: AS _____; AS _____; AS _____

Fiscal information: [The regulation is not expected to require an increased appropriation.] [It is estimated that the regulation will require increased appropriations as follows: FY _____, _____; FY _____, _____; FY _____, _____; FY _____, _____.]

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

Date: _____

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

NOTICE OF ADOPTION OF EMERGENCY REGULATION
ON [SUBSTANCE OF REGULATIONS] OF [NAME OF AGENCY]

BRIEF DESCRIPTION: The [name of agency] proposes to make permanent regulation changes made by emergency regulation on [topic of regulations].

On [month and day, year], the [name of agency] adopted, as an emergency regulation, changes in [AAC Title] of the Alaska Administrative Code dealing with [the general subject expressed in a few words], including the following:

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

The emergency regulation [took] [takes] effect [month and day, year], and will expire [month and day, year]. The [name of agency] [intends] [does not intend] to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes, by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] or by electronic mail at [e-mail address].] [Comments also may be submitted through the Alaska Public Online Notice System by accessing this notice on the system and using the comment link.] The comments must be received not later than [time] on [month and day, year].

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

[You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on [month and day, year] by calling [phone number]. There will not be in-person attendance provided at the hearing site, so please prepare to share your oral comments by telephone only. The hearing is scheduled from [time] to [time] and priority will be given to commenters on the line before the beginning of the hearing. The hearing may be extended to accommodate those on the line before [time] who did not have an opportunity to comment. Before the start of the hearing, [name of agency] [chair of the Board] may limit the time allotted for each person providing oral testimony, as reasonably necessary to conclude the hearing in the time provided.]

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

Public Notice System [and agency website]. The [name of agency] may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

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

A copy of the emergency regulation is available on the Alaska Online Public Notice System [and/or through the electronic link to the complete text] and by contacting [name of agency representative at e-mail address and phone number].

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

The language of the permanent regulations may be different from that of the original emergency regulation and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS _____; AS _____; AS _____

Statutes being implemented, interpreted, or made specific: AS _____; AS _____; AS _____

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 _____, _____.]

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

Date: _____

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

APPENDIX R-3: Notice of Adoption of Emergency Regulations
(Board of Fisheries, Board of Game, AOGCC, and RCA)

NOTICE OF ADOPTION OF EMERGENCY REGULATION
ON [SUBSTANCE OF REGULATION] OF [NAME OF AGENCY]

On [month and day, year], the [name of agency] adopted, as an emergency regulation, changes in [AAC Title] of the Alaska Administrative Code dealing with [the general subject expressed in a few words], including the following:

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

The emergency regulation [took] [takes] effect [month and day, year], and will expire [month and day, year]. The [name of agency] [intends] [does not intend] to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes, by submitting written comments to [name of agency or agency representative at mailing address]. [Additionally, the [name of agency] will accept comments by facsimile at [fax number] and by electronic mail at [e-mail address]. [Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link.] The comments must be received not later than [time] on [month and day, year].

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

[You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on [month and day, year] by calling [phone number]. There will not be in-person attendance provided at the hearing site, so please prepare to share your oral comments by telephone only. The hearing is scheduled from [time] to [time] and priority will be given to commenters on the line before the beginning of the hearing. The hearing may be extended to accommodate those on the line before [time] who did not have an opportunity to comment. Before the start of the hearing, [name of agency] [chair of the Board] may limit the time allotted for each person providing oral testimony, as reasonably necessary to conclude the hearing in the time provided.]

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

A copy of the emergency regulation is available on [the Alaska Online Public Notice System and/or through the electronic link to the complete text] and by contacting [name of agency representative at e-mail address and phone number]

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

The language of the permanent regulation may be different from that of the original emergency regulation, and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected. Written comments are public records and subject to public inspection.

Statutory authority: AS _____; AS _____; AS _____

Statutes being implemented, interpreted, or made specific: AS _____; AS _____; AS _____

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 _____, _____.]

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

Date: _____

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

APPENDIX S: Certification of Notice of Emergency Regulation

CERTIFICATION OF NOTICE OF ADOPTION
OF EMERGENCY REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, [name], [title], of [agency], under penalty of perjury, state the following:

As required by AS 44.62.250, notice of the [date] emergency changes to [regulation title, chapter, and short statement of its subject] has been given under AS 44.62.190(a) by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the regulation;
- (6) electronically transmitted to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System: as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1)

As required by AS 44.62.190, additional regulation notice information regarding the [date] emergency changes to the regulation described above has been furnished to persons in (2), (4) and (6) of the list above. The additional regulation notice information has also been posted on the Alaska Online Public Notice System.

I certify under penalty of perjury that the foregoing is true.

Date: _____

[certifier's signature]

[name and title, typed]

State of Alaska
[City, town, or village], [Borough or Municipality]

APPENDIX T: Certification of Compliance

CERTIFICATION OF COMPLIANCE

I, [name and title], certify that, as required by AS 44.62.260 in order to make the attached _____ pages of regulations permanent, as of this date a legal opinion of the Department of Law has been requested under AS 44.62.060, a notice conforming to AS 44.62.200 was issued in compliance with AS 44.62.190, and an opportunity for public comment was provided under AS 44.62.210, for the following emergency regulation:

[citation and short statement of subject]

This regulation originally was filed as an emergency regulation on _____, 20_____.

[If not included in the emergency adoption or certification order, or if circumstances have changed, include a statement regarding appropriations]

[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.]

Date: _____

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

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on _____, 20____, at ____m., I filed the attached regulation according to the provisions of AS 44.62.

[signature]
Lieutenant Governor

Register: _____.

APPENDIX U: Notice of Amended Material Previously Adopted by Reference

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 _____, under authority of _____, and dealing with _____, is in effect:

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

A copy of the above material is available for public review at [address of state agency where material is available, and addresses of other review sites as applicable] and on the Alaska Online Public Notice System.

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

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

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

Date: _____

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

APPENDIX V: Certification of Notice of Amended Material

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

I, [name], [title], of [name of agency], under penalty of perjury, state the following:

As required by AS 44.62.245, notice of the amended version of material previously adopted by reference in [title and chapter of regulation], dealing with [brief description of regulation], has been given by being

- (1) posted on the Alaska Online Public Notice System;
- (2) published in a newspaper of general circulation or trade or industry publication or in a regularly published agency newsletter or similar printed publication;
- (3) furnished to interested persons; and
- (4) furnished to the regulations attorney in the Department of Law.

As required by AS 44.62.175(a)(8) and (b) and 44.62.245(b), a copy of the notice has been posted on the Alaska Online Public Notice System.

There is no notary public or other official empowered to administer oaths available to notarize this document.

I certify under penalty of perjury that the foregoing is true.

Date: _____

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

State of Alaska
[City, town, or village], [Borough or Municipality]

APPENDIX W: Non-APA Adoption Order

ORDER CHANGING REGULATIONS
OF [NAME OF AGENCY]

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

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

Date: _____

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

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on _____, 20____, at _____m., I filed the attached regulation.

[signature]
Lieutenant Governor

Effective: _____.

Register: _____.

APPENDIX X: Non-APA Certification Order

ORDER CERTIFYING THE CHANGES TO REGULATIONS
OF [NAME OF BOARD/COMMISSION]

The attached ____ page[s] of [the] regulation[s], dealing with _____, [is] [are] certified 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 _____.

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

Date: _____

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

FILING CERTIFICATION

I, [name of lieutenant governor], Lieutenant Governor for the State of Alaska, certify that on _____, 20____, at _____m., I filed the attached regulation.

[signature]
Lieutenant Governor

Effective: _____.

Register: _____.

APPENDIX Y: Example Regulations

Header: Register number and AAC volume title

Register _____, _____ 20__ LABOR AND WORKFORCE DEV.

8 AAC 05.020 is repealed:

8 AAC 05.020. Occupations prohibited to persons under age 21. Repealed.

10/5/80, Register 15; am 5/20/90, Register 33; repealed ___/___/___, Register ___)

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 ___/___/___.

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

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

Authority: AS 23.10.355 AS 23.10.365 AS 44.31.020
AS 23.10.360

When repealing complete section, history note has blank spaces for date of repeal and authority citation is removed.

New text is bolded and underlined; deleted text is bracketed and capitalized.

Blanks provided for date of repeal.

When adding a completely new provision, no bold or underline on added text.

History note shows repeal of paragraph as an "amendment," because the section remains. Repeals within a section are always shown as amendments; only the repeal of a complete section results in "repeal" notation in the history note.

Register _____, _____ 20__ LABOR AND WORKFORCE DEV.

8 AAC 05.040(3) is repealed:

(3) repealed ___/___/____, (Eff. 10/5/70, Register 15; am 4/15/88, Register 26;

am ___/___/____, Register ___)

Authority: AS 23.10.360 AS 23.10.365

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

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

occupations are prohibited to a minor under five years of age. (Eff. ___/___/____, Register ___)

Authority: AS 23.10.360 AS 23.10.370 AS 23.10.410

AS 23.10.365 AS 23.10.385 AS 23.10.900

AS 23.10.367

Because no subdivisions follow this new section, history note begins immediately after text on same line.

8 AAC 05.045(a) is amended to read:

(a) **An occupation** [OCCUPATIONS] for which a permit is required under (b) of this

section is one that requires the following responsibilities:

(1) handling of and accounting for cash; [AND]

(2) resolving **customer** [CONSUMER] complaints; **and**

(3) closing an establishment at the end of the business day.

(Eff. 8/1/84, Register 134; am 2/15/2010, Register 153; am ___/___/____, Register ___)

Authority: AS 23.10.360 AS 23.10.365

Because subsection (a) is followed by other subdivisions not being amended, history note begins on next line down.

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

(3) a copy of the applicant's driver's license or photo-identification card issued by this state;

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

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
	[AS 23.10.370]	AS 23.10.390	

Amendments to authority citation are shown in standard amendment format; layout remains in numerical order.

8 AAC 05.200 is repealed and readopted to read:

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

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

Authority: AS 23.10.350 **AS 23.10.360**

The introductory language of 8 AAC 05.260(b) is amended to read:

(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:

...

Lead-in line indicates that only "introductory language" is amended because there are no amendments made to the paragraphs of (b).
In this type of amendment, ellipses indicate that subdivisions follow that are not being amended. Ellipses should be bolded and in 16pt font.

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];

Amendment is made to entire span of citation, not just chapter. Amendments must always be to entire span of citation or to entire word.

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

Authority citation is only set out once—at the end of the amendments to the section (in this example, at the end of the amendments to .260)

Step 1: Planning and Preparation

- Consider timing, deadlines, and costs.
- Confirm agency authority.

Step 2: Drafting

- Confirm that agency is working with most recent copy of regulations.
- Draft proposed amendments in accordance with [Chapter 4](#).

Step 3 and 4: File Opening and Department of Law Preliminary Review

- Submit file opening and preliminary review request to Legislation, Regulations, and Legislative Research Section at law.regulations@alaska.gov ([Appendix A](#)).
- Attach copy of proposed regulations and notice materials.
- Receive Department of Law approval to move forward with public notice.

Step 5: Public Notice and Comment

- Finalize notice document ([Appendix B-1](#) for newspaper and [B-2](#) for non-newspaper; [Appendix B-3](#) for exempt boards and commissions). Include the following:
 - Brief description (for Appendix B-2 only);
 - Informative summary of regulation;
 - Deadline and address for submitting comments;
 - ADA information;
 - Oral hearing information, if applicable;
 - Summary of fiscal information;
 - Statutory authority;
 - Statutes being implemented, interpreted, or made specific.
- Finalize additional regulation notice information ([Appendix C-1](#) or [C-2](#)).
- Prepare fiscal note, if applicable ([Appendix D](#)).
- Publish notice in newspaper of general circulation; request proof-of-publication affidavit.
- Post on the Alaska Online Public Notice System. Include the following:
 - Public notice;
 - Additional regulation notice information;
 - Fiscal note, if applicable;
 - Proposed regulations;
 - Material adopted by reference, if applicable and not protected by copyright.
- Distribute notice and additional regulation notice to the following parties:
 - Incumbent state legislators;
 - Persons on agency's interested-persons list;

- Other persons who may be interested but not on agency list;
- Department heads, if applicable.
- Publish answers to written questions on the Alaska Online Public Notice System.
- Record comments received at oral hearing, if applicable.
- Collect and carefully consider all comments.
- Document the use or rejection of comments.

Step 6: Department of Law Final Review

- Submit final packet to Legislation, Regulations, and Legislative Research Section by email at law.regulations@alaska.gov. Include the following:
 - Final review request ([Appendix E](#));
 - MS Word version of final regulations;
 - Copy of public notice;
 - Copy of additional regulation notice information;
 - Fiscal note, if applicable;
 - Certification of notice of proposed regulations ([Appendix F](#));
 - Certification of oral hearing, if applicable ([Appendix H](#));
 - Copy of affidavit of publication;
 - Certification of agency record of public comment (not for exempt boards and commissions)([Appendix G](#));
 - Other relevant documents (e.g., material adopted by reference).

Step 7: Adoption

- Receive final approval and edited regulations, if applicable, from Department of Law for adoption.
- Formally adopt regulations through adoption order. Or, if board or commission, vote to adopt regulations during properly noticed public meeting and prepare certification order, if appropriate.
- Email adopted regulations and adoption or certification order to gov-regs@list.state.ak.us. (Not applicable to exempted boards and commissions and non-APA regulations.) Include, if applicable, copy of delegation of authority.
- Email to Department of Law, for forwarding to the lieutenant governor's office, the following:
 - Completed adoption or certification order;
 - Delegation of authority, if applicable; and
 - Excerpt of board minutes and certification of board/commission action, if applicable ([Appendix M](#)).

Step 8: Filing by Office of the Lieutenant Governor

- Receive filing notification from the lieutenant governor's office; the agency regulations contact will receive an email notification accompanied by the filed regulations from the lieutenant governor's office.

Step 9: Post Summary on the Alaska Online Public Notice System (FINAL STEP)

- Post summary of filed regulations on the Alaska Online Public Notice System ([Appendix O](#)). Attach copy of filed regulations.

Step 1: Planning and Preparation

- Determine whether project meets emergency regulation standard:
 - Clearly identified risk to public health, safety, peace, or welfare;
 - Risk is sudden, unusual, or unpredictable.
- Confirm agency authority.
- Consider timing, deadlines, and costs.

Steps 2 - 5: Department of Law File Opening; Drafting Regulations, Finding of Emergency, and Public Notice Material; Department of Law Approval

- Confirm that agency is working with most recent copy of regulations.
- Draft proposed amendments in accordance with [Chapter 4](#), with the addition of the words "EMERGENCY REGULATION" in the header.
- Prepare written finding of emergency and order ([Appendix P](#) or [Appendix Q](#) for boards and commissions).
- Decide whether emergency regulations will be made permanent.
- Prepare public notice for emergency regulation ([Appendix R-1](#) for newspaper and [R-2](#) for non-newspaper; [Appendix R-3](#) for exempt boards and commissions). Include the following:
 - Brief description (for Appendix R-2 only);
 - Informative summary of regulation;
 - Statement whether emergency regulation will be made permanent;
 - If regulation is going to be made permanent, provide a minimum 30-day comment period, deadline and address for submitting comments;
 - ADA information;
 - Oral hearing information, if applicable;
 - Summary of fiscal information;
 - Statutory authority;
 - Statutes being implemented, interpreted, or made specific.
- Prepare additional regulation notice information ([Appendix C-1](#) or [C-2](#)).
- Prepare fiscal note, if applicable ([Appendix D](#)).
- Consult with agency attorney and have draft documents reviewed for accuracy.
- In the file opening request, submit the proposed regulation, finding of emergency, and notice material to Department of Law for approval.

Step 6: Adoption

- Formally adopt regulations through adoption order or certification order that appears below the finding of emergency ([Appendix P](#) or [Appendix Q](#)).

Step 7: Submission to Office of the Lieutenant Governor

- Submit emergency regulations packet to the lieutenant governor's office. Include the following:
 - Signed finding of emergency/adoption or certification order;
 - Copy of the emergency regulations;
 - Copy of delegation, if applicable;
 - Fiscal note, if applicable;
 - Relevant minutes and board certification, if applicable.

Step 8: Public Notice and Delivery

- Complete notice document with the effective date and expiration date for the emergency regulation, as indicated on filing notification from lieutenant governor's office.
- Within 5 days of filing, publish notice in newspaper of general circulation and post on the Alaska Online Public Notice System. For the online notice, include the following:
 - Public notice;
 - Additional regulation notice information;
 - Fiscal note, if applicable;
 - Copy of filed emergency regulations.
- Distribute notice and additional regulation notice to following parties:
 - Incumbent state legislators;
 - Persons on agency's interested-persons list;
 - Other persons who may be interested but not on agency list;
 - Department heads, if applicable.
- After publishing notice, submit certification of notice, copy of public notice materials, and proof-of-publication affidavit to lieutenant governor's office.

**** Continue on to next steps only if emergency regulation will be made permanent. ****

Step 9: Consider Comments and Changes

- Collect and carefully consider all comments; document use or rejection of comments.
- Prepare certification of compliance ([Appendix T](#)).
- If making changes to the originally filed emergency regulations, prepare adoption order or certification order ([Appendix I](#) or [Appendix J](#)).

Step 10: Department of Law Review

- Submit final packet to Legislation, Regulations, and Legislative Research Section for review. Include the following:
 - Final review request ([Appendix E](#));
 - Final permanent regulations;
 - Signed certification of compliance;
 - Signed adoption or certification order, if applicable;
 - Copy of delegation of authority, if applicable;
 - Copy of public notice;
 - Copy of additional regulation notice information;
 - Fiscal note, if applicable;
 - Certification of notice of adoption of emergency regulations ([Appendix S](#));
 - Certification of oral hearing, if applicable ([Appendix H](#));
 - Copy of affidavit of publication;
 - Certification of agency record of public comment (not for exempt boards and commissions) ([Appendix G](#));
 - Board or commission minutes and certification of board action, if applicable; this should include a copy of the minutes and certification that went to the lieutenant governor when first adopted, as well as minutes and certification for making the regulations permanent. ([Appendix M](#));
 - Other relevant documents (e.g., material adopted by reference).
- Email certification of compliance and final regulations to regulations specialists in the governor's and lieutenant governor's office. Include adoption or certification order, if applicable.

Step 11: Filing by Office of the Lieutenant Governor

- Receive filing notification from the lieutenant governor's office; the agency regulations contact will receive an email notification accompanied by the filed regulations from the lieutenant governor's office.

Step 12: Post Summary on the Alaska Online Public Notice System

- Post summary of filed permanent regulations on the Alaska Online Public Notice System ([Appendix O](#)). Attach copy of filed regulations.

Glossary

Administrative Procedure Act (APA). Chapter of the Alaska Statutes (AS 44.62) that provides for the development and adoption of regulations for most state agencies.

Adoption order. An order adopting regulatory changes signed by an official with regulation-adoption authority.

Agency. A state agency of the executive branch, including a board or commission.

Agency attorney. An assistant attorney general from the Department of Law who works regularly with the client agency on the subject matter covered by the regulations.

Alaska Administrative Code (AAC). Official publication of Alaska regulations adopted by state agencies and filed by the Office of the Lieutenant Governor.

Alaska Online Public Notice System. Internet website maintained by the Office of the Lieutenant Governor where state agencies are required to post public notice of regulatory actions.

Amendment. General term for adding a new provision, amending an existing provision, repealing a provision, repealing and readopting a provision, or any combination thereof.

Article. Organizational unit of the Alaska Administrative Code used to group related sections. Not an official part of the AAC and not represented in regulation citation.

Authority citation. Citation of statutory authority for adopting a regulation that follows each regulation section.

Certification (of adoption) order. A document signed by an official certifying that a board or commission took an action to adopt regulatory changes.

Certification of compliance. A document signed by an official with regulation-adoption authority certifying legal compliance for making emergency regulations permanent.

Chapter. A formal grouping of sections under one topic, represented by the second digit in an official citation, after "AAC" and before the period.

Conforming amendment. An amendment made to conform other regulations with amended text (for example, deleting references to a regulation section that is being repealed).

Content list. A list of contents included in a title, part, chapter, or article as displayed in the published AAC.

Editor's note. Text that follows the authority citation for a regulation section and provides helpful information to the public, including where to obtain forms and the history of technical changes and corrections to the section.

Emergency regulation. A regulation adopted on an emergency basis, temporarily bypassing the public notice and comment process.

Exempt boards and commissions. The Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, and the Alaska Oil and Gas Conservation Commission.

Fiscal note. A statement of the fiscal impact of a regulation on the state, prepared only if a regulation would require an increased appropriation.

History note. Notation at the end of each regulation section that indicates the date the regulation took effect and dates it was amended.

Introductory language. Language of a provision that precedes subdivisions. For example, all the language in subsection (a) leading up to paragraphs below the subsection.

Lead-in line. The text that precedes an amendment indicating the type of amendment and the provision being amended.

Legal editor. A member of the Legislation, Regulations, and Legislative Research Section responsible for editing, monitoring, and assisting with regulation projects.

Legislation, Regulations, and Legislative Research Section. Section of the Department of Law that includes the regulations attorney and is responsible for final review and approval of all state regulations under the Alaska Administrative Procedure Act.

Material adopted by reference. An item, usually of a highly technical nature, that acquires the force of a regulation, through language in the regulation stating that the item, generally with a stated date, is "adopted by reference."

Non-APA agency. An agency that adopts regulations outside of the Administrative Procedure Act.

Oxford comma. Comma that follows the second-to-last item in a list. Also known as the "serial comma."

Paragraph. Any subdivision that is lower than a subsection (includes paragraph, subparagraph, and sub-subparagraph).

Part. Organizational unit of the Alaska Administrative Code used to group chapters. Not an official part of the AAC and not represented in regulation citation.

Provision. General term used to mean any division of a regulation (i.e., section, subsection, paragraph, subparagraph, or sub-subparagraph).

Register. Quarterly publication of the AAC that includes amendments over the previous three months.

Regulations attorney. A statutorily designated position (AS 44.62.125) in the Department of Law responsible for advising all state agencies on regulations matters—substance, process, public hearings, form, and organization of the AAC.

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

Repeal. General term for amendment that formally removes of a provision from the AAC.

Repeal and readopt. General term for amendment that, rather than setting out details that might confuse the reader, replaces existing text with new text; works like a repeal and reenact in legislative drafting, and is the only way to rearrange subsections within an existing section.

Section. A chapter's numbered subdivision and basic unit, comprising all provisions that share the section's subject matter (section, subsection, paragraph, subparagraph, sub-subparagraph); represented by the last digit in an official citation to the AAC.

Subdivision. Generally, used to mean any provision lower than a section (i.e., subsection, paragraph, subparagraph, sub-subparagraph).

Subsection. Subdivision lower than a section and designated by lowercase letters (for example, "(a)," "(b)," "(c)," etc.).

Supplemental notice. An additional public notice of the proposed regulation, often issued because of a year-lapse between the original notice and anticipated filing date of the regulation, or because of substantive changes made to the proposed regulations or corrections made to the original notice.

Technical changes. Changes made by the Department of Law to bring regulations into conformance with drafting standards.

Title. A formal grouping of chapters and sections, represented by the first digit in official citation, before "AAC".

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