

18 AAC 15.010(e)(1) is amended to read:

(1) permit, approval, or certification decisions involving matters described in (a) or (b) of this section, **including decisions to amend, suspend, revoke, or re-issue permits, approvals, or certifications**; and

(Eff. 11/25/77, Register 64; am 8/2/90, Register 115; am 2/15/98, Register 145; am 7/11/2002, Register 163; am 9/6/2003, Register 167; am 12/16/2004, Register 172; am 7/29/2006, Register 179; am 7/25/2010, Register 195; am ____/____/____, Register ____)

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|-------------------|--------------|--------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.320 | AS 46.03.730 |
| | AS 46.03.100 | AS 46.03.330 | <u>AS 46.03.880</u> |
| | AS 46.03.110 | AS 46.03.720 | <u>AS 46.04.890</u> |

18 AAC 15.185(a) is amended to read:

(a) **The informal review process allows the requester to address, with the department division that issued a contested decision, concerns over the decision without entering into a formal adjudicatory hearing process. An informal review request is not required before making a request for an adjudicatory hearing.** A person authorized **under** [BY] a provision of this title to request an informal review under this section, or a person authorized to request an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340, may request an informal agency review by the director of the department division that issued the contested decision. As provided in 18 AAC 15.200(e), **proceedings on** a request for **adjudicatory hearing do not begin until after the** [INFORMAL REVIEW STAYS] proceedings on a request for **informal review, if requested, of the contested decision are**

completed [FOR AN ADJUDICATORY HEARING]. A request for informal review must be made **not later than 20** [WITHIN 15] days after **issuance of** [RECEIVING] the department's decision reviewable under this section. The request may be made by mail, electronic mail, or facsimile, and must include

- (1) the **information required under 18 AAC 15.200(c) and (d)**
[REQUESTER'S NAME, MAILING ADDRESS, AND TELEPHONE NUMBER]; **and**
- (2) **subject to the restrictions of 18 AAC 15.245,** [AN IDENTIFICATION OF
THE DEPARTMENT'S DECISION TO BE REVIEWED; AND
- (3) A CLEAR AND CONCISE STATEMENT OF THE REASON FOR THE
REQUEST, INCLUDING
 - (A) A STATEMENT OF THE NATURE AND SCOPE OF THE
REQUESTER'S INTERESTS, AND AN EXPLANATION OF HOW AND TO WHAT
EXTENT THOSE INTERESTS WOULD BE DIRECTLY AND ADVERSELY
AFFECTED BY THE DECISION;
 - (B) THE CONTESTED TERMS AND CONDITIONS OF THE
DEPARTMENT'S DECISION, AND PROPOSED ALTERNATIVES; AND
 - (C)] copies of any documents or data that would assist the director in
concluding the informal review.

18 AAC 15.185(b) is amended to read:

- (b) **Not later than** [THE DIRECTOR OF THE DEPARTMENT DIVISION THAT
ISSUED THE CONTESTED DECISION MAY DESIGNATE A PERSON TO CONDUCT

THE INFORMAL REVIEW, OTHER THAN THE PERSON WHO ISSUED THE CONTESTED DECISION. WITHIN] seven days after receipt of a request for review, the director [OR DESIGNEE] will decide if the request merits informal review. If the director [OR DESIGNEE] decides that the request does not merit informal review, the director [OR DESIGNEE] shall inform the requester in writing of this decision and include the reasons for the decision. **The director's informal review decision is not itself subject to appeal, but the requester may seek a formal adjudicatory hearing on the underlying contested decision under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requester.** In the denial, the director [OR DESIGNEE] shall include **a** [THE] statement **informing** [THAT] the requester [MAY SEEK A FORMAL ADJUDICATORY HEARING UNDER 18 AAC 15.200 OR AS 44.62,] if either of those options is available to the requester.

18 AAC 15.185(c) is amended to read:

(c) If informal review is granted, the director [OR DESIGNEE] may request additional information from the requester. **Additional information requested as part of the informal review process does not become part of the agency decision record under 18 AAC 15.237, unless previously and timely submitted to the division during its review before issuance of the contested decision.** The director [OR DESIGNEE] shall issue a final decision **not later than 20** [WITHIN 15] days after receipt of the request for informal review or receipt of additional information requested, whichever is later. **The director's informal review decision itself is not subject to an appeal. Rather, the** [THE] director [OR DESIGNEE] shall [ALSO] advise the requester and all other parties of the **appropriate appeal procedure described in (d)**

of this section based on the director's final decision after granting informal review [RIGHT TO SEEK AN ADJUDICATORY HEARING UNDER 18 AAC 15.200 OR AS 44.62, IF EITHER OF THOSE OPTIONS IS AVAILABLE TO THE REQUESTOR OR OTHER PARTIES].

18 AAC 85.185(d) is repealed and readopted to read:

(d) In making a final decision after granting informal review, the director may

(1) affirm the contested decision; the director shall advise the requester and all other parties of the right to seek, not later than 30 days after issuance of the director's decision affirming the contested decision, an adjudicatory hearing under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requester or other parties;

(2) remand the entire decision to the division staff for action in accordance with the director's decision; the director shall advise the requester and all other parties of the right to seek an informal review or an adjudicatory hearing under 18 AAC 15.200 or AS 44.62 if either of those options is available to the requester or other parties not later than 30 days after the division staff issues a final decision on remand; or

(3) change the contested decision as follows:

(A) if the change is minor the director shall advise the requester and all other parties of the right to seek an adjudicatory hearing under 18 AAC 15.200 or AS 44.62 on the contested decision as revised by the director, if either of those options is available to the requester or other parties not later than 30 days after issuance of the director's revised decision;

(B) if the change is substantive the director shall direct the division staff to re-notice the contested decision; once finalized and issued, the revised decision is subject to informal review in accordance with this section or to a request for an adjudicatory hearing under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requester or other parties not later than 30 days after issuance of the revised decision.

18 AAC 15.185 is amended by adding a new subsection to read:

(e) With the consent of the parties or good cause shown, the director may shorten or extend a deadline established in (b) or (c) of this section. (Eff. 7/11/2002, Register 163; am ___/___/___, Register ___)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | <u>AS 46.14.200</u> |
| | AS 46.03.320 | AS 46.04.030 | |

18 AAC 15.195 is repealed and readopted to read:

18 AAC 15.195. Applicability. The provisions of 18 AAC 15.195 - 18 AAC 15.340 apply to adjudicatory hearings to review decisions described in 18 AAC 15.010(e), except adjudicatory hearings for administrative penalties under AS 46.03.761(d) or adjudicatory hearings under 18 AAC 23, 18 AAC 30, 18 AAC 31, 18 AAC 32, 18 AAC 34, 18 AAC 52,

18 AAC 60.260, 18 AAC 72.430, 18 AAC 75.550 - 18 AAC 75.570, or 18 AAC 80.1240. (Eff.

7/11/2002, Register 163; am ____/____/____, Register ____)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.720 | <u>AS 46.04.890</u> |
| | [AS 43.03.090] | AS 46.03.730 | AS 46.14.120 |
| | AS 46.03.100 | <u>AS 46.03.761</u> | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | <u>AS 46.14.200</u> |
| | AS 46.03.320 | AS 46.04.030 | [AS 46.35.090(e)] |
| | AS 46.03.330 | | |

18 AAC 15 is amended by adding a new section to read:

18 AAC 15.196. Administrative Procedure Act. To the extent provided in AS 44.62.330(a), AS 46.03.880, AS 46.04.890, and AS 46.14.200, the adjudicatory hearing procedures in this chapter supersede the adjudicatory hearing procedures contained in AS 44.62.330 - 44.62.630 (Administrative Procedure Act). (Eff. ____/____/____, Register ____)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.62.330 | AS 46.03.330 | AS 46.04.890 |
| | AS 46.03.020 | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | AS 46.03.880 | AS 46.14.200 |
| | AS 46.03.320 | AS 46.04.030 | |

18 AAC 15.200 is repealed and readopted to read:

18 AAC 15.200. Request for an adjudicatory hearing. (a) Not later than 30 days after

the department issues a decision reviewable under 18 AAC 15.195 - 18 AAC 15.340 or not later than 30 days after the director issues a final decision under 18 AAC 15.185, whichever is later, a person authorized to request an adjudicatory hearing under this chapter may serve a request upon the commissioner. A copy of the request for adjudicatory hearing must be served on the director, and on the permit applicant or permittee. Except as provided in AS 46.14.200 for certain persons requesting an air emissions permit hearing, a person who requests an adjudicatory hearing, a person designated to act on the person's behalf, or an intervenor must have actively raised the issue to the department through participation in the public review process on the draft decision, if the department offered one, either by submitting written comments or by testifying at a public hearing on the draft decision, unless the challenge is to a provision of a final permit that was not in the draft permit that was the subject of the public notice or comment process.

(b) Unless a permit is being renewed, if the application was made solely for a permit amendment, a request for an adjudicatory hearing may not raise issues relating to

- (1) the validity of the permit for which an amendment is sought; or
- (2) unrelated permit conditions for which an amendment was not sought.

(c) The requester must show in the hearing request that the requirements of (a) - (d) of this section have been met. An adjudicatory hearing request must be in writing on a form provided by the commissioner and must contain

- (1) a description of the decision to be reviewed;
- (2) the requester's name, mailing address, electronic mail address, and telephone number;
- (3) the name and address of each person that is adversely affected by the decision

and that the requester represents; and

(4) the information that supports the request, including

(A) a detailed factual statement of the nature and scope of the interests of the requester, or if the requester is an organization, the interests of the representative members of the organization;

(B) an explanation of how and to what extent those interests would be directly and adversely affected by the contested issues in the decision, including a discussion of the factors in (d) of this section;

(C) a clear and concise statement of the contested issues proposed for hearing, identifying for each contested issue

(i) the disputed issues of material fact and law proposed for review;

(ii) the relevance to the decision of those disputed issues of material fact and law identified under (i) of this subparagraph;

(iii) a detailed explanation of how the decision was in error with respect to the contested issue; and

(iv) the hearing time estimated to be necessary for the adjudication;

(D) a discussion of why the request for hearing should be granted; and

(E) if applicable, specific reference to the contested terms or conditions of the department's decision, as well as suggested alternative terms and conditions that in the requester's judgment are required to implement applicable requirements of law.

(d) The requester must show in the hearing request

(1) that the requester or, if the requester is an organization, the representative members of the organization, are directly and adversely affected by the contested issues in the department's decision so as to justify relief;

(2) the nature of the interest asserted by the requester;

(3) whether that interest is one that the applicable statutes and regulations were intended to protect; and

(4) the extent to which the contested issues in the department's decision directly and substantively impairs that interest.

(e) A request under 18 AAC 15.185 for informal agency review suspends the deadlines set out in 18 AAC 15.200 - 18 AAC 15.340 while the request is pending and during any informal review.

(f) In this section, "contested issues" means the specific disputed issues of material fact and law proposed for review under this section. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am ___/___/___, Register ___)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | <u>AS 46.14.200</u> |
| | AS 46.03.320 | AS 46.04.030 | [AS 46.35.090(e)] |

18 AAC 15.205(a) is amended to read:

(a) Notwithstanding 18 AAC 15.195 - 18 AAC 15.340, the department and the parties may engage in alternative dispute resolution **as provided in 2 AAC 64.200** [, USING PROCEDURES TO WHICH THE DEPARTMENT AND THE PARTIES AGREE, IN ORDER TO PREVENT OR TO MINIMIZE THE ESCALATION OF A DISPUTE OR TO RESOLVE A DISPUTE THAT HAS OCCURRED]. However, a request for an adjudicatory hearing must be filed in accordance with 18 AAC 15.200 at the same time as or before a request for alternative dispute resolution.

(Eff. 7/11/2002, Register 163; am ___/___/___, Register ___)

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|-------------------|----------------|--------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.320 | <u>AS 46.03.880</u> |
| | [AS 46.03.090] | AS 46.03.330 | <u>AS 46.04.890</u> |
| | AS 46.03.100 | AS 46.03.720 | <u>AS 46.14.200</u> |
| | AS 46.03.110 | AS 46.03.730 | |

18 AAC 15.210 is repealed and readopted to read:

18 AAC 15.210. Stay of decision. (a) The department's decision is effective when issued. The department's decision is not automatically stayed during the pendency of proceedings under this chapter. A requester may, not later than the deadline for service of a request for a hearing under 18 AAC 15.200, serve upon the commissioner a request for stay of the department's decision, or a portion of it, pending completion of proceedings under this chapter. The request must be supported by a written memorandum setting out each reason why the decision should be stayed. A person requesting a stay must serve a copy of the request and

supporting memorandum on the division director and on the permit applicant or permittee. A copy of the request for stay also must be provided to the commissioner in an electronic format, unless the department waives this requirement because the requester lacks a readily accessible means or the capability to provide items in an electronic format. The commissioner will issue by mail, facsimile transmission, or electronic mail a notice of the request for stay to the requester, to the division director, to the permit applicant or permittee, and to each person who commented on the application or draft decision, and will post that notice on the Alaska Online Public Notice System established under AS 44.62.175. In the notice of request for stay, the commissioner will inform persons that the request for stay is available for review by contacting the department or by reviewing the department's website. In the notice, the commissioner also will include the statement that a person who wishes to oppose or support the request for stay must do so by serving a response on the commissioner on or before a date established by the commissioner and by serving copies as required under (b) of this section.

(b) Not later than the time that the commissioner sets in the notice of request for stay under (a) of this section, the division director, a requester not requesting the stay, the permit applicant or permittee, and a potential intervenor may serve a responsive memorandum upon the commissioner, the stay requester, the permit applicant or permittee, and the division director in the manner required under 18 AAC 15.340. A potential intervenor need not file a request to intervene under 18 AAC 15.225 in order to submit a responsive memorandum to a request for stay. A potential intervenor submitting a responsive memorandum to a request for stay must file a motion to intervene if the person wishes to participate in a proceeding that the commissioner grants under 18 AAC 15.220.

(c) The commissioner will issue a decision on a request for stay made under (a) of this section. In reviewing a request for stay, the commissioner will consider

(1) whether the person requesting the stay will suffer irreparable harm if a stay is not granted;

(2) whether the rights of other persons and the public interest can be adequately protected if the stay is granted;

(3) the relative harm to the person requesting the stay, the permit applicant or permittee, public health, safety, the environment, and the public interest, if a stay were granted or denied;

(4) the resources that would be committed during the pendency of proceedings under this chapter if a stay were granted or denied; and

(5) the likelihood that the person requesting the stay will prevail in the proceedings on the merits.

(d) When considering the likelihood of a person prevailing on the merits for purposes of (c)(5) of this section, the commissioner will consider the nature of the threatened injury. If the requesting person faces irreparable harm and the rights of other persons can be adequately protected, the person requesting the stay must raise serious and substantial questions on the merits of the department's decision in order for the commissioner to grant a stay. If the harm to the person requesting the stay is less than irreparable or if the rights of other persons cannot be adequately protected if the commissioner grants a stay, the person requesting the stay must meet the heightened standard of a clear showing of probable success on the merits in order for the commissioner to grant a stay. The commissioner will not impose or continue a stay of the

department's decision if the commissioner finds that to impose or continue the stay would be contrary to the public interest. The commissioner will not grant a stay on a denial of a permit application or request for certification for either a new operation or an operation that began after the effective date of the statute or regulation requiring a permit. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am ___/___/___, Register ___)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | [AS 46.35.090(e)] |
| | AS 46.03.320 | AS 46.04.030 | |

18 AAC 15.220 is repealed and readopted to read:

18 AAC 15.220. Action on hearing requests. (a) As provided in AS 44.64.060(b), the commissioner will, not later than 10 days after receiving a properly served hearing request,

(1) deny the request

(A) for a reason provided by law; or

(B) by vacating and remanding the matter to the division director for

further action; or

(2) conditionally approve the hearing request and refer the request to the office of administrative hearings (AS 44.64.010) for a recommended decision whether the request meets the requirements of 18 AAC 15.200 and the scope of any hearing on the request.

(b) If the commissioner refers a hearing request to the office of administrative hearings,

the commissioner will give notice of the referral to the requester, the division director, and the permit applicant or permittee. In the notice the commissioner will include a statement that, not later than 20 days after the commissioner gives the notice of referral, the division director and the permit applicant or permittee may file a response with the office of administrative hearings as to whether the hearing request meets the requirements of 18 AAC 15.200 and, if so, the scope of proceedings before the office of administrative hearings. The requester may reply not later than seven days after service of any response to the request for an adjudicatory hearing. The response and any reply must be served as described in 18 AAC 15.340 on the office of administrative hearings, the division director, the permit applicant or permittee, and the requester. Not later than 10 days after the time has expired for a requester to reply to responses to the request, the office of administrative hearings will issue a recommended decision to the commissioner whether the hearing request

(1) meets the requirements of 18 AAC 15.200 and an adjudicatory hearing or hearing on the briefs should be held;

(2) does not meet the requirements of 18 AAC 15.200 and the hearing request should be denied; or

(3) should be denied because the matter should be vacated and remanded to the division director for further action.

(c) Not later than 10 days after receiving a recommended decision of the office of administrative hearings under (b) of this section, the commissioner will make a final decision on the recommendation to

(1) grant an adjudicatory hearing or hearing on the briefs;

(2) deny the hearing request as not meeting the requirements of 18 AAC 15.200;

or

(3) vacate the contested decision, deny the hearing request, and remand the matter to the division director for further action.

(d) If the commissioner determines that an adjudicatory hearing or a hearing on the existing record and on written briefs should be held, the commissioner will publish notice of the action in a newspaper of general circulation for the affected area, and if sufficient contact information is provided, will send a copy of the public notice to each person who submitted timely written comments on the draft decision, who testified at a public hearing before the department's decision on the draft decision, or who submitted a request for hearing. In the notice the commissioner will include the statement that a person who wishes to participate in the proceedings may file a request to intervene not later than 15 days after publication of the notice or mailing of the notice, whichever occurs last. In the notice the commissioner will also state that a request to intervene must

(1) meet the requirements of 18 AAC 15.225 and 2 AAC 64.180; and

(2) be served on the administrative law judge, the division director, the requester, and the permit applicant or permittee.

(e) If the commissioner grants a hearing on the existing record and on written briefs, the administrative law judge will establish, after the time to intervene has expired under 18 AAC 15.225, a briefing schedule for submission of an opening brief by each requester, a responsive brief by each respondent, and a reply brief by each requester. Subject to the requirements of 18 AAC 15.245, the administrative law judge may allow the parties to supplement the agency

record with additional information submitted with the briefs. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am ____/____/____, Register ____)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | [AS 46.35.090(e)] |
| | AS 46.03.320 | AS 46.04.030 | |

18 AAC 15.225(a) is amended to read:

(a) A person who wants to intervene in proceedings granted by the commissioner [OR DESIGNEE UNDER 18 AAC 15.220(b)(1) OR (b)(3)] may serve upon the **administrative law judge** [COMMISSIONER] a request to intervene that contains the information and meets the requirements specified in 18 AAC 15.200, **not later than** [WITHIN] 15 days after publication of notice or mailing of notice under **18 AAC 15.220(d)** [18 AAC 15.220(c)], whichever occurs last. A person requesting to intervene must serve a copy of the request to intervene on each party. **A person requesting to intervene may not raise new contested issues beyond those contained in the request for hearing granted by the commissioner under 18 AAC 15.220(c).** An existing party may submit an objection to a request to intervene **not later than seven** [WITHIN 15] days after service of the request.

18 AAC 15.225(b) is amended to read:

(b) Each requester, the permit applicant **or permittee**, and the **division director**

[DEPARTMENT OFFICE THAT ISSUED THE CHALLENGED DECISION] are automatically parties to the proceeding and need not file requests for intervention.

18 AAC 15.225(c) is amended to read:

(c) The **administrative law judge** [COMMISSIONER OR DESIGNEE] will grant or deny the request to intervene **not later than** [WITHIN] 10 days after the expiration of the deadline to object. The **administrative law judge** [COMMISSIONER OR DESIGNEE] will grant the intervention request if the **administrative law judge** [COMMISSIONER OR DESIGNEE] finds that the potential intervenor meets the standing requirements of **18 AAC 15.200** [18 AAC 15.220(b)(1)(A)] and the potential intervenor's interests are not adequately represented in the adjudication.

(Eff. 7/11/2002, Register 163; am ___/___/___, Register ___)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | <u>AS 46.03.880</u> | AS 46.14.150 |
| | AS 46.03.110 | AS 46.04.030 | [AS 46.35.090(e)] |
| | AS 46.03.320 | | |

18 AAC 15.230 is amended by adding a new subsection to read:

(c) After referral to the office of administrative hearings as required or permitted under AS 44.64.030, consolidation or severance is governed by 2 AAC 64.190. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am ___/___/___, Register ___)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | [AS 46.35.090(e)] |
| | AS 46.03.320 | AS 46.04.030 | |

18 AAC 15 is amended by adding a new section to read:

18 AAC 15.234. Administrative law judge. (a) Under AS 44.64.030, an administrative law judge will conduct

(1) an adjudicatory hearing granted by the commissioner under this chapter; or

(2) a hearing granted by the commissioner under this chapter on the existing record and on written briefs.

(b) The commissioner may designate

(1) the office of administrative hearings to make a recommended or final decision on whether to grant or deny a request for a stay of decision under 18 AAC 15.210;

(2) a department employee to make a final decision on a recommendation by the office of administrative hearings to grant or deny an adjudicatory hearing request under 18 AAC 15.200; or

(3) a department employee or the office of administrative hearings to make a final department decision after hearing by the office of administrative hearings as provided in AS 44.64.060(e).

(c) A department employee designated under (b) of this section

- (1) may not have been substantively involved in the contested decision;
- (2) shall be impartial with respect to the subject of the contested decision;
- (3) if a public officer within the meaning of AS 39.52 (Executive Branch Ethics Act), may not serve in violation of that chapter; and
- (4) if an attorney, shall comply with applicable rules of professional conduct.

(d) If the commissioner designates another individual to act as a designee under (b) of this section, the commissioner will serve notice at the time of the designation to the parties. (Eff.

___/___/___, Register ___)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 46.03.020 | AS 46.03.720 | AS 46.04.120 |
| | AS 46.03.100 | AS 46.03.880 | AS 46.04.890 |
| | AS 46.03.110 | AS 46.04.030 | AS 46.14.150 |
| | AS 46.03.330 | | |

18 AAC 15.235 is repealed:

18 AAC 15.235. Hearing officer. Repealed. (Eff. 7/11/2002, Register 163; repealed ___/___/___, Register ___)

18 AAC 15.237 is repealed and readopted to read:

18 AAC 15.237. Agency decision record. (a) As provided in AS 44.64.060(b), if a hearing request is referred to the office of administrative hearings under 18 AAC 15.220(a), and not later than 15 days after receiving a hearing request, the division director shall provide to the office of administrative hearings a copy of the contested decision, including any findings

document or response to public comments, and any underlying permit documents.

(b) If an adjudicatory hearing request is granted, or a hearing on the existing record and on written briefs is granted under 18 AAC 15.220(c), the division director shall supplement the record materials provided under (a) of this section with those portions of the supplemental documents described in this subsection that are relevant to the issues upon which the hearing is granted. The supplemental documents are the application and supporting documentation, written and electronic correspondence concerning the proposed decision, additional information submitted by the permit applicant or permittee to the department, public comments and information submitted to the department on the proposed decision, recordings or transcripts of any public hearing, prior department decisional documents referenced in the contested decision, and other materials that the department considered or relied upon in making the department's decision. The record materials under (a) of this section and the supplemental documents under this subsection constitute the agency decision record. Documents exempt from disclosure under AS 40.25.110 - 40.25.125 may not be included in the agency decision record. Documents or additional information received as part of the informal review process under 18 AAC 15.185 may not be included in the agency decision record, unless those documents or the additional information was previously and timely submitted to the division during its review before issuance of the contested decision. A requester may request to supplement the record under 2 AAC 64.310. The department staff shall number the pages of the agency decision record. The department staff is not required to prepare an index of the agency decision record.

(c) Not later than 20 days after the commissioner's decision granting an adjudicatory hearing or a hearing on the existing record and on written briefs under 18 AAC 15.220(c), the

division director shall supplement the agency decision record as required under (b) of this section. The division director shall at the same time also serve notice on all parties that the agency decision record is complete. A person may inspect or obtain a copy of the agency decision record both before and after the agency notice is served. A person wishing to obtain a copy of the agency decision record may do so at the requesting person's expense. For good cause shown, the administrative law judge may extend the time for preparation of the agency decision record.

(d) The department will impose copying charges on a party requesting copies of a portion of or the entire agency decision record, unless the number of copies requested is de minimis. (Eff. 7/11/2002, Register 163; am 8/15/2010, Register 195; am ___/___/___, Register ___)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | AS 46.04.030 |
| | AS 46.03.100 | AS 46.03.720 | AS 46.04.890 |
| | AS 46.03.110 | AS 46.03.730 | AS 46.14.120 |
| | AS 46.03.320 | AS 46.03.880 | AS 46.14.150 |

18 AAC 15.240 is repealed:

18 AAC 15.240. Prehearing document exchange; witness lists. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed ___/___/___, Register ___)

[EDITOR'S NOTE: AS OF REGISTER 204 (JANUARY 2013), AND UNDER AS 44.62.125(b)(6), THE REGULATIONS ATTORNEY MADE TECHNICAL

CORRECTIONS TO 18 AAC 15.240.]

18 AAC 15.245 is amended to read:

18 AAC 15.245. Obligation to submit evidence and raise issues. A party may not submit a factual contention or expert opinion that was not submitted timely to the department before the department's issuance of the contested decision unless the party shows good cause for the failure to submit the item. A party may not raise an issue of fact or question of law that was not raised timely to the department before the department's issuance of the contested decision unless the party shows good cause for the failure to raise each matter. For purposes of this section, grounds upon which a party may show good cause include **one or more of** the following:

(1) the party could not reasonably have ascertained the issues or made the information available within the time required by this chapter; [OR]

(2) the party could not have reasonably anticipated the relevance or materiality of the matter sought to be raised or the information sought to be introduced. (Eff. 7/11/2002, Register 163; am ___/___/___, Register ___)

| | | | |
|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | [AS 46.35.090(e)] |
| | AS 46.03.320 | AS 46.04.030 | |

18 AAC 15.247 is repealed:

18 AAC 15.247. Subpoenas. Repealed. (Eff. 7/11/2002, Register 163; repealed ___/___/___, Register ___)

18 AAC 15.250 is repealed:

18 AAC 15.250. Prehearing conference. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed ___/___/___, Register ___)

18 AAC 15.255 is repealed:

18 AAC 15.255. Summary determination. Repealed. (Eff. 7/11/2002, Register 163; repealed ___/___/___, Register ___)

18 AAC 15.270 is repealed:

18 AAC 15.270. Hearings. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed ___/___/___, Register ___)

[EDITOR'S NOTE: AS OF REGISTER 204 (JANUARY 2013), AND UNDER AS 44.62.125(b)(6), THE REGULATIONS ATTORNEY MADE TECHNICAL CORRECTIONS TO 18 AAC 15.270.]

18 AAC 15.280 is repealed:

18 AAC 15.280. Certification of adjudication record. Repealed. (Eff. 11/25/77,

Register 64; am 7/11/2002, Register 163; repealed ___/___/___, Register ___)

[EDITOR'S NOTE: AS OF REGISTER 204 (JANUARY 2013), AND UNDER AS 44.62.125(b)(6), THE REGULATIONS ATTORNEY MADE TECHNICAL CORRECTIONS TO 18 AAC 15.280.]

18 AAC 15.290 is repealed:

18 AAC 15.290. Proposed findings. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed ___/___/___, Register ___)

18 AAC 15.300 is repealed:

18 AAC 15.300. Final decision. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed ___/___/___, Register ___)

[EDITOR'S NOTE: AS OF REGISTER 197 (APRIL 2011), THE REGULATIONS ATTORNEY MADE A TECHNICAL REVISION UNDER AS 44.62.125(b)(6), TO THE AUTHORITY CITATION THAT FOLLOWS 18 AAC 15.300, TO CORRECT MANIFEST ERRORS IN TWO OF THE CITATIONS.]

18 AAC 15.305 is repealed:

18 AAC 15.305. Reconsideration. Repealed. (Eff. 7/11/2002, Register 163; repealed ___/___/___, Register ___)

[EDITOR'S NOTE: AS OF REGISTER 197 (APRIL 2011), THE REGULATIONS ATTORNEY MADE A TECHNICAL REVISION UNDER AS 44.62.125(b)(6), TO THE AUTHORITY CITATION THAT FOLLOWS 18 AAC 15.305, TO CORRECT MANIFEST ERRORS IN TWO OF THE CITATIONS.]

18 AAC 15.310 is repealed and readopted to read:

18 AAC 15.310. Adjustment of deadlines. For good cause shown, the commissioner or administrative law judge may stay the proceedings under or shorten or extend a deadline established in 18 AAC 15.220(b) - (f) and 18 AAC 15.225 - 18 AAC 15.245. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am ___/___/___, Register ___)

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|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | <u>AS 46.03.880</u> | AS 46.14.150 |
| | AS 46.03.110 | AS 46.04.030 | [AS 46.35.090(e)] |

18 AAC 15.320 is amended to read:

18 AAC 15.320. Contempt. The commissioner or **administrative law judge** [HEARING OFFICER] may use the procedures set **out** [FORTH] in AS 44.62.590 to obtain the assistance of the superior court if a person in the proceeding disobeys or resists a lawful order, refuses to respond to a subpoena, refuses to take oath or affirmation as a witness, refuses to be examined, or is guilty of misconduct at the hearing or so near the hearing as to obstruct the proceeding. (Eff. 7/11/2002, Register 163; am ___/___/___, Register ___)

| | | | |
|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| | AS 46.03.110 | <u>AS 46.03.880</u> | [AS 46.35.090(e)] |
| | AS 46.03.320 | AS 46.04.030 | |

18 AAC 15.340 is repealed and readopted to read:

18 AAC 15.340. Service under 18 AAC 15.185 - 18 AAC 15.220. (a) As provided in 18 AAC 15.185, 18 AAC 15.200, and 18 AAC 15.900, the deadline for service of a request for informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.200 commences from issuance of the department's decision on which informal review or an adjudicatory hearing is sought. The deadline for service is computed as provided in 18 AAC 15.900. Issuance of the decision is the date indicated by the postmark if the decision was mailed or the date when the department sent the facsimile or electronic mail if facsimile transmission or electronic mail was used. If the requester uses mail to serve the request for informal review or request for an adjudicatory hearing, service occurs, for the purpose of the requester's service obligation, on the date of mailing as indicated by the postmark or on the date when the requester sent the request by facsimile transmission or electronic mail if facsimile transmission or electronic mail was used. Service of a request for informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.200 shall be made to the persons set out in 18 AAC 15.185 and 18 AAC 15.200, respectively, and must include an affidavit of service stating the persons who have been served and the day and manner of service.

(b) After the request for informal review or request for an adjudicatory hearing is filed, any matter required to be served under 18 AAC 15.185 - 18 AAC 15.220 shall be submitted by personal delivery or by first-class, priority, or express United States mail to each party and the commissioner along with proof of service. Upon motion of a party, the director in an informal review under 18 AAC 15.185 or the commissioner in a proceeding under 18 AAC 15.200 may waive the requirement for submission by personal delivery or mail as described in this subsection, to allow service by facsimile transmission or electronic mail. Proof of service shall be made by an affidavit of service stating the persons who have been served and the day and manner of service.

(c) If a pleading or paper filed discloses that a requester or respondent is represented by counsel, service upon the requester or respondent must be made upon the requester's or respondent's attorney.

(d) If mail is used for service, service occurs upon mailing for the purpose of the serving person's obligation. Except as provided in (a) of this section with respect to the time to file a request for informal review or a request for an adjudicatory hearing, if a party has the right or is required to do some act or take some proceedings within a period prescribed in 18 AAC 15.185 - 18 AAC 15.220 after the service of a notice or other paper upon the party, and if the party is served by mail, three days are added to the prescribed period.

(e) After referral of a hearing request to the office of administrative hearings, service is governed by 2 AAC 64.920. (Eff. 7/11/2002, Register 163; am ___/___/___, Register ___)

| | | | |
|-------------------|----------------|--------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |

| | | |
|--------------|----------------------------|-------------------|
| AS 46.03.100 | AS 46.03.730 | AS 46.14.150 |
| AS 46.03.110 | <u>AS 46.03.880</u> | [AS 46.35.090(e)] |
| AS 46.03.320 | AS 46.04.030 | |

18 AAC 15.900 is repealed and readopted to read:

18 AAC 15.900. Time computations. As provided in AS 01.10.080, time computations under this chapter to determine when an act is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded. (Eff. 11/25/77, Register 64; am ___/___/___, Register ___)

Authority: **AS 46.03.020** AS 46.03.110 AS 46.03.720
 [AS 46.03.020(10)] [AS 46.03.160] **AS 46.14.120**
 [AS 46.03.090] AS 46.03.330 **AS 46.14.150**
 AS 46.03.100

18 AAC 15.910(a) is repealed and readopted to read:

18 AAC 15.910. Service. (a) Any matter required to be served under 18 AAC 15.020 - 18 AAC 15.080, or a department decision subject to an informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.200, may be served by first-class mail, facsimile transmission, electronic mail, or personal delivery.

18 AAC 15.910 is amended by adding a new subsection to read:

(e) For purposes of requesting informal review under 18 AAC 15.185 or requesting an

adjudicatory hearing under 18 AAC 15.200, service is governed by 18 AAC 15.340(a). (Eff.

11/25/77, Register 64; am 7/11/2002, Register 163; am ___/___/___, Register ___)

Authority: AS 46.03.020 AS 46.03.110 **AS 46.03.880**

[AS 46.03.090] AS 46.03.330 AS 46.04.030

AS 46.03.100 AS 46.03.720 **AS 46.04.890**

18 AAC 15.920 is amended to read:

18 AAC 15.920. Definitions. In this chapter, unless the context requires otherwise,

(1) "administrative law judge" means the individual that the office of administrative hearings assigns under AS 44.64.020(a)(4) to hear

(A) an adjudicatory hearing; or

(B) a hearing on the existing record and on written briefs;

(2) "appropriate division director," with respect to permit or certification procedures under 18 AAC 15.020 - 18 AAC 15.160, means the director of the department division responsible for the permit, approval, or certification at issue;

(3) "commissioner" means

(A) the commissioner of environmental conservation; or

(B) a person designated by the commissioner to act for the commissioner, other than the person who issued the contested decision;

(4) "decision" means a department decision to issue, deny, condition, suspend, revoke, or amend a permit, or to take another action reviewable under 18 AAC 15.195 - 18 AAC 15.340;

(5) "department" means the Department of Environmental Conservation;

(6) "division director" or "director," with respect to proceedings that are subject to 18 AAC 15.185 - 18 AAC 15.340, means

(A) the director of the division within the department that issued the decision that is being contested in a request for informal review, request for an adjudicatory hearing, or request for stay; or

(B) a person designated by the director to act for the director, other than the person who issued the contested decision;

(7) "draft decision," with respect to

(A) a draft permit or draft decision that a division issues for a comment, means the draft permit or draft decision;

(B) a decision other than one described in (A) of this paragraph, means the permit or approval application, along with supporting materials submitted by the permit applicant or permittee and put out for public comment, that formed the basis for the contested decision;

(8) "EPA" means the United States Environmental Protection Agency;

(9) "modification of an NPDES permit" includes an action that, as a practical matter, alters the permittee's obligation under the NPDES permit, whether through a consent decree, stipulated agreement, enforcement compliance schedule letter, or any other means;

(10) "NPDES" means the National Pollutant Discharge Elimination System under 33 U.S.C. 1328, 1342, and 1345;

(11) "office of administrative hearings" means the independent agency under the

direction of the chief administrative law judge and created under AS 44.64.010 in the Department of Administration;

(12) "party" means the permit applicant or permittee, each person whose request for adjudicatory hearing or intervention has been granted, and the division director;

(13) "permit"

(A) means an approval, permit, certification, variance, exemption, delegation, or other authorization of the department subject to review under 18 AAC 15.195 - 18 AAC 15.340, including the terms and conditions of the permit;

(B) includes an oil discharge prevention and contingency plan under AS 46.04 and the terms and conditions of the department's approval of the plan;

(14) "permit applicant" means a person who

(A) submitted an application for a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(B) has been issued a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340; or

(C) who is the subject of a departmental action that is subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(15) "regional administrator" means the administrator of Region 10 of EPA;

(16) "requester," with respect to

(A) actions under 18 AAC 15.200 - 18 AAC 15.220, means a person requesting an adjudicatory hearing under 18 AAC 15.200 or requesting a stay under 18 AAC 15.210;

(B) actions under 18 AAC 15.225 - 18 AAC 15.320,

(i) means a person whose request for an adjudicatory hearing under 18 AAC 15.200 has been granted in whole or in part, a person whose request for stay has been granted in whole or in part, or a person whose request to intervene to contest all or part of the department's decision had been granted in whole or in part;

(ii) does not include a person whose request for an adjudicatory hearing or request for intervention has been denied in whole;

(17) "respondent" means a person defending the department's decision. (Eff.

11/25/77, Register 64; am 7/11/2002, Register 163; am ___/___/___, Register ___)

| | | | |
|-------------------|----------------|----------------------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.330 | <u>AS 46.04.890</u> |
| | [AS 46.03.090] | AS 46.03.720 | AS 46.14.120 |
| | AS 46.03.100 | <u>AS 46.03.880</u> | AS 46.14.150 |
| | AS 46.03.110 | AS 46.04.030 | |

18 AAC 23.910(g) is amended to read:

(g) After suspending a certificate of sanitary standards under (a) of this section, issuing a notice to stop operating under (b) of this section, or issuing a notice of closure under (d) of this section, the department will provide an opportunity for a hearing as follows:

(1) the owner or operator may request, in writing, a hearing under this subsection **by serving, not later than** [WITHIN] 10 days after receiving a notice of suspension, notice to stop operating, or notice of closure, **a request on the department and the office of**

administrative hearings (AS 44.64.010);

(2) if [THE DEPARTMENT RECEIVES] a timely request for a hearing under (1) of this subsection **is made**, the **office of administrative hearings** [DEPARTMENT] will hold the hearing within 14 days after receipt of the **hearing** request;

(3) a hearing under this subsection will be conducted before **an administrative law judge of the office of administrative hearings who will** [(A) THE COMMISSIONER; OR (B) AN INDIVIDUAL DESIGNATED BY THE COMMISSIONER UNDER 18 AAC 15.235 TO] hear the matter and prepare a recommended decision for **review by the commissioner or by the commissioner's designee if the designee is a person other than the person who issued the contested decision** [COMMISSIONER'S REVIEW];

(4) in [CONDUCTING THE] hearing under this subsection, [THE DEPARTMENT WILL FOLLOW THE PROCEDURES FOR AN ADJUDICATORY HEARING IN 18 AAC 15.240 - 18 AAC 15.340; IN ADDITION, (A)] the burden of proof and of going forward with the evidence is upon the **division assigned to environmental health within the** department; [(B) THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE WILL SET THE TIMELINES FOR THE PROCEDURES IN 18 AAC 15.240 - 18 AAC 15.340 TO ENSURE A TIMELY HEARING UNDER (2) OF THIS SUBSECTION;]

(5) after a hearing under this subsection, the commissioner or designee will affirm, modify, or set aside the suspension, notice to stop operating, or notice of closure.

18 AAC 23.910(i) is repealed:

(i) Repealed ____/____/____. (Eff. 12/1/2002, Register 164; am ____/____/____, Register

____)

Authority: AS 08.13.030 AS 08.13.210 AS 44.46.020
AS 08.13.120

18 AAC 30.985(c) is amended to read:

(c) A facility in violation of any provision of this chapter is subject to closure **by** [AFTER NOTICE AND A HEARING AT THE DISCRETION OF] the department. **If the violation poses an imminent health hazard, the department, without prior hearing, may close the facility by serving a notice of closure on the operator. Not later than 10 days after receiving the notice of closure from the department, the operator may submit a request for hearing to the commissioner. If the violation does not pose an imminent health hazard, the notice of closure is not effective until the operator is provided an expedited hearing under (d) of this section. In the notice of closure the department will inform the operator of the opportunity to request, not later than 10 days after receiving the notice of closure, an expedited hearing. For purposes of this subsection, an imminent health hazard is a significant threat or danger to health that is considered to exist if the department determines or has cause to believe, based on the number of potential injuries and the nature, severity, and duration of the anticipated injury, that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury.**

18 AAC 30.985 is amended by adding a new subsection to read:

(d) Upon receiving a timely request for an expedited hearing under (c) of this section, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for an expedited hearing and recommended decision to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision. The expedited hearing will be held under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990 not later than 14 days after the department receives the request for expedited hearing. (Eff. 4/18/82, Register 82; am ___/___/___, Register ___)

Authority: [AS 17.20.010 - .050] **AS 17.20.045** AS 18.35.030

AS 17.20.010 **AS 17.20.048** AS 18.35.120

AS 17.20.013 **AS 17.20.050** AS 18.35.220

AS 17.20.030 AS 17.20.150 AS 44.46.020

AS 17.20.040 AS 17.20.180 AS 46.03.020

AS 17.20.044

18 AAC 31.905(e) is amended to read:

(e) After the department suspends a permit or issues a notice of closure, the operator may request an informal review under 18 AAC 15.185 or may request an adjudicatory hearing under **AS 44.62 (Administrative Procedure Act)** [18 AAC 15.200]. **An adjudicatory hearing is requested by submitting a request for hearing to the commissioner not later than 30 days after the issuance by the department of the notice of suspension or closure. If a timely request for an adjudicatory hearing is received, the commissioner will refer the matter to**

the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision

[THIS SUBSECTION DOES NOT AFFECT A PERSON'S RIGHT TO A HEARING UNDER AS 44.62 (ADMINISTRATIVE PROCEDURE ACT)]. (Eff. 5/18/97, Register 142; am 12/19/99, Register 152; am 12/30/2000, Register 156; am 6/28/2001, Register 158; am 7/11/2002, Register 163; am 12/1/2004, Register 172; am 12/28/2006, Register 180; am ___/___/___, Register ___)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 17.20.005 | AS 17.20.020 | AS 17.20.180 |
| | AS 17.20.010 | AS 17.20.072 | AS 44.46.020 |

18 AAC 31.910(b)(2) is amended to read:

(2) the immediate custodian or operator may request **an expedited** [A] hearing in writing **not later than** [WITHIN] 30 days after receipt of the notice of detention **by serving the request on the commissioner and the office of administrative hearings (AS 44.64.010); if a timely request for an expedited hearing is received, the office of administrative hearings will hold an expedited hearing and make a recommended decision to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the notice of detention;** the **office of administrative hearings** [DEPARTMENT] will hold **an expedited** hearing **under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990 not later than** [WITHIN] seven days after receipt of a request and will issue **a recommended** [ITS FINAL] decision **not later than** [WITHIN] seven days after the hearing, or

not later than [WITHIN] 35 days after the date of the notice of detention, whichever is later;

the commissioner will issue a final department decision within the shortest feasible time;

(Eff. 5/18/97, Register 142; am 12/19/99, Register 152; am 6/28/2001, Register 158; am

12/28/2006, Register 180; am ___/___/___, Register ___)

Authority: AS 03.05.011 AS 17.20.070 AS 17.20.240

AS 17.20.005 AS 17.20.072 AS 17.20.250

AS 17.20.010 AS 17.20.180 AS 17.20.270

AS 17.20.020 AS 17.20.200 AS 17.20.290

AS 17.20.040 AS 17.20.230 AS 44.46.020

18 AAC 31.915(c) is amended to read:

(c) After the department assesses a civil fine under this section, the operator may request an informal review under 18 AAC 15.185 or an adjudicatory hearing under **AS 44.62**

(Administrative Procedure Act) [18 AAC 15.200]. An adjudicatory hearing may be requested by submitting a request to the commissioner not later than 30 days after the notice of assessment of the civil fine. Upon receipt of a timely request for an adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who assessed the civil fine [THIS SUBSECTION DOES NOT AFFECT

A PERSON'S RIGHT TO A HEARING UNDER AS 44.62 (ADMINISTRATIVE

PROCEDURE ACT)]. (Eff. 12/28/2006, Register 180; am ___/___/___, Register ___)

Authority: AS 17.20.005 AS 17.20.190 AS 17.20.365
AS 17.20.072 AS 17.20.315 AS 44.46.020
AS 17.20.180

18 AAC 31.940(c) is amended to read:

(c) If the department orders the embargo or destruction of food under 18 AAC 31.910 without prior opportunity for a hearing under AS 44.62.330 - 44.62.640, [THE DEPARTMENT MAY OR UPON REQUEST OF] the permittee **may request an expedited hearing by notifying the commissioner and the office of administrative hearings (AS 44.64.010) not later than** [MADE WITHIN] 15 days after the permittee receives the order. **The office of administrative hearings will** [,] schedule **an expedited** [A] hearing at the earliest possible time **and make a recommended decision to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the order.** The hearing will be held **not later than** [WITHIN] five days after the **office of administrative hearings** [DEPARTMENT] receives the **expedited hearing** request. The submission of a request or the scheduling of a hearing does not stay the operation of the department's order. **Within the shortest feasible time the office of administrative hearings** [THE DEPARTMENT] will issue a **recommended decision to the commissioner or the commissioner's designee. The commissioner or the commissioner's designee will issue a final department** decision within the shortest feasible time. (Eff. 5/18/97, Register 142; readopt 12/19/99, Register 152; am 6/28/2001, Register 158; am 7/11/2002, Register 163; am ____/____/____, Register ____)

Authority: AS 17.20.005 AS 17.20.190 AS 44.46.020

AS 17.20.180

18 AAC 32.290 is repealed and readopted to read:

18 AAC 32.290. Right to appeal a decision. A person subject to 18 AAC 32.210 - 18 AAC 32.295 may seek an informal review under 18 AAC 15.185 of a department decision or an adjudicatory hearing under AS 44.62 (Administrative Procedure Act). An adjudicatory hearing may be requested by submitting a request to the commissioner not later than 30 days after the notice of the department decision. Upon receipt of a timely request for an adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision. (Eff. 12/3/2010, Register 196; am ___/___/___, Register ___)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 17.20.005 | AS 17.20.072 | AS 17.20.190 |
| | AS 17.20.065 | AS 17.20.180 | AS 44.46.020 |

18 AAC 32.693(c) is amended to read:

(c) After suspending a permit or issuing a notice of closure, the department will provide an opportunity for a hearing as follows:

(1) the operator may, in writing, request a hearing under this subsection **by serving a request on the commissioner and the office of administrative hearings (AS 44.64.010) not later than** [WITHIN] 10 days after receiving a notice of

(A) suspension under (a) of this section; or

(B) closure under (b) of this section;

(2) if the **office of administrative hearings** [DEPARTMENT] receives a timely request for a hearing under (1) of this subsection, the **office of administrative hearings** [DEPARTMENT] will hold, **not later than** [THE HEARING WITHIN] 14 days after receipt of the request **by the office of administrative hearings, an adjudicatory hearing and make a recommended decision under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision;**

(3) a hearing under this subsection is before **an administrative law judge of the office of administrative hearings who will** [(A) THE COMMISSIONER; OR (B) AN INDIVIDUAL DESIGNATED BY THE COMMISSIONER TO] hear the matter and prepare a recommended decision for [THE COMMISSIONER'S] review **by the commissioner or the commissioner's designee;**

(4) in conducting the hearing under this subsection, [THE DEPARTMENT WILL FOLLOW THE PROCEDURES FOR AN ADJUDICATORY HEARING IN 18 AAC 15.240 - 18 AAC 15.340; IN ADDITION, (A)] the burden of proof and of going forward with the evidence is upon the **division assigned to environmental health within the** department [; AND (B) THE COMMISSIONER OR COMMISSIONER'S DESIGNEE WILL SET THE TIMELINES FOR THE PROCEDURES IN 18 AAC 15.240 - 18 AAC 15.340 TO ENSURE A TIMELY HEARING UNDER (2) OF THIS SUBSECTION];

(5) after a hearing under this subsection, the commissioner or **the**

commissioner's designee will affirm, modify, or set aside the suspension or closure.

18 AAC 32.693(e) is repealed:

(e) Repealed ____/____/____. (Eff. 9/6/2003, Register 167; am 12/3/2010, Register 196; am ____/____/____, Register ____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 03.05.011 | AS 17.20.070 | AS 17.20.240 |
| | AS 17.20.005 | AS 17.20.072 | AS 17.20.250 |
| | AS 17.20.010 | AS 17.20.180 | AS 17.20.270 |
| | AS 17.20.020 | AS 17.20.200 | AS 17.20.290 |
| | AS 17.20.040 | AS 17.20.230 | AS 44.46.020 |

18 AAC 32.695(b)(2) is amended to read:

(2) the immediate custodian or owner may request **an expedited** [A] hearing in writing **by serving the request on the commissioner and the office of administrative hearings (AS 44.46.010) not later than** [WITHIN 30] days after receipt of the notice of detention; **not later than seven days after receipt of a timely request for an expedited hearing,** the **office of administrative hearings** [DEPARTMENT] will hold **an expedited** [A] hearing [WITHIN SEVEN DAYS AFTER RECEIPT OF A REQUEST] and **make a recommended decision under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the notice of detention; the commissioner or the commissioner's designee** will issue a final decision **not later than** [WITHIN] seven days after

the **expedited** hearing, or **not later than** [WITHIN] 35 days after the date of the notice of detention, whichever is later;

(Eff. 9/6/2003, Register 167; am 12/3/2010, Register 196; am ____/____/____, Register ____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 03.05.011 | AS 17.20.070 | AS 17.20.240 |
| | AS 17.20.005 | AS 17.20.072 | AS 17.20.250 |
| | AS 17.20.010 | AS 17.20.180 | AS 17.20.270 |
| | AS 17.20.020 | AS 17.20.200 | AS 17.20.290 |
| | AS 17.20.040 | AS 17.20.230 | AS 44.46.020 |

18 AAC 32.910(b) is amended to read:

(b) A person who is aggrieved by a department decision to deny or approve a permit under **this chapter** [18 AAC 32.030] or a waiver request under **this chapter** [18 AAC 32.900] may request

(1) an informal review under 18 AAC 15.185; or

(2) **an adjudicatory** [A] hearing under **AS 44.62 (Administrative Procedure Act)** [18 AAC 15.195 - 15.340 OR AS 44.62.330 - 44.62.640].

18 AAC 32.910(c) is repealed and readopted to read:

(c) An adjudicatory hearing under (b)(2) of this section may be requested by submitting a hearing request to the commissioner not later than 30 days after the issuance of the decision described in (b) of this section. Upon receipt of a timely request for adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a

hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision. (Eff. 5/23/98, Register 146; am 7/11/2002, Register 163; am 9/6/2003, Register 167; am ___/___/___, Register ___)

| | | | |
|-------------------|----------------|--------------|--------------|
| Authority: | AS 03.05.011 | AS 17.20.040 | AS 17.20.230 |
| | [AS 03.05.020] | AS 17.20.070 | AS 17.20.250 |
| | AS 03.05.040 | AS 17.20.072 | AS 17.20.270 |
| | AS 03.05.050 | AS 17.20.190 | AS 17.20.290 |
| | AS 17.20.010 | AS 17.20.200 | AS 44.46.020 |
| | AS 17.20.020 | | |

18 AAC 34.035(g) is amended to read:

(g) If the department denies a permit to operate a facility, it will notify the applicant in writing as soon as practicable but, to the extent possible, **not** [NO] later than 60 days after the department receives a complete application. **In the** [THE] notice of denial **the department** will include the reasons for denial. **Not later than** [THE APPLICANT MAY, WITHIN] 30 days after receiving notice of denial, **the applicant may** request an adjudicatory hearing **under AS 44.62 (Administrative Procedure Act) by submitting a request to the commissioner.** **Upon receipt of a timely request for an adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the**

contested decision [AS SET OUT IN 18 AAC 15.200 - 18 AAC 15.910. NOTHING IN THIS SUBSECTION AFFECTS AN APPLICANT'S RIGHTS UNDER THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62)]. (Eff. 12/18/97, Register 144; am/readopt 12/2/99, Register 152; am 8/6/2006, Register 179; am ___/___/___, Register ___)

Authority: AS 17.20.005 AS 17.20.072 AS 44.46.020
AS 17.20.065 AS 17.20.180

18 AAC 34.940(e)(2) is repealed and readopted to read:

(2) the immediate custodian or owner may request an expedited hearing in writing not later than 30 days after receipt of the notice of detention by submitting an expedited hearing request to the commissioner and the office of administrative hearings (AS 44.64.010); if a timely request for an expedited hearing is received, the office of administrative hearings will hold an expedited hearing and make a recommended decision to the commissioner or to the the commissioner's designee if the designee is a person other than the person who issued the notice of detention; the office of administrative hearings will hold an expedited hearing under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990 not later than five working days after receipt of a request and will issue a recommended decision to the commissioner or to the commissioner's designee; the commissioner or the commissioner's designee will issue a final decision not later than five working days after the hearing, or not later than 35 days after the date of the notice of detention, whichever is later; for a fresh seafood product, the office of administrative hearings will conduct an expedited hearing and the commissioner or the commissioner's designee will issue an expedited decision;

18 AAC 34.940(f) is amended to read:

(f) The department will attempt to work with a processor to resolve noncompliance. If, after an attempt to resolve noncompliance, the department believes further attempts would not be in the public interest, or that the noncompliance represents an imminent health hazard, the department will, applying its enforcement discretion, modify, suspend, or revoke a seafood processing permit. The department will afford an opportunity for a hearing before suspending or revoking the permit, unless an inspection or investigation reveals an imminent health hazard. Except in the case of an imminent health hazard, a compliance action under this subsection is subject to the following:

(1) if the department modifies, suspends, or revokes a permit under this subsection, it will send a notice to the permittee stating that, based on the department's written findings,

(A) the permit will be modified, suspended, or revoked, effective 30 days after the date of the notice;

(B) the permittee may not continue to operate after the effective date of a suspension or revocation;

(C) the permittee may request **an expedited** [A] hearing under this section **not later than** [WITHIN] 10 days after receiving the notice **by serving the expedited hearing request on the commissioner and the office of administrative hearings (AS 44.64.010)**; and

(D) **upon receipt of a timely request for an expedited hearing, the office of administrative hearings will hold an expedited hearing** [A HEARING, IF

REQUESTED, WILL BE HELD WITHIN 10 WORKING DAYS AFTER THE
DEPARTMENT RECEIVES A REQUEST FOR HEARING];

(2) **the office of administrative hearings will hold an adjudicatory** [A] hearing under [THIS SUBSECTION WILL] **AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990 not later than 10 working days after the office of administrative hearings receives the request for an expedited hearing** [(A) BE BEFORE THE COMMISSIONER OR A PERSON DESIGNATED BY THE COMMISSIONER TO HEAR THE MATTER AND PREPARE A RECOMMENDED DECISION FOR THE COMMISSIONER'S REVIEW; AND (B) FOLLOW THE PROCEDURES FOR AN ADJUDICATORY HEARING IN 18 AAC 15]; the burden of proof and of going forward with the evidence is upon the **division assigned to environmental health within the** department; [AND]

(3) after **an expedited** [A] hearing under this subsection, **the office of administrative hearings will make a recommended decision to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision;** the commissioner or **the commissioner's** designee will affirm, modify, or set aside the modification, suspension, or revocation.

18 AAC 34.940(g) is repealed:

(g) Repealed ____/____/____.

(Eff. 12/18/97, Register 144; am/readopt 12/2/99, Register 152; am 8/6/2006, Register 179; am ____/____/____, Register ____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 17.20.005 | AS 17.20.180 | AS 17.20.260 |
| | AS 17.20.065 | AS 17.20.200 | AS 17.20.270 |
| | AS 17.20.070 | AS 17.20.230 | AS 17.20.280 |
| | AS 17.20.072 | AS 17.20.240 | AS 17.20.305 |
| | AS 17.20.172 | AS 17.20.250 | AS 44.46.020 |

18 AAC 36.940 is amended to read:

18 AAC 36.940. Informal reviews and non-expedited hearings. If the department denies a permit, rejects a health certificate, or denies any approval, the owner or person responsible for an animal may request an informal review under 18 AAC 15.185 or may request an adjudicatory hearing under AS 44.62.330 - 44.62.630 (Administrative Procedure Act). An adjudicatory hearing is requested by submitting a request for hearing to the commissioner not later than 30 days after the issuance by the department of the denial or rejection. If a timely request for adjudicatory hearing is received, the commissioner will request that the **office of administrative hearings** [OFFICE OF ADMINISTRATIVE HEARINGS] (AS 44.64.010) conduct a hearing and prepare a recommended decision for the commissioner or the commissioner's designee. If the **office of administrative hearings** [OFFICE OF ADMINISTRATIVE HEARINGS] declines the request, the department will conduct the hearing. (Eff. 3/24/2017, Register 221; am ___/___/___, Register ____)

Authority: AS 03.05.011

18 AAC 50.542(d)(2) is amended to read:

(2) the department will notify the applicant, and any person who commented on the department's preliminary decision, of the department's final decision to approve or deny the permit application; a person described in AS 46.14.200 may request an informal **review under 18 AAC 15.185** or **an** adjudicatory hearing **under** [AS PRESCRIBED IN] 18 AAC 15.195 - 18 AAC 15.340; in a notification of denial of an application, the department will include the reasons for denial.

(Eff. 10/1/2004, Register 171; am 12/1/2004, Register 172; am 7/25/2008, Register 187; am 12/9/2010, Register 196; am 1/4/2013, Register 205; am 8/20/2016, Register 219; am ___/___/___, Register ___)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 46.03.020 | AS 46.14.120 | AS 46.14.170 |
| | AS 46.14.010 | AS 46.14.130 | AS 46.14.180 |
| | AS 46.14.020 | AS 46.14.140 | AS 46.14.200 |

18 AAC 50 is amended by adding a new section to read:

18 AAC 50.905. Appeals. (a) A person authorized under AS 46.14.200 may request an informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340 to review a final department decision to issue, deny, place a term or condition upon, or revoke a permit under 18 AAC 50.302, 18 AAC 50.306, 18 AAC 50.311, 18 AAC 50.316, 18 AAC 50.321, 18 AAC 50.326, 18 AAC 50.502, 18 AAC 50.508, 18 AAC 50.542, and 18 AAC 50.560.

(b) A person authorized under AS 46.14.200 may request informal review under 18 AAC

15.185 or an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340 of a final department decision on an application to construct or operate under a general minor permit under 18 AAC 50.560. Review is limited to whether the activity or facility qualifies for the minor general permit under 18 AAC 50.560(e) and any terms and conditions established under 18 AAC 50.560(f)(5).

The terms of a general minor permit previously approved by department are not subject to review as part of an application to construct or operate under a general minor permit. (Eff.

___/___/___, Register ___)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 46.03.020 | AS 46.14.120 | AS 46.14.170 |
| | AS 46.03.880 | AS 46.14.130 | AS 46.14.180 |
| | AS 46.14.010 | AS 46.14.140 | AS 46.14.200 |
| | AS 46.14.020 | | |

18 AAC 52.105(d)(4) is amended to read:

(4) a formal hearing under this subsection **is** [SHALL]

(A) [BE] before the **office of administrative hearings (AS 44.64.010);**
the office of administrative hearings will [COMMISSIONER OR A PERSON
 DESIGNATED BY THE COMMISSIONER TO] hear the matter and prepare a
 recommended decision **under AS 44.62 (Administrative Procedure Act) and 2 AAC**
64.100 - 2 AAC 64.990 for **review to** the **commissioner or to the commissioner's**
designee if the designee is a person other than the person who issued the contested
decision; [COMMISSIONER'S REVIEW] or

(B) before the local I/M administrator or a person designated by the

administrator to hear the matter and prepare a recommended decision for the administrator's review [, AS APPLICABLE]; **the administrator or designated person shall** [AND (B)] follow the hearing procedures of **AS 44.62** ([THE] Administrative Procedure Act [(AS 44.62)]);

18 AAC 52.105(d)(5) is amended to read:

(5) after a formal hearing conducted **under (4) of this subsection** by **the office of administrative hearings** [COMMISSIONER] or the local I/M administrator [UNDER (4) OF THIS SUBSECTION], the commissioner **or the commissioner's designee** will or the local I/M administrator **or designated person** shall affirm, modify, or set aside the modification, suspension, or revocation of the certification, **or return the recommended decision as described in (6) of this subsection**;

18 AAC 52.105(d)(6) is amended to read:

(6) **as an alternative to making a decision described in (5)** [AFTER A FORMAL HEARING CONDUCTED BY A PERSON DESIGNATED BY THE COMMISSIONER OR LOCAL I/M ADMINISTRATOR TO HEAR THE MATTER AND PREPARE A RECOMMENDED DECISION UNDER (4)] of this subsection, the commissioner **or the commissioner's designee** will, **after reviewing** [OR THE LOCAL I/M ADMINISTRATOR SHALL REVIEW] the recommended decision, [AND EITHER AFFIRM, MODIFY, OR SET ASIDE THE MODIFICATION, SUSPENSION, OR REVOCATION OF THE CERTIFICATION OR] return the recommended decision to the **office of administrative**

hearings for further proceedings, consideration, or recommendations, or the local I/M administrator, after reviewing the recommended decision, shall return the recommended decision to the designated person for further proceedings, consideration, or recommendations;

(Eff. 2/1/94, Register 129; am 6/24/94, Register 130; am 1/1/97, Register 140; am 1/1/98, Register 144; am 1/1/2000, Register 152; am ___/___/___, Register ___)

Authority: AS 46.03.010 AS 46.14.030 AS 46.14.510

AS 46.03.020

18 AAC 52.110(d)(4) is amended to read:

(4) a formal hearing under this subsection **is** [SHALL (A) BE] before the **office of administrative hearings (AS 44.64.010); the office of administrative hearings will** [COMMISSIONER OR A PERSON DESIGNATED BY THE COMMISSIONER TO] hear the matter and prepare a recommended decision **under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990** for **review to** the **commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision** [COMMISSIONER'S REVIEW; AND (B) FOLLOW THE HEARING PROCEDURES OF THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62)];

18 AAC 52.110(d)(5) is amended to read:

(5) after a formal hearing conducted **under (4) of this subsection** by the **office of administrative hearings** [COMMISSIONER UNDER (4) OF THIS SUBSECTION], the commissioner **or the commissioner's designee** will affirm, modify, or set aside the

modification, suspension, or revocation of the certification, **or return the recommended decision as described in (6) of this subsection;**

18 AAC 52.110(d)(6) is amended to read:

(6) **as an alternative to making a decision described in (5)** [AFTER A FORMAL HEARING CONDUCTED BY A PERSON DESIGNATED BY THE COMMISSIONER TO HEAR THE MATTER AND PREPARE A RECOMMENDED DECISION UNDER (4)] of this subsection, the commissioner **or the commissioner's designee** will, **after reviewing** [REVIEW] the recommended decision, [AND EITHER AFFIRM, MODIFY, OR SET ASIDE THE MODIFICATION, SUSPENSION, OR REVOCATION OF THE CERTIFICATION OR] return the recommended decision to the **office of administrative hearings** [DESIGNATED PERSON] for further proceedings, consideration, or recommendations; and

(Eff. 1/1/2000, Register 152; am ___/___/___, Register ___)

Authority: AS 46.03.010 AS 46.14.030 AS 46.14.510
AS 46.03.020

18 AAC 60.255(d) is amended to read:

(d) After the time for public comment expires, the department will grant or deny the application for a general permit or, if the general permit is one proposed by the department, will issue the permit, or decide to take no action on the proposal. A copy of the department's decision will be sent to the applicant and to any person who submitted written comments on the proposed

general permit. **In the** [THE] decision **the department** will include a statement that any person who is aggrieved by the decision may request an adjudicatory hearing under **18 AAC 15.195 - 18 AAC 15.340** [18 AAC 15].

18 AAC 60.255(f) is amended to read:

(f) The department will notify the applicant of its decision to grant or deny an application for coverage under a general permit **not later than** [WITHIN] 30 days after receiving a complete application under (e) of this section. **A person aggrieved by a decision to grant or deny an application for coverage under a general permit issued under this section may request informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340. Review is limited to whether the activity or facility that is the subject of the application for coverage is the type intended to be covered under the general permit and the appropriateness of any site-specific terms or conditions that are issued as part of the granting of the application for coverage under the general permit and that were not otherwise set out in the general permit. The terms of a general permit previously approved by department are not subject to review as part of an application for coverage decision under this subsection.**

(Eff. 1/28/96, Register 137; am 6/28/96, Register 138; am 10/29/98, Register 148; am 6/30/2002, Register 162; am 7/11/2002, Register 163; am 9/5/2010, Register 195; am 4/8/2012, Register 202; am ___/___/___, Register ___)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.100 | AS 46.03.810 |
| | AS 44.46.025 | AS 46.03.110 | AS 46.06.010 |

AS 46.03.010

AS 46.03.800

AS 46.06.080

AS 46.03.020

18 AAC 60.260(b)(3) is amended to read:

(3) state that the permittee may request an **expedited** [IMMEDIATE] hearing before the **office of administrative hearings (AS 44.64.010)** [COMMISSIONER OR THE COMMISSIONER'S DESIGNEE], if the request is submitted to the commissioner **and the office of administrative hearings not later than** [WITHIN] 10 days after receipt of the notice; a request for **an expedited** hearing must include a written statement of reasons why the permittee believes the department's decision to be in error; failure to file a timely request for hearing constitutes a waiver of the permittee's right to a hearing; **upon receipt of a timely request for an expedited hearing, the office of administrative hearings will schedule the request for an expedited hearing, conduct the expedited hearing under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990, and forward a recommended decision to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the notice of termination or modification.**

18 AAC 60.260(c) is amended to read:

(c) **An expedited** [A] hearing under this section will be held **not** [NO] later than 10 days after a request for **an expedited** [A] hearing is received **by the office of administrative hearings (AS 44.64.010)** under (b) of this section, and the commissioner or the commissioner's designee will issue a **final** [WRITTEN] decision **as provided in 2 AAC 64.340 after receiving**

a recommended decision from the office of administrative hearings following [NO LATER THAN 10 DAYS AFTER] the hearing. A decision under this subsection is a final agency decision subject to judicial review. [A HEARING UNDER THIS SECTION WILL BE RECORDED AND WILL ADHERE TO THE EVIDENCE RULES DESCRIBED IN AS 44.62.460.]

(Eff. 1/28/96, Register 137; am 9/5/2010, Register 195; am ____/____/____, Register ____)

Authority: AS 44.46.020 AS 46.03.100 AS 46.03.820
AS 46.03.010 AS 46.03.120 AS 46.03.850
AS 46.03.020

18 AAC 69.945 is amended to read:

18 AAC 69.945. Appeals. Not later than [ANY PERSON MAY, WITHIN] 30 days after a final department decision under AS 46.03.462(c) [, 18 AAC 69.045(c),] or 18 AAC 69.950 **any person may** [,] submit a request for an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340. (Eff. 11/15/2002, Register 164; am ____/____/____, Register ____)

Authority: AS 46.03.020 **AS 46.03.880** [AS 46.35.090(e)]

18 AAC 72.430(d) is repealed and readopted to read:

(d) The office of administrative hearings (AS 44.64.010) will conduct the hearing under AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990. The burden of proof and of going forward with the evidence is on the department's division assigned to water. After the hearing, the office of administrative hearings will make, as provided in 2 AAC 64.340,

a recommended decision to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the notice of revocation. The commissioner or the the commissioner's designee will affirm, modify, or set aside the revocation. A decision issued under this subsection is the final decision of the department and may be appealed to the superior court as provided in the Alaska Rules of Appellate Procedure. The decision is effective immediately unless stayed by the commissioner, the commissioner's designee, or the court.

18 AAC 72.430(e) is repealed:

(e) Repealed ____/____/____.

18 AAC 72.430(f) is repealed:

(f) Repealed ____/____/____.

18 AAC 72.430(g) is repealed:

(g) Repealed ____/____/____.

(Eff. 4/1/99, Register 149; am ____/____/____, Register ____)

| | | | |
|-------------------|--------------|--------------|----------------------------|
| Authority: | AS 44.46.020 | AS 46.03.070 | AS 46.03.720 |
| | AS 46.03.020 | AS 46.03.080 | <u>AS 46.03.880</u> |
| | AS 46.03.050 | AS 46.03.100 | [AS 46.35.090(e)] |

18 AAC 75.235(h) is amended to read:

(h) If the department provides a notice under (g) of this section, the applicant may

request an informal review under **18 AAC 15.185 or an adjudicatory hearing under** 18 AAC 15.195 - 18 AAC 15.340. The requirement of (f) of this section is not stayed during the pendency of an adjudicatory hearing.

(Eff. 5/14/92, Register 122; am 11/26/94, Register 132; am 12/8/95, Register 136; am 10/1/99, Register 151; am 10/28/2000, Register 156; am 10/27/2002, Register 164; am 11/27/2002, Register 164; am 10/16/2005, Register 176; am 8/31/2008, Register 187; am 10/1/2011, Register 199; am 9/4/2014, Register 211; [ADD'L] am 10/1/2014, Register 211; am ___/___/___, Register ___)

| | | | |
|-------------------|--------------|--------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.04.045 | AS 46.04.070 |
| | AS 46.04.040 | AS 46.04.055 | <u>AS 46.04.890</u> |

18 AAC 75.385 is amended to read:

18 AAC 75.385. Appeals. A person aggrieved by a final department decision under **18 AAC 75.380 or a final department decision revoking an approval issued under** the site cleanup rules may request **informal review under 18 AAC 15.185 or may request** an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340. [A REQUEST FOR AN ADJUDICATORY HEARING MUST BE MADE WITHIN 30 DAYS AFTER THE DATE OF THE DECISION BEING APPEALED.] (Eff. 1/22/99, Register 149; am 7/11/2002, Register 163; am 1/30/2003, Register 165; am ___/___/___, Register ___)

| | | | |
|-------------------|--------------|----------------------------|-------------------|
| Authority: | AS 46.03.020 | <u>AS 46.04.890</u> | [AS 46.35.090(e)] |
|-------------------|--------------|----------------------------|-------------------|

The authority citation for 18 AAC 75.460 is changed to read:

18 AAC 75.460. Department decision on oil discharge prevention and contingency plans; new plans, plan renewals, and major plan amendments.

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|-------------------|--------------|----------------|----------------------------|
| Authority: | AS 46.03.020 | [AS 46.04.055] | <u>AS 46.04.890</u> |
| | AS 46.04.030 | AS 46.04.070 | |

The authority citation for 18 AAC 75.490 is changed to read:

18 AAC 75.490. Failure to comply.

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| | | | |
|-------------------|--------------|--------------|----------------------------|
| Authority: | AS 46.03.020 | AS 46.03.750 | AS 46.04.070 |
| | AS 46.03.740 | AS 46.04.030 | <u>AS 46.04.890</u> |
| | AS 46.03.745 | AS 46.04.055 | [AS 46.35.090(e)] |

18 AAC 75.550(d) is amended to read:

(d) **Not later than** [WITHIN] 10 days after receiving **an adverse decision** [A NOTICE OF DENIAL] under (c) of this section, the applicant may request an informal review of the decision **by submitting a request to the division director** under 18 AAC 15.185 **or** [, AND] may request an adjudicatory hearing under AS 44.62 (Administrative Procedure Act) **by submitting a request for hearing to the commissioner. Upon receipt of a timely request for an adjudicatory hearing, the commissioner will refer the matter to the office of**

administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision.

(Eff. 9/25/93, Register 127; am 3/28/96, Register 137; am 7/11/2002, Register 163; am

___/___/___, Register ___)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070

AS 46.04.030 AS 46.04.055

18 AAC 75.551(d) is amended to read:

(d) **Not later than** [WITHIN] 10 days after receiving **an adverse decision** [A NOTICE OF DENIAL] under (c) of this section, the applicant may request an informal review of the decision under 18 AAC 15.185 **by submitting a request to the director of the division assigned to spill prevention and response within the department or request an adjudicatory hearing under AS 44.62 (Administrative Procedure Act) by submitting a request to the commissioner. Upon receipt of a timely request for adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision.**

18 AAC 75.551(e) is repealed:

(e) Repealed ___/___/___ . (Eff. 11/27/2002, Register 164; am 9/4/2014, Register 211;

am ___/___/___, Register ___)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.552(d) is amended to read:

(d) **Not later than** [WITHIN] 10 days after receiving **an adverse decision** [A NOTICE OF DENIAL] under (c) of this section, the applicant may request an informal review of the decision under 18 AAC 15.185 **by submitting a request to the director of the division assigned to spill prevention and response within the department or request an adjudicatory hearing under AS 44.62 (Administrative Procedure Act) by submitting a request to the commissioner. Upon receipt of a timely request for adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision.**

18 AAC 75.552(e) is repealed:

(e) Repealed ___/___/___ (Eff. 11/27/2002, Register 164; am 9/4/2014, Register 211; am ___/___/___, Register ___)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.553(d) is amended to read:

(d) **Not later than** [WITHIN] 10 days after receiving **an adverse decision** [A NOTICE OF DENIAL] under (c) of this section, the applicant may request an informal review of the decision under 18 AAC 15.185 **by submitting a request to the director of the division assigned to spill prevention and response within the department or request an adjudicatory hearing under AS 44.62 (Administrative Procedure Act) by submitting a request to the commissioner. Upon receipt of a timely request for adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision.**

18 AAC 75.553(e) is repealed:

(e) Repealed ____/____/____. (Eff. 11/27/2002, Register 164; am 9/4/2014, Register 211; am ____/____/____, Register ____)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

18 AAC 75.570(b) is amended to read:

(b) A person who is aggrieved by a department decision under (a) of this section may request an informal review of that decision **under** [, USING THE PROCEDURES DESCRIBED IN] 18 AAC 15.185 **by submitting a request to the director of the division assigned to spill**

prevention and response within the department, or may request an adjudicatory hearing under AS 44.62 (Administrative Procedure Act) by submitting a request to the commissioner. Upon receipt of a timely request for adjudicatory hearing, the commissioner will refer the matter to the office of administrative hearings (AS 44.64.010) for a hearing and recommended decision under 2 AAC 64.100 - 2 AAC 64.990 to the commissioner or to the commissioner's designee if the designee is a person other than the person who issued the contested decision. [NOTHING IN THIS SUBSECTION AFFECTS THAT PERSON'S

RIGHT TO AN ADJUDICATORY HEARING UNDER AS 44.62 (ADMINISTRATIVE PROCEDURE ACT).] (Eff. 9/25/93, Register 127; am 7/11/2002, Register 163; am 11/27/2002, Register 164; am ___/___/___, Register ___)

Authority: AS 46.03.020 AS 46.04.035 AS 46.04.070
AS 46.04.030 AS 46.04.055

The authority citation for 18 AAC 78.960 is changed to read:

18 AAC 78.960. Appeals.

...

Authority: AS 46.03.020 **AS 46.03.880** [AS 46.35.090(e)]
AS 46.03.365

18 AAC 80.439(b)(4) is repealed and readopted to read:

(4) that the sanitary survey inspector may, as provided in 18 AAC 80.1920, request informal review under 18 AAC 15.185 of the revocation in accordance with 18 AAC

80.1920 and may request an adjudicatory hearing under 18 AAC 15.200.

(Eff. 1/11/2006, Register 177; am 5/20/2011, Register 198; am 2/11/2017, Register 221; am

___/___/___, Register ___)

Authority: AS 46.03.020 AS 46.03.710 **AS 46.03.880**

AS 46.03.050 AS 46.03.720

18 AAC 80.1240(b)(1) is amended to read:

(1) include instructions for contesting and appealing the assessment, including instructions substantially as follows: "The entity has 45 days to file a notice with the department contesting the proposed penalty. If, within 45 days after receiving the notice of assessment issued by the department, the entity fails to file a notice contesting the proposed penalty, the proposed penalty is considered a final order not subject to review by the superior court. If the entity contests the proposed penalty by filing a notice with the department, the department will afford an opportunity for **an adjudicatory** [A] hearing in accordance with **AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 - 2 AAC 64.990** [18 AAC 15.195 - 18 AAC 15.340]. After an opportunity for a hearing, the department will issue an order, based upon findings of fact, affirming, modifying, or rescinding the administrative penalty.";

18 AAC 80.1240(c) is amended to read:

(c) If the entity notifies the department in writing, **not later than** [WITHIN] 45 days after receiving the notice of assessment, or within the time period allowed in any extension granted by the department under this subsection, of the intent to contest the proposed

administrative penalty, the department will **refer the matter to the office of administrative hearings (AS 44.64.010) for** [CONDUCT] an adjudicatory hearing in accordance with **AS 44.62 (Administrative Procedure Act) and 2 AAC 64.100 – 2 AAC 64.990** [18 AAC 15.195 - 18 AAC 15.340]. The department will extend the 45-day period for filing a notice of intent if

- (1) the entity requests the extension **during** [WITHIN] the 45-day period; and
- (2) the department determines that
 - (A) the extension is not sought for purposes of delay;
 - (B) good cause is shown; and
 - (C) the public is adequately protected.

(Eff. 9/21/2002, Register 163; am ____/____/____, Register ____)

Authority: AS 46.03.020 AS 46.03.761

18 AAC 80.1250(a) is amended to read:

(a) After affording an opportunity for a hearing under **18 AAC 80.1240(c)** [18 AAC 15.195 – 18 AAC 15.340], the department will issue an order in writing affirming, modifying, or rescinding an administrative penalty. In the order, the department will include text that reads substantially as follows: "This administrative order is the final agency decision. The entity may obtain judicial review of this administrative penalty order by filing a notice of appeal in the superior court in the [number of the judicial district] judicial district at [address of the court] within 30 days from the date that the decision appealed from is mailed or otherwise distributed as provided by the Alaska Rule of Appellate Procedure 602. An administrative penalty order becomes final and is not subject to review by a court if an appeal is not timely filed with the

superior court."

(Eff. 9/21/2002, Register 163; am ___/___/___, Register ___)

Authority: AS 46.03.020 AS 46.03.761

18 AAC 80.1920(a) is amended to read:

(a) **Except as provided in (d) of this section, not later than 20** [WITHIN 15] days after **the department issues a** [RECEIVING THE DEPARTMENT'S] decision concerning plans submitted for approval under 18 AAC 80.200 - 18 AAC 80.220, a classification under 18 AAC 80.200(a), a waiver, a variance, an exemption, or any other decision under this chapter, the applicant, owner or operator, or other person adversely affected by the decision may request an informal review of the decision under 18 AAC 15.185, and, **not later than** [MAY, WITHIN] 30 days **after issuance of the department decision**, **may** request an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340.

18 AAC 80.1920 is amended by adding a new section to read:

(d) An entity subject to a department decision that proposes or assesses an administrative penalty under 18 AAC 80.1200 - 18 AAC 80.1290 may contest the proposed or assessed administrative penalty by following the procedures set out in 18 AAC 80.1200 - 18 AAC 80.1290. (Eff. 10/1/99, Register 151; am 7/11/2002, Register 163; am 1/11/2006, Register 177; am ___/___/___, Register ___)

Authority: AS 46.03.020 [AS 46.03.070] AS 46.03.720
AS 46.03.050 AS 46.03.710 **AS 46.03.880**

18 AAC 83.175 is repealed and readopted to read:

18 AAC 83.175. Appeals. (a) The permit applicant and any person who filed comments on the draft permit, or who both participated in a public hearing on the draft permit and raised the issues that are the subject of the informal review or adjudicatory hearing, may request review of the terms and conditions of a final APDES permit or any denial of an APDES permit application by filing a request for informal review under 18 AAC 15.185 or a request for adjudicatory hearing under 18 AAC 15.200. The provisions of 18 AAC 15.185 and 18 AAC 15.200 also apply to the review of any modification, revocation, or termination of an APDES permit.

(b) For purposes of (a) of this section, an APDES permit includes an authorization to discharge under a general permit in accordance with 18 AAC 83.210. However, a review under 18 AAC 15.185 and 18 AAC 15.195 - 18 AAC 15.340 of the authorization to discharge under a general permit is limited to whether the authorization to discharge is for the type of discharge intended to be covered under the general permit and the appropriateness of any site-specific terms or conditions issued as part of the authorization to discharge under the general permit that were not otherwise specified in the general permit. The terms of a general permit previously approved by the department are not subject to review as part of the review of the authorization to discharge under a general permit under this subsection.

(c) An APDES permit is not automatically stayed by the filing of a request for an adjudicatory hearing on the permit. A request to stay an APDES permit will be decided by the commissioner or by the commissioner's designee if the designee is a person other than the person who issued the contested decision. (Eff. 7/29/2006, Register 179; am 11/10/2007, Register 184;

am ____/____/____, Register ____)

Authority: AS 44.46.020 AS 46.03.050 AS 46.03.110
AS 46.03.010 AS 46.03.100 **AS 46.03.880**
AS 46.03.020

18 AAC 85 is amended by adding a new section to read:

18 AAC 85.325. Appeals. Any person aggrieved by a permit decision under AS 46.03.250 may seek an informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340. (Eff. ____/____/____, Register ____)

Authority: AS 46.03.020 AS 46.03.260 AS 46.03.880