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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Gary Mendivil  
Department of Environmental Conservation

**FROM:** Scott Meriwether, Office of the Lieutenant Governor 465.4081 

**DATE:** December 14, 2017

**RE:** Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation regulations re: air quality, PM-2.5 (fine particulate matter), wood- and coal-fired devices, and the state air quality control plan (18 AAC 50.030; 18 AAC 50.075(e), (f); 18 AAC 50.077; 18 AAC 50.079; 18 AAC 50.990)

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Attorney General File:	JU2017200219
Regulation Filed:	12/13/2017
Effective Date:	1/12/2018
Print:	225, April 2018

cc with enclosures: Linda Miller, Department of Law  
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO  
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

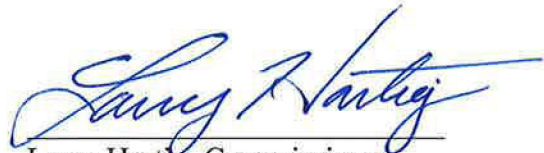
The attached 14 pages of regulations, dealing with air quality regulations are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.14 and after compliance with the Administrative Procedures Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Environmental Conservation paid special consideration to the cost to private persons of the regulatory action being taken. The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

The regulation changes adopted under this order take effect on the 30<sup>th</sup> day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

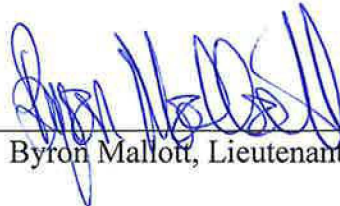
DATE: December 8, 2017  
Anchorage, Alaska



Larry Hartig, Commissioner  
Department of Environmental Conservation

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on December 13 2017, at 2:40 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: January 12, 2018  
Register: 225, April 2018

18 AAC 50.030 is repealed and readopted to read:

**18 AAC 50.030. State air quality control plan.** (a) Volumes II and III of the *State Air Quality Control Plan* for implementing and enforcing the provisions of AS 46.14 and this chapter, as amended through December 3, 2017, are adopted by reference. The plan includes the following documents that are also adopted by reference:

- (1) the department's *Alaska Air Quality Small Business Assistance Program*, April 1994;
- (2) the Code of the City and Borough of Juneau, Alaska, Chapter 36.40, amended by the provisions of Ordinance of the City and Borough of Juneau, Alaska, Serial No. 2008-28, sec. 2;
- (3) except as provided in 18 AAC 50.090(b), the department's *Air Quality Compliance Certification Procedures for Volatile Liquid Storage Tanks, Delivery Tanks, and Loading Racks*, as amended through December 10, 1992;
- (4) the department's *Quality Assurance Project Plan for the State of Alaska Air Monitoring & Quality Assurance Program*, as amended through February 23, 2010;
- (5) *Protocol for Determining the Best Performing Model*, EPA-454/R-92-025, December 1992;
- (6) *Source Test Report Outline*, as amended through November 1984;
- (7) the department's *Performance Audits for COMS*, revised as of August 20, 2008;
- (8) the department's *Minor Permit Application Forms*, dated August 30, 2004.

(b) Any sources that under the *State Air Quality Control Plan*, adopted by reference in

(a) of this section, are subject to RACT or are subject to BACM and BACT shall comply with RACT or with BACM and BACT as identified in the specific sections of the *State Air Quality Control Plan*. (Eff. 1/18/97, Register 141; am 6/21/98, Register 146; am 9/4/98, Register 147; am 1/1/2000, Register 152; am 12/30/2000, Register 156; am 9/21/2001, Register 159; am 1/27/2002, Register 161; am 3/27/2002, Register 161; am 5/3/2002, Register 162; am 2/20/2004, Register 169; am 6/24/2004, Register 170; am 10/1/2004, Register 171; am 12/14/2006, Register 180; am 12/30/2007, Register 184; am 5/17/2008, Register 186; am 7/25/2008, Register 187; am 11/9/2008, Register 188; am 5/6/2009, Register 190; am 11/4/2009, Register 192; am 4/1/2010, Register 193; am 10/29/2010, Register 196; am 4/13/2011, Register 198; am 9/17/2011, Register 199; am 8/1/2012, Register 203; am 5/8/2013, Register 206; am 2/5/2015, Register 213; am 4/17/2015, Register 214; am 3/2/2016, Register 217; am 11/26/2016, Register 220; am 12/29/2016, Register 220; am 1 / 12 / 2018, Register 225)

**Authority:** AS 46.03.020                      AS 46.14.030                      Sec. 30, ch. 74, SLA 1993  
AS 46.14.020                      AS 46.14.140

18 AAC 50.075(e) is amended to read:

(e) The department may prohibit operation of a solid fuel-fired heating device in an area for which the department has declared a PM-2.5 air quality episode under emergency episode provisions included in a local air quality plan incorporated in the *State Air Quality Control Plan*, adopted by reference in 18 AAC 50.030, only if [(1) THE TEMPERATURE IS WARMER THAN ANY THRESHOLD TEMPERATURE IDENTIFIED IN A LOCAL AIR QUALITY PLAN INCORPORATED IN THE STATE AIR QUALITY CONTROL PLAN, ADOPTED BY



REFERENCE IN 18 AAC 50.030; AND (2)] the announcement identifies

(1) [(A)] the air quality zone affected by the prohibition; and

(2) [(B)] any exceptions as identified in the *State Air Quality Control Plan*,  
adopted by reference in 18 AAC 50.030.

18 AAC 50.075 is amended by adding a new subsection to read:

(f) A solid fuel-fired heating device located in an area identified in 18 AAC 50.015(b)(3) shall be operated so that the visible emissions or opacity do not exceed 20 percent opacity for more than six minutes in any one hour, except during the first 15 minutes after initial firing of the device when the opacity limit must be less than 50 percent. Visible emissions are measured as set out in (a)(2) of this section. (Eff. 1/18/97, Register 141; am 5/6/2009, Register 190; am 2/28/2015, Register 213; am 11/26/2016, Register 220; am 1 / 12 / 2018, Register 225)

**Authority:** AS 46.03.020                      AS 46.14.020                      Sec. 30, ch. 74, SLA 1993  
AS 46.14.010                      AS 46.14.030

18 AAC 50.077(a) is repealed and readopted to read:

(a) This section applies to a person who

(1) owns or operates a wood-fired heating device in an area identified in 18 AAC 50.015(b)(3), if the wood-fired heating device

(A) is installed on or after February 28, 2015;

(B) was installed before February 28, 2015, and the wood-fired heating  
device

(i) is being sold, leased, or conveyed as part of an existing building or other property; and

(ii) lacked a valid EPA certification under 40 C.F.R. 60.533 or a qualifying "white tag" under EPA's Phase 2 voluntary partnership program for hydronic heaters; or

(C) is not otherwise exempted in this section; or

(2) intends to supply, sell, lease, distribute, convey, or install a wood-fired heating device for operation in an area identified in 18 AAC 50.015(b)(3).

18 AAC 50.077(b) is amended to read:

(b) Except as provided under (f), (g), or (h) of this section, a person may not operate, install, or reinstall a wood-fired hydronic heater in an area identified in 18 AAC 50.015(b)(3), and may not supply, sell, lease, distribute, or convey a wood-fired hydronic heater for operation or installation in an area identified in 18 AAC 50.015(b)(3), unless

(1) the model

**(A) has been certified** [RECEIVED A QUALIFYING "WHITE TAG"]  
under **40 C.F.R. 60.5474(a)(1) and (b)(1) (Subpart QQQQ, "Step 1" emission rates),**  
**revised as of July 1, 2017, and adopted by reference;**

**(B)** [EPA'S PHASE 2 VOLUNTARY PARTNERSHIP PROGRAM FOR HYDRONIC HEATERS,] meets the particulate matter annual average emission limit in  
(2) of this subsection; [,] and

**(C)** has a rated size under 350,000 Btu per hour; or

(2) a laboratory with current EPA accreditation under 40 C.F.R. 60.535 has tested the model to meet an annual average emission level of 0.32 pounds per million Btu of heat output, a particulate matter annual average emission limit of 2.5 grams per hour, and a maximum individual test-run emission rate of 18.0 grams of fine particles per hour; the test results

(A) must be [HAVE BEEN (A)] obtained using one of the following test procedures applicable to the specific device; [IN EPA'S PHASE 2 VOLUNTARY PARTNERSHIP PROGRAM FOR HYDRONIC HEATERS; THOSE PROCEDURES ARE SET OUT IN]

(i) [ATTACHMENT 2 TO THE EPA HYDRONIC HEATER PROGRAM: PHASE 2 PARTNERSHIP AGREEMENT, DATED OCTOBER 12, 2011, CONSISTING OF EPA'S TEST METHOD 28 WHH FOR MEASUREMENT OF PARTICULATE EMISSIONS AND HEATING EFFICIENCY OF WOOD-FIRED HYDRONIC HEATING APPLIANCES; THE TEST METHOD IS ADOPTED BY REFERENCE;

(ii)] ASTM International E 2618-13 [E 2618-09], *Standard Test Method for Measurement of Particulate Emissions and Heating Efficiency of* [OUTDOOR] *Solid Fuel-Fired Hydronic Heating Appliances* [DEVICES], approved September 1, 2013, [FEBRUARY 15, 2009] and adopted by reference, subject to conditions in 40 C.F.R. Part 60, Subpart QQQQ, revised as of July 1, 2017, and adopted by reference;

(ii) 40 C.F.R. Part 60, Appendix A-8, Method 28WHH-PTS, revised as of July 1, 2017, and adopted by reference;

**(B) must be obtained using one of the following test procedures applicable to the specific device:**

(i) [(iii)] ASTM International E 2515-11, *Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel*, approved November 1, 2011, and adopted by reference;

(ii) **40 C.F.R. Part 60, Appendix A, Method 5G, revised as of July 1, 2017, and adopted by reference;** and

**(C) obtained under (A) and (B) of this paragraph must be** [(B)] submitted to and approved by the department as described in (e) of this section, if the wood-fired hydronic heater is not already listed under (e) of this section by the department.

18 AAC 50.077(c)(2) is amended to read:

(2) a laboratory with current EPA accreditation under 40 C.F.R. 60.535 has tested the model to meet a particulate matter annual average emission limit of 2.5 grams per hour; the test results must **be** [HAVE BEEN]

(A) obtained using [THE]

(i) **the** test procedures applicable to the specific device; those procedures are set out in 40 C.F.R. Part 60, Appendix A, Methods 28, [AND] 28A, **and 28R, revised as of July 1, 2017, and** adopted by reference [IN 18 AAC 50.040]; **or** [AND]

(ii) alternative cordwood methods that have been approved by

EPA;

(B) obtained using the emission concentration measurement procedures applicable to the specific device; those procedures are set out in 40 C.F.R. Part 60, Appendix A, Methods 5G and 5H, revised as of July 1, 2017, and adopted by reference [IN 18 AAC 50.040];

(C) calculated in grams per hour; and

(D) [(B)] submitted to and approved by the department as described in (e) of this section, if the woodstove is not already listed under (e) of this section by the department.

18 AAC 50.077(d) is amended to read:

(d) Except as provided under (f), (g), or (h) of this section, and if a wood-fired heating device has a rated size of 350,000 Btu or greater per hour, a person may not operate or install the wood-fired heating device in an area identified in 18 AAC 50.015(b)(3), and may not supply, sell, lease, distribute, or convey the wood-fired heating device for operation or installation in an area identified in 18 AAC 50.015(b)(3), unless a laboratory with current EPA accreditation under 40 C.F.R. 60.535 has tested the model to meet a particulate matter annual average emission limit of 2.5 grams per hour; the test results

(1) must be [HAVE BEEN (1)] obtained using one of the following test procedures applicable to the specific device: [; THOSE PROCEDURES ARE SET OUT IN]

(A) ASTM International E 2618-13 [E 2618-09], *Standard Test Method for Measurement of Particulate Emissions and Heating Efficiency of [OUTDOOR] Solid Fuel-Fired Hydronic Heating Appliances* [DEVICES], adopted by reference in (b)(2)(A)(i) [(b)(2)(A)(ii)] of this section;

(B) 40 C.F.R. Part 60, Appendix A-8, Method 28WHH, revised as of July 1, 2017, and adopted by reference;

(C) Canadian Standards Association (CSA) Method B415.1-10, Performance Testing of Solid-Fuel-Burning Heating Appliances, dated March 2010, reaffirmed 2015, and adopted by reference, as referenced in 40 C.F.R. Part 60, Subpart QQQQ, revised as of July 1, 2017, and adopted by reference;

(2) must be obtained using [(B)] ASTM International E 2515-11, *Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel*, adopted by reference in (b)(2)(B)(i) [(b)(2)(A)(iii)] of this section; and

(3) obtained under (1) and (2) of this subsection must be [(2)] submitted to and approved by the department as described in (e) of this section, if the wood-fired heating device is not already listed under (e) of this section by the department.

18 AAC 50.077(g) is amended to read:

(g) Subsections (b) – (d) of this section do not apply to operation of a wood-fired heating device that is located in an area that is identified in 18 AAC 50.015(b)(3), if [(1) UNDER 42 U.S.C. 7513 AND 7602, EPA HAS DESIGNATED THE AREA AS A "MODERATE" NONATTAINMENT AREA WITH RESPECT TO PM-2.5; AND (2)] the



wood-fired heating device [IS BEING SOLD, LEASED, OR CONVEYED AS PART OF AN EXISTING BUILDING OR OTHER PROPERTY AND THE DEVICE] was installed in that building or on that property before February 28, 2015.

The introductory language of 18 AAC 50.077(h) is amended to read:

(h) Subsections (b) - (d) of this section do not apply to the conveyance of a wood-fired heating device under (a)(1)(B) [(a)(2)(B)] of this section if the owner requests and receives a temporary waiver from the department or a local air quality program. The department or local air quality program may grant a temporary waiver after considering

...

(Eff. 2/28/15, Register 213; am 11/26/2016, Register 220; am 1 / 12 / 2018, Register 225)

**Editor's note:** For the convenience of consumers, the United States Environmental Protection Agency (EPA) keeps a list of wood-fired hydronic heaters with qualifying "**white** [WHILE] tags" under EPA's Phase 2 voluntary partnership program for hydronic heaters. That list is part of EPA's *Partners - Program Participation - List of Qualified Hydronic Heaters*, and is available on the Internet at <http://www.epa.gov/burnwise/whhlist.html>. For additional information whether a heater appearing on that list is in compliance with 18 AAC 50.077, please contact the Department of Environmental Conservation at: Department of Environmental Conservation, Division of Air Quality, 410 Willoughby Avenue, Suite 303, P.O. Box 111180, Juneau, AK 99801; telephone: (907) 465-5100.

For the convenience of consumers, the United States Environmental Protection Agency (EPA) keeps a list of wood heaters certified under 40 C.F.R. 60.533. That list, entitled *List of*

*EPA Certified Wood Heaters (Heaters certified as meeting the 1988 Standards of Performance for New Residential Wood Heaters)*, is available on the Internet at

<http://www.epa.gov/Compliance/resources/publications/monitoring/caa/woodstoves/certifiedwood.pdf>. For additional information whether a heater appearing on that list is in compliance with 18 AAC 50.077, please contact the Department of Environmental Conservation, Division of Air Quality, 410 Willoughby Avenue, Suite 303, P.O. Box 111180, Juneau, AK 99801; telephone: (907) 465-5100.

The test methods adopted by reference in 18 AAC 50.077 may be reviewed at the department's Anchorage, Fairbanks, or Juneau office. For information on how to obtain a copy of the ASTM International documents adopted by reference in 18 AAC 50.077, contact ASTM International, Publications Department, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania, 19428-2959; telephone (877) 909-2786; fax (610) 832-9555. **For information on how to obtain a copy of the Canadian Standards Association document adopted by reference in 18 AAC 50.077, contact the Canadian Standards Association (CSA), 178 Rexdale Boulevard, Etobicoke, ON, M9W 1R3, Canada; telephone (416) 747-4139; fax (416) 401-6621.**

The list of wood-fired heating devices maintained under 18 AAC 50.077(e) is available at the department's offices in Anchorage, Fairbanks, and Juneau, is available on the Internet at <http://burnwise.alaska.gov/>, or can be obtained by contacting the Department of Environmental Conservation, Division of Air Quality, 410 Willoughby Avenue, Suite 303, P.O. Box 111180, Juneau, AK 99801; telephone: (907) 465-5100.

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

**18 AAC 50.079. Provisions for coal-fired heating devices.** (a) This section applies to a person who

(1) owns or operates a coal-fired heating device in an area identified in 18 AAC 50.015(b)(3), if the coal-fired device

(A) is installed before <sup>January 12, 2018</sup> {effective date of regulations}; and

(B) is not otherwise exempted in this section; or

(2) intends to supply, sell, lease, distribute, convey, or install a coal-fired heating device for operation in an area identified in 18 AAC 50.015(b)(3).

(b) A person may not operate, install, or reinstall a coal-fired heating device and may not supply, sell, lease, distribute, or convey a coal-fired heating device for operation or installation unless it is a listed device with the local government's air quality program or certified by EPA.

(c) Except as provided under (d) or (e) of this section, a person may not sell, lease, or convey a coal-fired heating device as part of an existing building or other property located in an area identified in 18 AAC 50.015(b)(3) unless the device is listed with the local government's air quality program or certified by EPA.

(d) Subsection (c) of this section does not apply to an installed coal-fired heating device that has undergone, during wintertime operation, an emission source test

(1) that the department has approved;

(2) that uses 40 C.F.R. Part 60, Appendix A-3, Method 5, revised as of July 1, 2017, and adopted by reference; and

(3) for which the maximum emission rate for any individual test run does not exceed 18.0 grams per hour of total particulate matter.

(e) Subsection (c) of this section does not apply to the conveyance of a coal-fired heating device in an area identified in 18 AAC 50.015(b)(3) if the owner requests and receives a temporary waiver from the department or a local air quality program. The department or local air quality program may grant a temporary waiver after considering

(1) financial hardship information provided by the owner or operator;

(2) technical feasibility and device design information provided by the owner or operator; and

(3) potential impact to locations with populations sensitive to exposure to PM-2.5; locations under this paragraph include hospitals, schools, child care facilities, health clinics, long-term care facilities, assisted living homes, and senior centers. (Eff. 1 / 12 / 2018, Register 225)

**Authority:** AS 46.03.020      AS 46.14.020      Sec. 30, ch. 74, SLA 1993  
AS 46.14.010      AS 46.14.030

18 AAC 50.990(71) is amended to read:

(71) "particulate matter"

**(A) except as provided in (B) of this paragraph,** means a material, except water, that is or has been airborne and exists as a liquid or solid at standard conditions;

**(B) with respect to meeting emissions standards in 18 AAC 50.077,**



**(i) has the meaning given in 40 C.F.R. 60.531 (Subpart AAA),  
revised as of July 1, 2017, and adopted by reference;**

**(2) includes total particulate matter as defined in the definition  
of "particulate matter" in 40 C.F.R. 60.531;**

18 AAC 50.990(138)(C) is amended to read:

(C) does not include a device that is

**(i) primarily a part of an industrial process and incidentally  
provides usable heat for the interior of a building; or**

**(ii) is a cogeneration boiler that provides both steam for  
electrical generation and steam for a centralized heat distribution system;**

18 AAC 50.990 is amended by adding new paragraphs to read:

(149) "BACM" has the meaning given the term "best available control measures (BACM)" in 40 C.F.R. 51.1000, as revised as of July 1, 2017, adopted by reference;

(150) "BACT"

(A) except as provided in (B) of this paragraph, has the meaning given the term "best available control technology" in 40 C.F.R. 52.21(b), adopted by reference in 18 AAC 50.040;

(B) with respect to a nonattainment area plan for a nonattainment area that under 42 U.S.C. 7513 and 7602 EPA has designated "serious" for PM-2.5, has the meaning given the term "best available control technology" in 40 C.F.R. 52.21(b),

adopted by reference in 18 AAC 50.040, except that BACT applies only to direct emissions of PM-2.5 and to PM-2.5 plan precursors;

(151) "RACT" has the meaning given the term "reasonably available control technology (RACT)" in 40 C.F.R. 51.100(o), as revised as of July 1, 2017, adopted by reference. (Eff. 1/18/97, Register 141; am 6/14/98, Register 146; am 6/21/98, Register 146; am 9/4/98, Register 147; am 11/4/99, Register 152; am 1/1/2000, Register 152; am 2/2/2002, Register 161; am 5/3/2002, Register 162; am 11/15/2002, Register 164; am 8/8/2003, Register 167; am 10/1/2004, Register 171; am 12/3/2005, Register 176; am 12/30/2007, Register 184; am 7/25/2008, Register 187; am 4/1/2010, Register 193; am 12/9/2010, Register 196; am 9/17/2011, Register 199; am 9/14/2012, Register 203; am 10/6/2013, Register 208; am 11/9/2014, Register 212; am 2/28/2015, Register 213; am 4/17/2015, Register 214; am 3/2/2016, Register 217; am 1 / 12 / 2018, Register 225)

<b>Authority:</b>	AS 44.46.025	AS 46.14.140	AS 46.14.250
	AS 46.03.020	AS 46.14.150	AS 46.14.255
	AS 46.03.710	AS 46.14.160	AS 46.14.280
	AS 46.14.010	AS 46.14.170	AS 46.14.285
	AS 46.14.020	AS 46.14.180	AS 46.14.290
	AS 46.14.030	AS 46.14.210	AS 46.14.300
	AS 46.14.120	AS 46.14.230	AS 46.14.560
	AS 46.14.130	AS 46.14.240	Sec. 30, ch. 74, SLA 1993



# MEMORANDUM


## State of Alaska Department of Law

**To:** Hon. Byron Mallott  
Lieutenant Governor

**Date:** December 13, 2017

**File No.:** JU2017200219

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

**From:** Steven C. Weaver   
Sr. Assistant Attorney General  
and Assistant Regulations Attorney  
Legislation and Regulations Section

**Re:** Department of Environmental  
Conservation regulations re: air  
quality, PM-2.5 (fine particulate  
matter), wood- and coal-fired devices,  
and the state air quality control plan  
(18 AAC 50.030; 18 AAC 50.075(e),  
(f); 18 AAC 50.077; 18 AAC 50.079;  
18 AAC 50.990)

We have reviewed the attached regulations from the Department of Environmental Conservation against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated December 7, 2017 from the Regulations Attorney. The regulations update air quality regulations, including procedures and requirements for wood- and coal-fired devices, particularly in any area that the United States Environmental Protection Agency (EPA) has designated a "serious" nonattainment area for "PM-2.5" fine particulates found, for instance, in smoke and other emissions from certain wood- and coal-fired heaters.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

Please note that 18 AAC 50.079(a)(1), on page 11 of the attached copy of the regulations, contains a placeholder for a date that is timed to the effective date of the regulations. Once the regulations are filed and the effective date thus established under AS 44.62.180, we request that your office make handwritten edits to substitute the correct date for the placeholder text.

The July 19, 2017 public notice and the December 8, 2017 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor  
Our file: JU2017200219

December 13, 2017  
Page 2

We have made a technical correction to conform the regulations in accordance with AS 44.62.125. Specifically, 18 AAC 50.030(a), on page 1 of the attached copy of the regulations, contained a placeholder tying changes to the *State Air Quality Control Plan* to the date when the department adopted the regulations. We made a handwritten edit to substitute the actual date from the adoption order: December 8, 2017.

SCW

cc w/enc: (via email)

Hon. Larry Hartig, Commissioner  
Department of Environmental Conservation

Gary Mendivil, Regulations Contact  
Department of Environmental Conservation

Denise Koch, Director  
Division of Air Quality  
Department of Environmental Conservation

Cynthia Heil  
Division of Air Quality  
Department of Environmental Conservation

Rebecca Tyson Smith  
Division of Air Quality  
Department of Environmental Conservation

Chris Peloso, Assistant Attorney General  
Environmental Section

# MEMORANDUM


## State of Alaska Department of Law

TO: Hon. Byron Mallott  
Lieutenant Governor

DATE: December 7, 2017

FILE NO.: JU2017200219

TELEPHONE NO.: (907) 465-3600

FROM: Susan R. Pollard   
Chief Assistant Attorney General  
and Regulations Attorney  
Legislation/Regulations Section

SUBJECT: Specific delegation of authority  
regarding regulations review on  
Department of Environmental  
Conservation regulations re: air  
quality, PM-2.5 (fine particulate  
matter), wood- and coal-fired  
devices, and the state air quality  
control plan (18 AAC 50.030;  
18 AAC 50.075(e), (f); 18 AAC  
50.077; 18 AAC 50.079; 18 AAC  
50.990)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SRP

cc w/enc: Scott C. Meriwether, AAC Coordinator  
Office of the Lieutenant Governor

Steven C. Weaver  
Sr. Assistant Attorney General and  
Assistant Regulations Attorney  
Legislation/Regulations Section

AIR QUALITY CONTROL: NOTICE OF PROPOSED CHANGES  
IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

**BRIEF DESCRIPTION**

The Alaska Department of Environmental Conservation proposes to adopt regulation changes intended to assist with the improvement of air quality in the Fairbanks North Star Borough (FNSB) Nonattainment Area. The proposed regulations and State Implementation Plan (SIP) amendments incorporate elements of local ordinances enacted by the FNSB Assembly allowing their use in meeting federal Clean Air Act requirements for the FNSB Nonattainment Area.

The Alaska Department of Environmental Conservation (ADEC) proposes to adopt changes in 18 AAC 50 of the Alaska Administrative Code, dealing with air quality, including the following:

- (1) Repeal and readopt 18 AAC 50.030 to adopt revisions to the State Air Quality Control Plan in Volume II Section III.D.5: FNSB PM-2.5 Control Plan and its corresponding Appendix; and add language addressing nonattainment area permit requirements.
- (2) Amend 18 AAC 50.075 to add new language on visible emissions standards and to remove language that is no longer applicable.
- (3) Amend 18 AAC 50.077 to address requirements for wood-fired heating devices, heating device test methods, and address heating devices located in the FNSB nonattainment area.
- (4) Add a new section, 18 AAC 50.079, to address requirements for coal-fired heating devices.
- (5) Amend 18 AAC 50.990 to add definitions.

**Posting**

The above list of proposed changes to the regulations only provides a summary of their subject matter. Copies of the proposed regulation changes and SIP amendments are available at

[http://dec.alaska.gov/air/anpms/comm/fbks\\_pm2-5\\_proposed-regs\\_2017.htm](http://dec.alaska.gov/air/anpms/comm/fbks_pm2-5_proposed-regs_2017.htm)

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**Questions**

You may submit written questions relevant to the proposed action to ADEC using the electronic question form link found on [http://dec.alaska.gov/air/anpms/comm/fbks\\_pm2-5\\_proposed-regs\\_2017.htm](http://dec.alaska.gov/air/anpms/comm/fbks_pm2-5_proposed-regs_2017.htm); by electronic mail to [dec.air.comment@alaska.gov](mailto:dec.air.comment@alaska.gov); or by mail to Teri Buck, Division of Air Quality, 555 Cordova St. Anchorage, Alaska 99501. Questions may also be submitted verbally in testimony at one of the public hearings. The Department will aggregate its response to substantially similar questions and make the questions and response available on <http://dec.alaska.gov/air/anpms/comm/fbks-pm2-5-questions-answers.html>. The written questions must be received at least 10 days before the end of the public comment period; Friday,



August 18, 2017. The Department may, but is not required to, answer written questions received after Friday, August 18, 2017, the 10-day cut-off date.

### **Comments**

You may comment on the proposed regulation changes, including the potential costs to private persons of complying and alternative practical methods of complying with the proposed changes, by submitting written comments to: Cindy Heil, Division of Air Quality, ADEC, 555 Cordova St, Anchorage AK 99501; or by facsimile at (907) 269-7508; or by e-mail to [dec.air.comment@alaska.gov](mailto:dec.air.comment@alaska.gov); or by the electronic comment form at <https://dec.alaska.gov/Applications/Air/airtoolsweb/FormalComments>. Comments must be received by 5:00 p.m. on Wednesday, August 30 2017. Comments received after this date will not be considered in final action on these rules and the air quality plan.

### **Hearings**

The Department will also hold public hearings on this proposal. The Fairbanks public hearings will be held as follows: on Friday, August 18, 2017, from 11:30 am – 1:30 p.m. at the Fairbanks North Star Borough, 907 Terminal St., Assembly Chambers; and on Friday, August 18, 2017, from 5:00 – 7:00 p.m. at the Fairbanks North Star Borough, 907 Terminal St., Assembly Chambers. The Department has tentatively scheduled public hearings in Anchorage and Juneau for these proposed regulations, on Friday, August 18, 2017, from 12:00 p.m. to 1:30 p.m. at the ADEC Anchorage Building, First Floor Conference Room, 555 Cordova St., Anchorage, Alaska; and ADEC 2<sup>nd</sup> Floor Main Conference Room, 410 Willoughby Avenue, Juneau Alaska. The Anchorage and Juneau public hearings will be held only if a request to hold a public hearing is received by ADEC by 5:00 p.m. on Friday, August 11, 2017. You may request a public hearing by calling Teri Buck at 907-269-7695 between 9:00 a.m. and 5:00 p.m., Monday through Friday or by e-mailing a request to [teri.buck@alaska.gov](mailto:teri.buck@alaska.gov). If no request for a public hearing is received by Friday, August 11, 2017, the public hearings in Anchorage and/or Juneau will be cancelled. ADEC will announce the cancellation of the public hearings by publishing a public notice, by 5:00 p.m. on Tuesday, August 15, 2017, on these websites: <http://dec.alaska.gov/Applications/Air/airtoolsweb/AirPermitsApprovalsAndPublicNotices>, and [http://dec.alaska.gov/commish/public\\_notices.htm](http://dec.alaska.gov/commish/public_notices.htm). Formal oral or written comment may be submitted at the hearings. The hearing will be extended if necessary to accommodate those present before 1:30 pm and 7:00 pm, respectively, who did not have an opportunity to comment.

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After the public comment period ends, ADEC will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED. Written comments received are public records and are subject to public inspection.

**Statutory authority:** AS 46.03.010; AS 46.03.020; AS 46.14.030; AS 46.14.400

**Statutes being implemented, interpreted, or made specific:** AS 46.14.030; AS 46.14.400

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

**Date:** July 18, 2017

  
\_\_\_\_\_  
Larry Hartig, Commissioner



ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(d))

1. Adopting agency: Department of Environmental Conservation
2. General subject of regulation: 18 AAC 50 Air Quality Control
3. Citation of regulation (may be grouped): 18 AAC 50.030; 18 AAC 50.040; 18 AAC 50.075; 18 AAC 50.077; 18 AAC 50.079; 18 AAC 50.990
4. Department of Law file number, if any: JU2017200219
5. Reason for the proposed action:  
( X ) Compliance with federal law or action (identify): Clean Air Act  
( ) Compliance with new or changed state statute  
( ) Compliance with federal or state court decision (identify): \_\_\_\_\_  
(X) Development of program standards  
( ) Other (identify): \_\_\_\_\_
6. Appropriation/Allocation: Air Quality Division/Non-Point and Mobile Sources Program
7. Estimated annual cost to comply with the proposed action to:  
A private person: The department does not anticipate additional compliance costs because proposed requirements and restrictions in the nonattainment area reflect current policies already in place at a local level through the Fairbanks North Star Borough (FNSB) Ordinance 2017-18. Proposed revisions allow for the current FNSB policies to be incorporated into the State Implementation Plan (SIP). The department recognizes that there may be concerns by some about the costs due to a potential reduction of heating options. The department encourages comments on potential costs of complying with these proposed regulations. Please see the Question and Answer webpage for additional information: <http://dec.alaska.gov/air/anpms/comm/fbks-pm2-5-proposed-regulations.htm>.  
Another state agency: None.  
A municipality: None. The policies being added to the SIP are already in place.
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY18	Subsequent Years
Operating Cost	\$0	\$0
Capital Cost	\$0	\$0
1002 Federal receipts	\$0	\$0
1003 General fund match	\$0	\$0
1004 General fund	\$0	\$0
1005 General fund/ program	\$0	\$0
Other (identify)	\$0	\$0


AFFIDAVIT OF NOTICE OF PROPOSED REGULATION  
AND FURNISHING OF ADDITIONAL INFORMATION

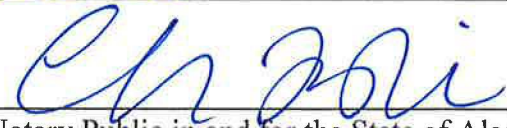
I, Rebecca Tyson Smith, Environmental Program Specialist, of the Department of Environmental Conservation, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 18 AAC 50, Air Quality Control, adopting local ordinances enacted by the Fairbanks North Star Borough Assembly into the State Implementation Plan has been given by being

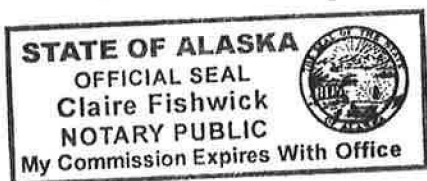
- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chairs of the Resources Committees of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 21 August 2017   
Rebecca Tyson Smith, Environmental Program Specialist

Subscribed and sworn to before me at Tueau on 8/21/17  
  
Notary Public in and for the State of Alaska

[NOTARY SEAL]



AFFIDAVIT OF ORAL HEARINGS

I, Tom Turner, Environmental Program Manager, of the Department of Environmental Conservation, being sworn, state the following:

On August 18, 2017, at 1130-1330, at the Fairbanks North Star Borough, 907 Terminal St., Assembly Chambers, Fairbanks, AK; and 1700-1900 at the Fairbanks North Star Borough, 907 Terminal St., Assembly Chambers, Fairbanks, AK, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to 18 AAC 50, Air Quality Control to:

- (1) Repeal and readopt 18 AAC 50.030 to adopt revisions to the State Air Quality Control Plan in Volume II Section III.D.5: FNSB PM-2.5 Control Plan and its corresponding Appendix; and add language addressing nonattainment area permit requirements.
- (2) Amend 18 AAC 50.075 to add new language on visible emissions standards and to remove language that is no longer applicable.
- (3) Amend 18 AAC 50.077 to address requirements for wood-fired heating devices, heating device test methods, and address heating devices located in the FNSB nonattainment area.
- (4) Add a new section, 18 AAC 50.079, to address requirements for coal-fired heating devices.
- (5) Amend 18 AAC 50.990 to add definitions.

Date: 8/25/2017



Tom Turner, Environmental Program Manager

Subscribed and sworn to before me at Anchorage, Alaska on  
August 25, 2017  
(date)



Notary Public in and for the State of Alaska

[NOTARY SEAL]



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Rebecca Tyson Smith, Environmental Program Specialist, of the Department of Environmental Conservation, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Environmental Conservation has kept a record of its use or rejection of factual or other substantive information that was submitted in writing and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Environmental Conservation regulation on fine particulate matter (PM2.5) episodes, clarifications to the role of local air programs, and related definitions. These regulations are adopted in support of the Fairbanks PM2.5 air quality plan, which is required by federal law.

The changes to the Air Quality regulations address the use of wood stoves and coal-fired heating devices, visible emissions and the adoption of revisions to the State Air Quality Control Plan that reflect changes to local programs. The regulations were also amended to reflect changes in federal rules regarding heating device test methods.. The goal of these regulations is to protect human health and air quality as required by federal law primarily by promoting the use of efficient and effective heating sources, while also preserving the ability of residents to affordably heat their homes.

Date:

3 Nov 2017

  
Rebecca Tyson Smith, Environmental Program Specialist

Subscribed and sworn to before me at

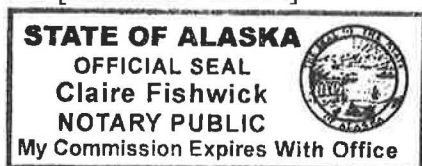
Tuneau

on

3 Nov 2017

  
Notary Public in and for the State of Alaska

[NOTARY SEAL]






AFFIDAVIT OF CANCELLATION OF ANCHORAGE AND JUNEAU ORAL HEARINGS

I, Teri Buck, Environmental Program Specialist of the Department of Environmental Conservation, being sworn, state the following:

The Department of Environmental Conservation tentatively scheduled oral hearings, available upon request as stated in the notice of proposed regulations, for August 18, 2017, at 1200 - 1330, in ADEC Anchorage Building, First Floor Conference Room, 555 Cordova St., Anchorage, Alaska; and ADEC 2<sup>nd</sup> Floor Main Conference Room, 410 Willoughby Avenue, Juneau Alaska. No member of the public requested an oral hearing for either Anchorage or Juneau, and the public hearings were cancelled and noticed as stated in the notice of proposed regulations.

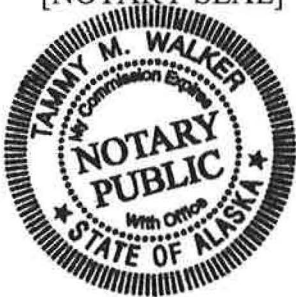
Date: 8-17-17

  
Teri Buck, Environmental Program Specialist

Subscribed and sworn to before me at Anchorage, Alaska on  
August 17, 2017  
(date)

  
Notary Public in and for the State of Alaska

[NOTARY SEAL]





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# AFFIDAVIT OF PUBLICATION

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Alaska Dispatch News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

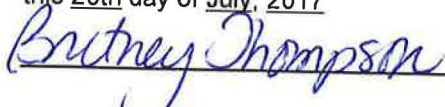
July 19, 2017, July 20, 2017

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed



Subscribed and sworn to before me  
this 20th day of July, 2017



Notary Public in and for  
The State of Alaska.  
Third Division  
Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019  
Notary Public  
BRITNEY L. THOMPSON  
State of Alaska  
My Commission Expires Feb 23, 2019

## AIR QUALITY CONTROL: NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

### BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation proposes to adopt regulation changes intended to assist with the improvement of air quality in the Fairbanks North Star Borough (FNSB) Nonattainment Area. The proposed regulations and State Implementation Plan (SIP) amendments incorporate elements of local ordinances enacted by the FNSB Assembly allowing their use in meeting federal Clean Air Act requirements for the FNSB Nonattainment Area.

The Alaska Department of Environmental Conservation (ADEC) proposes to adopt changes in 18 AAC 50 of the Alaska Administrative Code, dealing with air quality, including the following:

- (1) Repeal and readopt 18 AAC 50.030 to adopt revisions to the State Air Quality Control Plan in Volume II Section III.D.5: FNSB PM-2.5 Control Plan and its corresponding Appendix; and add language addressing nonattainment area permit requirements.
- (2) Amend 18 AAC 50.075 to add new language on visible emissions standards and to remove language that is no longer applicable.
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### Questions

You may submit written questions relevant to the proposed action to ADEC using the electronic question form link found on [http://dec.alaska.gov/air/anpms/comm/fbks\\_pm2-5\\_proposed-regs\\_2017.htm](http://dec.alaska.gov/air/anpms/comm/fbks_pm2-5_proposed-regs_2017.htm); by electronic mail to [dec.air.comment@alaska.gov](mailto:dec.air.comment@alaska.gov); or by mail to Teri Buck, Division of Air Quality, 555 Cordova St. Anchorage, Alaska 99501. Questions may also be submitted verbally in testimony at one of the public hearings. The Department will aggregate its response to substantially similar questions and make the questions and response available on [http://dec.alaska.gov/air/anpms/comm/fbks\\_pm2-5-questions-answers.html](http://dec.alaska.gov/air/anpms/comm/fbks_pm2-5-questions-answers.html). The written questions must be received at least 10 days before the end of the public comment period; Friday, August 18, 2017. The Department may, but is not required to, answer written questions received after Friday, August 18, 2017, the 10-day cut-off date.

### Comments

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### Hearings

The Department will also hold public hearings on this proposal. The Fairbanks public hearings will be held as follows: on Friday, August 18, 2017, from 11:30 a.m. - 1:30 p.m. at the Fairbanks North Star Borough, 907 Terminal St., Assembly Chambers; and on Friday, August 18, 2017, from 5:00 - 7:00 p.m. at the Fairbanks North Star Borough, 907 Terminal St., Assembly Chambers. The Department has tentatively scheduled public hearings in Anchorage and Juneau for these proposed regulations, on Friday, August 18, 2017, from 12:00 p.m. to 1:30 p.m. at the ADEC Anchorage Building, First Floor Conference Room, 555 Cordova St., Anchorage, Alaska; and ADEC 2nd Floor Main Conference Room, 410 Willoughby Avenue, Juneau Alaska. The Anchorage and Juneau public hearings will be held only if a request to hold a public hearing is received by ADEC by 5:00 p.m. on Friday, August 11, 2017. You may request a public hearing by calling Teri Buck at 907-269-7695 between 9:00 a.m. and 5:00 p.m., Monday through Friday or by e-mailing a request to [teri.buck@alaska.gov](mailto:teri.buck@alaska.gov). If no request for a public hearing is received by Friday, August 11, 2017, the public hearings in Anchorage and/or Juneau will be cancelled. ADEC will announce the cancellation of the public hearings by publishing a public notice, by 5:00 p.m. on Tuesday, August 15, 2017, on these websites: <http://dec.alaska.gov/Applications/Air/airtoolsweb/AirPermitsApprovalsAndPublicNotices>, and [http://dec.alaska.gov/commish/public\\_notices.htm](http://dec.alaska.gov/commish/public_notices.htm). Formal oral or written comment may be submitted at the hearings. The hearing will be extended if necessary to accommodate those present before 1:30 pm and 7:00 pm, respectively, who did not have an opportunity to comment.

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AN-5003-18


## **Affidavit of Publication**

UNITED STATES OF AMERICA }  
STATE OF ALASKA } SS.  
FOURTH DISTRICT }

Before me, the undersigned, a notary public, this day personally appeared Tameka Ambersley, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper (i) published in newspaper format, (ii) distributed daily more than 50 weeks per year, (iii) with a total circulation of more than 500 and more than 10% of the population of the Fourth Judicial District, (iv) holding a second class mailing permit from the United States Postal Service, (v) not published primarily to distribute advertising, and (vi) not intended for a particular professional or occupational group. The advertisement which is attached is a true copy of the advertisement published in said paper on the following day(s):

July 19, 2017, July 20, 2017

and that the rate charged thereon is not excess of the rate charged private individuals, with the usual discounts.

  
\_\_\_\_\_  
Advertising Clerk

Subscribed to and sworn to me this 20th day of July 2017.

  
\_\_\_\_\_  
Marena Burnell, Notary Public in and for the State Alaska.

My commission expires: December 07, 2017

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ST OF AK ADEC/AQ/Air Permits  
410 Willoughby Ave, Ste 303  
PO BOX 111800

42023

AIR QUALITY CONTROL: NOTICE OF  
PROPOSED CHANGES IN THE REGULATIONS  
OF THE ALASKA DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

### **BRIEF DESCRIPTION**

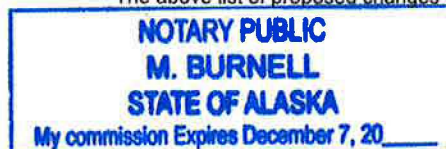
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#### Questions

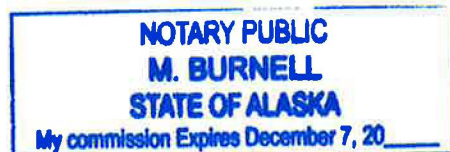
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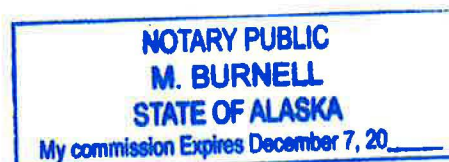


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If you are a person with a disability who may need a special accommodation in order to participate in this public process, please contact Natalie Wolfe at (907) 269-0291, [Natalie.Wolfe@alaska.gov](mailto:Natalie.Wolfe@alaska.gov) or TDD Relay Service 1-800-770-8973/TTY or dial 711 seven day prior to any open house, public hearing or comment deadline to ensure that



any necessary accommodations can be provided.

After the public comment period ends, ADEC will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.** Written comments received are public records and are subject to public inspection.

Statutory authority: AS 46.03.010; AS 46.03.020; AS 46.14.030; AS 46.14.400

Statutes being implemented, interpreted, or made specific: AS 46.14.030; AS 46.14.400

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: July 18, 2017

/s/ Larry Hartig, Commissioner

Publish: July 19 & 20, 2017

