

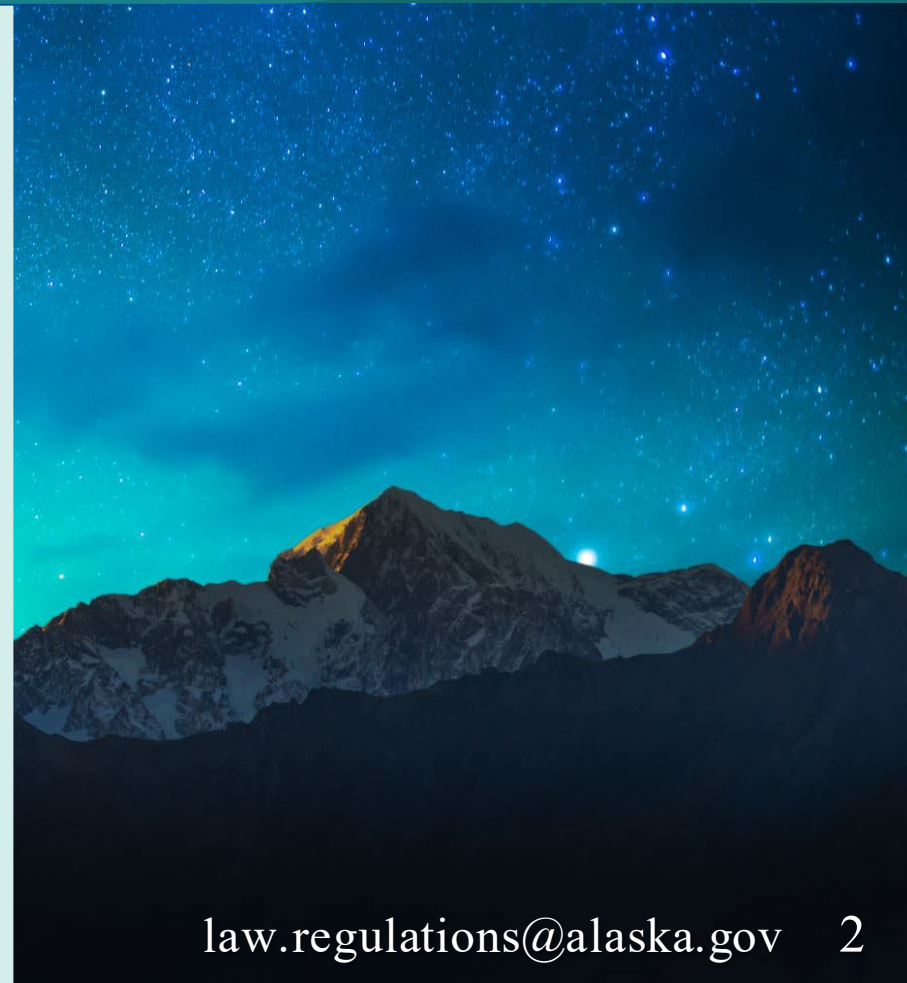
The background of the slide features a photograph of the Aurora Borealis (Northern Lights) over a snowy, rocky landscape. The aurora is visible as a vibrant green and blue light display in the dark, starry sky. The foreground shows snow-covered ground with some dark rocks. A large, semi-transparent teal circle is overlaid on the right side of the image, and a solid teal shape is at the bottom.

Regulations Training 2023

Legislation, Regulations, and Legislative Research Section
Department of Law

Agenda

- Introductions and the purpose of today's training
- Overview of the roles and responsibilities of the Legislation, Regulations, and Legislative Research Section
- Regulations and the Administrative Procedure Act
- Addressing issues and improving processes
- Review the Drafting Manual for Administrative Regulations
- Question and answer period



The Legislation, Regulations, and Legislative Research Section is providing this training to ensure that the regulations process is clear, streamlined, and easy to navigate.

No matter your role in the regulatory process, today's training will provide a comprehensive overview and give you the knowledge and tools to fulfill your role.

You can reach the LRLR Section for any regulatory questions at the following centralized email address:

law.regulations@alaska.gov



Regulations and the Administrative Procedure Act



“Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure...”

AS 44.62.640 (3)

What is a Regulation?

NARROWING THE DEFINITION

Whether a regulation, regardless of its name, is covered by the APA depends in part on whether it *affects the public* or is used by the agency in *dealing with the public*.

Regulations have the effect of rules, orders, regulations, or standards of general application – but regardless of the phraseology, the regulations process *must* be followed per statute.

REGULATIONS MAY INCLUDE

- Manuals
- Policies
- Instructions
- Guides to enforcement
- Interpretive bulletins
- Interpretations

The Administrative Procedure Act (APA)

PURPOSE

- Provides structure by which most state agencies adopt their regulations
- Ensures the public has a meaningful opportunity to comment and ask questions when regulations are proposed
- Establishes uniform standards for state agencies for the regulatory process
- Allows exceptions for certain state agencies

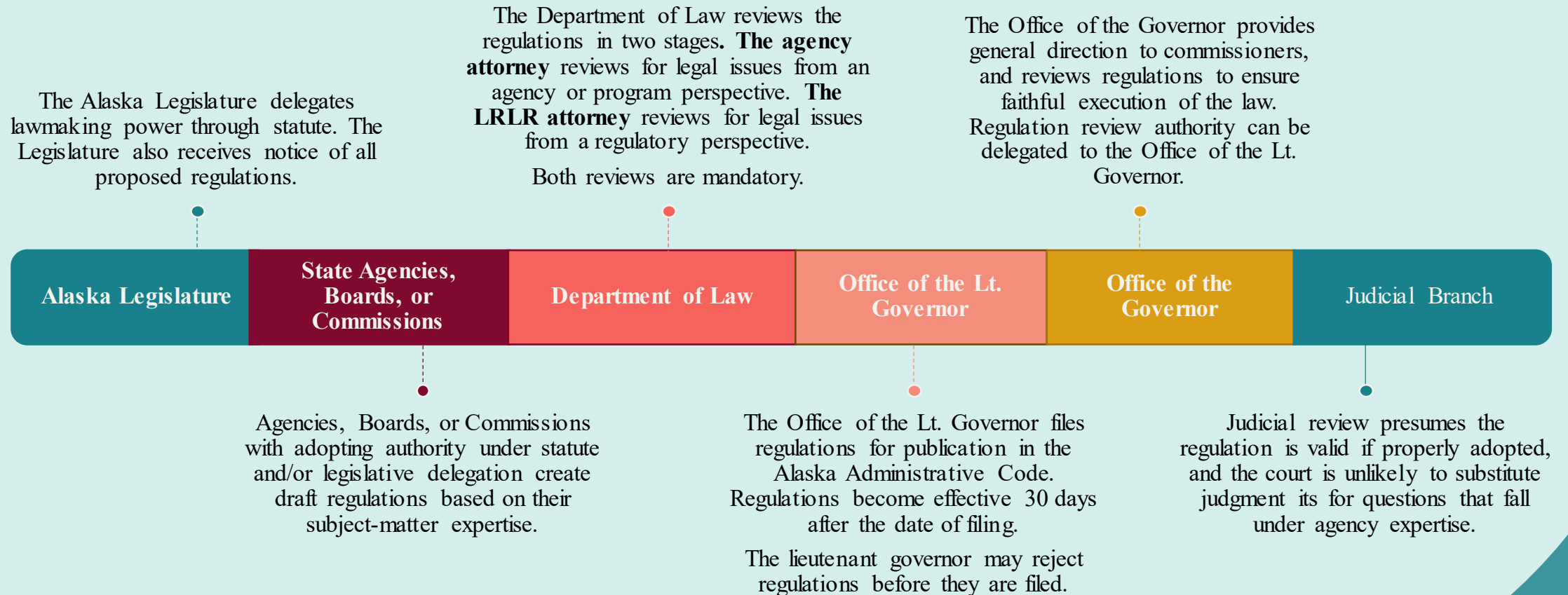
DELEGATION

- The Legislature may delegate, by statute, its authority to create rules and standards (regulations) to executive branch agencies
- Through this delegation of authority, the Legislature relies on the subject-matter expertise of state agencies to draft and adopt regulations that are clear, concise, and lawful
- The Legislature retains oversight over the regulations

AUTHORITY

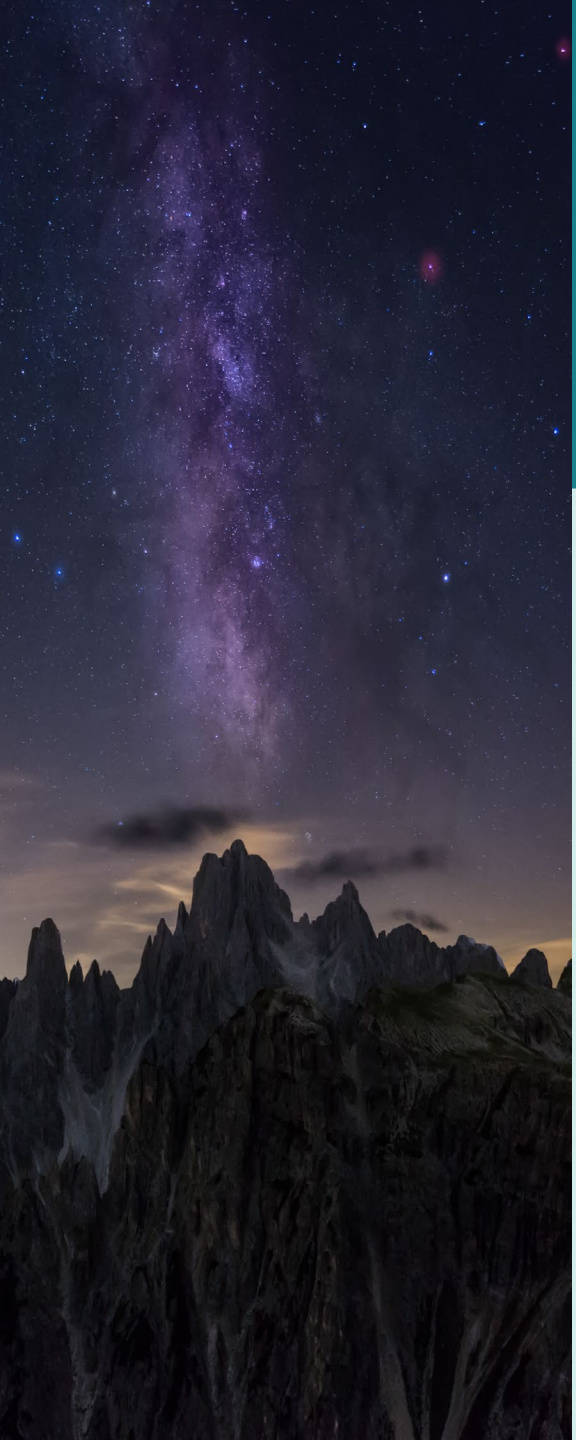
- Regulations have the force of law only if the agency has the statutory authority to adopt the regulation in question
- Most executive branch agencies are subject to the APA, but there are exceptions – some agencies, boards, or commissions have statutory authority set out elsewhere
- A substantial failure to comply with the procedural steps – whether APA or not – may be grounds for a regulation to be invalidated by a court.

Key Players in the Regulatory Process



Legislation, Regulations, & Legislative Research Section





Roles & Responsibilities of the Legislation, Regulations, & Legislative Research Section

Legislation

- Legal counsel to governor's office for legislation matters
- Legal counsel to Office of Management and Budget
- Drafts governor's legislation
- Drafts bill reviews for the governor
- Drafts appropriation bills
- Drafts administrative orders for the governor
- Monitors all legislation for legal issues
- Provides legislative research services

Regulations

- Manages the regulatory process for the State of Alaska
- Legal counsel to governor's office for regulation matters.
- Legally reviews and edits regulations and advises on regulatory process.
- Establishes drafting standards, creates and maintains the Drafting Manual for Administrative Regulations
- Approves or disapproves regulations for filing with the Lt. Governor.



The Role of the Regulations Attorney

The Regulations Attorney is a statutory position under AS 44.62. The Regulations Attorney is responsible for the following:

- Advising state agencies of the nature and use of administrative regulations
- Reviewing regulations and making recommendations
- Assisting with drafting new regulations and providing advice on legal problems encountered
- Advising agencies with respect to public hearing requirements
- Serves as the revisor for the AAC

Legislation, Regulations, and Legislative Research Staff



The LRLR Section works year-round on both legislative and regulatory projects. During the second session of the 32nd Legislature, the LRLR Section drafted over 50 bills, completed roughly 80 bill review letters, and monitored over 600 bills - while managing more than 100 regulations projects. Due to volume, work is assigned based on priority.

The section includes the following staff:

- Six attorneys, including the regulations attorney and the civil legislative liaison, all cross-trained to work on both regulations and legislation
- Two legal editors trained to review both legislation and regulations for conformity, clarity, and accuracy
- Two paralegals to conduct research, manage the legislative and regulatory processes, and assist with special projects

Updated Internal Procedures



Identified Regulatory Process Issues

NOTICE, ADOPTION & FILING

- Regulations projects frequently require re-noticing or supplemental public notices
- Regulations frequently require re-adoption by state agencies after legal review
- Regulations projects frequently approach “staleness”
- Regulations are not consistently delivered to Lt. Governor for filing or filed by the Lt. Governor on timelines requested by agencies.

ISSUES DURING LEGAL REVIEW

- Agency attorneys and regulations attorneys provide legal advice at different stages of the review process creating notice, adoption, and filing issues.
- Legal issues that arise during the review process delay the project’s delivery, filing, and effective date
- Agency attorneys must balance their review processes with their other duties
- Regulations attorneys are frequently pulled to assist with legislation, slowing their review process

OUTDATED PROCESSES

- Notarizing original forms is difficult in light of heavy telework and remote offices
- Requiring originals to be mailed to Juneau office for review slows the process down
- Agencies are unable to pinpoint someone to quickly and effectively answer questions
- Forms are outdated or difficult to use or understand

Changes Already in Place to Internal Procedures

NOTICE, ADOPTION & FILING

- Notice reviews are now conducted by the paralegal – agency and regulations attorneys no longer have to perform this review
- Paralegals re-key the edited regulations so clean copies are delivered to the publisher without pencil edits
- Adoption packets are now reviewed by the paralegal to ensure completeness and accuracy--agency and regulations attorneys no longer have to perform this review

LEGAL REVIEW STREAMLINING

- Technical reviews are now conducted by the legal editor prior to legal review – agency and regulations attorneys no longer have to perform these edits
- All LRLR attorneys are cross-trained to perform both regulations review and legislation work to increase the availability of staff
- Cross-training allows for more efficient legal review by increasing subject-matter expertise across projects

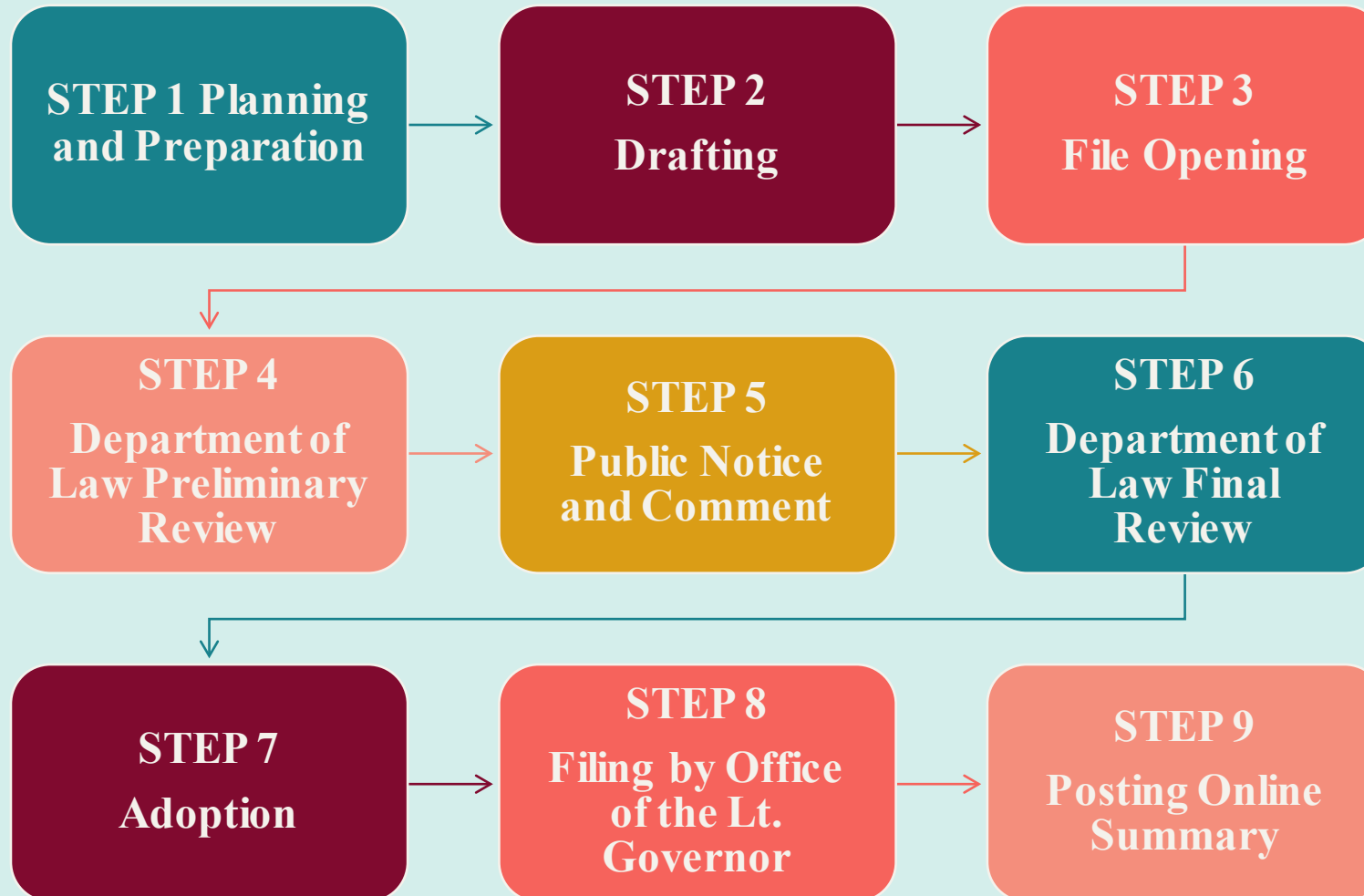
UPDATED PROCESSES

- Centralized email address for all regulations-related work:
law.regulations@alaska.gov
- Centralized email allows for routing of questions to appropriate staff, faster processing of documents, and project status updates
- Original documents are no longer required for submission
- Electronic signatures accepted
- Electronic delivery to Lt. Governor's office

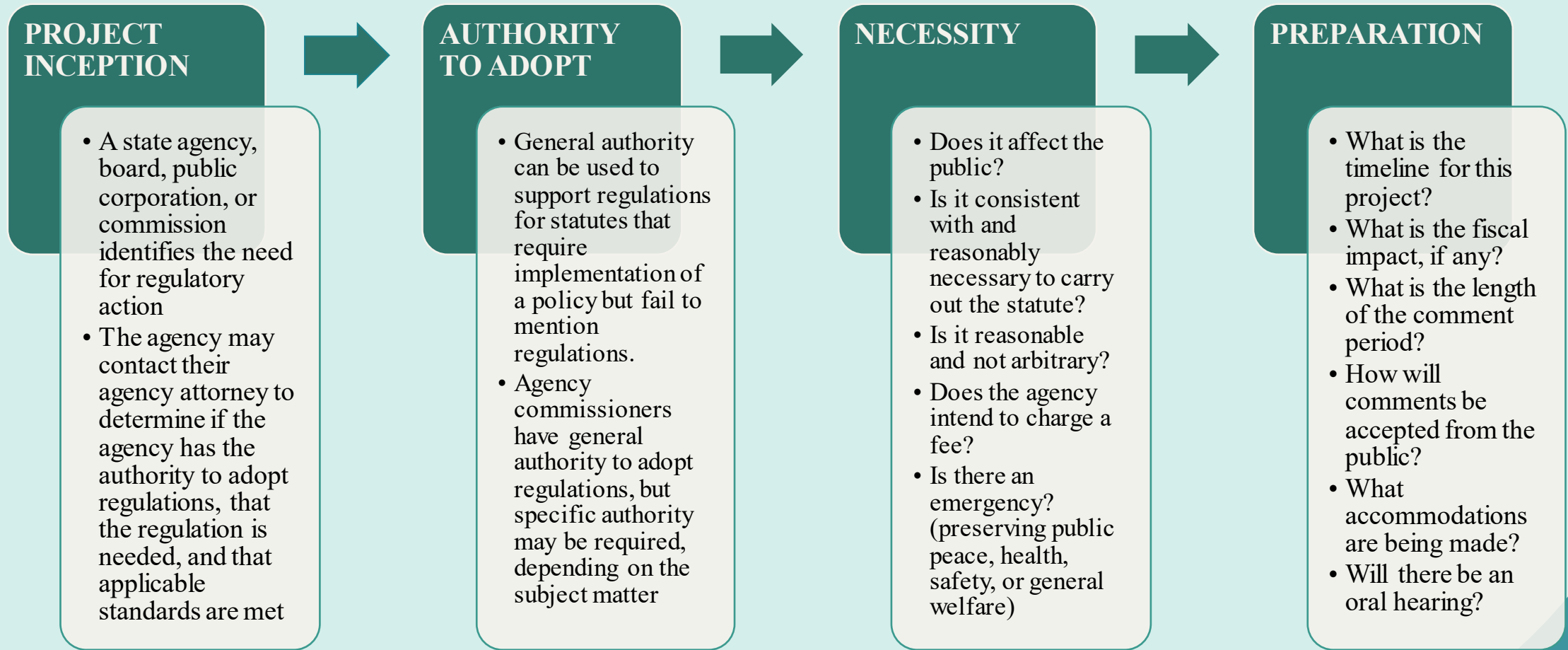
New Procedures in the Regulatory Process



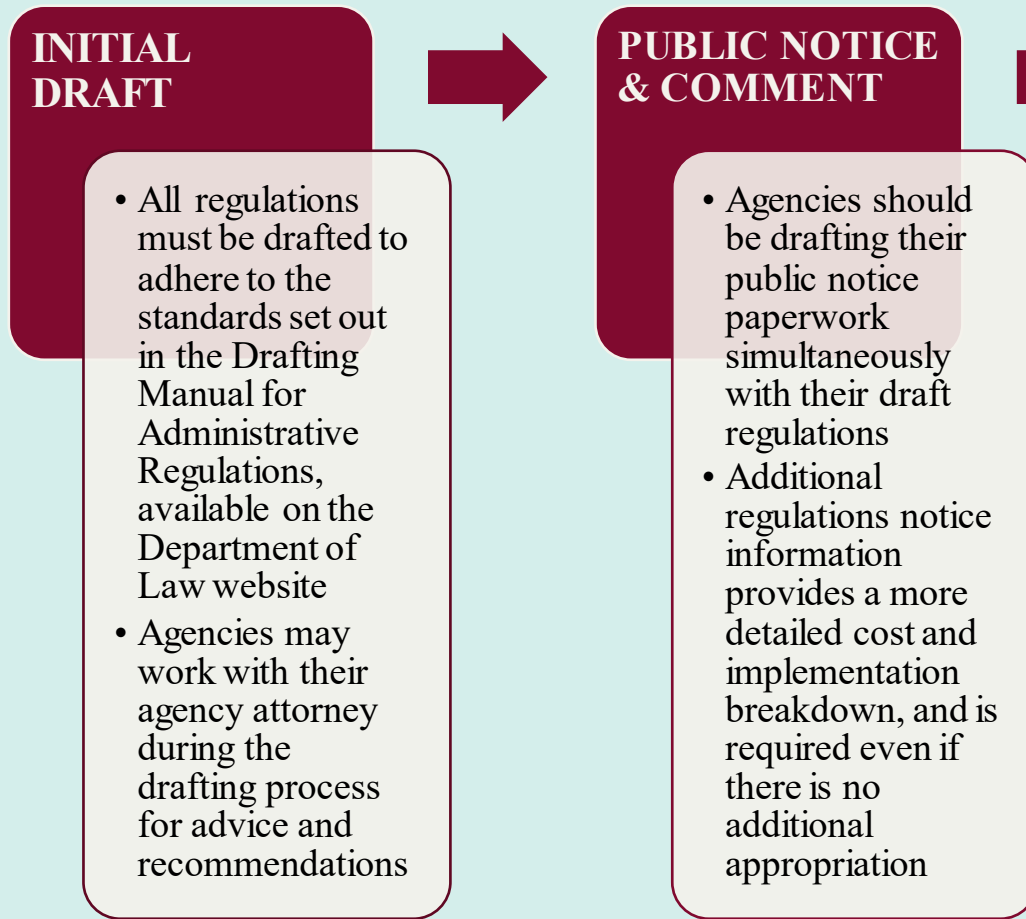
Regulatory Process for APA Regulations



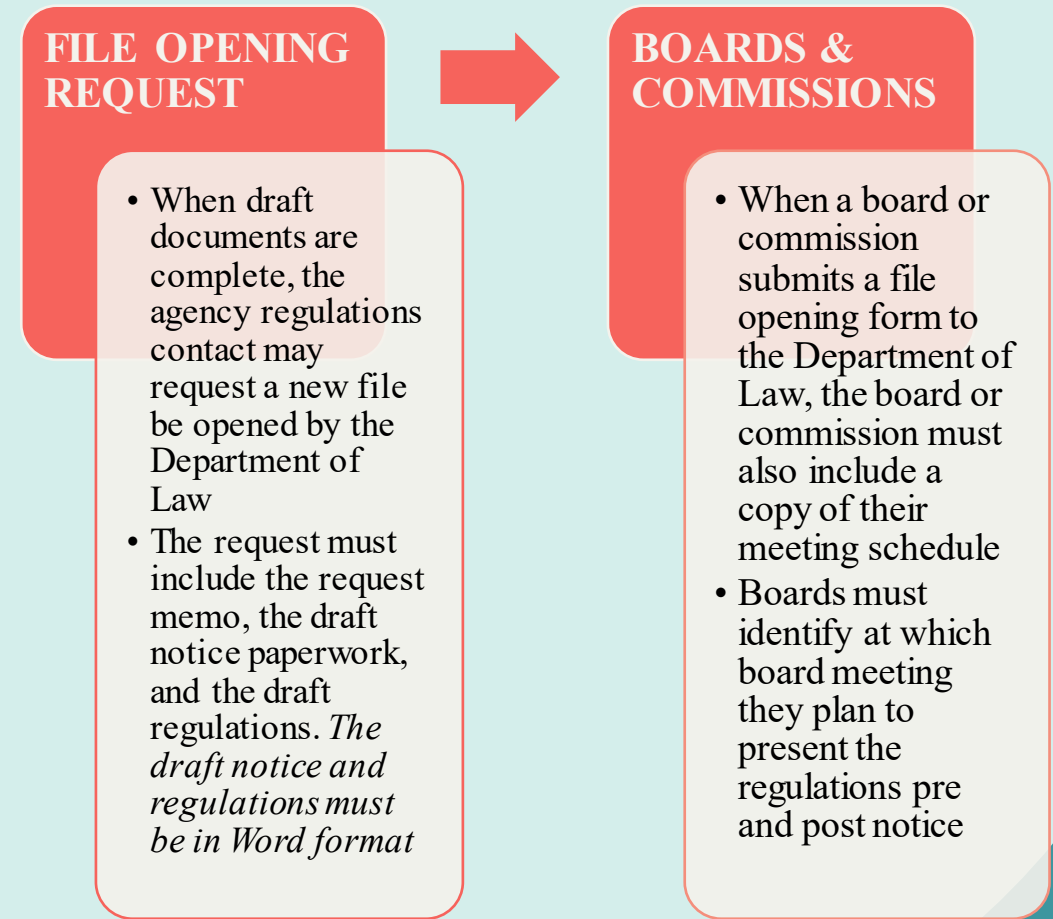
Step 1: Planning and Preparation



Step 2: Drafting



Step 3: File Opening



Drafting a Regulation

RESOURCES

- The agency must start with the current version of the regulations
- If the agency does not have access to the latest regulations, the agency regulations contact may request a Word version of the regulations from the LRLR Section
- The agency should have relevant statutes on hand to ensure the proposed regulations fall within the statutory authority of the adopting agency
- The Drafting Manual for Administrative Regulations is the official source for drafting requirements, style guides, and examples – **when in doubt, consult the manual**
- All the appendices in the manual are also available online at law.alaska.gov/doclibrary/drafting_manual.html

Agencies versus Boards and Commissions

AGENCIES

- unless exempt, agencies must comply with the Administrative Procedure Act
- agency commissioners approve and adopt regulations, unless authority is delegated to a designee
- must maintain a record of how public comments are treated, but the record does not need to be decisional
- oral hearings are optional

BOARDS AND COMMISSIONS

- unless exempt, boards and commissions must comply with the Administrative Procedure Act
- maintain a regular schedule of meetings
- approve and adopt regulations at regularly scheduled meetings
- adoption orders must be accompanied by meeting minutes reflecting the adoption

Drafting a Regulation – Fees, Fiscal Notes, and Material Adopted by Reference

FEES & PENALTIES

- Regulations should not provide for penalties without express statutory authority to do so
- Agencies may set out fees in regulations for providing state services IF the fee is authorized by statute and IF the regulations meet APA standards and IF the fee does not exceed the estimated annual cost of providing the service

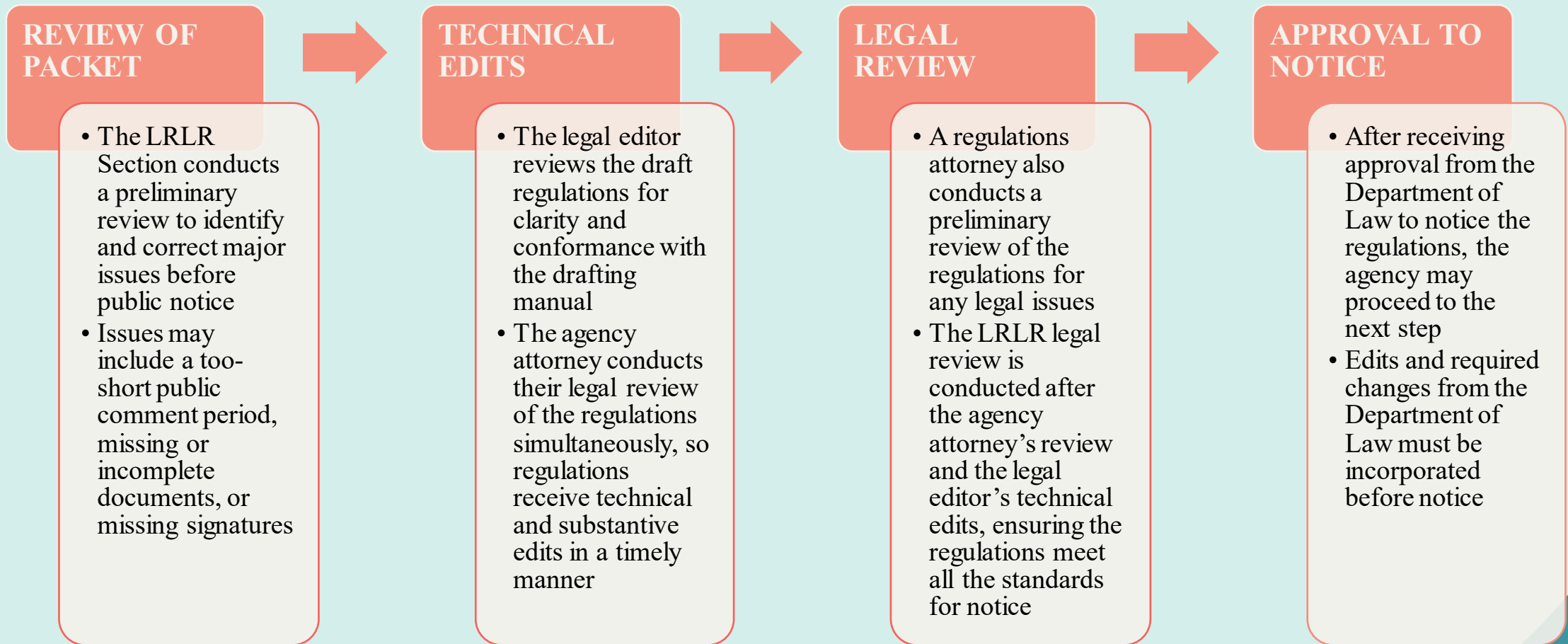
THE PURPOSE OF FISCAL NOTES

- The APA requires disclosure of fiscal ramifications of proposed regulations
- A fiscal note is required if a proposed regulation would require “increased appropriation” by the state
- Chapter 7 of the drafting manual provides an in-depth guide to fiscal notes, including how to draft them, who needs to draft them, and when they are required

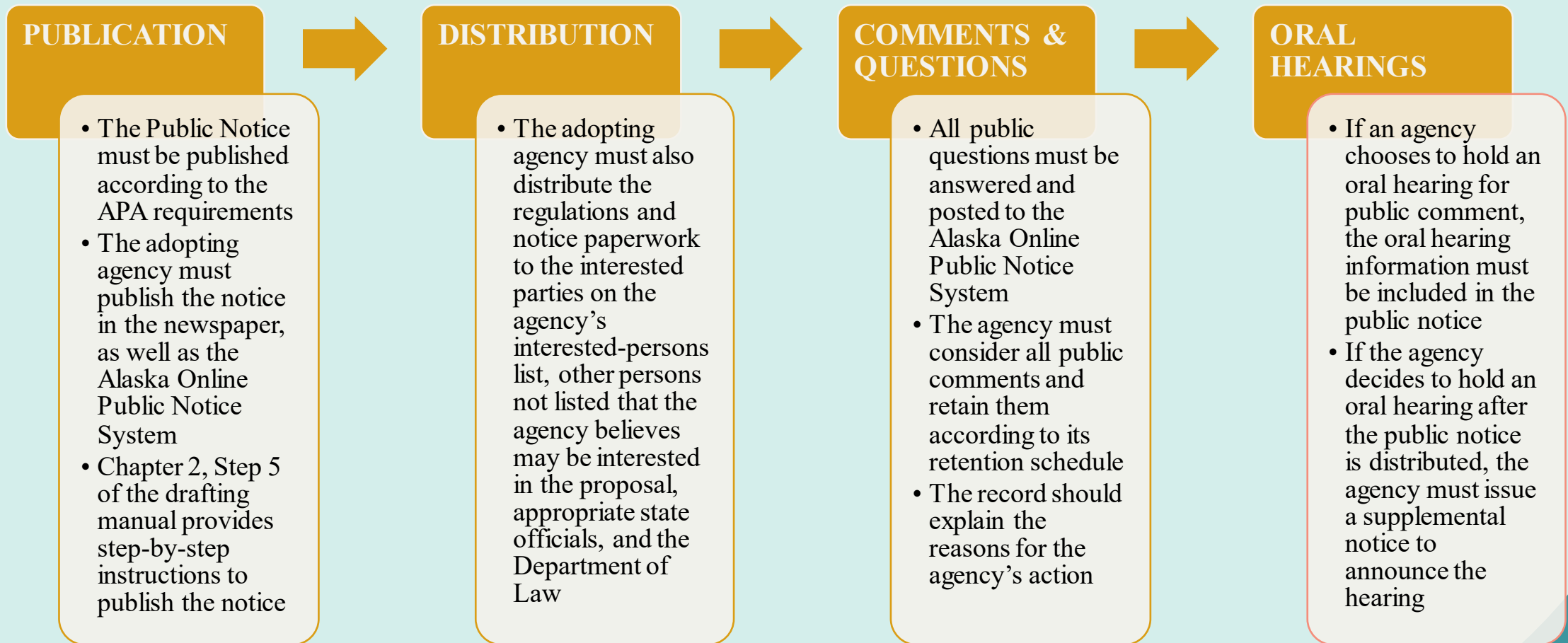
MATERIAL ADOPTED BY REFERENCE

- If the agency has the statutory authority to adopt material by reference, it may do so by following the steps in Chapter 8 of the drafting manual
- Material adopted by reference does not have to follow the same word-processing requirements as the actual regulations
- Material adopted by reference must be available for inspection by the public, and when materials are amended, the regulations must be updated

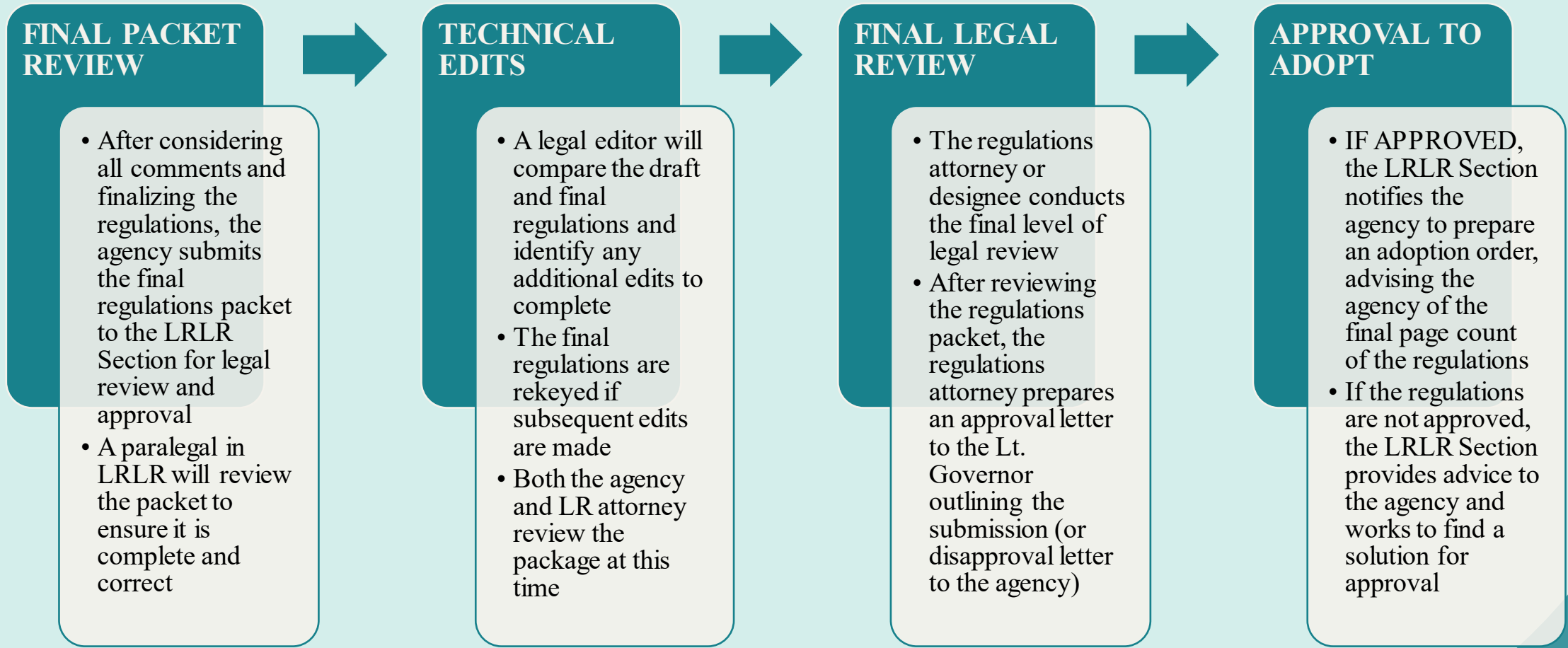
Step 4: Dept. of Law Preliminary Review



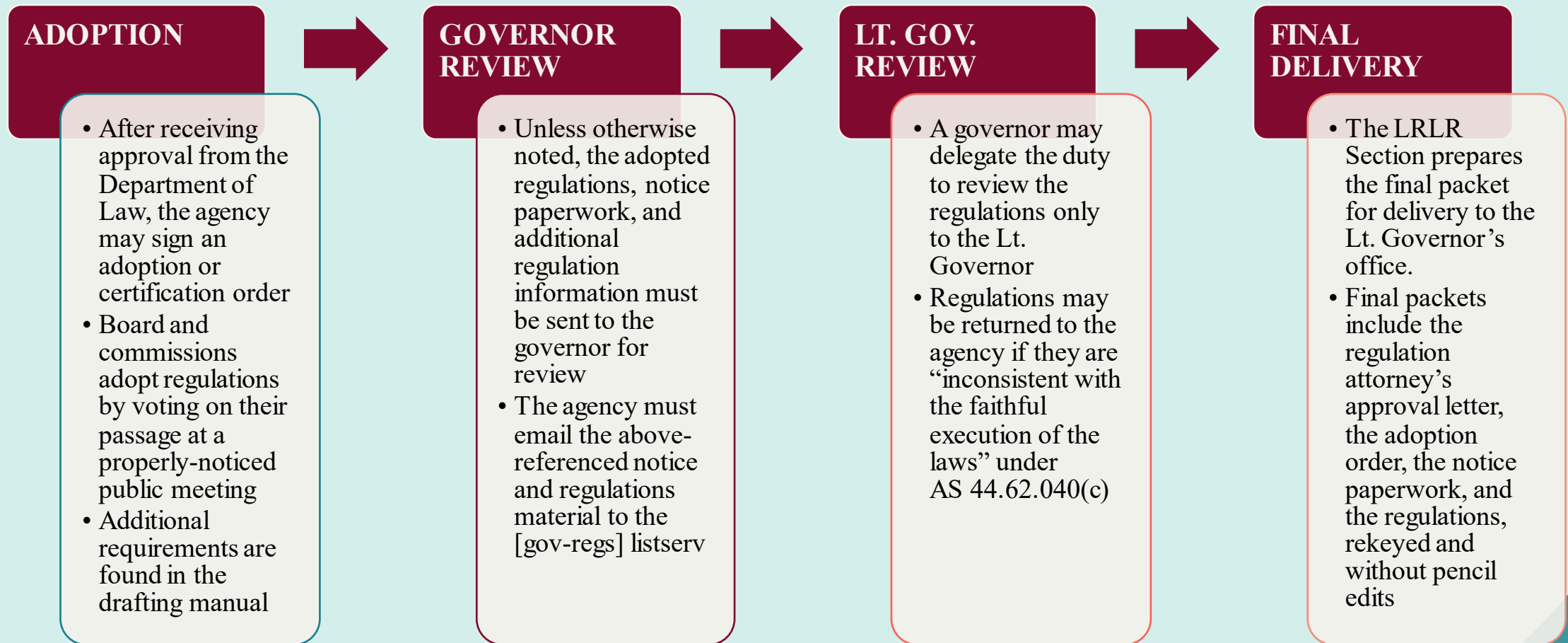
Step 5: Public Notice and Comment



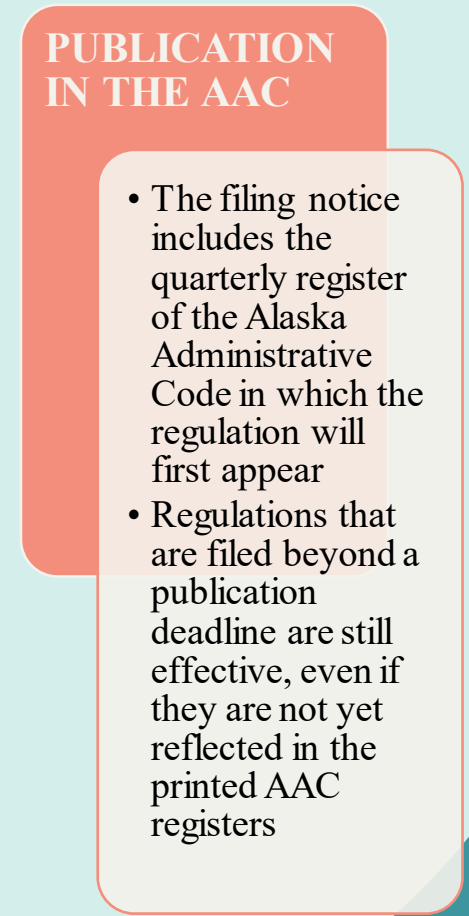
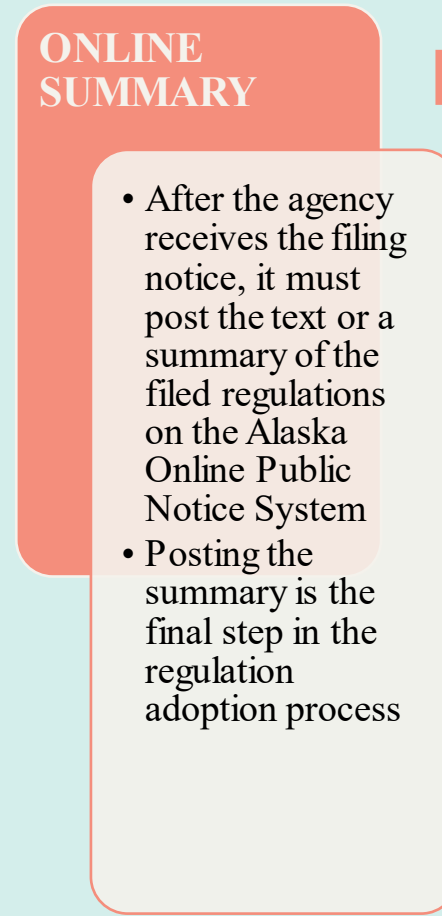
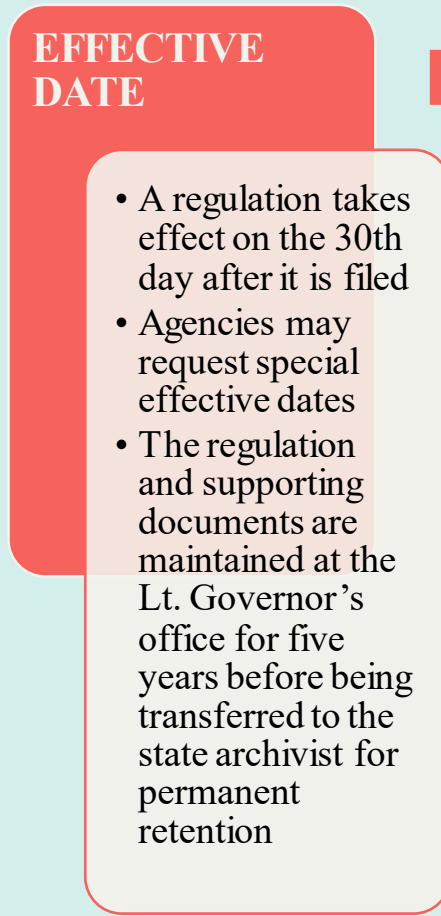
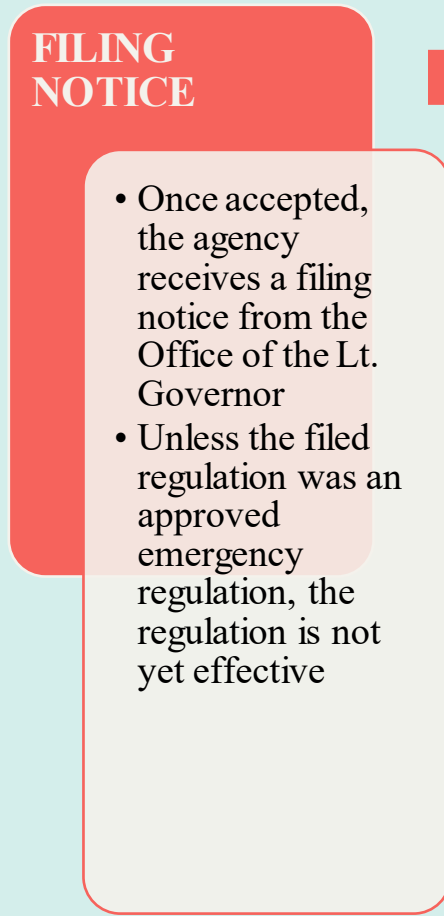
Step 6: Dept. of Law Final Review



Filing Step 7: Adoption



Step 8: Filing



Step 9: Online Summary

Emergency Regulations

- If a threat to the public peace, health, safety, or general welfare requires *immediate* action, an agency may adopt an emergency regulation without first following the APA procedure of publishing notice and public comment.
- Emergency regulations **require approval and a finding of emergency** from the **Regulations Attorney** before proceeding.



Emergency vs. Non-Emergency Regulations

EMERGENCY REGULATIONS

- require a finding of emergency and necessity of project
- do not require notice and comment period prior to filing
- emergency finding **must be approved** by the Department of Law before filing
- are effective on the date they are filed by the lieutenant governor
- expire automatically after 120 days, unless made permanent by the agency

NON-EMERGENCY REGULATIONS

- do not require explanatory document
- require public notice and a 30-day comment period
- require Department of Law review before filing
- are effective 30 days after filing
- do not expire

Emergency Regulations Process

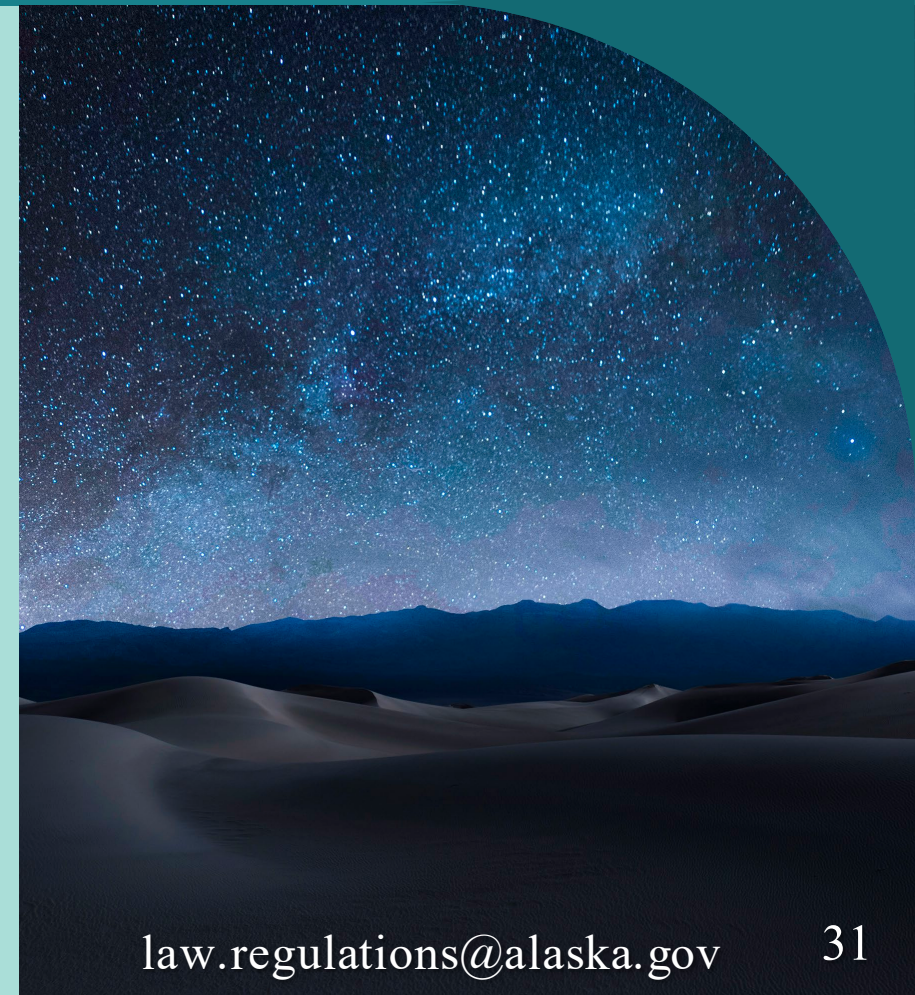


Non-APA Agencies

The legislature has expressly excluded certain agencies from compliance with the Administrative Procedure Act when adopting regulations.

These agencies are most commonly exempt because the entity must retain market participation flexibility, or because the regulation relates to specialized internal management.

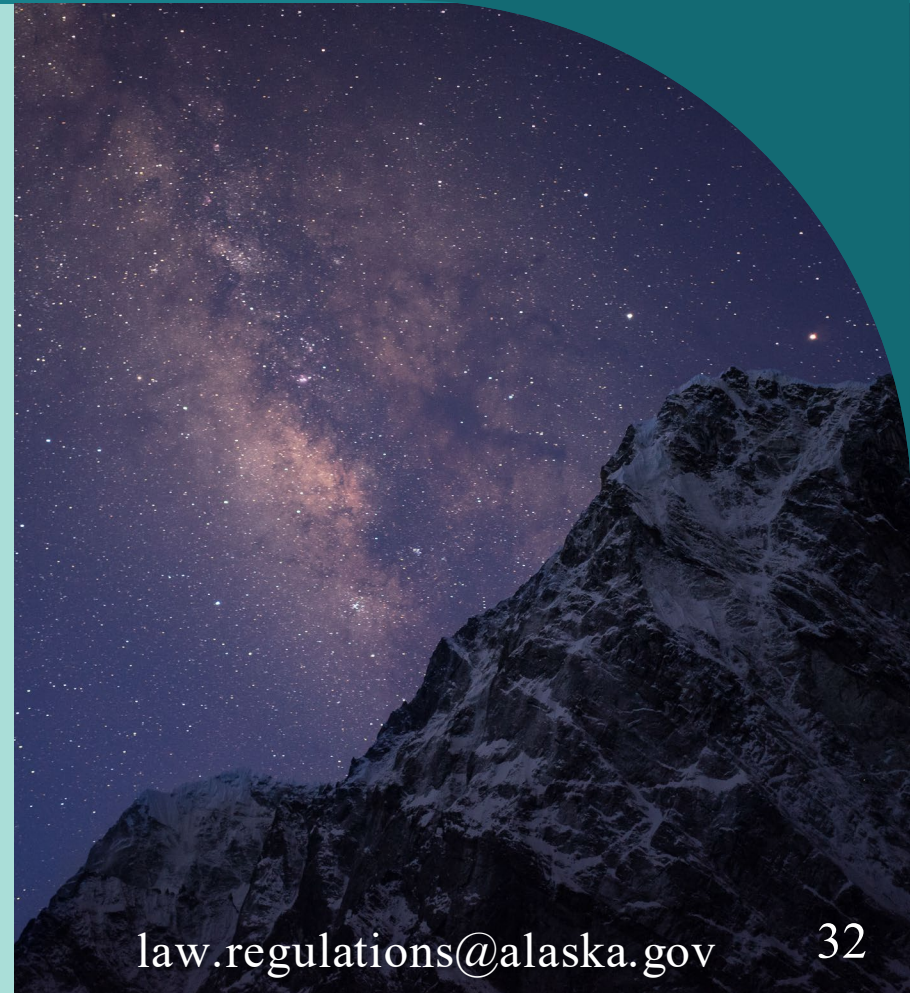
Chapter 11 of the Drafting Manual lists the APA-exempt agencies and how their process differs from the standard APA process.



Conclusion

The Legislation, Regulations, and Legislative Research Section is committed to a streamlined regulatory process that allows for thorough review and timely filing of projects. The new Drafting Manual for Administrative Regulations has much more to offer than this training allows. Please review it often, and if you have further questions, please contact us at

law.regulations@alaska.gov





Questions?