



DEPARTMENT OF LAW  
2020 REGULATIONS PRIMER

EMERGENCY REGULATIONS PROCESS

# WHY ARE WE HERE?

WE WANT TO INTRODUCE YOU TO THE PROCESS OF DRAFTING REGULATIONS

(DON'T WORRY, YOU'LL GET A COPY OF THIS POWER POINT)



# WHO ARE WE?

## Harriet Dinegar-Milks

- Department of Law
- Commercial & Fair Business Section
- Provides advice to the Department of Commerce, Community, & Economic Development and related boards and commissions

## Samantha Weinstein

- Department of Law
- Legislation & Regulations Section
- Drafts legislation and reviews regulations for all agencies

# COVID-19 GOVERNOR'S DECLARATION MARCH 11, 2020

- Emergency disaster declaration: threat of an imminent disease outbreak
- Grants statutory powers to deal with the disaster to:
  - the governor,
  - Department of Health and Social Services, and
  - Department of Military and Veterans Affairs
- Legislature must agree that there is a disaster within 30 days of the declaration

*Introducing The New*  
**Coronavirus.Alaska.Gov**  
*Alaskans source for COVID-19 information,  
news, and official announcements.*



Preview it today at: [covid19.alaska.gov](https://covid19.alaska.gov)

# LEGISLATIVE CONFIRMATION OF DISASTER – SB 241

If necessary,  
boards may

- Expedite licensing for a person holding the corresponding license in another state
- Limit the expedited license to the length of the disaster

If necessary,  
boards may

- Waive or modify continuing education requirements
- Regulate the scope or duration of expedited licenses
- Require supervision of a person with an expedited license

A doctor or nurse  
is exempt from  
licensing if

- Licensed & in good standing in another state
- Within the scope of services
- Using two-way, real time, electronic communication
- Not prescribing a controlled substance

# AUTHORITY FOR REGULATIONS: ALASKA STATUTES



*Image courtesy of the Fairbanks Daily News-miner*

A screenshot of the Alaska State Legislature's website. The header features a map of Alaska and the text 'The Alaska State Legislature'. Below the header is a navigation menu with links for HOME, SENATE, HOUSE, BILLS &amp; LAWS, MEDIA CENTER, PUBLICATIONS, and GET STARTED. The main content area displays '31st Legislature(2019-2020)' and 'Alaska Statutes 2018'. A search bar is located on the right side of the page. On the left, there is a 'Basis Navigation' sidebar with links for Bills, Legislators, Committees, Session, Session Laws, Tools, and Archive. Below this is a 'Statutes Navigation' sidebar with links for ToC, Print, Email Link, and Embed This. The main text area shows the beginning of 'TITLE 1. GENERAL PROVISIONS.' and 'Chapter 05. Alaska Statutes.', followed by 'Sec. 01.05.006. Adoption of Alaska Statutes; notes, headings, and references not Law.' and a paragraph of text describing the bulk formal revision of the laws of Alaska.

*Image from akleg.gov/basis/statutes.asp*

# AUGUST 2018 LATEST EDITION: AVAILABLE IN PRINT OR ONLINE

## Drafting Manual for Administrative Regulations



Prepared by

State of Alaska  
Department of Law

August 2018 (22<sup>nd</sup> Edition)

A screenshot of a web browser displaying the State of Alaska Department of Law website. The page title is "DRAFTING MANUAL FOR ADMINISTRATIVE REGULATIONS". The browser address bar shows "law.alaska.gov/doclibrary/drafting\_manual.html". The website header includes "THE GREAT STATE OF ALASKA" and "Do'ent'a? (Dinak) How are you?". The main content area features a navigation menu with "LAW HOME", "CONSUMER PROTECTION", "LAW RESOURCES", "CRIMINAL JUSTICE", and "EMPLOYMENT". Below the menu, the page title "DRAFTING MANUAL FOR ADMINISTRATIVE REGULATIONS" is displayed. A sub-header reads "DRAFTING MANUAL FOR ADMINISTRATIVE REGULATIONS (2018) (PDF - 1.8M) posted 10/02/2018". A bullet point links to "Memo Regarding the 2018 Drafting Manual for Administrative Regulations (PDF - 15K)". A paragraph explains that the manual is produced by the Legislation and Regulations Section of the Alaska Department of Law and provides contact information for Susan Pollard. Another paragraph states that the manual includes appendices, forms, and electronic links to appendix documents in MS Word format. A list of appendices is provided: APPENDIX A - AGENCY CHECKLIST REGS, APPENDIX B - AGENCY CHECKLIST EMERG REGS, APPENDIX C - SAMPLE REGULATIONS, APPENDIX D-1 - NOTICE OF PROPOSED REGS - NEWSPAPER, APPENDIX D-2 - NOTICE OF PROPOSED REGS - NON-NEWSPAPER, APPENDIX D-3 - NOTICE OF PROP REGS - NEWSPAPER (EXEMPT BDS COMMNS), APPENDIX E-1 - ADDITIONAL REGS NOTICE INFORMATION, APPENDIX E-2 - ADDITIONAL REGS NOTICE INFORMATION (EXEMPT BDS COMMNS), APPENDIX F - FISCAL NOTE, APPENDIX G - AGENCY FILE OPENING REQUEST, and APPENDIX H - AFFIDAVIT OF NOTICE. A sidebar on the right lists "LAW RESOURCES" with links to "LAW RESOURCES", "ALASKA STATUTES &amp; REGULATIONS", "ALASKA CONSTITUTION", "REGULATIONS DRAFTING MANUAL", "ATTORNEY GENERAL OPINIONS", and "EXECUTIVE BRANCH ETHICS".

## BOARDS HAVE AN EXISTING POWER TO REGULATE

All boards have statutes giving the authority and duty to regulate the applicable profession

Boards can follow the normal procedure or, if necessary to protect the public, adopt emergency regulations

Regulations fill the gaps left by statutes – the legislature makes the outline, and boards add the specifics



# WHAT'S A REGULATION?

Standard of general application

Adopted by a state agency to

- Implement, interpret, or make specific a law, or
- Govern the agency's procedure (but not its internal management)

Affects the public or is used by the agency in dealing with the public

Must be reasonably necessary and not arbitrary

# IS THERE AN EMERGENCY?

(APPENDIX S IN THE DRAFTING MANUAL)

- Do circumstances indicate that the board needs to make or change a regulation?
  - **Necessary for the immediate preservation of the public peace, health, safety, or general welfare.**
- State policy: emergencies are held to a minimum and rarely found to exist



# HOW TO DRAFT AND ADOPT EMERGENCY REGULATIONS

## **Know your Limits**

- Emergency regulations don't last forever
- Be prepared to convert to permanent regulation

## **Know your Lawyer**

- AAGs are here to assist at every step
- Identification of emergency, drafting, review,

## **Know the Rules**

- Administrative Procedure Act
  - Notice, meeting, voting
- Drafting Manual
  - Procedure and Examples
  - Appendices T and U

# THE PUBLIC MEETING

## The meeting must look like this:

**3 or more members** who have the power to act on behalf of the board

**Reasonable notice** – the more the better

- 3 days is usual minimum;
- 10 days if possible

**Open to the public** – listen & testify

- A place people can walk into
- A number people can call
- A place to record minutes

## At the meeting, the board must:

**Identify, describe, and VOTE on finding of an emergency**

**Describe how the proposed regulation responds to the emergency**

**Roll call vote if any member is telephonic**

## DELIVERY TO LT. GOVERNOR

### Notify April Simpson

- (907) 465-3520 or  
april.simpson@Alaska.gov

### Create your packet

- Original signed finding & order
- Relevant section of board meeting minutes
- Board staff affidavit
- Fiscal note (if applicable)
- Emergency regulations



*Take a quick nap, you're not done yet*

# FOUR ESSENTIALS OF NOTICE

## TITLE

Which board?  
What topic?

## BRIEF DESCRIPTION

Enough to put  
interested  
parties on  
notice that  
this could  
affect their  
interests

## INFORMATIVE SUMMARY

What parts of  
the regulatory  
scheme are  
affected and,  
briefly, how?

## MEETING

When?  
Where?  
How will  
people  
comment?

# PUBLICATION AND DISTRIBUTION OF NOTICE

## APPENDIX H

### Must be:



Published in a newspaper or trade publication



furnished electronically to incumbent State of Alaska legislators



posted on the Alaska Online Public Notice System

### Must be Furnished to:



every person who has filed a request for notice of proposed action with the state agency



appropriate state officials



interested persons



the Department of Law, along with a copy of the proposed regulation



# MAKING REGULATIONS PERMANENT

A SUMMARY OF NEXT STEPS





# MAKING REGULATIONS PERMANENT

Open a file with Law: Appendix G

Have public comments & questions

Review public comments

Vote on making the regulations permanent

Submit regulations to the Governor, Lt. Governor, and Law

# LAW REFINES REGULATIONS



Final regulations may be changed or refined without re-noticing if:

- The subject matter remains the same
- Public notice made clear that action might affect same interests

# LAW SUBMITS REGULATIONS FOR FILING



- The Office of the Lt. Governor sends out a notice of filing, including the effective date of the changes and the register number.
- Check the published regulations one more time for accuracy – mistakes are not common, but they do happen.
- Publish a summary on the Alaska Online Public Notice System.

*Contact Susan Pollard and Steve Weaver if you have a question about published regulations.*



**THANK YOU!**

