

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
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Anchorage, Alaska 99501
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Jolene Julian
Department of Transportation

FROM: April Simpson, Office of the Lieutenant Governor *KS*
465.4081

DATE: January 20, 2021

RE: Filed Permanent Regulations: Department of Transportation

Department of Transportation and Public Facilities repeal of environmental program regulations (17 AAC 12)

| | |
|------------------------|-----------------|
| Attorney General File: | JU2015200363 |
| Regulation Filed: | 1/20/2021 |
| Effective Date: | 2/19/2021 |
| Print: | 237, April 2021 |

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Mary McRae, Engineer

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

The attached 2 page[s] of regulations, dealing with administration of responsibilities of the National Environmental Policy Act, are adopted and certified to be a correct copy of the regulation changes that the Department of Transportation and Public Facilities adopts under the authority of AS 44.42.030 and 44.42.300 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Department of Transportation and Public Facilities paid special attention to the cost to private persons of the regulatory action being taken.

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

Date: 1.13.21



John MacKinnon, Commissioner

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on January 20, 2021, at 12:12P m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: February 19, 2021.

Register: 237, April 2021.

Register 237, April 2021 TRANS. AND PUBLIC FACILITIES

17 AAC 12.010 is repealed:

17 AAC 12.010. Purpose. Repealed. (Eff. 8/23/2009, Register 191; repealed 2 / 19 / 2021, Register 237)

[EDITOR'S NOTE: THE MEMORANDA OF UNDERSTANDING THAT DETAIL THE RESPONSIBILITIES ASSUMED BY THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES UNDER 23 U.S.C. 326 AND 327 AND AS 44.42.300 ARE AVAILABLE FOR INSPECTION AND COPYING AT THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, OFFICE OF THE COMMISSIONER, LOCATED AT 3132 CHANNEL DRIVE, P.O. BOX 112500, JUNEAU, AK 99811-2500.]

17 AAC 12.020 is repealed:

17 AAC 12.020. Implementation of 23 U.S.C. 326 (state assumption of responsibility for categorical exclusions). Repealed. (Eff. 8/23/2009, Register 191; repealed 2 / 19 / 2021, Register 237)

17 AAC 12.030 is repealed:

17 AAC 12.030. Implementation of 23 U.S.C. 327 (NEPA pilot program). Repealed. (Eff. 8/23/2009, Register 191; repealed 2 / 19 / 2021, Register 237)

[EDITOR'S NOTE: A COMPLETE LIST OF FEDERAL LAWS AND EXECUTIVE ORDERS, FOR WHICH THE DEPARTMENT OF TRANSPORTATION AND PUBLIC

Register 237, April 2021 TRANS. AND PUBLIC FACILITIES

FACILITIES MAY ASSUME RESPONSIBILITY FOR COMPLIANCE, IS LOCATED AT
APPENDIX A TO 23 C.F.R. PART 773.]

17 AAC 12.040 is repealed:


17 AAC 12.040. Adoption of federal NEPA requirements. Repealed. (Eff. 8/23/2009,
Register 191; repealed 2 / 19 / 2021, Register 237)

[EDITOR'S NOTE: THE ADDRESS FOR THE OFFICE OF THE COMMISSIONER,
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IS 3132 CHANNEL
DRIVE, P.O. BOX 112500, JUNEAU, AK 99811-2500.]

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

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

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

Date: January 15, 2021

File No.: JU2015200363

Tel. No.: 465-3600

Re: Department of Transportation and
Public Facilities repeal of
environmental program regulations
(7 AAC 12)

The Department of Law has reviewed the attached regulations of the Department of Transportation and Public Facilities against the statutory standards of the Administrative Procedure Act. Based upon our review, 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. The regulations were adopted by the Department of Transportation and Public Facilities after the close of the public comment period. The regulations repeal obsolete 17 AAC 12, regarding the state environmental program, to reflect that the activities of the general public are not regulated by way of a memorandum of understanding between the Department of Transportation and Public Facilities and the Federal Highway Administration, under which the state stands in the shoes of the federal government for purposes of highway design and construction activities under 42 U.S.C. 4321 - 4370m-12 (National Environmental Policy Act).

The June 22, 2020 public notice and the January 13, 2021 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.

SCW

cc w/enc: John MacKinnon, Commissioner
Department of Transportation and Public Facilities

Jolene Julian, Regulations Contact
Department of Transportation and Public Facilities

Douglas S. Kolwaite
Division of Statewide Design and Engineering Services
Department of Transportation and Public Facilities

Mary F. McRae, P.E.
Division of Statewide Design and Engineering Services
Department of Transportation and Public Facilities

Eugene F. Hickey, Senior Assistant Attorney General
Transportation Section

Sean Lynch, Senior Assistant Attorney General
Transportation Section

NOTICE OF PROPOSED CHANGES ON ADMINISTRATION OF RESPONSIBILITIES
UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT
IN THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC
FACILITIES

The Department of Transportation and Public Facilities proposes to adopt regulation changes in 17 AAC 12 of the Alaska Administrative Code, dealing with the Department's Environmental Program, including the following:

- (1) Chapter 12 is proposed to be repealed. The intended effect of this repeal is to reflect an ongoing agreement between the State and the Federal Highway Administration (FHWA) for the State to accept responsibility under the National Environmental POLICY Act (NEPA) for environmental review, consultation, or other actions required under any Federal environmental law with respect to Federal Highway projects within Alaska.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Ms. Mary McRae at the Department of Transportation and Public Facilities, Division of Design & Engineering Services, P.O. Box 112500, Attention: Ms. Mary McRae, Juneau, AK, 99811. Additionally, the Department of Transportation and Public Facilities will accept comments by electronic mail at mary.mcrae@alaska.gov. The comments must be received not later than 4:30 PM on July 27, 2020.

You may submit written questions relevant to the proposed action to Ms. Mary McRae by e-mail at mary.mcrae@alaska.gov or by mail at Ms. Mary McRae at the Department of Transportation and Public Facilities, Division of Design & Engineering Services, P.O. Box 112500, Attention: Ms. Mary McRae, Juneau, AK 99811. The questions must be received at least 10 days before the end of the public comment period. The Department of Transportation and Public Facilities will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Ms. Mary McRae at mary.mcrae@alaska.gov and (907) 465-1222 not later than July 13, 2020, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Ms. Mary McRae at mary.mcrae@alaska.gov and (907) 465-1222.

After the public comment period ends, the Department of Transportation and Public Facilities 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.

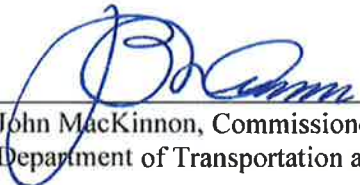
Statutory authority: AS 44.42.030; AS 44.42.300

Statutes being implemented, interpreted, or made specific: AS 44.42.030; AS 44.42.300

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

The Department of Transportation and Public Facilities, Division of Design & Engineering Services keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Department of Transportation and Public Facilities, Division of Design & Engineering Services notices of proposed regulation changes. To be added to or removed from the list, send a request to the Department of Transportation and Public Facilities, Division of Design & Engineering Services at mary.mcrae@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Date: 6.12.20



John MacKinnon, Commissioner
Department of Transportation and Public Facilities

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Transportation and Public Facilities
2. General subject of regulation: Administration of Responsibilities under the National Environmental Policy Act
3. Citation of regulation (may be grouped): 17 AAC 12
4. Department of Law file number, if any: 1JU-2015200363

5. Reason for the proposed action:

(X) Compliance with federal law or action (identify): NEPA Assignment
() Compliance with new or changed state statute
() Compliance with federal or state court decision (identify): _____
() Development of program standards
() Other (identify): _____

6. Appropriation/Allocation: N/A

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0. The department does not expect additional costs to a private person.

Another state agency: \$0. The department does not expect additional costs to any other state agency.

A municipality: \$0. The department does not expect additional costs to a municipality.

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

| | Initial Year FY <u>2020</u> | Subsequent Years |
|-------------------------------|--------------------------------|---------------------|
| Operating Cost | \$ <u>0</u> | \$ _____ |
| Capital Cost | \$ <u>0</u> | \$ _____ |
| 1002 Federal receipts | \$ <u>0</u> | \$ _____ |
| 1003 General fund match | \$ <u>0</u> | \$ _____ |
| 1004 General fund | \$ <u>0</u> | \$ _____ |
| 1005 General fund/ program | \$ <u>0</u> | \$ _____ |

Other (identify) \$ 0 \$ _____

9. The name of the contact person for the regulation:

Name: Douglas S. Kolwaite
Title: Environmental Program Manager
Address: P.O. Box 112500, Juneau, AK 99811
Telephone: (907) 465-8413
E-mail address: douglas.kolwaite@alaska.gov

10. The origin of the proposed action:

 X Staff of state agency
 Federal government
 General public
 Petition for regulation change⁷
 Other (identify): _____

11. Date: 6/15/2020 Prepared by: [signature]

Name (printed): Mary F. McRae

Title (printed): Engineer I

Telephone: (907) 465-1222

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION


I, Mary F. McRae, Engineer, of Alaska Department of Transportation & Public Facilities, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 17 AAC 12 administration of responsibilities under the National Environmental Policy Act has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

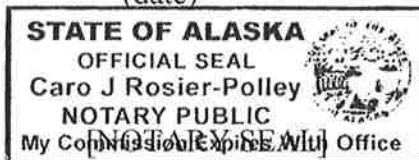
Date: 7-29-2020




Mary F. McRae, Engineer

Subscribed and sworn to before me at ADOT & PF on
7/29/2020

(date)






Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT


I, Mary F. McRae, Engineer for the Department of Transportation and Public Facilities, being duly sworn, state the following:

The Department of Transportation and Public Facilities did not receive any factual or other substantive information that was submitted in writing or orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Transportation and Public Facilities regulation on administration of responsibilities under the National Environmental Policy Act.

Date: 8/18/2020


Mary F. McRae, Engineer

Subscribed and sworn to before me at Juneau, AK on
August 18, 2020
(date)


Notary Public in and for the State of Alaska

[NOTARY SEAL]



ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 392869
PO BOX 112500, JUNEAU, AK 99811

Order #: W0016342

Cost: \$428.32

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily 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 afore-said 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

06/22/2020

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 11th day of August 2020.

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

MY COMMISSION EXPIRES

4/14/21

ANGELA M SIMMONS
NOTARY PUBLIC
State of Alaska
My Commission Expires Apr. 14, 2021

NOTICE OF PROPOSED CHANGES ON ADMINISTRATION OF RESPONSIBILITIES UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT IN THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

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Date: 6/12/20
By: /s/ John MacKinnon,
Commissioner
Department of Transportation and Public Facilities

Published: June 22, 2020