

# MEMORANDUM

State of Alaska  
Department of Law

**To:** All Readers of the *Drafting Manual for Administrative Regulations* (2015)

**Date:** August 2015

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

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

**Re:** Highlights of Significant  
Changes in the *Drafting  
Manual for Administrative  
Regulations* (2015)

The *Drafting Manual for Administrative Regulations* (2015) is available in paper copy and on the Department of Law Internet site under "Law Resources." The manual generally follows the organization and style of previous versions, but with revisions to address 2014 legislative changes made by ch. 87, SLA 2014 (effective October 14, 2014), to add new material related to word choice and formatting instructions, and to reflect court decisions decided after 2013 (the year of the last manual). The forms used by agencies to demonstrate compliance with the Alaska Administrative Procedure Act (AS 44.62) (APA), as well as suggested forms for agencies not subject to the requirements of the APA, are included as appendices to the hard copy version of the manual. The forms are also available as electronic versions on the Department of Law internet site under "Law Resources."

The most significant changes contained in the 2015 manual and forms are the following:

1. **Notice of proposed regulation.** Since October 14, 2014, when publishing a notice of proposed regulation, agencies must prepare and post on the Alaska Online Public Notice System a complete copy of each proposed adoption, amendment, or repeal of a regulation and, if feasible and not prohibited by copyright, any document or material adopted by reference, by providing an electronic attachment or link to the proposed text. AS 44.62.200(c). These requirements do not apply to the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission.

To account for this change, we have revised the forms used to publish notice of a proposed regulatory action. Most agencies will use Appendices D-1 (for

newspaper notice) and Appendix D-2 (for non-newspaper notice). The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission will use Appendix D-3. We have also revised the forms for publishing notice of an emergency regulation. Most agencies will use Appendix T-1 (for newspaper notice) and Appendix T-2 (for non-newspaper notice). The Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission will use Appendix T-3.

2. **Additional regulation notice information.** In addition to the notice of proposed action, a state agency must prepare and distribute to certain persons additional regulation notice information. The 2014 legislative changes added to the information that must be included in the additional regulation notice. First, in addition to the reason for the proposed regulation, agencies are now required to identify, if applicable, "the law, order, decision, or other action of the federal government or a federal or state court that is the basis for the proposed action." AS 44.62.190(d)(1). Additionally, when estimating the annual cost of a proposed regulation, agencies must make a good faith effort to estimate the costs in the aggregate, to private persons, the state agency, other state agencies, and municipalities to comply with the proposed action. AS 44.62.190(d)(3). These additional requirements do not apply to the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission; but these commissions and boards must include the information required in AS 44.62.190(g) in the additional regulation notice information.

To account for these changes, we have revised the forms used to distribute the additional regulation notice information. Most agencies will use Appendix E-1; the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission should use Appendix E-2.

3. **Agency contact with the public.** Two other significant legislative changes apply to a notice of proposed regulation issued on or after October 14, 2014. First, in the course of "developing a regulatory action and before the agency provides a notice of proposed action," an agency "may contact a person about the development of the regulatory action, and the agency may answer a question from a person that is relevant to the development of the regulatory action." AS 44.62.213(a). Since this

provision applies *before* an agency issues its notice of a proposed regulatory action, there are no applicable forms.

Second, the 2014 legislative changes require that an agency "make a good faith effort to answer, before the end of the public comment period, a question that is relevant to the proposed action, if the question is received in writing or asked at a public meeting at least 10 days before the end of the public comment period. If a question is received after the 10-day cutoff date, the agency may answer the question." AS 44.62.213(b). The agency must make the questions and answers available to the public. The agency can satisfy these requirements by posting the questions and answers on the Alaska Online Public Notice System and by giving a "single consolidated response" to questions that are substantially similar. *Id.*

To inform the public of this provision we have revised Appendix D-1 (newspaper notice) and D-2 (non-newspaper notice) to include a brief explanation of this provision.

4. **Record of comments.** Under AS 44.62.215, as amended by ch. 87, SLA 2014, an agency and most boards and commissions shall keep a record of its use or rejection of comments received in writing or orally as public comment.

To account for this change, we have revised the form used to establish that the agency kept a record of public comment. Agencies, boards, and commissions that must keep a record of response to public comment should use revised Appendix K (affidavit of agency record of public comment).

5. **Amended material adopted by reference.** In instances where AS 44.62.245 authorizes an agency to adopt future versions of material adopted by reference, under AS 44.62.245(c), as amended by ch. 87, SLA 2014, members of the legislature's Administrative Regulation Review Committee must also receive notice of amended materials adopted by reference.

To account for this change, we have amended Appendix X (affidavit of notice of amended version of material previously adopted by reference) used to give notice of amended material previously adopted by reference.

6. **Subject line of electronic mail and document titles.** Also as part of ch. 87, SLA 2014, AS 44.62.190 was amended to require that "[t]o the extent feasible, the subject line of electronic mail and the title of a written publication [on proposed regulations] must give the reader a fair idea of the substance of the proposed new regulation, the proposed amended regulation, or the regulation proposed for repeal." AS 44.62.190(f). To comply, agencies may describe the subject of the regulations at the beginning of the electronic email or document title. For example, it may be more helpful to the reader if the electronic mail subject line reads "Food safety: proposed regulations of [name of agency]" rather than "Proposed regulations of [name of agency] relating to food safety".

To account for this change, we have revised the forms on public notice (Appendices D-1, D-2, D-3, E-1, E-2, T-1, T-2, and T-3).

7. **Updated fiscal note form.** We have updated the fiscal note form (Appendix F) to match more closely to the legislative fiscal note form for new legislation. Please use the updated form in Appendix F.
8. **Post-adoption review.** Under AS 44.62.040(c), each agency must submit adopted regulations to the governor for review to assure consistency with the faithful execution of the laws, or to enable the adopting agency to respond to specific issues raised by the Administrative Regulation Review Committee. In ch. 87, SLA 2014, the legislature made three changes to this section. First, the regulations of boards and commissions (except for the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission) are now subject to review by the governor. Second, the governor's review is to be within 30 days after submission. Third, at the same time an adopted regulation is submitted to the governor, the regulation also must be submitted to the members of the Administrative Regulation Review Committee. Under AS 44.62.320(d) the chair of that committee may within "10 days after receiving a regulation . . . submit to the governor, by legislative memorandum or letter, comments on the regulation."

For practical purposes, these changes do not alter the process that agencies currently follow. Under current practice, after adoption of the regulations, an agency sends the final regulations package to the Department of Law for legal

review and approval. The Department of Law will send, by e-mail, the adopted regulations to the governor and legislative committee.

9. **Style, word choice, and formatting.** Chapter 6, on style, grammar, and words, is updated to include a chart of preferred word usage to assist drafters in choosing plain, easily understandable words when drafting a regulation. In chapter 5, we have revised "Figure 5.1 – Section subdivisions," to better explain subsections, paragraphs, subparagraphs, and sub-subparagraphs. Last, in chapter 7, we address the common drafting error of incorrect indentation with a revised "Figure 7.9 – Indentation."
10. **New court decisions.** Chapters 16 and 17 of the manual were revised to reflect new court decisions on regulations.
11. **Non-APA agencies.** We have added a new chapter 18 to provide guidance to agencies, authorities, and commissions that are exempt from the APA regulation adoption process.

Please replace your electronic versions of regulation appendix forms with the individual electronic appendix forms found in the online publication of the 2015 manual, accessible through the Department of Law website under "Law Resources."

For assistance, you may contact Linda Miller, Legislation and Regulations Section, Department of Law.

The endnote explanatory material that appears in the appendix forms in the printed 2015 manual and in the electronic .PDF version of the 2015 manual are omitted from the manual's appendix forms that appear as individual electronic links on the Department of Law website. You will need to refer to the printed manual or to the complete electronic .PDF version to see that endnote explanatory material.

We hope that you will find the 2015 edition of the manual helpful, and we welcome your comments to improve the manual.