# 2019 Summary of Changes: 4 AAC 31 Regulations

Prepared by Department of Education and Early Development

Finance & Support Services / Facilities Adopted by State Board of Education 9/19/2019

| **Regulation**  | **Summary of Change** | **Reason for Change** |
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| 4 AAC 31.013(a) | Add language adding “retro-commissioning” of existing buildings to requirement of facility management program for districts eligible for AS 14.11 aid.  | Supports best operational management practice to keep building systems at operating efficiency. |
| 4 AAC 31.013(e) | Reorganize section and refine language to parallel flow of process. | Reorganized language provides more clarity to the timeline of the determination process. |
| 4 AAC 31.013(f) | Provide method for department and a district to postpone on-site inspections if district does not seek a compliant PM program. | Current language does not provide the dept. or a district a way to ‘opt-out’ of the on-site inspection process on the occasion of a district that does not desire to qualify for CIP funding. This will potentially save the department operational costs. |
| 4 AAC 31.013(h) (new) | Add language defining department’s current practice of “provisional compliance”. | In the past 10 years, the department has issued determinations of “provisional compliance” to districts that have the capacity to meet PM standards but lack documentation of maintaining the program (e.g., being able to provide a full 12 months of reporting data). |
| 4 AAC 31.016(i) (new) | Provide guidance on when to include or exclude attendance area enrollment when housed in leased facilities. | Formalize dept. practice of excluding enrollment of leased-facility schools in attendance areas when determining space eligibility, unless single-site, and include clause for termination of leased space creating unhoused students.  |
| 4 AAC 31.020(a) | Update publication titles and editions. | Conform to new dept. publication editions; update publication title formatting. |
| 4 AAC 31.020(d) | Provide department flexibility to reduce or not reduce a project budget before the end of the design phase. | Current regulation reads to require a budget reduction if enrollment declines during design process; however, fluctuations can cause significant design changes and incur additional design costs. Dept. practice typically holds a project harmless once a grant agreement is signed and design is underway; however, there could be circumstances where a later adjustment is appropriate. |
| 4 AAC 31.021(e) | Allow “completed projects” to reuse priority ranking for 5 years after original application. | Enable districts to save costs of re-submitting a new application for projects that were completed and do not have any new information to present.  |
| 4 AAC 31.021(f) | Remove requirement to provide inflation/ escalation to elements of the project that will be completed prior to a grant being issued. | Adding the required escalation to projects with previously completed scope unnecessarily increases ranked project costs, resulting in lapsing balances in appropriations and tying up resources that could be used to fund additional projects. |
| 4 AAC 31.021(g) | Adds language on how to treat appeals on projects reused in years 2-6. | Required to conform existing language to the additional years of reuse beyond year one. |
| 4 AAC 31.022(b) | Changes primary purpose type “E” projects from school construction to major maintenance.  | Conforms to 2010 statute change. |
| 4 AAC 31.023(c) | Specify that application costs are allowable project costs. Define that the 36/120 month limit for reimbursable costs begins with initial application. | More clarity is need for when the “36 months” and “120 months” begin for reimbursable allowable project and land costs in a AS 14.11 grant or reimbursement.  |
| 4 AAC 31.023(c) | Adds language limiting amount of grant that can be used for district indirect administrative costs to specified percentage. | Provide more uniformity in treatment of indirect costs; reduces the obligation of the department to fund administrative costs not closely tied to a project with state aid. |
| 4 AAC 31.023(e) | Provides definitions to support changes regarding indirect administrative costs. | Provide clarity for new terms “indirect administrative costs” and “construction costs” used in subsection.  |
| 4 AAC 31.026(d) | Changes who appoints a hearing officer for CIP process appeals. | Conforms to 2004 statute change. |
| 4 AAC 31.030(a) | Changes statute reference from AS 14.11.020 to more common “grant funded under” AS 14.11.011. Specify that elements of a plan for DEED review must be submitted prior to solicitation of a construction contract. | Conform statute reference to statute providing grant funding. Language reinforces that plan must be provided for dept. review prior to construction contract solicitation, as some projects have been being submitted after contract award.  |
| 4 AAC 31.040(a) | Change statute reference from AS 14.11.020 to more common AS 14.11.011. Specify that DEED review and approval must be submitted prior to solicitation of a construction contract, as inferred from timeline requirements in (a)(1)-(3). | Conform statute reference to statute providing grant funding. Language reinforces that project documents must be provided for dept. review prior to construction contract solicitation, as some projects have been being submitted after contract award. |
| 4 AAC 31.060(i) | Change dollar value of reimbursement project costs $200,000. | Conform value to statute. Current $25,000 value is reflective of grant minimum project cost, not debt reimbursement.  |
| 4 AAC 31.061(b)(2) | Repeal language related to applications submitted before 1/1/1996. | Removal of non-applicable language. |
| 4 AAC 31.064 | Clarify when remaining bond proceeds can be redirected. | Clarity is needed for when “construction” of a project is considered complete: when design, construction, and equipment contracts are terminated. |
| 4 AAC 31.065(a) | Adds language to include commissioning services contract over $50,000 to required solicitations; allow solicitation of contracts for design, commissioning, and construction management consultants using qualifying Internet websites in lieu of newspapers.  | Online publishing of solicitations via the world wide web has become equal or more effective than traditional newspaper publishing. (Note: State procurement regulations now allow these types of solicitation options.)  |
| 4 AAC 31.065 (new) | Allow DEED discretion to deny/limit participation in costs of design and construction management for grants and debt reimbursement projects that did not comply with this section | Provide consistency in department treatment of participation in construction and consultant contracts.  |
| 4 AAC 31.080(b) | Allow solicitation of construction contracts using qualifying Internet websites in lieu of newspapers. | Online publishing of solicitations via the world wide web has become equal or more effective than traditional newspaper publishing. (Note: State procurement regulations now allow these types of solicitation options.) |
| 4 AAC 31.080(e) | Allow DEED discretion to deny/limit participation in costs of construction for grants that did not comply with this section; currently DEED may not allow payment for construction contract costs. | Provide consistency between grant and debt programs in dept. discretion to deny construction funding.  |
| 4 AAC 31.080(f) | Update publication edition reference. | Conform to new dept. publication edition and update publication title formatting. |
| 4 AAC 31.080(g) | Add “lease” and “donated” to methods a school district may acquire facilities with prior department approval.  | Expand methods of school district acquisition of property that require dept. approval; works in conjunction with new subsection (j) to potentially limit AS 14.11 funding for property that was not in the best interest of the state for a district to acquire [note -- most leased facilities are already not eligible for AS 14.11 funding] |
| 4 AAC 31.080(i) (new) | Add language specifying when a school capital project must include commissioning services and specifically allows associated costs. | Provide support for commissioning as essential cost-effective school construction element.  |
| 4 AAC 31.080(j) (new) | Allow denial or limiting of participation cost of school construction for facilities acquired under specific circumstances. | Provide dept. process for overview of district acquisition of land or facilities in instances where the dept. may be asked to provide financial support for major maintenance or restoration. |
| 4 AAC 31.085(a) | Specify that a school district is still responsible for liabilities caused by its use of the property. | Reinforce that district liabilities and responsibilities that are the result of the district’s use and operation of the property continue beyond the use permit and one-year wind-down period (see also 4 AAC 31.090(h)). |
| 4 AAC 31.220 | Change date districts shall provide a certificate of insurance to DEED from July 1 to July 15. | Date extension requested by districts and insurance carriers. Certificates not always issued before July 1. |
| 4 AAC 31.900(2) | Update publication edition reference. | Conform to new dept. publication edition and update publication title formatting. |
| 4 AAC 31.900(21) | Change minimum value of “school capital project” to $50,000. | Adjust dollar value in line with inflation to maintain intent of original regulation that projects are “capital” expenses and not “operational”. This value is consistent with inflation. |
| 4 AAC 31.900(31) (new) | Provide definition of “commissioning”. | Supports changes to 4 AAC 31.013, 4 AAC 31.080 |
| 4 AAC 31.900(32) (new) | Provide definition of “commissioning agent”. | Supports changes to 4 AAC 31.065, 4 AAC 31.080 |