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Source

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Chapter No.

64

AN ACT

Relating to the adoption, amendment, and repeal of regulations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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Approved by the Governor: June 5, 1995

Actual Effective Date: September 3, 1995

AN ACT

1 Relating to the adoption, amendment, and repeal of regulations.

2

3 * Section 1. AS 24.20.460(4) is amended to read:

4 (4) to examine all administrative regulations, including proposed
5 regulations, amendments, and orders of repeal, to determine if they properly
6 implement legislative intent and to provide comments on them to the governor and
7 state agencies;

8 * Sec. 2. AS 44.62.040(a) is amended to read:

9 (a) Subject to (c) of this section, every [EVERY] state agency that [WHICH]
10 by statute possesses regulation-making authority shall submit to the lieutenant governor
11 for filing a certified original and one duplicate copy of every regulation or order of
12 repeal adopted by it, except one that

13 (1) establishes or fixes rates, prices, or tariffs;

14 (2) relates to the use of public works, including streets and highways,
15 under the jurisdiction of a state agency if the effect of the order is indicated to the

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1 public by means of signs or signals; or

2 (3) is directed to a specifically named person or to a group of persons
3 and does not apply generally throughout the state.

4 * Sec. 3. AS 44.62.040 is amended by adding a new subsection to read:

5 (c) Before submitting the regulations and orders of repeal to the lieutenant
6 governor under (a) of this section, every state agency that by statute possesses
7 regulation making authority, except boards and commissions and the office of the
8 ombudsman, shall submit to the governor for review a copy of every regulation or
9 order of repeal adopted by the agency, except regulations and orders of repeal
10 identified in (a)(1) - (2). The governor may review the regulations and orders of
11 repeal received under this subsection. The governor may return the regulations and
12 orders of repeal to the adopting agency before they are submitted to the lieutenant
13 governor for filing under (a) of this section, (1) if they are inconsistent with the
14 faithful execution of the laws or (2) to enable the adopting agency to respond to
15 specific issues raised by the Administrative Regulation Review Committee. The
16 governor may not delegate the governor's review authority under this subsection to a
17 person other than the lieutenant governor.

18 * Sec. 4. AS 44.62.190(a) is amended to read:

19 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
20 notice of the proposed action shall be

21 (1) published in the newspaper of general circulation or trade or
22 industry publication that the state agency prescribes and in the Alaska Administrative
23 Journal; in the discretion of the state agency giving the notice, the requirement of
24 publication in a newspaper or trade or industry publication may be satisfied by using
25 a combination of publication and broadcasting; when broadcasting the notice, an
26 agency may use an abbreviated form of the notice if the broadcast provides the name
27 and date of the newspaper or trade or industry journal where the full text of the notice
28 can be found;

29 (2) mailed to every person who has filed a request for notice of
30 proposed action with the state agency;

31 (3) if the agency is within a department, mailed or delivered to the

1 commissioner of the department;

2 (4) when appropriate in the judgment of the agency,

3 (A) mailed to a person or group of persons whom the agency
4 believes is interested in the proposed action; and

5 (B) published in the additional form and manner the state
6 agency prescribes;

7 (5) furnished the Department of Law together with a copy of the
8 proposed regulation, amendment, or order of repeal for the department's use in
9 preparing the opinion required after adoption and before filing by AS 44.62.060;

10 (6) furnished to all incumbent State of Alaska legislators and the
11 Legislative Affairs Agency;

12 (7) furnished to the standing committee of each house of the legislature
13 having legislative jurisdiction over the subject matter treated by the regulation under
14 the Uniform Rules of the Alaska State Legislature, together with a copy of the
15 proposed regulation, amendment, or order of repeal for the committee's use in
16 conducting the review authorized by AS 24.05.182;

17 (8) furnished to the staff of the Administrative Regulation Review
18 Committee, together with a copy of the proposed regulation, amendment, or order
19 of repeal and, if preparation of an appropriation increase estimate is required by
20 AS 44.62.195, a copy of the estimate.

21 * Sec. 5. AS 44.62.210(a) is amended to read:

22 (a) On the date and at the time and place designated in the notice the agency
23 shall give each interested person or the person's authorized representative, or both, the
24 opportunity to present statements, arguments, or contentions in writing, with or without
25 opportunity to present them orally. The state agency may accept material presented
26 by any form of communication authorized by this chapter and shall consider all
27 factual, substantive, and other relevant matter presented to it before adopting,
28 amending, or repealing a regulation. When considering the factual, substantive, and
29 other relevant matter, the agency shall pay special attention to the cost to private
30 persons of the proposed regulatory action.

31 * Sec. 6. AS 44.62 is amended by adding a new section to read:

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1 Sec. 44.62.215. RECORD OF PUBLIC COMMENT. In the drafting, review,
2 or other preparation of a proposed regulation, amendment, or order of repeal, an
3 agency, other than a board or commission and the office of the ombudsman, shall keep
4 a record of its use or rejection of factual or other substantive information that is
5 submitted in writing as public comment and that is relevant to the accuracy, coverage,
6 or other aspect of the proposed regulatory action.

7 * Sec. 7. AS 44.62.230 is amended to read:

8 Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a petition
9 requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 -
10 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule
11 the matter for public hearing under AS 44.62.190 - 44.62.215 [AS 44.62.190 -
12 44.62.210]. However, if the petition is for an emergency regulation, and the agency
13 finds that an emergency exists, the requirements of AS 44.62.040(c) and 44.62.190 -
14 44.62.215 [AS 44.62.190 - 44.62.210] do not apply, and the agency may submit the
15 regulation to the lieutenant governor immediately after making the finding of
16 emergency and putting the regulation into proper form.

17 * Sec. 8. AS 44.62.250 is amended to read:

18 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of
19 repeal may be adopted as an emergency regulation or order of repeal if a state agency
20 makes a written finding, including a statement of the facts that constitute the
21 emergency, that the adoption of the regulation or order of repeal is necessary for the
22 immediate preservation of the public peace, health, safety, or general welfare. The
23 requirements of AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215
24 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency regulations;
25 however, upon adoption of an emergency regulation the adopting agency shall
26 immediately submit a copy of it to the lieutenant governor for filing and for
27 publication in the Alaska Administrative Register, and within five days after filing by
28 the lieutenant governor the agency shall give notice of the adoption in accordance with
29 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day
30 automatically repeals the regulation.

31 * Sec. 9. AS 44.62.260 is amended to read:

1 Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY
2 REGULATIONS. (a) A regulation adopted as an emergency regulation does not
3 remain in effect more than 120 days unless the adopting agency complies with
4 AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 -
5 44.62.210] either before submitting the regulation to the lieutenant governor or during
6 the 120-day period.

7 (b) Before the expiration of the 120-day period, the agency shall transmit to
8 the lieutenant governor for filing a certification that AS 44.62.040(c), 44.62.060,
9 [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with
10 before submitting the regulation to the lieutenant governor, or that the agency complied
11 with those sections within the 120-day period. Failure to so certify repeals the
12 emergency regulation; it may not be renewed or refiled as an emergency regulation.

13 * **Sec. 10.** AS 46.03.020 is amended by adding a new subsection to read:

14 (b) Notwithstanding another provision of law to the contrary, when adopting
15 a regulation relating to the control, prevention, and abatement of air, water, or land or
16 subsurface land pollution, the department shall give special attention to public
17 comments concerning the cost of compliance with the regulation and to alternate
18 practical methods of complying with the statute being interpreted or implemented by
19 the regulation.

20 * **Sec. 11.** APPLICABILITY FOR REGULATIONS. The changes made to AS 44.62 and
21 AS 46.03.020 by this Act do not apply to the adoption, amendment, or repeal of a regulation
22 unless the adoption, amendment, or repeal is first noticed under AS 44.62.200 on or after the
23 effective date of this Act.