

Drafting Manual for Administrative Regulations



**State of Alaska
Department of Law
2025 (24th Edition)**

DRAFTING MANUAL FOR ADMINISTRATIVE REGULATIONS

2025 (24th Edition)

Published by
State of Alaska, Department of Law
Legislation, Regulations, and Legislative Research Section

Rebecca C. Polizzotto, Regulations Attorney

Steve Weaver, Senior Assistant Attorney General

Amy Robinson, Senior Assistant Attorney General

Parker Patterson, Senior Assistant Attorney General

Ryan Farnsworth, Senior Assistant Attorney General

Dave Rhodes, Senior Assistant Attorney General

Sarah Finley, Assistant Attorney General

Harry Hale, Legal Editor

Colleen Bailey, Legal Editor

Beth Parsons, Paralegal II

ToniMarie Gonzales, Paralegal I

An electronic version of this manual and appendices are available on the Department of Law's Internet 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

The *Drafting Manual for Administrative Regulations* is published by the Alaska Department of Law in compliance with AS 44.62.050. Its primary purpose is to guide agencies through the legal requirements for administrative rulemaking under the Alaska Administrative Procedure Act (APA) and to prescribe the style and form for submitting administrative regulations. All agencies that by statute possess regulation-making authority must comply with this manual (AS 44.62.060), and it is the responsibility of the Department of Law to ensure compliance (AS 44.62.125). Together, the department and other state agencies rely on this manual—its procedures, guidance, and appendices—to ensure regulations are adopted in accordance with the APA and any other applicable law.

To be the most useful in the drafting and processing of regulations, the manual is organized into chapters, which are in turn organized by order of events. Chapter 1 introduces the reader to the regulatory process in Alaska and the body of law that governs it—namely, the APA. Chapter 2 sets out the procedure for developing and adopting a regulation, including review by the Department of Law, notice to the public, and permanent filing by the Office of the Lieutenant Governor. Chapters 3 - 5 provide an overview of the Alaska Administrative Code and standards for drafting a regulation. Chapters 6 - 8 explain rules applicable to penalties, fees, fiscal notes, and materials adopted by reference. Chapter 9 sets out the procedure for adopting an emergency regulation, including making an emergency regulation permanent. Chapter 10 explains the role of the Department of Law and the statutorily created position of the regulations attorney. Finally, Chapter 11 provides an overview of agencies expressly exempted from the APA that adopt regulations under their own specific statutes—referred to in this manual as "non-APA agencies."

The manual includes appendices that must be completed and submitted to the Department of Law for each regulation project. The appendices are deliberately crafted by the Department of Law not only to be accessible to agency personnel, but to ensure that all legal requirements for the proposal and adoption of regulations are satisfied. Included as appendices are checklists that may be used by agencies to ensure no steps or documents are overlooked in the process. Copies of all appendices are available for download on the Department of Law's Internet website.

Finally, although this manual describes requirements and procedures explicitly provided in the Administrative Procedure Act, some processes and requirements of the manual are designed to satisfy other applicable law, such as case law and constitutional law, and may not be expressly addressed in the APA.

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

TABLE OF CONTENTS

CHAPTER 1 - INTRODUCTION TO REGULATIONS	1
CHAPTER 2 - REGULATION PROCESS	3
Step 1 - Planning and Preparation	4
Step 2 - Drafting	8
Step 3 - File Opening	8
Step 4 - Department of Law Preliminary Review	8
Step 5 - Public Notice and Comment	9
Step 6 - Department of Law Final Review	19
Step 7 - Adoption	20
Step 8 - Filing by the Office of the Lieutenant Governor	22
Step 9 - Posting Online Summary	23
CHAPTER 3 - ORGANIZATION OF ALASKA ADMINISTRATIVE CODE	24
CHAPTER 4 - DRAFTING A REGULATION	27
Resources	27
Setting up the Page - Basic Formatting	27
Components to an Amendment	30
Lead-in Line	30
Amendment to Text: Available Actions	32
History Note	41
Authority Citation	45
Editor's Note	46
Drafting Specific Types of Regulation Sections	47
CHAPTER 5 - STYLE, GRAMMAR, AND WORD CHOICE	52
Style and Word Choice	54
Grammar	58
CHAPTER 6 - PENALTIES AND FEES	61
CHAPTER 7 - REGULATORY FISCAL NOTES	63

<u>CHAPTER 8 - MATERIAL ADOPTED BY REFERENCE</u>	66
<u>Requirements</u>	66
<u>Public Access to Material</u>	69
<u>Adoption by Reference of Future Amended Versions</u>	71
<u>CHAPTER 9 - EMERGENCY REGULATIONS</u>	73
<u>Step 1 - Planning and Preparation</u>	75
<u>Step 2 - Department of Law File Opening</u>	76
<u>Step 3 - Drafting Emergency Regulations and Finding of Emergency</u>	76
<u>Step 4 - Drafting Public Notice Material</u>	77
<u>Step 5 - Regulations Attorney Approval of Finding of Emergency</u>	78
<u>Step 6 - Adoption</u>	78
<u>Step 7 - Submission to Office of the Lieutenant Governor for Filing</u>	78
<u>Step 8 - Public Notice and Delivery</u>	79
<u>Step 9 - Consider Public Comments and Changes</u>	79
<u>Step 10 - Department of Law Review</u>	82
<u>Step 11 - Certification of Compliance (and adoption, if applicable)</u>	82
<u>Step 12 - Filing by the Office of the Lieutenant Governor</u>	82
<u>Step 13 - Posting Summary</u>	83
<u>How an Emergency Regulation Appears in the AAC</u>	83
<u>CHAPTER 10 - ROLE OF THE DEPARTMENT OF LAW</u>	84
<u>Role of the Regulations Attorney</u>	84
<u>Preliminary Review Before Public Notice</u>	85
<u>Final Review Before Adoption and Filing</u>	87
<u>Process for Disapproval of All or Part of a Regulation</u>	87
<u>Revisor Function of the Regulations Attorney: Tech. Revisions and Title Reviews</u>	88
<u>Regulation Files and Public Records Requests</u>	90
<u>Legislative History of the APA</u>	92
<u>CHAPTER 11 - AGENCIES NOT SUBJECT TO APA PROCESS</u>	96

<u>Steps in the Non-APA Regulations Process</u>	98
<u>Emergency Non-APA Regulations</u>	99
<u>APPENDICES</u>	100
<u>Introduction to Appendices</u>	101
<u>Table of Appendices</u>	102
<u>GLOSSARY</u>	157
<u>INDEX</u>	160

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 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 provides by statute the structure for agency decision-making so that agencies do not operate in a vacuum. The Administrative Procedure Act (AS 44.62 (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 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 that the agency "shall" adopt regulations to set program standards. Other times, statutes authorize but do not require regulations by stating that 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 the regulation using the proper procedure. The regulatory procedures for most agencies are set out in the APA. These procedures are designed to ensure that 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 entities, typically public corporations and authorities, are set out in statutes relevant to those entities. Further, certain agencies may adopt some regulations using the APA and other regulations using a non-APA process. Generally, non-APA procedures share the same purpose as the APA: to notify the public and provide an opportunity for meaningful comment before a regulation is adopted. Non-APA agencies are discussed further in Chapter 11.

In limited circumstances, an agency may adopt an emergency regulation, temporarily bypassing the public notice and comment process. An emergency regulation may be of short duration—not more than 120 days—or made permanent following notice and comment. Except for initial adoption, notice and permanent adoption of an emergency regulation follows substantially the

same process as a non-emergency regulation. 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. Second, 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 statutory authority, it is regulatory. The Department of Law is available to advise agencies on both 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

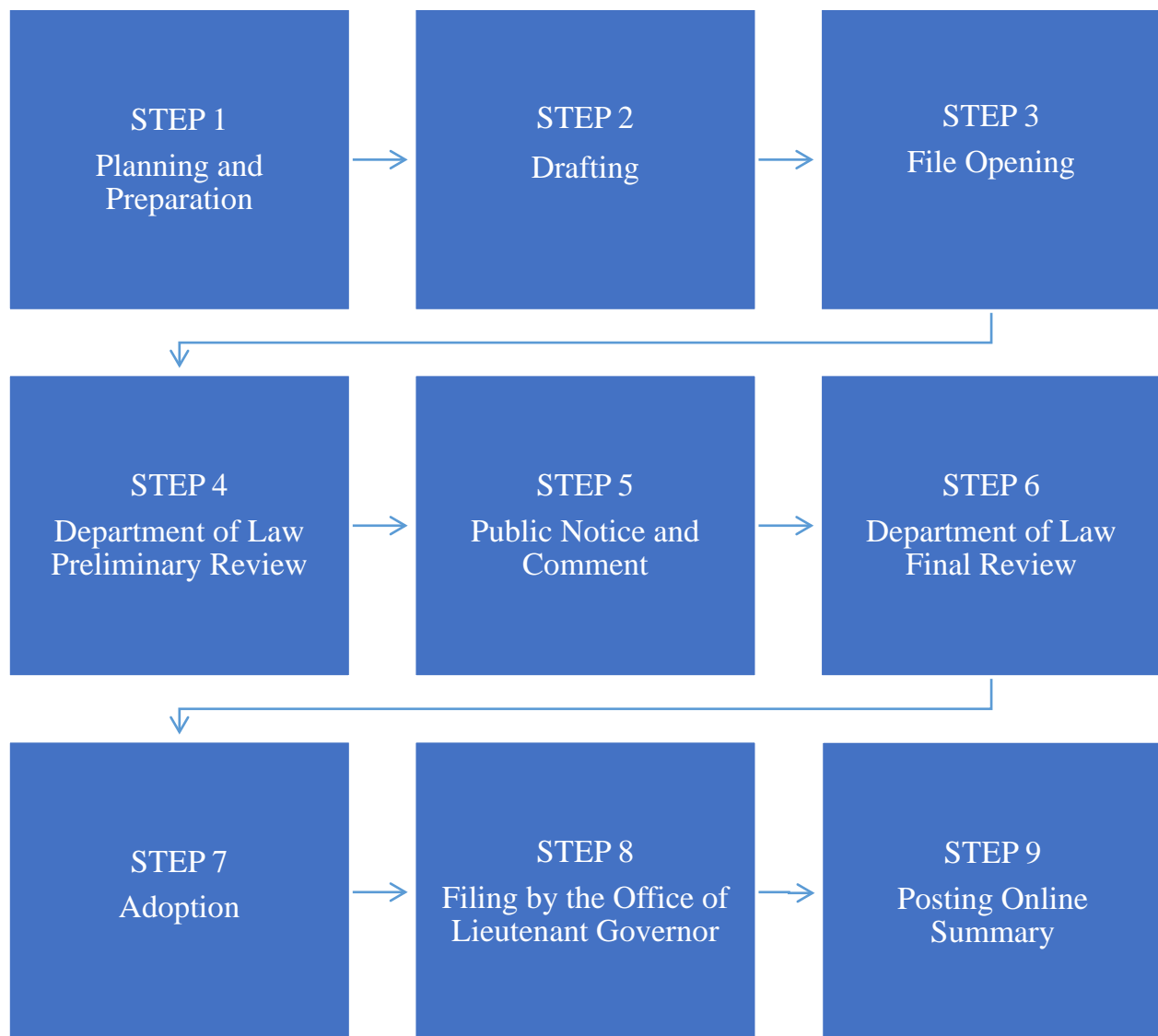
that affects the public or is used by the agency in dealing with the public.

CHAPTER 2

REGULATION PROCESS

This chapter sets out the process for promulgating a new regulation. All agencies that adopt regulations under the APA must follow this process. Certain agencies—notably, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the Regulatory Commission of Alaska, the office of the ombudsman, and the office of victims' rights—are subject to minor alternate procedures. Explicit direction is provided where the process for these agencies departs from the standard.

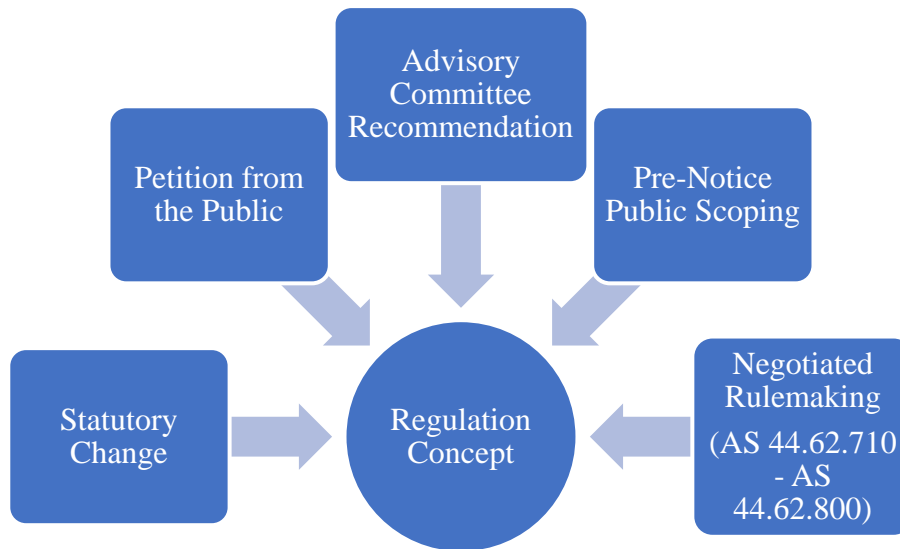
Figure 2.1 – Steps in the Regulatory Process



Step 1: Planning and Preparation

Ideas. A regulation project begins with an idea for regulatory change. In developing an idea for a regulation, agencies may consult with the Department of Law to determine whether the proposed change is necessary to accomplish the goal and within the agency's statutory authority. An idea for regulatory change can come through any number of sources, including from a member of the public.

Figure 2.2 – Ideas for regulatory change

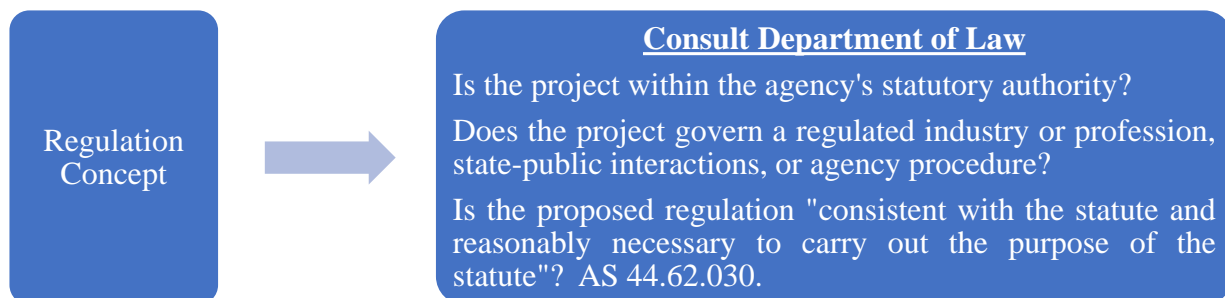


- *Statutory change.* A change in statute often prompts a regulation change, such as after enactment of a new law or a judicial determination.
- *Petition from the public.* Unless limited or amended by another statutory provision, a member of the public may petition an agency to adopt a regulation. AS 44.62.220. Upon receipt of a petition, an agency is required to deny the petition in writing within 30 days or schedule the matter for a public hearing under AS 44.62.190 - 44.62.215. If the petition is for an emergency regulation and the agency finds that an emergency exists, the agency may adopt an emergency regulation, subject to approval of the finding of emergency by the regulations attorney. Emergency regulations are discussed further in Chapter 9.
- *Pre-notice "scoping" or stakeholder engagement.* Often referred to as "scoping" or "stakeholder engagement," an agency may present an *idea* for regulatory change to the public before issuing a public notice under the APA. This informal practice may assist the agency in gathering information and ensuring a well-intended concept is not impractical or needlessly burdensome in application. Scoping may also assist in the consideration of alternative approaches and be useful in anticipation of industry or impacted party concerns. However, when engaging in scoping or stakeholder engagement, an agency may not circulate a draft of the proposed regulation and, if applicable, must comply with AS 44.62.213(a) and 44.62.215.

- *Pre-adoption public contact and recordkeeping.* Under AS 44.62.213(a), "while an agency is developing a regulatory action and before the agency provides a notice of proposed action under AS 44.62.190, the 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." For example, an agency may contact a representative of a federal oversight committee to ensure that a proposed regulation would be federally compliant. The degree of public interaction will vary in relationship to the complexity of the proposed regulation, the need to balance opposing interests, and any potential for controversy. If engaging in pre-notice public outreach in the development of a regulation, the agency must maintain all records. AS 44.62.215. The Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, and the Alaska Oil and Gas Conservation Commission are exempt from AS 44.62.213(a) and 44.62.215; and the office of victims' rights and the office of the ombudsman are exempt from AS 44.62.215.

Once the agency has developed a concept, the Department of Law can assist in determining whether the concept is appropriate for a regulation.

Figure 2.3 – Determining whether concept is appropriate for regulation



During this initial planning stage, if the agency determines that an emergency regulation is necessary, it should proceed to Chapter 9.

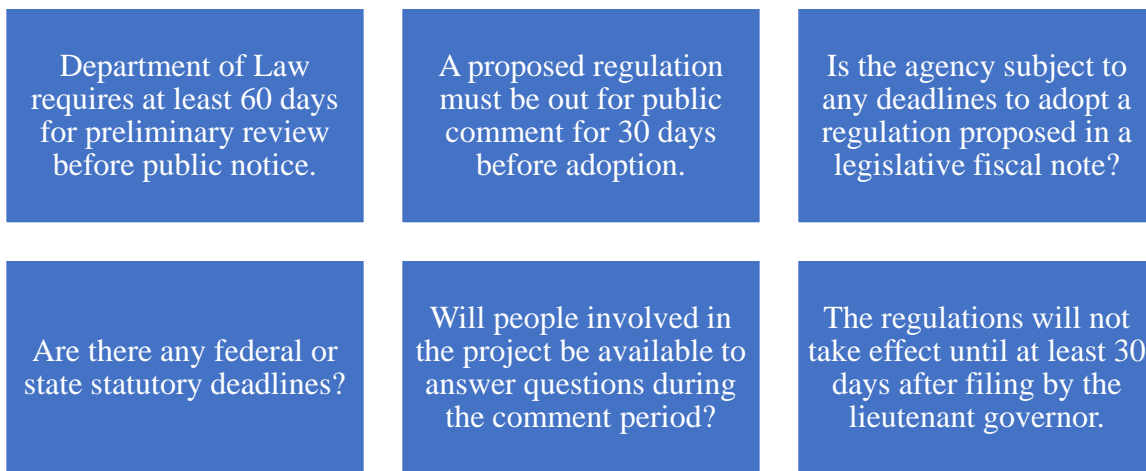
Timing. After determining that a concept is appropriate for a regulation, the agency must consider timing needs and deadlines for completing the project.

- *Board planning considerations.* For a regulation proposed by a board or commission, the board must plan on consideration of the proposed regulation at a minimum of two meetings that are properly noticed under the Open Meetings Act. AS 44.62.310 - 44.62.319. The board must communicate its deadlines to the Department of Law and submit its preliminary and final review materials to the department with sufficient time to review.
 - *First board meeting.* The purpose of the first board meeting is to approve the proposed regulation for preliminary review by the Department of Law and to authorize publication of the notice.
 - *Second board meeting.* The purpose of the second board meeting is to consider adoption, amendment, or rejection of the proposed regulation after conclusion of

the public notice period. The regulation may be adopted at this second meeting. Final review by the Department of Law, however, may necessitate readoption.

- *Additional board meetings.* Additional board meetings may be necessary if supplemental notice is required, if the board needs additional time to consider public comments, or if the board needs to adopt the regulation after the Department of Law concludes its final review.
- *Negotiated rulemaking.* If contemplated, negotiated rulemaking will add time to the promulgation process.

Figure 2.4 – Other timing considerations



Costs. An agency must consider the potential costs of a proposed regulation, including the cost of hiring a professional regulation drafter. Estimating costs in advance will assist the agency in completing the paperwork that accompanies the public notice.

Figure 2.5 – Cost considerations



Planning for boards and commissions; compliance with Open Meetings Act. When a board or commission proposes a regulation, it must comply with both the APA and the Open Meetings Act (AS 44.62.310 - 44.62.319). Boards and commissions should consider the following when planning for a proposed regulation change:

- Meeting notices that are required under AS 44.62.310(e) of the Open Meetings Act do not need to include notice of a proposed regulatory action. A board may elect to furnish a copy of the notice of proposed regulatory action, including the additional regulation notice information, to people who routinely receive board meeting notices. AS 44.62.190(a)(4), (d), (g).
- Neither the Open Meetings Act nor the APA requires a board to allow public comment on a proposed regulation at a regular board meeting:
 - The APA only requires that a board give interested persons the opportunity to present statements, arguments, or contentions in writing, *with or without opportunity to present them orally*, "[o]n the date and at the time and place designated in the notice." AS 44.62.210(a).
 - In some cases, statutes applicable to a board may require the board to accommodate oral public comment.
- If a board elects to hold an oral hearing under AS 44.62.210, the time, place, and manner of the oral hearing must be specified in the notice of the proposed regulatory action. A board may schedule the oral hearing on the last day of the comment period as a component of a regular board meeting and act at the same meeting if the board allots enough time to consider any comments received.
- Though a board has discretion with respect to its governance procedures, scheduling an oral hearing to occur during the public comment period of a regular board meeting is not recommended because it does not allow for differentiation between general public comment on board matters from the hearing time set aside for the public to comment on a proposed regulatory action.
- If a board elects to hold an oral hearing under AS 44.62.210, scheduling the hearing separately from a regular board meeting is recommended:
 - Separation affords the board time to consider public comments before taking action and to establish that the board took a "hard look" at salient problems and genuinely engaged in reasoned decision-making.
 - Separate proceedings may assist a board in retaining a record of the public comments as required under AS 44.62.215.
 - A separate hearing may accommodate public comment without impeding administration of the board's routine business in the event that a hearing must be continued or postponed due to the volume of responses received.

- If a board designates a regular board meeting as the time and place for the public to provide oral comment in its notice of proposed regulatory action, it must be prepared to receive the public comments and to adjust its agenda and meeting calendar to accommodate the published comment period.
- To avoid public confusion and to accommodate compliance with both the APA and the Open Meetings Act, when a public comment period for a proposed regulatory action has expired in advance of the meeting where the board intends to act, the board chair should consider making a statement, before opening any public comment period held to satisfy the Open Meetings Act, that the time to comment on the proposed regulatory action has expired and that the board will not hear additional public comments related to the action.

Step 2: Drafting

Every regulation must adhere to the drafting standards prescribed in this manual. AS 44.62.050. Although each agency is responsible for the initial drafting of a proposed regulation, the agency may seek the advice of the Department of Law in the drafting process, particularly for a complex regulation. The agency attorney will work with the Legislation, Regulations, and Legislative Research Section to ensure that the proposed regulation meets the drafting standards. If an agency needs to copy material from the AAC to begin a drafting project, the Legislation, Regulations, and Legislative Research Section is available to confirm that the agency is working from the current version of the AAC. Drafting standards are set out in Chapter 4.

Step 3: File Opening

Once an agency decides to distribute a proposed 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 and preliminary review request form provided as Appendix A. In the file opening and preliminary review request, the agency must alert the Department of Law to any urgency relating to the regulation, including the reason for the urgency and any requested effective date. If a special effective date is requested, the agency must indicate when it wants to publish the notice. A copy of the proposed regulation and notice documents—including the additional regulation notice—must be submitted with the file opening and preliminary review request. If the proposed regulation adopts or incorporates material by reference, a complete copy of that material and Appendix AA must be included. See Step 5 for more information on the public notice documents.

Step 4: Department of Law Preliminary Review

The Legislation, Regulations, and Legislative Research Section will conduct a preliminary legal review of the proposed regulation and notices to identify and correct any drafting or legal issues before public notice. At this stage, a legal editor will review the regulation and make edits for clarity, consistency, and conformance to drafting standards.

The regulations attorney will review the proposed regulation to ensure it is legal, constitutional, and consistent with other regulations; that it is proposed under and cites to appropriate statutory

authority; that it is clearly written and without any possibility of misapplication; and that it complies with the *Drafting Manual for Administrative Regulations*. Review by the regulations attorney may include the consideration of other factors not listed above.

After receiving formal approval from the regulations attorney, the agency may proceed to the next step of public notice and comment.

Step 5: Public Notice and Comment

Upon approval by the regulations attorney, the agency may provide notice of the proposed regulation. The agency must provide notice at least 30 days before adoption. AS 44.62.190. The APA prescribes 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 in fillable format on the Department of Law Internet website—are designed to meet these requirements and must be used in the 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 such additional requirements apply.

Content of notice. Agencies that adopt regulations under the APA must use the public notice appendices. Most agencies will use Appendix B-1 and B-2. *However, the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission must use Appendix B-3.* The public notice will include the following:

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 roughly 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 Board of Fisheries, the Board of Game, and the Regulatory Commission of Alaska do not need to include the brief description in their notices; however, the Alaska Oil and Gas Conservation Commission must include the brief description.*

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

The informative summary must 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.

An agency should carefully consider this balance when choosing to identify specific regulatory sections or actions. If identifying specific sections, the agency must 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 two types of informative summaries: one that identifies the *specific* provisions being amended and one that *summarizes* the subject of the proposed amendment.

Figure 2.6 – 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>The Department of Military and Veterans' Affairs proposes to amend regulations in 10 AAC 50 to address unidentified, non-terrestrial technology, including unidentified flying objects, and to implement changes relating to the definition of "non-terrestrial" in response to AS 26.35.</p>

4. Public comment information

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

- *The method for submitting 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 submitting comments.* The deadline must be **at least 30 days after the public notice is published**. To ensure compliance with this requirement, it is recommended that the agency add a few days to the 30-day comment period. The deadline must include the date (e.g., January 10, 2025). 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 an 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. The notice must also state whether the public can submit oral or written comments at the hearing or whether

only oral comments will be accepted. The agency must explain the options and include any information that the public needs to participate. See below for more on oral hearings.

5. Information regarding questions

Except for the Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, and Alaska Oil and Gas Conservation Commission, agencies must describe how the public can submit questions and how those questions will be managed. AS 44.62.213(b). The description must include:

- *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 or provide necessary auxiliary aids or services to allow the individual to participate in the regulatory process. In setting the deadline for ADA accommodation requests, the agency must allow sufficient time to address reasonable requests for accommodations before any oral hearing or written comment deadline.

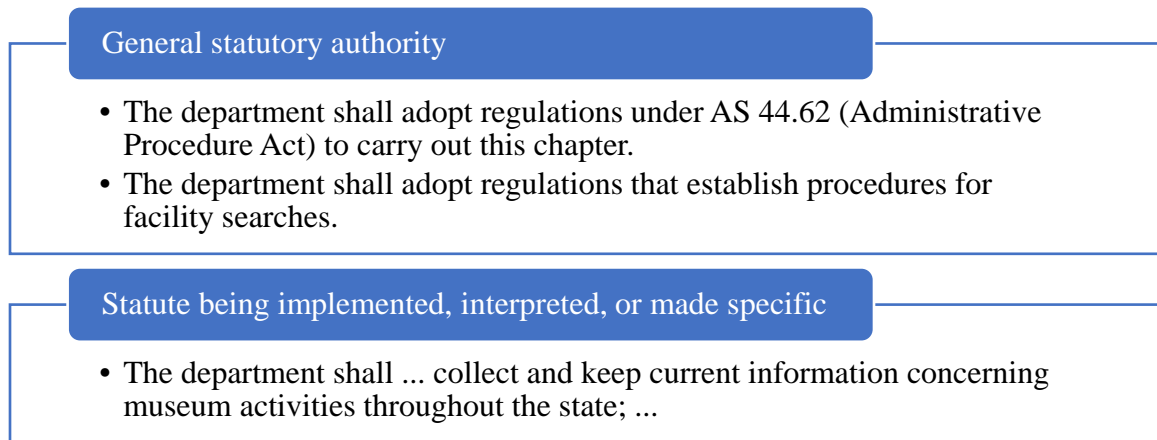
7. Obtaining a copy of the proposed regulations

The notice must state where the public can obtain a copy of the proposed regulation. *Except for the Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, and Alaska Oil and Gas Conservation Commission*, agencies must provide a complete copy of the proposed regulation, including each proposed adoption, amendment, or repeal, on the Alaska Online Public Notice System by an electronic attachment or link to the text.

8. 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 in determining whether a statute identifies general or specific authority.

Figure 2.7 – Examples of general statutory authority and statute implemented by regulation



9. 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 an additional appropriation is not needed, the notice must contain a statement to that effect and a fiscal note is not required. The fiscal information may not contain a statement of *reduced* costs. Regulatory fiscal notes are not common.

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. Fiscal notes are discussed further in Chapter 7.

10. 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.

11. 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 regulations in the agency.

Additional Regulation Notice Information. In addition to the public notice, the agency must prepare the Additional Regulation Notice Information ("additional regulation notice"). The additional regulation notice provides specific information required by law. AS 44.62.190(d). It 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 below. The agency must use the Additional Regulation Notice Information form provided as Appendix C-1.

If the adopting agency is the Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, or 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 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 2.8 – Additional Regulation Notice Information

Additional Regulation Notice Information	1 - 4. Basic information, including the adopting agency, subject matter, citation to AAC, and Law file number;
(as presented on Law's form)	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 figure below illustrates how costs for the additional regulation notice could be estimated for a hypothetical transportation development project.

Figure 2.9 – Example of estimating annual costs for add'l regs notice

Private persons:	<ul style="list-style-type: none"> The agency proposes a toll amount of \$3.50 for each single-passenger motor vehicle that accesses the Northbound Knik Arm Tunnel on a weekday, but total annual costs to private persons will vary depending how often in a year a person uses a toll-exempt commuter vehicle or accesses the tunnel on a weekend or holiday when tolls are suspended.
Other state agencies:	<ul style="list-style-type: none"> The Department of Environmental Conservation estimates that environmental monitoring, cleanup, and enforcement for the Knik Arm Tunnel will result in an aggregate annual cost of \$100,000; The Department of Fish and Game estimates that the related monitoring and mitigation of impacts to Cook Inlet beluga whales will result in an annual cost of \$25,000.
Municipalities:	<ul style="list-style-type: none"> The maintenance and repair of roads resulting from changes in traffic patterns caused by use of the Knik Arm Tunnel are projected to result in an aggregate annual cost to (1) the City of Anchorage of \$225,000; and (2) the Matanuska-Susitna Borough of \$130,000.

Publication and distribution. The APA has specific requirements for the publication and distribution of information about proposed regulations. AS 44.62.190. The 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." AS 44.62.190(a). Publication in a newspaper must occur at least once. An agency attorney will be helpful in determining whether there are additional, specific publication requirements in the agency's authorizing statutes. The newspaper 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, it must tell the publisher the date the notice is to appear in the publication and request a proof-of-

publication affidavit. 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 newspaper publication, the adopting agency must post the public notice and additional regulation notice on the Alaska Online Public Notice System. *Except for the Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, and Alaska Oil and Gas Conservation Commission*, an agency must include with the online notice 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 materials adopted by reference is feasible or whether the materials are 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 an emergency regulation, 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 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 at law.regulations@alaska.gov.

4. Distribute to interested parties

Include: Notice and additional regulation notice

The agency must provide the notice and additional regulation notice to:

- | | |
|--|---|
| (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, it must furnish the public notice to the head of that 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 44.62.215. 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

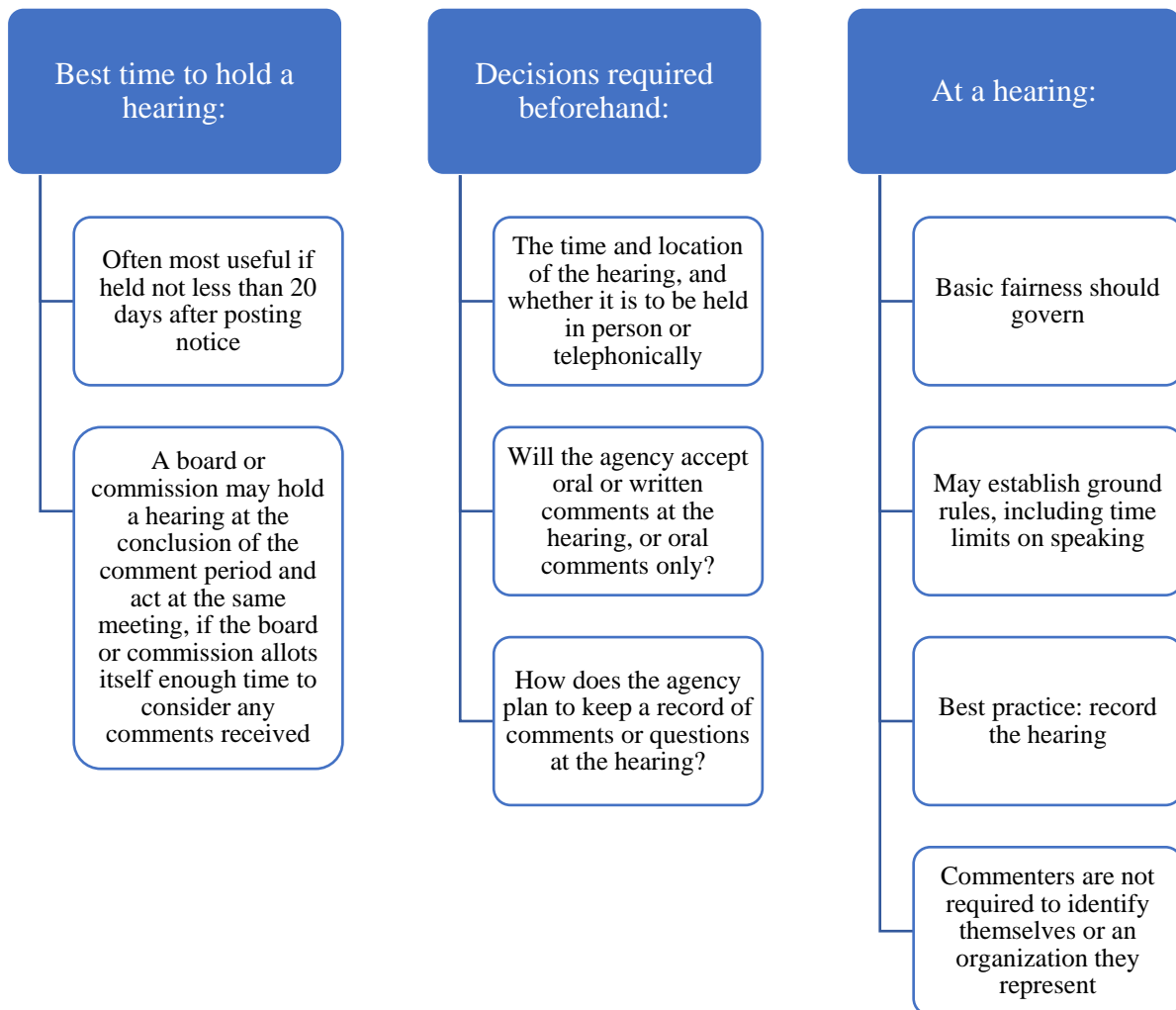
- Fully consider all comments;
- Pay special attention to the cost of the proposed action to private persons;
- Record its use or rejection of factual or other substantive information contained in comments and relevant to the proposed action; and
- Comply with any additional requirements of state or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

For recording the use or rejection of comments, the record may consist of a spreadsheet of comments and responses; notations on physical comments; 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.

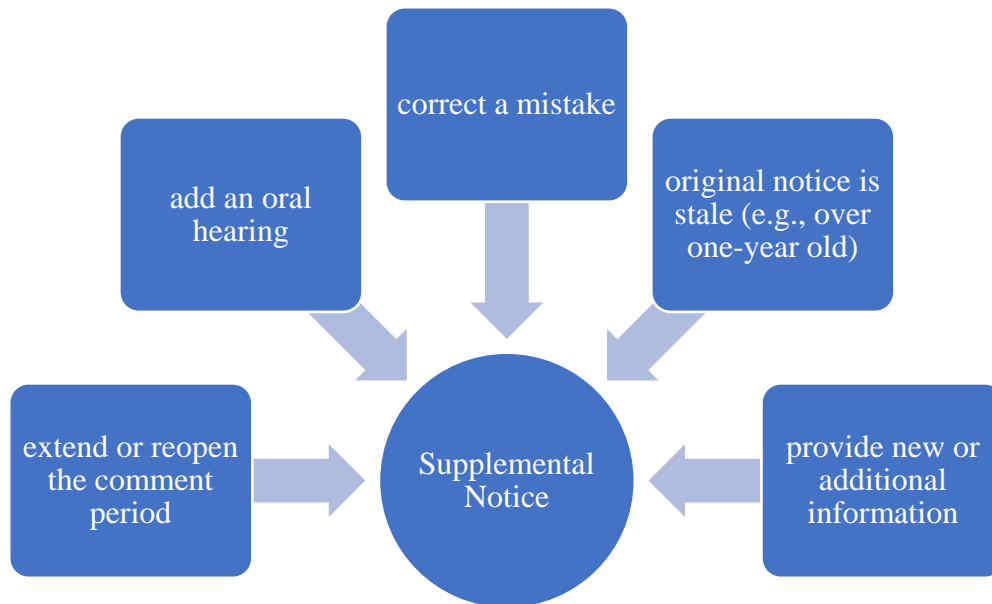
Oral hearings. As noted above, if an agency intends to hold an oral hearing on a proposed regulation, the public notice must include the date, time, location, and any call-in information for the hearing. AS 44.62.210. The agency may hold an oral hearing by teleconference. See AS 44.62.930. If an agency proposes to hold an oral hearing primarily through an Internet conference service—such as 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 an agency decides to add an oral hearing after the public notice is already published and distributed, it must issue a supplemental notice announcing the hearing.

Figure 2.10 – Oral hearings



Supplemental notice or re-noticing a project. Public notice is crucial to ensuring the public is appropriately informed of certain agency actions and has an 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. However, the regulations attorney will advise an agency when supplemental notice is required. An agency should not issue a supplemental notice without consulting with the regulations attorney.

Figure 2.11 – When to issue a supplemental notice



To comply with due process of law, if one year or more has elapsed between the original publication date and the anticipated filing date, an agency should discuss the need for a supplemental notice with the regulations attorney. The regulations attorney will consider the nature and significance of the regulation, as well as other means by which the agency has kept the public informed during the intervening time.

If an agency provides a supplemental notice, it may also need to re-open 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 regulations attorney will advise on this matter.

A supplemental notice looks similar to the original notice, but must have the word "supplemental" in the title, clearly mention the relationship to the earlier notice, and clearly state the reason for the supplement. The regulations attorney will advise on whether the additional regulation notice needs to be updated and redistributed.

Figure 2.12 – Example language for a supplemental notice

...

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES issued on July 21, 2025, concerning the above-proposed revisions, contained in Department of Law File No. 2024200999. 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:

...

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 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 regulation—*and before adoption*—the agency must send the final regulation packet to the regulations attorney in the Legislation, Regulations, and Legislative Research Section at law.regulations@alaska.gov for legal review and approval. The final packet will provide evidence of compliance with the APA and include the documents listed in the table below. In compiling the packet, the agency may refer to the checklist in Appendix Z-1. As noted above, some boards and commissions may choose to adopt the regulation before final review; in such cases, the board or commission should include the certification order and supporting documents in the final packet.

Documents Submitted in Final Regulation Packet		
Required:	Required, if applicable:	Appendix
(1) Final review request;		Appendix E
(2) a copy of the final regulation in Microsoft Word format;		N/A
(3) a copy of each public notice that was published;		Appendix B-1 and Appendix B-2; or Appendix B-3
(4) a signed copy of the Additional Regulation Notice Information;		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

	(7) the certification of oral hearing;	Appendix H
	(8) a fiscal note;	Appendix D
(9) the certification of agency record of public comment (<i>not required for the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission</i>);		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 regulation as follows:

1. Process review

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 or paralegal will compare the regulations submitted for preliminary review and final review to identify any changes. The legal editor will review any changes and make edits as necessary.

3. Final legal review

The regulations attorney or that person's designee will conduct a final legal review of the regulation. In the final review, the regulations attorney—in consultation with the agency attorney as needed—will ensure the agency considered all public comments, properly responded to advice from the Department of Law, and is on track to adopt the regulation within any timeline proposed under AS 24.08.035. The regulations attorney will prepare a legal opinion for the lieutenant governor that approves or disapproves the regulation. If the regulation is approved, the agency will be asked to prepare the adoption or certification order for the final regulation in accordance with Step 7 below. If the regulation is disapproved, the regulations attorney will work with the agency to bring the project into compliance with the law.

Step 7: Adoption

After the passage of 30 or more days from the agency's publication of the notice of proposed regulatory change, after the consideration of all public comments—and *after receiving final*

approval from the Department of Law under Step 6 above—the agency may take final action to adopt a regulation. Upon adoption, the agency must send the adoption order or certification order, and any accompanying documents, to the Legislation, Regulations, and Legislative Research Section for forwarding to the lieutenant governor's office. As noted above, some boards and commissions may adopt a regulation before submitting it for final review; however, the Department of Law's final review may necessitate readoption.

Adoption orders. To adopt a regulation, the official who has regulation-adoption authority signs and dates an *adoption order* (Appendix I).

Certification orders. For boards and commissions, the chair, acting chair, or executive director signs a *certification order* that states that the board or commission adopted the relevant regulation at a meeting (Appendix J). In the alternative, the board or commission may use an adoption order if it is signed at the meeting by the members who were present at the time the regulation was adopted. Additional requirements for boards and commissions are as follows:

- 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).
- 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 applied through DocuSign, through the certificate-based and password-protected signature function in Adobe Acrobat, or through a similar type of electronic signature verification program.

Upon receipt of the adoption or certification order, the Legislation, Regulations, and Legislative Research Section will deliver the legal opinion approving the regulation, the final adopted version of the regulation, and the supporting paperwork to the Office of the Lieutenant Governor.

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 2.13 – Delegations

Form of delegation <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)
Breadth <ul style="list-style-type: none"> • May broadly cover all agency regulations • May apply to specific project or length of time
Filing <ul style="list-style-type: none"> • A copy of the delegation document must be included with the adoption order signed under the delegation.
Form of signature under delegation <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 the Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, and Alaska Oil and Gas Conservation Commission*, an agency must submit a copy of the adopted regulation and public notice documents 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 using this email address for the first time, the agency may need to contact the regulations specialist at the lieutenant governor's office to obtain permission.

The governor may delegate the duty to review only to the lieutenant governor. The 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

A regulation takes effect on the 30th day after it is filed by the lieutenant governor or at a later date specified by the agency in its adoption order or certification order. 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 the regulation will first appear.

The regulation and supporting documents are maintained at the Office of the Lieutenant Governor 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 regulation 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 regulation. See template provided as Appendix O.

Agencies may also want to consider the use of their Internet website, press releases, mailings, and no-cost publications to inform the public of a filed regulation and its prospective effective date.

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

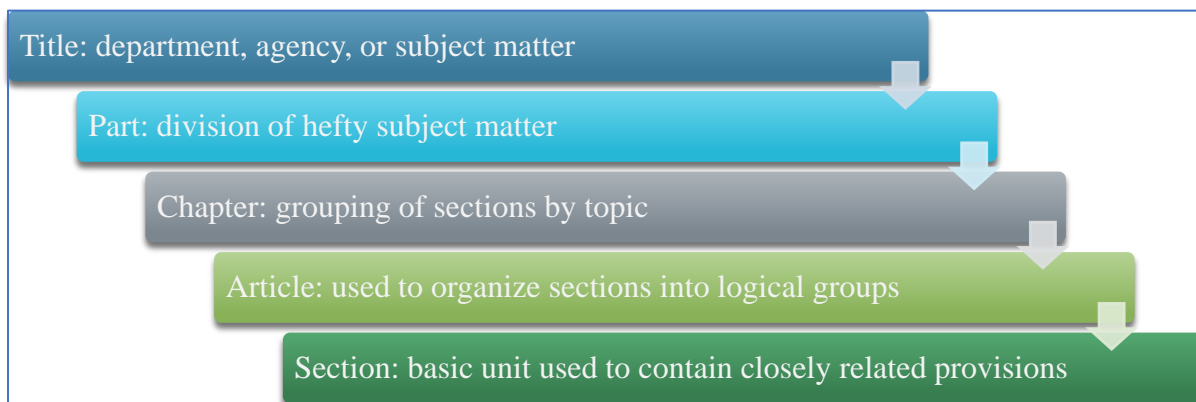
CHAPTER 3

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 AAC is the official compilation of state agency regulations, just as statutes are codified in the official Alaska Statutes.

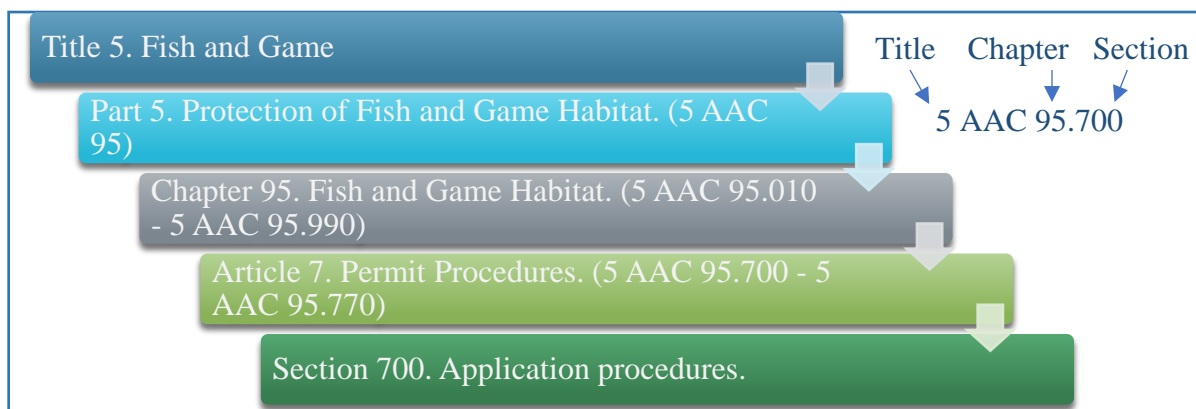
Regulations are organized in the AAC in much the same manner as Alaska Statutes.

Figure 3.1 – Basic organization of the AAC



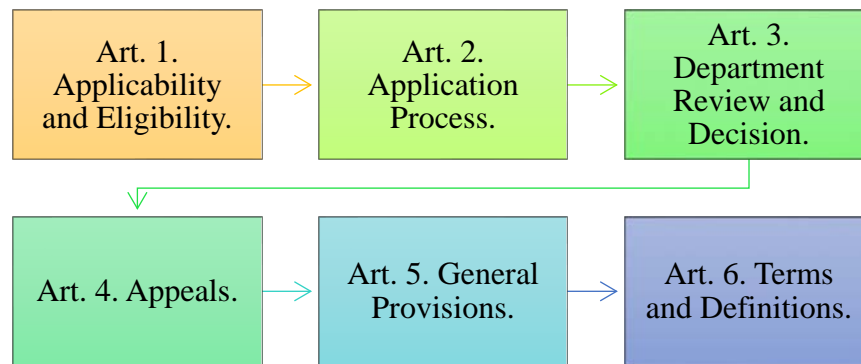
For consistency, each chapter is identified with a two-digit number and each section with a three-digit number. Only when a title is "full" is it permissible to use more than two digits for a chapter number, and only when a chapter is "full" is it permissible to use more than three digits for a section 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 to follow 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 separated by semicolons. The final paragraph, because it brings the sentence to its conclusion, is punctuated with a period. 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

11 AAC 05.990. Definitions. In this chapter, unless the context requires otherwise,

- (1) "commissioner" means...;
- (2) "department" means...;
- (3) "director" means....

Figure 3.6 – Subdivisions of subsection

(f) At the time of registration, an individual under this section may request the department issue a biannual registration sticker in the shape of

- (1) a circle;
- (2) a heart;
- (3) an octagon; or
- (4) a five-pointed star.

CHAPTER 4

DRAFTING A REGULATION

This chapter sets out the standards for drafting a regulation. All agencies are required to draft regulations in accordance with the standards set out in this chapter.

Resources

Copy of current regulations. An agency must start with the most up-to-date regulations; this is especially important for agencies that frequently adopt regulations. Regulations are published in quarterly pamphlets, or "registers," each January, April, July, and October. This quarterly publication schedule means that an amendment to a regulation may be filed by the lieutenant governor and effective before its publication in the next register.

An electronic version of the AAC is available on the Alaska State Legislature's website at www.akleg.gov/basis/aac.asp. However, the website may or may not keep pace with the official 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 print version. If there is uncertainty about the correct text of a regulation, the agency should consult the official print version of the AAC or check with the Legislation, Regulations, and Legislative Research Section at law.regulations@alaska.gov. The section can assist in locating the most current, official version of the regulatory text.

Statutory authority. The agency should have the relevant Alaska Statutes on hand to reference while drafting. This will assist in not exceeding an agency's statutory authority and not repeating language already provided 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) <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].	
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 demonstrated below. Note that, when subsection "(a)" follows the section heading, it is not indented. Additionally, the sub-subparagraph level is the lowest designation allowed.

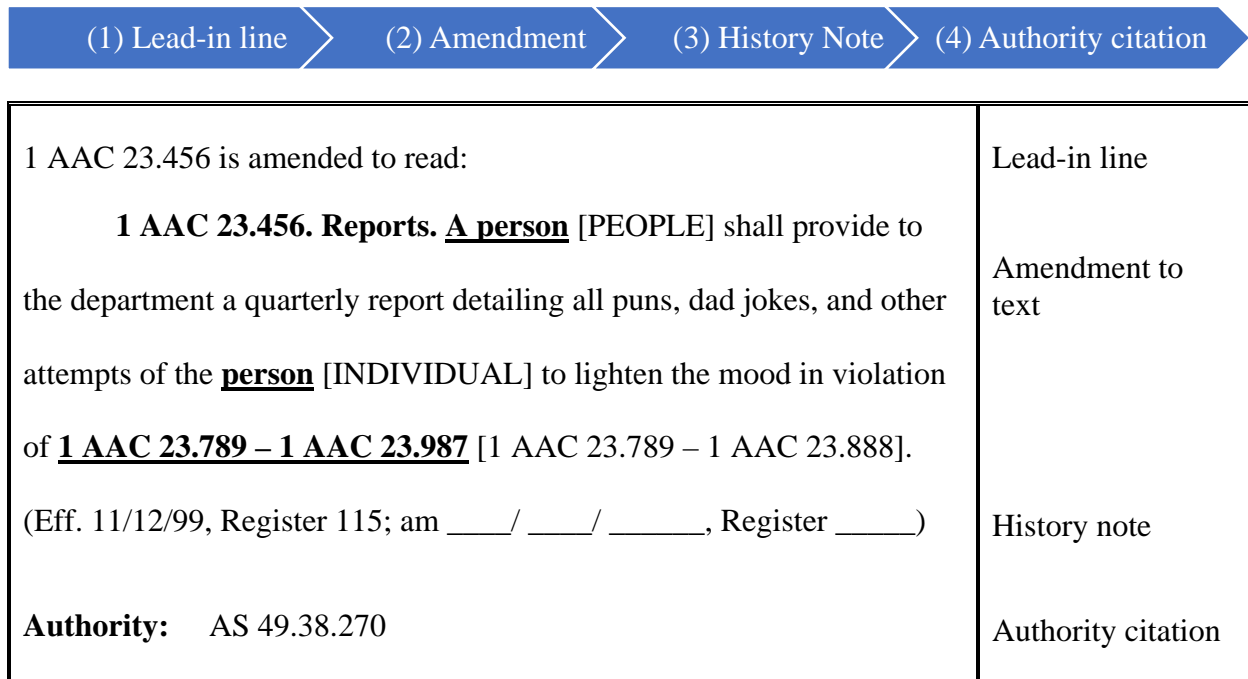
Figure 4.2 – Indentation

(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 amended 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>1 AAC 23.456. Reports. <u>(a) 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><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 a new section, group of sections, or chapter, 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.

A new subsection must be added after the last existing subsection. 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. If setting out the new text alone, use the format illustrated in Figure 4.8. Additionally, unlike the rule for adding new subsections, the agency may insert a new paragraph or smaller subdivision in the middle of an existing series. In this case, the agency must display the text of the surrounding provisions. 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 in 5s and sections numbered in 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</p> <p>department a quarterly report detailing all puns, dad jokes, and other</p> <p>attempts of the person to lighten the mood in violation of 1 AAC 23.789</p> <p>– 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>
--	--

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>
--	---

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>
---	---

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>2. <u>Renewal and Cancellation (1 AAC 23.100 – 1 AAC 23.130)</u></p> <p>3. 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>
---	---

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>
--	--

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>Section number and heading are set out.</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>
--	---

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 because only a portion of the section is repealed.</p> <p>Authority citation is retained.</p>
---	--

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,</p> <p>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 because only a portion of the section is repealed.</p> <p>Authority citation is retained.</p>
--	--

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

However, a repeal and readoption may 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.

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.

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>
--	--

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) <u>The</u> [AN] applicant must be a registered owner of the motor vehicle and the vehicle must be <u>currently</u> 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>
---	--

<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>
---	---

Conforming amendments. When a regulation is proposed for repeal, the agency must search the current AAC for cross-references to that repealed provision and amend any 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>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>
--	--

Figure 4.17 – History note: Amending existing section

<p>1 AAC 23.456 is amended to read:</p> <p>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]. (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>
--	--

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, set out the history note immediately after the text of the section.</p>
---	---

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>(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, set out the history note on the next line down.</p> <p>In this example, (b) is followed by subsection (c), which is not being amended.</p>
---	--

Figure 4.20 – History note: Repealing section

<p>1 AAC 23.450 is repealed:</p> <p>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>
---	---

Figure 4.21 – History note: Repealing subsection

<p>1 AAC 23.450(f) is repealed:</p> <p>(f) Repealed ___/___/____. (Eff. 3/19/2019, Register 218; am ___/___/____, Register ___)</p> <p>OR</p> <p>(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>
--	--

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>
--	---

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>
---	---

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. An added authority citation must be set out in bold 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 28.60.080	AS 44.21.020
<u>For five authorities:</u>		
Authority:	AS 28.60.070	AS 28.60.090
	AS 28.60.080	AS 44.21.160
<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
	<u>AS 28.60.080</u>	AS 44.21.160
		<u>AS 44.21.020</u>

In rare occasions, and only 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.
-------------------	----------------------------	------------------------------

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 authorizing 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 is 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 tell the public where forms may be obtained or the 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).

If the agency is 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

3 AAC 14.159. Definitions. <i>In this chapter, ...</i> OR 3 AAC 14.159. Definitions. <i>In 3 AAC 14.010 - 3 AAC 14.159, ...</i> OR (g) <i>In this section, ...</i>	This introductory language identifies where the definition applies; it may apply to a whole chapter, ...a span of sections (or article), ora single section.
3 AAC 14.159. Definitions. <i>In AS 02.65, unless the context requires otherwise, ...</i> OR 3 AAC 14.159. Definitions. <i>In AS 02.65 and this chapter, unless the context requires otherwise, ...</i>	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.
3 AAC 14.159. Definitions. (a) <i>In AS 02.65, unless the context requires otherwise, ...</i> (b) <i>In AS 02.65 and this chapter, unless the context requires otherwise, ...</i>	If an agency needs to define terms for these separate reasons, each grouping should have its own subsection and introductory language.

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 and followed by the defined terms set out in paragraphs.

Figure 4.29 – Definitions section with no subsections

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

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
3 AAC 14.159. Definitions. In this chapter, (1) "a" means ...; (2) "b" means ...; (3) "d" means ...	3 AAC 14.159 is amended by adding a new paragraph to read: (4) "c" means ...

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.

The "repeal and readopt" method should not be used if adding only one or two terms to a definitions section, because repealing and readopting a section 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

(41) "ruminant" (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; (B) does not include frogs, crocodiles, or that gecko on television;

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	[SEPT. 1 - SEPT. 30]	[SEPT. 1 - SEPT. 30]
only; up to 110 permits	(General hunt only)	<u>Jan. 15 - Mar. 31</u>
may be issued; or 1 musk	<u>Jan. 15 - Mar. 31</u>	[FEB. 1 - MAR. 15]
ox by registration permit	[FEB. 1 - MAR. 15]	
only	(General hunt only)	
Unit 18, Nelson Island	<u>Feb. 1 - Mar. 31</u>	<u>Feb. 1 - Mar. 31</u>
1 musk ox by registration	[FEB. 1 - MAR. 25]	[FEB. 1 - MAR. 25]
permit only	(General hunt only)	
...		

((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, ellipses may only be used for an amendment to the introductory language of a provision that comes before paragraphs but does not amend the paragraphs themselves (see example of introductory language amendment in Appendix Y).

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 they are especially important to regulation drafting.

Figure 5.1 – General rules

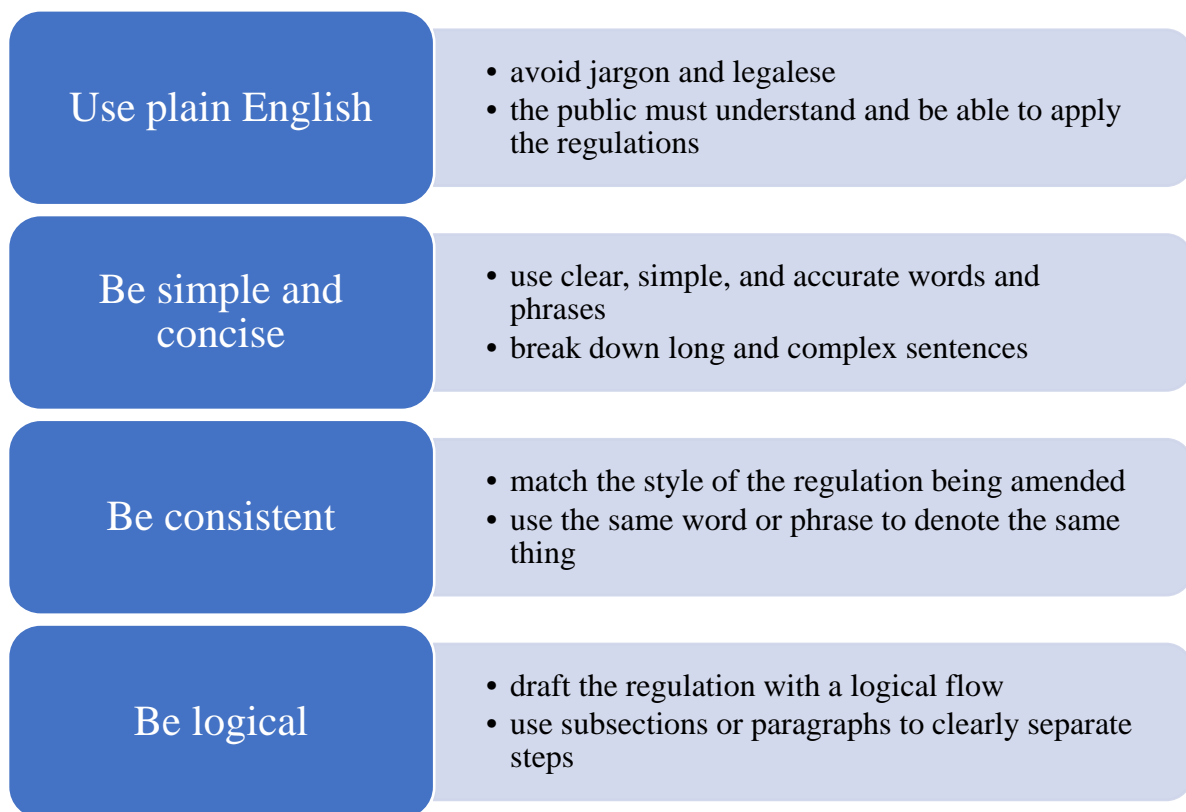
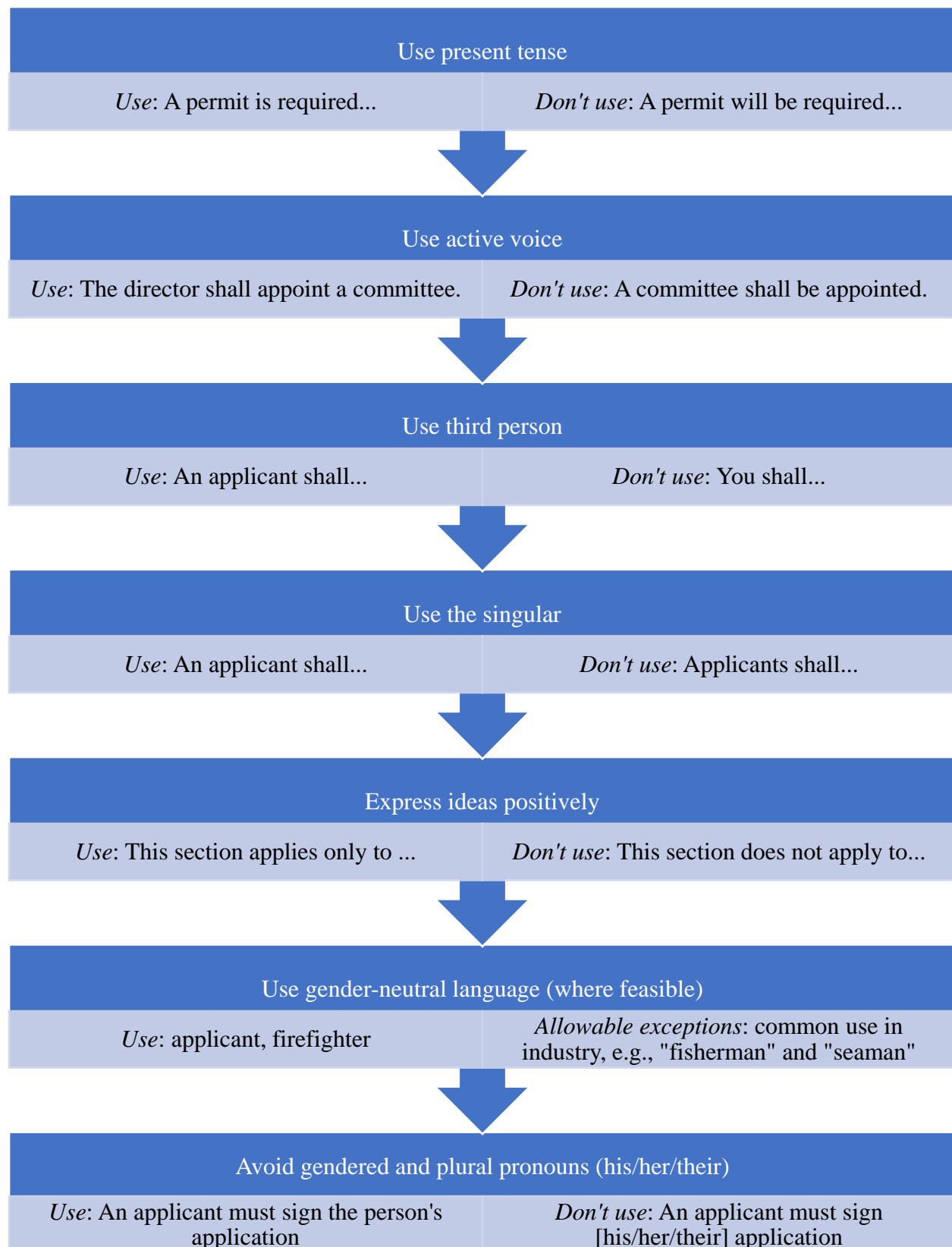


Figure 5.2 – Specific rules

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 with a space on each side of the hyphen. 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, reference to that media is 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 of the verb (active voice) or receives the action of the verb (passive voice). 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." The sentence is in the passive voice because the subject (the application) *receives* the action of the verb (being approved). Although some instances may require the use of passive voice, the active voice should be used whenever feasible when drafting a regulation because the passive can lead to ambiguity if the actor is omitted. In the passive sentence above, for example, we do not know who is required to approve the application. When used, however, the passive construction can be disambiguated by indicating the actor with a "by" prepositional phrase as in: "The application shall be approved *by the board*."

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:

- (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.

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

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.
-

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 may 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.

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 regulation meets the standards of the APA; 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 for 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

REGULATORY 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?

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, but the adopting agency should carefully review the assumptions made in developing increased appropriation estimates and 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 the regulation and at least two succeeding fiscal years. The agency should 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

Adoption "by reference" is a method by which an agency adopts a separate document as part of a regulation as if the document were actually and fully contained in the text of the regulation. Adopting—or incorporating—other material by reference has the effect of turning that material itself into a regulation, although it is not published in the Alaska Administrative Code. This practice is used to give separate material the force and effect of law. Adopting material by reference avoids setting out the full 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. Note that "adoption" by reference is legally synonymous with "incorporation" by reference and the two terms are treated interchangeably in this manual.

Requirements

General considerations. Because adopting material by reference makes that material itself a regulation, the same rules that apply to regulations generally under the APA also apply to the adopted material. The agency must have statutory authority to adopt the material as a regulation, meaning that every word of the adopted material could have been set out directly in the adopting regulation consistent with the agency's statutory authority.

While adoption by reference provides a useful tool for the integration of resources that are voluminous, cumbersome, or otherwise impractical to publish in the AAC, secondary material adopted by reference on its own is not a substitute for the agency's own regulations. An agency does not discharge its duty to issue regulations by merely referring the public to some other resource. Rather, the agency must integrate secondary material to supplement its own substantive regulations.

When adopting material by reference, the agency must be sure to describe the material so that the identity of the material is clear beyond any doubt. This is important because documents adopted by reference often present a moving target—for example, when an agency adopts a federal regulation that is subsequently amended by that federal agency. Because regulations, including materials adopted by reference, may only change in compliance with the APA, the documents adopted by reference are "locked in" as of the date of adoption, except under specific circumstances. An amendment or other update to separate material made by the author is not automatically incorporated in the regulation. Rather, the agency must amend its regulation in the normal manner to adopt the new version of the material.

How to adopt by reference. To adopt a document by reference, the text of the proposed regulation must identify the document by its full title or citation, provide the effective date or publication date of the document, and state expressly that it is "adopted by reference."

When adopting a published work, such as a model code or technical manual, the text of the proposed regulation must specify the particular edition or version being adopted and reference the publication date of that edition. When adopting a statute or regulation, the regulation must reference the effective date—not the publication date—of the law. For example:

Federal regulation

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

Books and Manuals

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

Some materials, including Internet websites, may not have an identifiable publication date or may be amended so frequently that identifying specific versions is impractical or impossible. AS 44.62.245. However, adoption by reference of an Internet website or other material without a publication date is only permissible for those agencies with express statutory authority to adopt future amended versions.

When adopting state or federal statutes or regulations, an agency may employ a span citation or other appropriate reference to the group of sections being incorporated. The text of the proposed regulation should reference the effective date of the latest amended or enacted section. For example:

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

"19 AAC 10.010 - 19 AAC10.030, revised as of June 1, 2024, adopted by reference"

Material that may be adopted by reference. Not all material is suitable for adoption by reference, and not every reference in a regulation to secondary material should be treated as an adoption by reference. The following materials may generally be adopted by reference:

- *Model codes and laws.* Adoption by reference of model codes and laws issued by private organizations is one of the most common uses of this practice. Utilization of model regulations that have been similarly incorporated by other jurisdictions may promote uniformity and predictability. Care is needed, however, when adopting codes not drafted with Alaska in mind to ensure that the material is consistent with Alaska law and the agency's statutory authority.
- *Technical manuals, lists, and guides.* Trade groups and other private parties develop industry specific, technical material that agencies often reference or rely on in developing and implementing their regulatory programs. Whether a particular technical manual is appropriate for adoption by reference is necessarily a case-by-case determination and will require the consideration of multiple factors, including whether the material meets the standards of a regulation, the agency's statutory authority, potential copyright issues, and the availability of such proprietary material to the public.
- *Documents created by the agency.* An agency may adopt by reference its own technical material that is impractical to publish in the AAC, including maps and charts. Adoption by reference of agency policy or guidance documents or other conventional materials that do not present practical difficulties publishing in the AAC, however, is rarely appropriate.

- *State statutes and regulations.* State statutes and regulations already have the force of law, but it may be appropriate to adopt such material by reference under limited circumstances. As discussed below, future amendments of regulations of other state agencies may also be adopted by reference. An agency should never, however, adopt by reference its own regulations or adopt by reference a statute that already applies by its own terms.

If a regulation simply acknowledges the existence of another law that already applies in its own right, the regulation should not adopt that other law by reference. For example, a regulation referencing a fee owed under another regulation should not adopt that other regulation by reference, but rather cite to the provision in the following format:

"An applicant for a license under this section shall pay the fee required by 19 AAC 10.040(b)."

If, however, a regulation seeks to make the provisions of that other law apply in circumstances in which it would not otherwise apply, adoption by reference may be appropriate. For example, a regulation may adopt by reference another agency's regulation found in a different title of the AAC if the agency wishes to apply that other regulation itself in the following format:

"An applicant under this section shall meet the same requirements as an applicant under 19 AAC 40.010, revised as of August 1, 2024, which is adopted by reference."

- *Federal statutes and regulations.* Federal statutes and regulations are also already laws in their own right and the same distinction between referencing other laws and adopting them by reference applies. Adopting a federal statute or regulation by reference causes that provision to apply as a matter of Alaska law. Adoption by reference of federal regulations may be appropriate, for example, when they set forth lengthy and technical compliance criteria that the agency intends to enforce under its own authority.

Material adopted by reference should be comprehensible as a regulation, meaning that it establishes general standards affecting the public or used by the agency in dealing with the public. It would not make sense, for example, to incorporate by reference a scientific study or data collected by the agency because such material does not fall within the definition of a regulation. Agencies should also avoid circular incorporations, meaning that the incorporated material itself references back to the agency's regulations. An example of a circular incorporation is the adoption of the agency's own manual summarizing or describing its existing regulations.

An agency should also take care when incorporating other laws by reference to ensure that the incorporated provisions make sense as Alaska regulations. When incorporating a sequence of provisions, each section must be reviewed individually to ensure it is appropriate for adoption. It is appropriate, for example, to incorporate a federal code provision setting forth complex standards applicable to the public that the agency intends to administer directly. Where the law in question obligates the agency itself to undertake some regulatory action, such as developing a licensing program, however, the agency should not simply incorporate that law by reference to fulfill its mandate in lieu of its own substantive regulations. That is a type of circular incorporation.

Materials other than those listed above that are proposed for adoption by reference will be reviewed by the Department of Law on a case-by-case basis to determine whether they are appropriate. The

materials must meet the requirements of a regulation, be consistent with the agency's statutory authority, and otherwise comply with the APA.

Procedure for adopting by reference. If an agency intends to adopt material by reference in its regulation, it must notify the Department of Law in the file opening and preliminary review request. The agency must submit the Material Adopted by Reference form (Appendix AA) with the request and attach a complete copy of the material, regardless of the size or cost and whether the material is available to the public on the Internet or otherwise. A file opening and preliminary review request that does not include a copy of the material proposed to be adopted by reference cannot be accepted.

The regulations attorney will review the material proposed for incorporation as part of the preliminary review. Adoption by reference of the material will not be approved unless the agency has statutory authority to adopt the material and it otherwise meets the requirements of the APA and this chapter. Presuming the incorporation by reference is approved as part of the Department of Law's preliminary review, the material must be attached to the agency's public notice. Additionally:

- At the time the notice is published and distributed, the agency must physically 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 regulation is adopted and takes effect.
- An agency, *excluding the Board of Fisheries, the Board of Game, the Regulatory Commission of Alaska, and 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 the material adopted by reference.

Once the regulation and incorporated materials have received final approval and have been adopted by the agency, the Department of Law will forward the regulation and the incorporated material to the lieutenant governor for filing. The document on file with the lieutenant governor is the official copy of that material for purposes of Alaska law. The agency must use the version of the material that is on file with the lieutenant governor and may not rely on other sources that include subsequent or different iterations of the material. The agency should also ensure that the public has reasonable access to the specific material adopted by the agency, as distinguished from alternative iterations otherwise publicly available.

Public Access to Material

The public is entitled by due process to know the status of laws and regulations that affect them. Because material adopted by reference is not published in the AAC, it poses a heightened risk of creating opaque, incomprehensible, or secret administrative rules—the central evil the APA is intended to prevent.

The availability to the public of material adopted by reference is of critical concern. Material published by private entities is often subject to copyright and may be difficult or costly to obtain, particularly if the material is rare or out of print. An agency may be able to copy and distribute copyrighted material adopted by reference under certain exceptions provided by copyright law,

but the applicability of those exceptions depends on the circumstances and nature of the material and other factors. The agency must consult with the Department of Law before disseminating copyrighted material adopted by reference.

At a minimum, a regulation that adopts material by reference must identify how the public may obtain a copy of the adopted material. The agency must maintain copies of any material adopted by reference and make those copies available to the public for inspection at regional offices. Generally, it is recommended that the agency also maintain a copy of any material adopted by reference on its Internet website.

An editor's note must be used following the text of the regulation to identify how the public can obtain the material in question. If material adopted by reference can be obtained by email request or is readily available to the public on the Internet, the agency must provide the email address and Internet website in the editor's note.

Figure 8.1 – Example editor's note: 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>.

Special care should be taken when referring the public to material hosted by third parties. Third-party sources may be unilaterally updated or changed so that they no longer reflect what was incorporated by the agency. Unless the agency has incorporated future amendments (discussed below), it should only refer the public to a third-party source if the source is stable, meaning that it houses only the specific incorporated document and is not updated to reflect subsequent changes to the material that have not been incorporated by the agency.

Adoption by Reference of Future Amended Versions

The APA addresses requirements for the adoption of future amended versions of certain material adopted by reference in AS 44.62.245. To adopt future amended versions of material by reference, the material must meet certain requirements, the agency must have statutory authority, 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 this 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.

An agency that adopts future versions of material by reference must monitor the material for amendments. When an amended version becomes available, the agency must notify the regulations attorney by sending Appendix AA with a copy of the amended material to law.regulations@alaska.gov. The agency must indicate if the title of the material adopted by reference has changed. Under AS 44.62.125, the regulations attorney will change the title that appears in the AAC.

Second, the agency must make the amended version available to the public for review. To comply with this requirement, the agency must 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 material 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...." AS 44.62.245(b)(2). Amendments that are not posted and published within the statutory deadline may be vulnerable to legal challenge.

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.

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 at law.regulations@alaska.gov. 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).

The Department of Law will forward the amended 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. Amendments are not effective before they have been properly noticed and submitted to the lieutenant governor.

Finally, the Department of Law recommends that an agency adopting by reference a regulation of another agency request to be put on the other agency's interested-persons list to receive notices of proposed regulatory changes.

CHAPTER 9

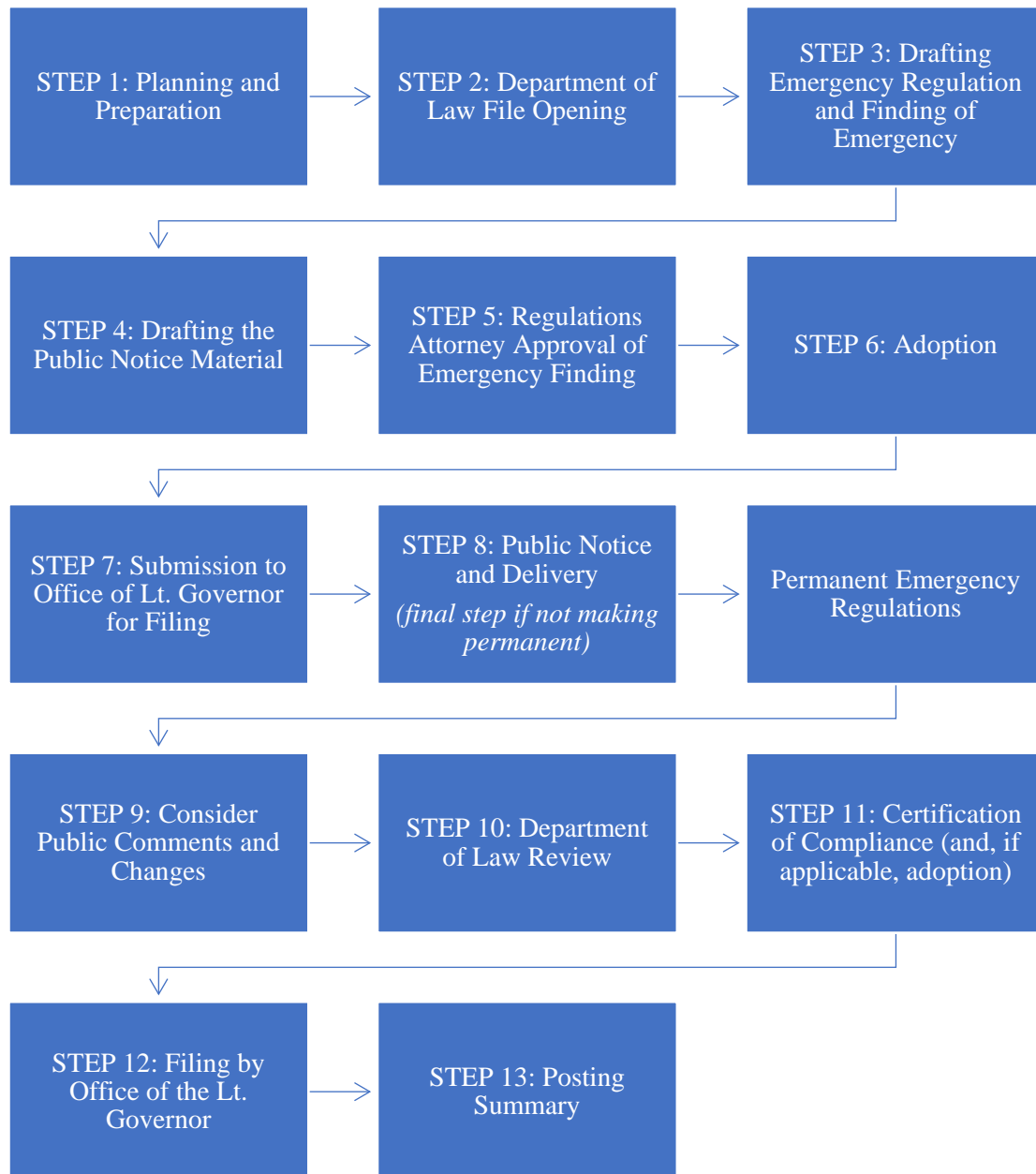
EMERGENCY REGULATIONS

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. However, "It is the state policy that emergencies are held to a minimum and are rarely found to exist." AS 44.62.270. 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 regulation is within the agency's statutory authority and meets 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 adoption of permanent and non-permanent emergency regulations are covered in this chapter.

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 before adoption
emergency finding must be approved by regs attorney before adoption	require review by regs attorney before filing
are effective immediately after filing	are effective 30 days after filing
expire after 120 days	do not expire

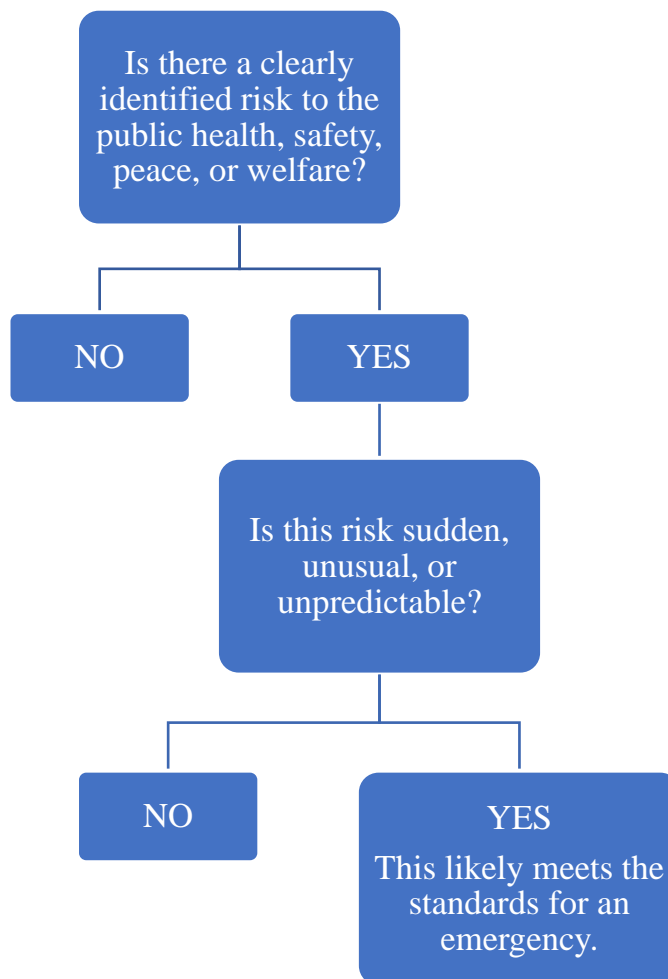
Figure 9.2 - Steps in the Emergency Regulation Process

Step 1: Planning and Preparation

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 regulations attorney approves the finding of emergency.

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

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 form 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.

Step 3: Drafting Emergency Regulation and Finding of Emergency

The agency must draft the emergency regulation in the same manner as a non-emergency regulation. The only difference in format 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)

EMERGENCY REGULATION	
Register _____, _____ 20__	FISH AND GAME
5 AAC 38.130 is amended to read:	
<p>5 AAC 38.130. Fishing seasons for abalone in Registration Area A. Abalone may be taken or possessed from <u>September 15</u> [OCTOBER 1] through May 15. (In effect before 1983; am 6/30/83, Register 86; am 7/14/85, Register 95; am 7/12/86, Register 99; em am 4/30/91 - 8/27/91, Register 118; am ____/____/____, Register ____)</p>	
Authority: AS 16.05.251	
5 AAC 38 is amended by adding a new section to read:	
<p>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>	
(Eff. ____/____/____, Register ____)	
Authority: AS 16.05.251	

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. Simply restating the emergency regulation standard found in AS 44.62.250 is not sufficient for a finding of emergency. The finding of emergency will be released along with the public notice and draft regulation. The finding of emergency must be approved by the regulations attorney 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 must 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 the Regulatory Commission of Alaska, the Board of Fisheries, and the Board of Game*. 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: Regulations Attorney 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 the regulation 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 date 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 the following 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 regulation is to be made permanent.

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

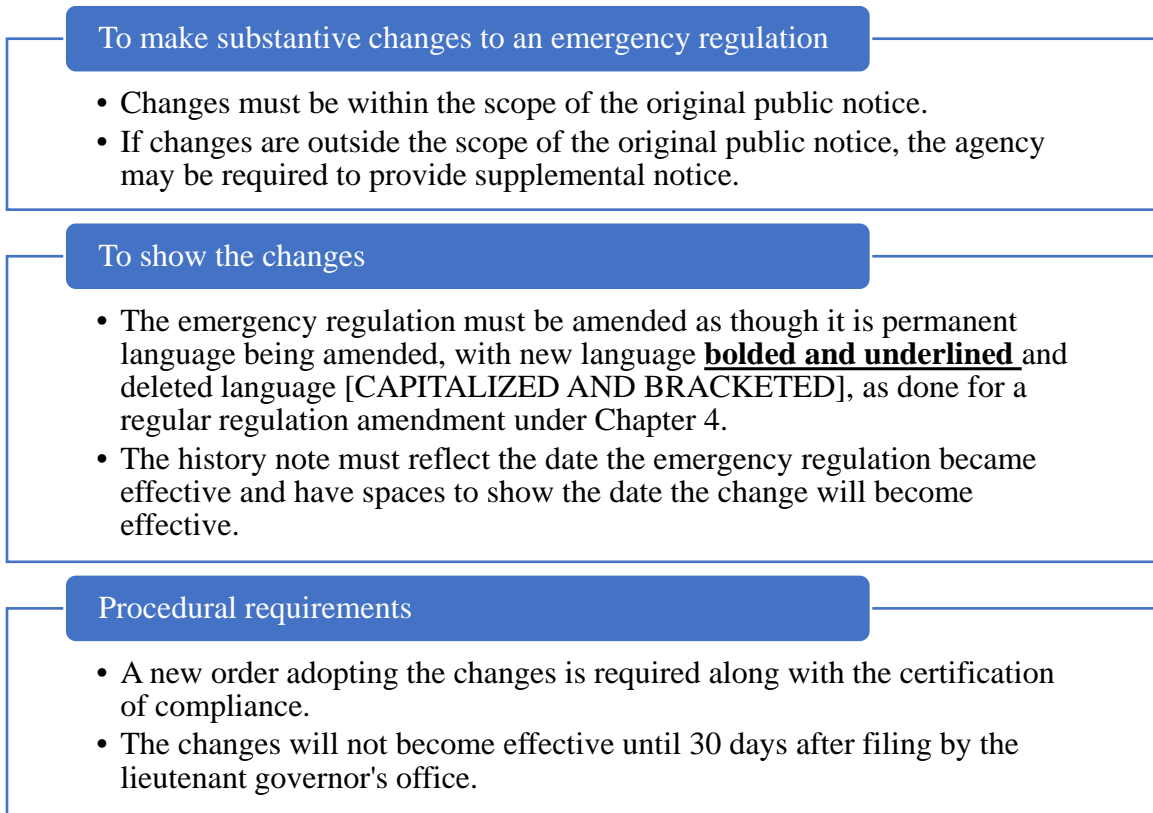
Step 9: Consider Public Comments and Changes

When an agency decides to make an emergency regulation permanent, the public notice must provide for a 30-day 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, it will need to adopt those new changes after receiving approval from the regulations attorney under Step 10.

Substantive changes. These are changes 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.

Format. 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>
--	---

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>
---	--

Step 10: Department of Law Review

After considering all comments and preparing the final regulation—and before adoption, if applicable—the agency must email the final regulation and accompanying documents to the regulations attorney at the Department of Law at law.regulations@alaska.gov. As with a regular regulation project, some boards and commissions may choose to adopt before final review, but readoption may be necessary in response to final review by the Department of Law. The final packet will provide evidence of compliance with the APA. The packet must include the same documents as required for a regular regulation project, except that it will also include a certification of notice of adoption of emergency regulation (Appendix S).

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

As with a regular regulation project, the regulations attorney will provide a final level of review of the emergency regulation being made permanent and, if approved, instruct the agency to prepare the certification of compliance (Appendix T) and, if applicable, an adoption order or certification order. As noted above, a new adoption or certification order is only required if the agency made substantive changes to the regulation since the original emergency adoption.

Step 11: Certification of Compliance (and adoption, if applicable)

The agency will then complete the certification of compliance and an adoption or certification order, if applicable, and email the completed documents back to law.regulations@alaska.gov for forwarding to the lieutenant governor. If a certification order is used, the agency will also need to provide the certification of board action and excerpt of the minutes. Additionally, except for the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, and the Regulatory Commission of Alaska, the agency must email the certification of compliance and final regulation to the regulations specialists in the governor's and lieutenant governor's office, including any new adoption or certification order, if applicable.

Step 12: Filing by the Office of the Lieutenant Governor

The Department of Law will then forward the final regulation packet, including the statement of approval from the regulations attorney, 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 the regulation since original adoption, which would be covered under a new adoption or certification order, take effect on the 30th day after the regulation is filed.

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 13: 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."

CHAPTER 10

ROLE OF THE DEPARTMENT OF LAW

The Department of Law must review and approve a regulation before it is submitted to the Office of the Lieutenant Governor for filing. AS 44.62.060. Additionally, the department must advise state agencies on matters relating to administrative regulations. AS 44.62.125. These responsibilities are carried out through a collaboration of the Department of Law's designated regulations attorney and agency attorneys from other sections in the department. The agency attorneys specialize in different areas of law and have the expertise necessary to assist agencies in developing their regulations. The regulations attorney reviews—before public notice and again before adoption—the proposed regulations to ensure they comply with the APA and any other applicable law.

Review by the regulations attorney and the Department of Law may involve additional considerations not explicitly addressed in this chapter.

Role of the Regulations Attorney

Approval authority. The regulations attorney is a statutorily created position in the Department of Law. AS 44.62.125. The attorney general has designated the supervisor of the Legislation, Regulations, and Legislative Research Section as the regulations attorney. The Department of Law's designated regulations attorney is vested with "approval" authority and must formally approve regulations before they are filed by the Office of the Lieutenant Governor. AS 44.62.060(b). The lieutenant governor may not accept a regulation for filing unless it is accompanied by a statement of approval from the department's designated regulations attorney. AS 44.62.060(c). Once the regulations attorney has approved a regulation, the lieutenant governor must proceed with the filing. Alaska statutes do not confer discretion on the lieutenant governor to decide not to file a regulation—in other words, the lieutenant governor's duty is ministerial. *January 1, 1994 Op. Att'y Gen.*

Drafting Manual for Administrative Regulations. The regulations attorney is the person designated in the Department of Law to prepare and revise when necessary a drafting manual for administrative regulations that prescribes the style and forms for submitting regulations. AS 44.62.050. Compliance with the drafting manual is required under AS 44.62.060.

Specific statutorily assigned duties. Under AS 44.62.125, the Department of Law's designated regulations attorney must:

- (1) advise state agencies regarding the nature and use of administrative regulations;
- (2) notify state agencies when statutes have been enacted that need to be implemented, interpreted, or made clear by agency regulation;
- (3) continually review published regulations, make recommendations to the respective state agencies concerning deficiencies, conflicts, and obsolete provisions, and the need for reorganization or revision of the regulations; and prepare regulations to be adopted by state agencies, correcting or removing the deficiencies, conflicts, and obsolete provisions;
- (4) work with state agencies in drafting all new regulations, advising the agencies of legal problems encountered with draft regulations, and ensuring compliance with the drafting manual for administrative regulations;
- (5) assist state agencies with holding public hearings under AS 44.62.210;
- (6) when necessary, after regulations have been filed by the lieutenant governor, edit and revise filed regulations for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes under AS 01.05.031; and
- (7) draft bills for consideration by the governor to transfer matters that should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed.

Preliminary Review Before Public Notice

To avoid errors in the public notice or regulation that may require a costly supplemental notice, the Department of Law reviews the draft regulation and public notice documents before publication and distribution.

Review of proposed regulation. Both the agency attorney and the assigned attorney in the Legislation, Regulations, and Legislative Research Section ("LRLR attorney") review the proposed regulation before public notice. For purposes of this review, the agency attorney is the expert on the subject matter of the regulation, whereas the LRLR attorney is the expert on regulations, the APA, and drafting conventions. A legal editor is assigned at this time to review the regulation and bring it into compliance with drafting standards.

The Department of Law's designated regulations attorney assigns an LRLR attorney to review the proposed regulation and notice material. The LRLR attorney is the attorney authorized to approve a regulation for public notice. In the preliminary review stage, the LRLR attorney conducts a legal review of the proposed regulation that analyzes the following:

- **Conflict/compliance with law.** A key focus of the preliminary review is to ensure that the proposed regulation complies with and does not conflict with existing state or federal law—constitutional law, statutory law, case law, and governing regulations.

- **Regulation text and statute text.** A common problem with regulations is that they attempt to repeat a statute. The LRLR attorney will review for this issue.
- **Statutory authority.** A regulation must be consistent with specific authority, general authority, or both. The LRLR attorney will check the statutory authority and make sure the intended language falls within the scope of the statute. If it does not, the LRLR attorney will review general authority and analyze whether it is broad enough to cover the regulation text. AS 44.62.040(b) requires that a citation to general statutory authority and a citation to specific statutory sections being implemented, interpreted, or made clear, follow the text of each regulation submitted to the lieutenant governor for filing.
- **Materials adopted by reference.** Reviewing material adopted by reference will include determining whether the material is appropriate for a regulation, whether there is statutory authority for adopting the material by reference, and whether the material is consistent with other requirements and is included in the public notice as required by statute (AS 44.62.200(c) and AS 44.62.245(b)); this review will also include considering how the regulation addresses the date of the adopted material and future amended versions, if applicable, and considering whether the intended action complies with AS 44.62.245.
- **Scope.** Sometimes a regulation is drafted in a manner that is consistent with a statute but may be a "stretch" or exceed the scope of authority granted by the legislature. However, AS 44.62.030 provides that a regulation is not valid or effective unless (1) consistent with the statute and (2) reasonably necessary to carry out the purpose of the statute.
- **Clarity.** There are many ways to say the same thing, and regulatory text is no exception. Edits to improve clarity in a regulation's language or syntax are important where ambiguity or poor phrasing creates a legal issue. The LRLR attorneys and editors will work to find a balance when editing a proposed regulation for clarity with deference to the agency's intent.

Review of public notice document. The LRLR attorney also reviews the public notice documents to ensure that the documents:

- (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;
- (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) are signed and dated by an agency official.

Emergency regulation. For an emergency regulation, the Legislation, Regulations, and Legislative Research Section approves the finding of emergency before adoption to confirm that the requirements of AS 44.62.250 are met. See Chapter 9 for more on emergency regulations.

For an emergency regulation that will be made permanent, the Legislation, Regulations, and Legislative Research Section reviews the public notice documents in the same way it does for a non-emergency regulation project.

Final Review Before Adoption and Filing

Final review is the second stage of legal review required before a regulation is adopted and submitted to the lieutenant governor for filing. The primary work of this stage is to (1) conduct a legal review of any changes to the regulation since public notice and all required forms (e.g., certification order) and (2) draft a letter of approval or disapproval to the lieutenant governor. It may be necessary for the LRLR attorney to review the public comments.

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

Process for Disapproval of All or Part of a Regulation

If a regulation is disapproved on legal grounds, the Department of Law's designated regulations attorney will provide a letter to the lieutenant governor's office stating the 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 letter.

If only part of a set of final regulations is disapproved, the Department of Law's designated regulations attorney will omit the disapproved portion of the regulations from the regulations to be filed by the lieutenant governor's office. The disapproved regulations will be identified in the letter accompanying the approved regulations submitted to the lieutenant governor's office.

It is the goal of the Legislation, Regulations, and Legislative Research section to work with agencies to avoid disapproval of regulations whenever possible.

Revisor Function of the Regulations Attorney: Technical Revisions and Title Reviews

One of the Department of Law's designated regulations attorney's duties is to serve as the revisor of the Alaska Administrative Code. Under AS 44.62.125(b)(6), the Department of Law exercises the power "after regulations have been filed by the lieutenant governor, [to] edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes under AS 01.05.031." Without changing the meaning of a regulation, the designated regulations attorney is statutorily authorized to

- (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;
- (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 Administrative Code;
- (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 Administrative Code;

(11) make changes to editor's notes as necessary.

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. If an agency wishes to request a technical correction to a regulation, it should contact the regulations attorney at law.regulations@alaska.gov.

Timing of technical corrections. A correction in a revisor's memorandum does not have an "effective date," strictly speaking, because the correction is not adopted by an agency. The correction's date of appearance generally corresponds to the next published register of the Alaska Administrative Code. But, from a technical perspective, the correction pre-dates publication.

Title reviews. Periodically, acting under the revisor authority of AS 44.62.125, the Department of Law's designated regulations attorney, or that attorney's designee, will review an entire title of the AAC to ensure the title remains in compliance with drafting conventions and is free of any errors, omissions, and outdated citations. There are three types of title reviews: (1) a general, editorial review for errors and omissions at the technical level; (2) a review for technical corrections in response to legislation or an executive order changing the name or assigned functions of an agency; and (3) a review for technical corrections in response to an editorial review by the revisor of statutes.

In the first type of title review, an editorial review, the regulations attorney will consider the following:

- **Section headings.** Are the headings accurate and will they help the reader determine the content of the section? If not, the regulations attorney may make a change. Note that the section heading only helps the reader find what is in the section; it is not a substantive element of the regulation.
- **Text of section.** Are internal references accurate and current? Are the names of organizations and federal government entities still accurate? Does the section make sense? Are there any grammatical errors or missing punctuation marks?
- **Proper organization of paragraphs.** Are repealed paragraphs in definitions or other lists removed and the remaining paragraphs renumbered with an appropriate revisor's note?
- **Definitions.** Do definitions need to be reordered to be alphabetical? Are definitions in the proper place (i.e., for a section, in the last subsection; for an article, chapter, or title, in the last section)? Are the defined terms used in the regulations?
- **History notes and editor's notes.** Are the history notes accurate? Are editor's notes accurate and still applicable?

- **Renumbering.** Do provisions need to be renumbered for the sake of logical placement or to create more room for drafting? If a provision is renumbered, the regulations attorney will set out an editor's note to that effect.

The second type of title review is a review for technical corrections in response to legislation or an executive order changing the name or assigned functions of an agency. An example of this is the change of the Department of Commerce and Economic Development to the Department of Community and Economic Development, the dissolution of the Department of Community and Regional Affairs as a line agency, and the broad reassignment of functions across agencies as a result of ch. 58, SLA 1999 (SCS CSHB 40(FIN) am S). In these instances, the regulations attorney had to address many technical changes in an across-the-board and extensive revisor's memorandum.

The third type of title review makes technical corrections in response to an editorial review by the revisor of statutes. For example, the revisor of statutes once conducted an editorial review of the section numbering in AS 21 (Insurance Code), renumbered numerous sections, and reassigned statutory language to new chapters out of a concern that the previous arrangement of AS 21 would exhaust free sections for drafters to use in future legislation. When the revisor of statutes makes changes in this fashion, the regulations attorney may make the necessary conforming changes in the AAC. The regulations attorney will carefully examine the editorial review from the revisor of statutes. The regulations attorney will keep the agency apprised should thorough changes to an agency's regulations become necessary.

Substantive or technical. It is sometimes difficult to determine whether a correction or change would be substantive or technical. The Department of Law's designated regulations attorney will make this determination and decide the proper course of action.

Sometimes, missing words or erroneous characters are of so confusing a nature that: (1) the regulations attorney will instruct the agency to fix the problem in a substantive regulations project; or (2) the agency—for example, the Alaska Department of Fish and Game—gathers corrections in its own "errors and omissions" regular regulations project. As with close calls on manifest errors, the regulations attorney makes the final decision on whether a substantive regulation project is necessary.

Errors in statute. The regulations attorney cannot use the position's revisor powers to correct an error in *a statute*.

Unofficial versions of the AAC. Some agencies maintain unofficial convenience copies of their regulations. Corrections to those documents are not the responsibility of the Department of Law. The same applies to the publisher's sale of "specialty publications" of field-specific Alaska statutes and regulations. Because the LexisNexis specialty publications division is separate from the division for official publications, neither the regulations attorney nor the publisher can address corrections to specialty materials. Likewise, the regulations attorney cannot correct any errors or omissions found in Westlaw.

Regulation Files and Public Records Requests

Maintaining an accurate and detailed history of a regulation is important. A regulation's history may need to be consulted for purposes of litigation, to address questions from the publisher, to assist the revisor when making necessary revisions, or for future drafting projects.

Documents in a regulation file are public records and are scheduled to be retained permanently under the Department of Law's *Civil Division Records Retention and Disposition Schedule*. Additionally, agency regulation files must be retained "until administrative or management need is met" in accordance with the *State of Alaska General Administrative Records Retention Schedule*. To determine whether the administrative or management need has been met, and before disposing of any regulation files, the agency should consult with the Department of Law.

Although documents in a regulation file are public records, they may contain protected information that must be reviewed and redacted or logged when responding to requests. Because more than just the attorney-client privilege may apply to regulation files, agencies may not unilaterally release protected information—or potentially protected information—without the approval of the regulations attorney. Below is a list of common documents found in a regulation file and their protected status. Agencies are free to release those documents marked "not protected."

Document Types	Protected Status
Correspondence, including email communications	Potentially protected. Department of Law will review for protected information (e.g., attorney-client, deliberative process, and executive communications).
Draft public notices and other notice documents	Potentially protected. Department of Law will review for protected information (e.g., attorney-client, deliberative process, and executive communications).
Draft regulations, including drafts edited by LRLR attorneys, agency attorneys, and legal editors	Potentially protected. Department of Law will review for protected information (e.g., attorney-client, deliberative process, and executive communications).
Final versions of regulations approved for notice	Not protected
Final public notices	Not protected
Final versions of regulations approved for adoption	Not protected
Regulations delivered to lieutenant governor	Not protected
Material adopted by reference	Not protected

Research files	Potentially protected. Department of Law will review for protected information (e.g., attorney-client, deliberative process, and executive communications).
Memoranda addressed to client agency	Potentially protected. Department of Law will review for protected information (e.g., attorney-client, deliberative process, and executive communications).

Legislative History of the APA

1959 (ch. 143, SLA 1959)

- The Administrative Procedure Act (APA) is established. It includes a provision that requires legislative oversight of regulations.
- The legislative council is required to annually review all regulations to ensure alignment with legislative intent and submit a report of its findings to the full legislature.
- Legislature is granted the authority to annul regulations by resolution.
- Lieutenant governor—at this time, called the secretary of state—is provided complete control over the form and style in which regulations are prepared and published. The lieutenant governor is directed to prescribe the manner and form for noticing, compiling, codifying, and indexing regulations filed under the APA.
- Regulations under the APA are required to go directly from the agency to lieutenant governor for filing.

1962 (ch. 149, SLA 1962)

- Agencies are required to submit regulations to the Department of Law for review before filing by the lieutenant governor.
- The Department of Law is required to provide an opinion to the agency regarding the validity, correctness, and clarity of the regulations, and to suggest any changes to make the regulations more valid or useful.
- The agency is required to provide the opinion of the Department of Law to the lieutenant governor with the regulations for filing.
- The lieutenant governor is prohibited from filing regulations *not accompanied by the Department of Law opinion*.

1966 (ch. 70, SLA 1966)

- The legislative council—instead of lieutenant governor—is directed to prescribe a uniform system of indexing, numbering, arrangement of text, and citation of authority and history notes for the Alaska Administrative Code.

- Legislative council staff are directed to devise a manual instructing agencies on the drafting and preparation of regulations for filing and publication.
- The lieutenant governor is directed to prescribe a standard size form to be used for filed regulations.
- The lieutenant governor is prohibited from filing a regulation unless accompanied by a Department of Law opinion stating that the regulation is "authorized by statute." This departs from previous law that required the lieutenant governor to only receive the opinion.

1969 (ch. 40, SLA 1969)

- Every regulation is required to be followed by a citation of general and specific statutory authority.
- The administrative code and registers are required to include appropriate annotations to judicial decisions and opinions of the attorney general.

1969 (ch. 57, SLA 1969)

- Legislative Affairs Agency (LAA) is directed to develop drafting manual for administrative regulations that prescribes the style and form of regulations submitted under the APA.
- Provision requiring regulation copies to local government clerks and a provision relating to publication form are repealed.

1969 (ch. 58, SLA 1969)

- Requirements under AS 44.62.040 are overhauled to require that every agency promulgating regulations under the APA work with the Department of Law, in addition to adhering to the drafting manual prepared by LAA.
- The Department of Law is directed to review for legality, constitutionality, and consistency with other regulations; the existence and correctness of statutory authority; clarity, simplicity, absence of possibility of misapplication; and adherence to drafting manual (the manual, at this time, still prepared by LAA).
- The Department of Law is required to prepare a written statement of approval or disapproval of the regulations.
- Clarified, again, that the lieutenant governor is prohibited from filing regulations unless accompanied by written statement of approval from the Department of Law. Slight deviation from the "authorized by statute" language from the 1966 law.
- Position of regulations attorney is created in the Department of Law. The responsibilities of the regulations attorney are substantively the same to this day under AS 44.62.125.

1975 (ch. 27, SLA 1975)

- Administrative Regulations Review Committee is established as an interim committee in legislature for reviewing all administrative regulations filed by the lieutenant governor.
- Within 45 days of filing a regulation, the lieutenant governor is required to submit the regulation to the chairman of the Administrative Regulation Review Committee.

1978 (ch. 64, SLA 1978)

- Responsibility for updating the drafting manual for administrative regulations is transferred from LAA to the Department of Law. At this point, the legislative council is still responsible for prescribing a uniform system of indexing, numbering, arrangement of text, and citation of authority and history notes for the Alaska Administrative Code.
- Incumbent legislators and LAA are added to distribution list for proposed regulations.
- Timeline for the lieutenant governor to submit regulations to Administrative Regulation Review Committee is changed from 45 days after filing to at the same time as filing.

1982 (ch. 59, SLA 1982)

- The responsibility for prescribing a uniform system of indexing, numbering, arrangement of text, and citation of authority and history notes for the Alaska Administrative Code is transferred from the legislative council to the Department of Law.

1985 (ch. 59, SLA 1985)

- AS 44.62.175 is enacted, requiring the lieutenant governor to publish or contract for the "Alaska Administrative Journal." All notices of proposed regulatory actions under the APA are required to be published in the journal. This would later be replaced by the Alaska Online Public Notice System.

1995 (ch. 64, SLA 1995)

- Agencies are required to submit adopted regulations to governor for review before submitting to the lieutenant governor for filing. All boards and commissions are exempted from this requirement.
- Governor is granted the authority to return the regulations if they are inconsistent with the faithful execution of the laws or to enable the agency to respond to issues raised by Administrative Regulation Review Committee.
- Agencies are required to pay special attention to the cost to private persons of a proposed regulation.
- Agencies are required to keep a record of the use or rejection of factual or other substantive information that is received in writing as public comment and that is relevant to the accuracy, coverage, or other aspect of the proposed regulatory action.

1998 (ch. 119, SLA 1998)

- Agencies are authorized to incorporate by reference future amended versions of material if (1) the material is a regulation of another state agency or (2) incorporation by reference of future versions is explicitly authorized by statute.
- Agencies are required to notify the regulations attorney in the Department of Law of any title change in future amended or revised version of a document or material incorporated by reference.

- Relatedly, AS 47.05.012 is enacted, explicitly listing the future amended documents that the Department of Health and Social Services may incorporate by reference.

2000 (ch. 54, SLA 2000)

- The Alaska Administrative Journal is eliminated and replaced by the Alaska Online Public Notice System. All notices of proposed regulatory action under the APA are required to be posted on the online system.

2014 (ch. 87, SLA 2014)

- Gubernatorial review statute, AS 44.62.040(c), is amended to only exempt Board of Fisheries, Board of Game, AOGCC, and RCA. Previously, all boards and commission were exempted. Additionally, the governor's ability to send the regulations back to the agency is limited to occurring within 30 days of receiving the regulations for review.
- Requirements for the content of notices are amended under AS 44.62.190 to exempt Board of Fisheries, Board of Game, AOGCC, and RCA from providing certain information. Those entities, however, are held to separate requirements.
- Board of Fisheries, Board of Game, AOGCC, and RCA are exempted from attaching proposed regulations to online notice.
- Board of Fisheries, Board of Game, AOGCC, and RCA are exempted from keeping record of use or rejection of information received in public comment. Previously, this exemption existed for all boards and commissions.
- AS 44.62.213 is enacted, allowing agencies to "contact a person about the development" of a regulation and requiring agencies to answer questions about regulations and make them available on the Alaska Online Public Notice System. Board of Fisheries, Board of Game, AOGCC, and RCA are exempted from this requirement.
- The Administrative Regulation Review Committee is added to the distribution list for notices relating to future amended versions of materials incorporated by reference.
- Agencies are required to submit regulations to the Administrative Regulation Review Committee at the same time they submit the regulations for governor review under AS 44.62.040(c).

2018 (ch. 7, SLA 2018)

- Administrative Regulation Review Committee is eliminated.

CHAPTER 11

AGENCIES NOT SUBJECT TO APA PROCESS

This chapter applies to agencies that the legislature has expressly excluded from compliance with the Administrative Procedure Act (APA) when adopting regulations. These agencies are different from those boards and commissions that have minor procedural differences under the APA, such as the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission. The agencies discussed in this chapter are considered "non-APA" because, by and large, they are completely exempted from the APA process, rather than being exempted from a limited number of provisions.

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

Why are some agencies not subject to the APA?

Most commonly an entity is exempt from the APA because it must retain market participation flexibility or because the area of regulation relates to specialized internal management.

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 consider its meeting schedule when planning the timing of a project.

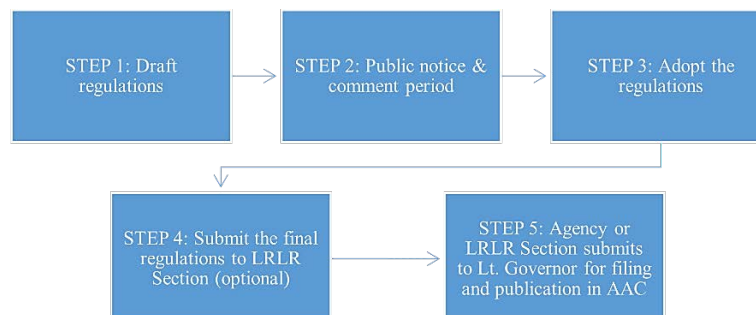
Can non-APA agencies use the appendices in this manual?

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 certain 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 adoption and in the same manner as 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.

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 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.

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

All appendices submitted to the Department of Law for 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.

Table of Appendices

Category	Appendix		Page
File Opening and Preliminary Review Request	A	Department of Law File Opening and Preliminary Review Request	105
Public Notice Regular Regulation	B-1	Notice of Proposed Regulation (Newspaper)	107
	B-2	Notice of Proposed Regulation (Non-Newspaper)	109
	B-3	Notice of Proposed Regulation (for use by Board of Fisheries, Board of Game, AOGCC, and RCA)	111
	C-1	Additional Regulation Notice Information	113
	C-2	Additional Regulation Notice Information (for use by Board of Fisheries, Board of Game, AOGCC, and RCA)	115
	D	Regulatory Fiscal Note	117
Department of Law Final Review Request and Adoption	E	Department of Law Final Review Request	118
	F	Certification of Notice of Proposed Regulation	119
	G	Certification of Agency Record of Public Comment	120
	H	Certification of Oral Hearing	121
	I	Adoption Order	122

Category	Appendix		Page
	J	Certification Order	123
	K	Limited Delegation	124
	L	Standing Delegation	125
	M	Staff Certification of Board/Commission Action	126
	N	Example Excerpt of Board Minutes	127
	O	Post-Filing Online Summary	128
Adoption and Public Notice Emergency Regulation	P	Finding of Emergency and Adoption Order	129
	Q	Finding of Emergency and Certification Order	130
	R-1	Notice of Emergency Adoption (Newspaper)	131
	R-2	Notice of Emergency Adoption (Non-Newspaper)	133
	R-3	Notice of Emergency Adoption (for use by Board of Fisheries, Board of Game, AOGCC, and RCA)	136
	S	Certification of Notice of Emergency Adoption	138
	T	Certification of Compliance	139
Amended Material Previously Adopted by Reference	U	Notice of Amended Material Previously Adopted by Reference	140

Category	Appendix		Page
	V	Certification of Notice of Amended Material Previously Adopted by Reference	141
Non-APA Regulations	W	Non-APA Adoption Order	142
	X	Non-APA Certification Order	143
Example Regulations and Checklists	Y	Example Regulations	144
	Z-1	Agency Checklist (Regular Regulation)	148
	Z-2	Agency Checklist (Permanent Emergency Regulation)	151
	Z-3	Agency Checklist (Non-Permanent Emergency Regulation)	154
Material Adopted by Reference Form	AA	Material Adopted by Reference	156

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:

Request expedited review: Yes ☐ No ☐

If yes, state the reason and any legal deadlines:

Note: The regulations attorney will make the final determination whether the project qualifies for expedited review.

Is this an emergency regulation that is to be made permanent? Yes ☐ No ☐

Does this project adopt material by reference? Yes ☐ No ☐

If yes, also submit Appendix AA and the material proposed for adoption.

Proposed date for public notice:

Note: The Department of Law requires a minimum of 60 days for preliminary review.

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:

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.

Will the proposed regulation be adopted under a delegation of authority? Yes ☐ No ☐

If yes, attach copy of relevant delegation.

Additional notes (for example, whether this is related to another open regulations file):

Appendix B-1: Notice of Proposed Regulation (Newspaper)

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

Summary of proposed changes: 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 _____.

Written comments: 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.]

Written comment deadline: The written comments must be received not later than [time] on [month and day, year].

[Oral hearing: 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.]

Questions: 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].

Public nature of comments and questions: Public comments and questions, once submitted, are public records and subject to disclosure under the Alaska Public Records Act. See AS 40.25.100 - 40.25.295. Do NOT include in your comments or questions any information that you do not want made public.

Accommodations: If you are a person with a disability who needs a reasonable 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.

Obtaining copies of proposed regulations: 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].]

Final version of regulations: 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.

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 __, _____.]

How to receive further notices: 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 B-2: Notice of Proposed Regulation (Non-Newspaper)

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], written in clear, easily readable language that a person without a legal background can understand].

Summary of proposed changes: 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 _____.

Written comments: 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.]

Written comment deadline: The written comments must be received not later than [time] on [month and day, year].

[Oral hearing: 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.]

Questions: 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].

Public nature of comments and questions: Public comments and questions, once submitted, are public records and subject to disclosure under the Alaska Public Records Act. See AS 40.25.100 - 40.25.295. Do NOT include in your comments or questions any information that you do not want made public.

Accommodations: If you are a person with a disability who needs a reasonable 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.

Obtaining copies of proposed regulations: 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]].

Final version of regulations: 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.

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 __, _____.]

How to receive further notices: 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 B-3: Notice of Proposed Regulation
(for use by Board of Fisheries, Board of Game, AOGCC, and RCA)

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

[]¹

Summary of proposed changes: 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 _____.

Written comments: 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.]

Written comment deadline: The comments must be received not later than [time] on [month and day, year].

[Oral hearing: 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.]

Public nature of comments: Public comments, once submitted, are public records and subject to disclosure under the Alaska Public Records Act. See AS 40.25.100 - 40.25.295. Do NOT include in your comments any information that you do not want made public.

¹ If the agency is the Alaska Oil and Gas Conservation Commission, insert brief description here. See Appendix B-2 for brief description example.

Accommodations: If you are a person with a disability who needs a reasonable 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.

Obtaining copies of proposed regulations: 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]].

[A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System [or though 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]].

Final version of regulations: 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.

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 __, _____.]

How to receive further notices: 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 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 (insert description and check all applicable boxes):

- ☐ 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: _____

A school district: _____

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 change

_____ Other (identify): _____

11. Date: _____ Prepared by: _____

[signature]

Name (printed): _____

Title (printed): _____

Telephone: _____

Appendix C-2: Additional Regulation Notice Information
(for use by 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 (insert description and check all applicable boxes):

- () 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	Subsequent
	FY _____	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: Regulatory 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: 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 each change in detail (attach extra pages if necessary or identify the name of the attachment that sets out each change):

If emergency regulation, provide date the emergency regulation expires:

Attachments:

See checklist in Appendix Z-1. If emergency regulation, see Appendix Z-2.

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], 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 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], 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 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], certify 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 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 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.] ²

[In accordance with [statute citation], the [name of agency] consulted with [name of other agency or party] before adopting the regulation changes.]

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: _____.

² 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 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.]

[In accordance with [statute citation], the [name of agency] consulted with [name of other agency or party] before adopting the regulation changes.]

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: _____.

Appendix K: Limited Delegation

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]

Appendix L: Standing Delegation

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], certify 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 that the foregoing is true.

Date: _____

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

State of Alaska

[City, town, or village], [Borough or Municipality]

Appendix N: Example Excerpt of Board Minutes

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, subject to final review and approval by the regulations attorney in the Department of Law."

The motion carried unanimously.

Appendix O: Post-Filing Online Summary

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 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) [and any other applicable authority].

[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) [and any other applicable authority].

[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 R-1: Notice of Adoption of Emergency Regulation (Newspaper)

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

Summary of changes: 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 changed as follows: [informative summary of proposed amendment or new material; describe the change from the existing regulation.]
- (2) _____ is 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] unless made permanent. The [name of agency] [intends] [does not intend] to make the emergency regulation permanent.

Written comments: 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.]

Written comment deadline: The written comments must be received not later than [time] on [month and day, year].

[Oral hearing: [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.]

Questions: 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.

Public nature of comments and questions: Public comments and questions, once submitted, are public records and subject to disclosure under the Alaska Public Records Act. See AS 40.25.100 - 40.25.295. Do NOT include in your comments or questions any information that you do not want made public.

Accommodations: If you are a person with a disability who needs a reasonable 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.

Obtaining copies of regulations: 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].]

Final version of regulations: 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.

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 _____, _____.]

How to receive further notices: 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: _____

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

Appendix R-2: Notice of Adoption of Emergency Regulation (Non-Newspaper)

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], written in clear, easily readable language that a person without a legal background can understand].

Summary of regulation changes: 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 changed as follows: [informative summary of proposed amendment or new material; describe the change from existing regulation.]
- (2) _____ is 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] unless made permanent. The [name of agency] [intends] [does not intend] to make the emergency regulation permanent.

Written comments: 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.]

Written comment deadline: The written comments must be received not later than [time] on [month and day, year].

[Oral hearing: [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.]

Questions: 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.

Public nature of comments and questions: Public comments and questions, once submitted, are public records and subject to disclosure under the Alaska Public Records Act. See AS 40.25.100 - 40.25.295. Do NOT include in your comments or questions any information that you do not want made public.

Accommodations: If you are a person with a disability who needs a reasonable 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.

Obtaining copies of regulations: 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].]

[Final version of regulations: 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.]

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 _____, _____.]

How to receive further notices: 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: _____

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

Appendix R-3: Notice of Adoption of Emergency Regulation
(for use by Board of Fisheries, Board of Game, AOGCC, and RCA)

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

□³

Summary of regulation changes: 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 changed as follows: [informative summary of proposed amendment or new material; describe the change from existing regulation.]
- (2) _____ is 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] if not made permanent. The [name of agency] [intends] [does not intend] to make the emergency regulation permanent.

Written comments: 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.]

Written comment deadline: The written comments must be received not later than [time] on [month and day, year].

[Oral hearing: [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.]

Public nature of comments: Public comments, once submitted, are public records and subject to

³ If the agency is the Alaska Oil and Gas Conservation Commission, insert brief description here. See Appendix B-2 for brief description example.

disclosure under the Alaska Public Records Act. See AS 40.25.100 - 40.25.295. Do NOT include in your comments any information that you do not want made public.

Accommodations: If you are a person with a disability who needs a reasonable 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.

Obtaining copies of regulations: 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].]

[Final version of regulations: 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.]

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 _____, _____.]

How to receive further notices: 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: _____

[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], 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 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 regulations permanent, 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 Version of 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 Version of Material
Previously Adopted by Reference**

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

I, [name], [title], of [name of agency], 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.

I certify 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 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] 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.

§ AAC 05.020 is repealed:

§ AAC 05.020. Occupations prohibited to persons under age 21. Repealed. (Eff. 10/5/80, Register 15; am 5/20/90, Register 33; repealed ____/____/____, Register ____)

§ 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 **16 or 17 years of age** [AGED 14 OR 15] 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.**

§ AAC 05.035(c) is repealed:

(c) Repealed ____/____/____.

§ 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

Blanks provided for date of repeal.

When adding a completely new provision, no bold or underline on added text.

When repealing complete section, history note has blank spaces for date of repeal and authority citation is removed.

Deleted language must come after the added language.

New text is bolded and underlined; deleted text is bracketed and capitalized.

Footer: page number

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.

Register _____, _____ 20__ LABOR AND WORKFORCE DEV.

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)

Appendix Z-1: Agency Checklist (Regular Regulation)

Step 1: Planning and Preparation

- ☐ Consider timing, deadlines, and costs.
- ☐ Confirm agency authority.
- ☐ Consult with agency attorney at the Department of Law to determine whether concept is appropriate for regulation.

Step 2: Drafting

- ☐ Confirm that agency is working with most recent copy of regulations.
- ☐ Draft proposed amendments in accordance with Chapter 4.
- ☐ Draft all notice documents in accordance with Chapter 2; choose appropriate public notice (Appendix B-1 for newspaper and B-2 for non-newspaper; Appendix B-3 for Regulatory Commission of Alaska, Board of Fisheries, and Board of Game, and AOGCC).

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 MS Word (.docx) copy of proposed regulations and notice materials; if applicable, attach material proposed to be adopted by reference and Appendix AA.
- ☐ Receive Department of Law approval to move forward with public notice.

Step 5: Public Notice and Comment

- ☐ Finalize notice documents that are approved by the Department of Law.
- ☐ Ensure the final approved public notice includes:
 - ☐ Brief description (for Appendix B-2; and B-3 if agency is AOGCC);
 - ☐ 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).
- ☐ Finalize 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; contact law.regulation@alaska.gov for the email.
 - ☐ 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 Regulatory Commission of Alaska, Board of Fisheries, and Board of Game, or Alaska Oil and Gas Conservation Commission)(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

- ☐ Post summary of filed regulations on the Alaska Online Public Notice System (Appendix O). Attach copy of filed regulations.

Appendix Z-2: Agency Checklist (Permanent Emergency Regulation)

Step 1: Planning and Preparation

- ☐ Determine whether project meets emergency regulation standard:
 - ☐ Address clearly identified risk to public health, safety, peace, or welfare;
 - ☐ Risk is sudden, unusual, or unpredictable.
- ☐ Confirm agency authority.
- ☐ Consider timing, deadlines, and costs.
- ☐ Prepare written finding of emergency and order (Appendix P or Appendix Q for boards and commissions).
- ☐ Receive approval of the emergency finding from the Department of Law.
- ☐ Decide whether emergency regulations will be made permanent; if not intending for the regulations to be permanent, use Appendix Z-3 for non-permanent emergency regulations.

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 public notice for emergency regulation (Appendix R-1 for newspaper and R-2 for non-newspaper; Appendix R-3 for Regulatory Commission of Alaska, Board of Fisheries, and Board of Game, and AOGCC). Include the following:
 - ☐ Brief description (for Appendix R-2; and on R-3 if agency is AOGCC);
 - ☐ Informative summary of regulation;
 - ☐ Statement whether emergency regulation will be made permanent;
 - ☐ 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.

Steps 6 and 7: Adoption and Submission to lieutenant governor

- ☐ 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; contact law.regulations@alaska.gov for the email.
 - ☐ 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.

Step 9: Consider Public Comments and Changes

- ☐ Collect and carefully consider all comments; document use or rejection of comments.
- ☐ Prepare certification of notice of adoption of emergency regulations (Appendix S).

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;
 - ☐ 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 Regulatory Commission of Alaska, Board of Fisheries, Board of Game, or Alaska Oil and Gas Conservation Commission) (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;
 - ☐ Other relevant documents (e.g., material adopted by reference).

Step 11: Certification of Compliance (and, if applicable, adoption)

- ☐ Upon approval by regulations attorney, complete certification of compliance and, if applicable, new adoption order or certification order.
- ☐ Send the following completed documents to law.regulations@alaska.gov:
 - ☐ Certification of compliance (Appendix E);
 - ☐ Adoption order, if applicable;
 - ☐ Certification order for boards and commission, if applicable, along with minutes and certification of board or commission action.
- ☐ Email certification of compliance and final regulations to regulations specialists (gov-reg) in the governor's and lieutenant governor's office. Include adoption or certification order, if applicable.

Step 12: 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 13: 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.

Appendix Z-3: Agency Checklist (Non-Permanent Emergency Regulation)

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.
- ☐ Prepare written finding of emergency and order (Appendix P or Appendix Q for boards and commissions).
- ☐ Receive approval of the emergency finding from the Department of Law.
- ☐ Decide whether emergency regulations will be made permanent; if intending for the regulations to be permanent, use Appendix Z-2 for permanent emergency regulations.

Steps 2: 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 public notice for emergency regulation (Appendix R-1 for newspaper and R-2 for non-newspaper; Appendix R-3 for Regulatory Commission of Alaska, Board of Fisheries, AOGCC, and Board of Game) Include the following:
 - ☐ Brief description (for Appendix R-2; and R-3 if agency is AOGCC);
 - ☐ Informative summary of regulation;
 - ☐ Statement whether emergency regulation will be made permanent;
 - ☐ ADA information;
 - ☐ 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.
- ☐ Submit the proposed regulation, finding of emergency, and notice material to Department of Law.

Step 3: Adoption

- ☐ Formally adopt regulations through adoption order or certification order that appears below the finding of emergency (Appendix P or Appendix Q).

Step 4: 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 5: 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.

Appendix AA: Material Adopted by Reference

Project title:

☐ Amendment under AS 44.62.245

Identify material to be adopted, including specific pages or sections if applicable:

Published/Issued by:

Publication/Effective Date:

Type of material:

☐ Model code or law

☐ Trade publication

☐ Agency technical document

☐ Alaska statute or regulation

☐ Federal statute or regulation

☐ Other: _____

Describe the material and reason for adoption by reference:

Are future amendments included:

☐ No

☐ Yes. Specific statutory authority, if applicable: _____

A full and complete copy of the material is:

☐ attached herewith

☐ accessible at the following Internet link:

Indicate how the public may access the material, including any associated fees or other costs:

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.

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".

Index

Abbreviations	54
Active voice	53, 58, 88
Additional regulation notice information.....	7, 13, 14, 19, 113, 115
Administrative Procedure Act.....	1 - 4, 7, 9, 14, 63, 66, 71, 73, 92 – 95, 157
Adoption	
authority	1, 22
delegation.....	22
order	21, 122, 129, 157
order for non-APA regulations	142
process.....	20 - 22, 78, 82, 97 - 99
Agency attorney	8, 14, 20, 84, 85, 87, 97, 157
Alaska Administrative Code	24 - 26, 66, 88, 89, 83, 157
Alaska Constitution.....	1, 46, 54
Alaska Online Public Notice System	10, 11, 13, 15, 16, 22, 23, 69, 71, 83, 94, 157
Amendment, types of.....	32, 157
Americans with Disabilities Act	11, 87
And, as conjunction	59
Approval of a regulation (see "Department of Law approval")	
Article	
addition of	34
organization.....	25, 157
Authority citation	45, 46, 157
Brief description.....	9, 86
Capitalization	32, 33, 54
Certification of agency record of public comment	20, 120
Certification of board/commission action.....	21, 126
Certification of compliance.....	82, 139, 157

Certification of notice of adopted emergency regulation	82, 138
Certification of notice of amended version of material adopted by reference.....	72, 79, 141
Certification of notice of proposed regulation	19, 119
Certification of oral hearing.....	20, 121
Certification (of adoption) order	19, 21, 123, 157
Certification (of adoption) order for non-APA regulations	98, 142
Chapter	
addition of	37
organization.....	25
Checklists	148 - 155
Colons	58
Commas	58
Comments	7, 8, 10, 16, 79, 98
Comment period.....	10, 79
Conforming amendments.....	41
Conjunctions	59
Content list	34, 157
Costs.....	6, 13, 14, 61, 63, 64
Definitions.....	25, 34, 47 - 50, 89
Delegation of authority	22
Drafting	8, 27 - 51
Editor's note	46, 47, 70, 157
Effective date	22, 78, 89, 99
Electronic terminology.....	54
Ellipses.....	50, 146
Emergency regulations.....	73 - 83, 87, 99
Fees	55, 61
Fiscal information	12

Fiscal note	12, 63 - 65, 117
Footer	27, 28
Formatting.....	27, 28
Fractions.....	55
Gender neutral language	53
Grammar	52, 58 - 60
Header	27, 28, 76
History note.....	30, 41
Incorporated by reference (see "material adopted by reference")	
Indentation	29
Informative summary.....	9, 10
Interested parties, interested persons	12, 15, 72
Introductory language	47, 158
Lead-in line	30
Material adopted by reference	66 - 72
May, use of.....	53
Must, use of.....	53
Non-APA agencies.....	1, 96 - 99, 158
Notice (see "public notice")	
Number (singular and plural).....	53
Numerals	55
Online Public Notice System (see "Alaska Online Public Notice System")	
Online summary.....	23, 83
Open Meetings Act	1, 5, 7, 8, 97
Or, as conjunction	59
Oral hearings	7, 17
Paragraph	25, 26, 158
Part	24, 158

Passive Voice	58
Penalties	61
Pronouns	53, 88
Public comment (see "comments")	
Public meeting	21, 98
Public Records Act	1
Public notice	
content.....	9 - 14
distribution	14, 79
for amended version of material previously adopted by reference.....	71
publication.....	14, 79, 85, 98, 99,
questions	11
Proof-of-publication affidavit	14, 19, 72, 79
Publisher's memo	50, 89
Regulation, definition of	1, 2
Regulations attorney, role	8, 9, 20, 78, 82, 84, 85, 87 - 90, 93, 158
Repeal	32, 38, 39, 41, 158
Repeal and readopt.....	32, 34, 39, 40, 158
Section, organization of	25
Semicolon	60
Shall, use of.....	53
Signatures.....	21
Subparagraph, organization of	25
Subsection, organization of.....	25
Sub-subparagraph, organization of	25
Supplemental Notice	17 - 19, 80, 159
Teleconference	10, 17, 21
Telephone numbers	57

Tense	53, 88
Timing.....	5
Underlining	32
Voice	58
Website addresses	57
Will, use of.....	56
Word choice	54 - 57