



Strategies for Boards to Get the Most Out of the AO 360 Regulatory Review Process

DCCED Boards and Regulations Resources

October 2025

Sara Chambers
Boards and Regulations Advisor
Agency Regulatory Liaison

Introduction

Administrative Order 360 was issued by Governor Dunleavy on August 4, 2025, with the purpose of improving the quality, transparency, and efficiency of the State's regulatory environment by:

- Promoting growth and investment in Alaska by reducing administrative and economic burdens associated with regulatory compliance, including removing barriers, finding solutions, and identifying alternative pathways.
- Streamlining permitting processes and improving coordination and efficiency within all permitting departments.
- Ensuring boards and commissions adjust regulatory structures as necessary to maintain critical consumer protection while eliminating unnecessary barriers to entry for new professionals.
- Engaging stakeholders early and continuously in the regulatory development and reform process.
- Ensuring all regulations are clearly written, legally sound, and supported by a demonstrated need.
- Regularly evaluating existing regulations for effectiveness, redundancy, clarity, and impact.
- Reducing the regulatory burden on all Alaskans.

As a board with regulatory authority, under the AO you are required to engage in a process that includes the steps below to produce the following deliverables:

- By December 29 (LBC, AIDEA, AEA, AOGCC, RCA)/February 13 (CBPL and AMCO): Produce a *Regulatory Reform Plan* to reduce your regulatory requirements by 15% by December 31, 2026, and 25% by December 31, 2027 (cumulative), in accordance with the *Regulatory Reduction Guide*. At a minimum, each proposed plan for regulatory reform must:
 - List each specific regulation identified for reform;
 - Include a decisional document identifying recommendations received, how they were considered for inclusion in the *Plan*, and (if appropriate) reasons for rejection;
 - Propose how the agency will organize the regulations identified for reform into discrete projects for submittal to the Department of Law for preliminary review;
 - Identify whether agency staff will be drafting the revised regulations or whether the agency is requesting drafting assistance from the Department of Law; and
 - Provide a timeline for submitting the draft revised regulations to the Department of Law for preliminary review.

The plan may also include proposed reductions in guidance documents as a means to meet the reduction percentages.

- Propose regulation changes per the Administrative Procedures Act to meet adoption timelines in the board's approved *Regulatory Reform Plan*.
- By September 4, 2026, and periodically prior to publication: Submit updates to guidance documents for Department of Law review per the process outlined in the *Regulatory Reduction Guide*.
- By September 18, 2026: Submit to the Agency Regulatory Liaison their projected regulatory plan that lists all anticipated rulemaking actions for the subsequent state fiscal year

As volunteer boards with many existing time-sensitive responsibilities, this task may seem daunting. However, it is truly an opportunity. This guide will assist you in strategizing -- not only to attain compliance but to produce excellence.

Engage the public, staff, and stakeholders

Cast a wide net for input. Stakeholders will have different perspectives, so invite the spectrum of those who interact with your regulations. These may be people or entities who are regulated, those who receive services, partner agencies or organizations...even those who have been critical of the board in the past. Ask staff for their suggestions; they are the front line in answering calls, processing applications, or investigating complaints.

Ensure your board understands the mission and has the materials to be successful

If you haven't already done so, schedule a 30-minute introduction on AO 360 at your upcoming meeting, or schedule a special meeting to hear this information and strategize how you will wrap your arms around this initiative. The division director, lead staff, or I are happy to walk through our presentation about the goals and timeline and answer questions.

Staff will provide the following information, which you will need to perform your work well and to comply with the governor's deliverables and deadlines:

- *A decisional document listing any public comments received during the listening sessions or via email/mail.*
This document will include space for your board to consider how to respond and to codify your response, which is required.
- *List of regulations and number of discretionary requirements in each section.*
You are required to present an overview of how you plan to change the regulation and to list the number and percentage of reductions expected from this change. You'll also need to indicate whether you expect to need attorney help in drafting, how you plan to package your regulations into manageable projects, as well as your timeline for completion.
- *List of guidance documents and their length.*
You are not required to include reductions in guidance documents as part of your 15% or 25% reductions but streamlining regulations should naturally produce streamlined guidance. Adopting clear and concise regulations reduces the need to explain them. You can use these reductions in guidance documents to help meet these reduction goals.
- *Suggestions for regulatory or guidance document improvements from their perspective.*
Staff should include their ideas for changes, especially to administrative burdens that hold back effective outcomes, outdated or unnecessary requirements, errors, and stumbling blocks that generate confusion.
- *A correct and current copy of your statutes, other agency statutes, regulations, and relevant federal codes that impact your program.*
The assignment includes reviewing all regulations, not just responding to public comments. Having these materials at your fingertips can ease the hunt for applicable information, especially when double-checking what regulations may be discretionary.
- *The Regulatory Reduction Guide issued by the Department of Law, as well as any additional relevant guidance from the Agency Regulatory Liaison.*

Organize according to your board's strengths

Board chairs should think about the strengths, skill sets, and makeup of their team, then suggest an efficient pathway to tackling the regulatory review process. Some ideas:

- *Schedule additional meetings so the entire board engages in the work.* This is most effective with smaller boards when committees might not make sense.
- *Divide and conquer:*
 - *Assign each member a section to analyze and report back to the board.*
This can be successful if the section is linked to type of license or expertise held by the board member. For example, someone holding the engineer or physician seat could review the technical sections that might not be within the knowledge base of a public member. The public member could review the sections relating to investigations or administration, which may relate best to the consumer experience and not require technical expertise.
 - *Form a committee of board members to review the regulations and report back to the board.*

This may be best suited to members who are critical readers and excel at documentation, policies, procedures, etc. They can dig deep and may even enjoy the process. Other members of the board could independently review public-facing guidance documents or pick up work outside of AO 360 to help lighten the load for those serving on the committee.

- *Form a work group of board members and key public persons, such as industry or representatives of certain constituencies.*

The board should identify these members in the motion when they vote to create the work group. While the public should be invited to offer input, not every person who calls in may merit a seat at the table. The work group ensures varied perspectives are presented and heard.

As a reminder, meetings of committees and workgroups must be publicly noticed. To ensure transparency and complete engagement and awareness by all members, your *Regulatory Reform Plan* should be approved by a roll call vote on the record of a public meeting.

Review all regulations with a fresh lens

The initiative provides boards with an opportunity to review all of their regulations afresh; given the myriad complex priorities of a regulatory board, a comprehensive regs review may not be part of an established rhythm. To maximize the value of the project, ensure that members approach it with the goals of AO 360 in mind: Seeking to reduce regulatory burdens, streamline and modernize requirements, and eliminate unnecessary barriers to entry.

Keep in mind that this does not include jeopardizing the safety of the public. However, it does create accountability among boards for using their highest faculties in determining whether existing standards and processes are appropriate. Strategies boards might use to approach this project include:

- Using a framework or system to adhere to the principles of “right-touch regulation.” (If you are unsure what this term means or do not currently use a decisionmaking framework, please contact your Boards and Regulations Advisor.)
- Avoiding the trap of “this is how we have always done it.” Is it necessary? Does it prevent a likely harm? If so, is it reasonable? If not, why require it?
- Ensuring you don’t have requirements that are not actionable, e.g., don’t request criminal background information if you may not take action based on that information.
- Maintaining arbitrary standards and timeframes that are not based on research, proven national standards, or other objective criteria.
- Thinking that a “may” in statute means a “shall”: Just because you have the authority to adopt a regulation doesn’t mean you have to.
- Digging into changes you have always wanted to make—or addressing changes that stakeholders have requested—but the board hasn’t had time to address.
- Updating to modern standards—don’t miss references to fax machines, unnecessarily notarizing documents, defunct organizations, etc.
- Looking for alternative pathways to accomplish similar goals, including attestations instead of submitting documents where that makes sense, identifying steps that can be eliminated because another agency has already checked the information, etc.

Prepare to defend what can’t change:

- Identify baseline public safety standards that can’t be lowered and include a rationale for why they are important.
- Identify statutory or federal requirements that are inflexible. Per the *Drafting Manual for Administrative Regulations*, eliminate repetition of those requirements in regulation unless they provide clarity or are advised by your attorney.

Conclusion

This Administrative Order is ambitious, but it is reachable with organization and intention. Every member will need to set aside additional time to engage with the process. Communicate concerns with your lead staff, who can work with your Agency Regulatory Liaison to answer questions and find solutions.

Argument in Support of Repealing 3 AAC 110.270(e)

(Prepared for submission under Administrative Order 360 — Regulatory Reform Initiative)

I. Administrative Order 360 and the State's Regulatory Review Mandate

Administrative Order 360 directs all state agencies and commissions to review existing regulations and recommend repeal or revision of any provisions that are unnecessary, duplicative, inconsistent with statute, exceed statutory authority, or impede constitutional or economic objectives. It expressly requires agencies to identify regulations no longer necessary to fulfill a legitimate state purpose, examine rules that impede economic opportunity or local autonomy, and repeal or amend regulations that conflict with statutory or constitutional intent.

Under this framework, 3 AAC 110.270(e) warrants repeal because it fails all three AO 360 review criteria: it serves no continuing necessity, obstructs maximum local self-government, and exceeds the authority delegated to the Local Boundary Commission (LBC).

II. The Regulation's Defect Under AO 360 Standards

A. Lack of Necessity and Practical Utility

3 AAC 110.270(e) requires that a petition for detachment and simultaneous incorporation propose a borough encompassing a substantially larger population and area than the detaching territory. The term 'substantially larger' was inserted in Register 185 (April 2008) without legislative mandate or factual justification. In the fifteen years since its adoption, no recorded LBC decision has applied or relied on this subsection, demonstrating that it is functionally obsolete.

B. Inconsistency with Statutory and Constitutional Intent

Under AS 44.33.812 and AS 29.06.040, the LBC's authority is limited to setting standards and procedures for boundary changes consistent with Article X of the Alaska Constitution. Article X § 1 establishes dual, co-equal aims—maximum local self-government and a minimum number of local government units—to be liberally construed in favor of local autonomy. Section 3 directs that boroughs be formed around population, geography, economy, transportation, and common interests, not arbitrary size ratios. Subsection (e) transforms that flexible balancing test into a categorical prohibition that elevates the 'minimum-units' aim above the 'maximum-self-government' aim, thereby reversing the constitutional hierarchy.

III. Exceeding Delegated Authority (Ultra Vires Rulemaking)

Neither Title 29 nor AS 44.33.812 delegates to the LBC the power to set quantitative population or area thresholds for detachment-plus-incorporation. The statutes instruct the Commission to evaluate petitions based on feasibility, fiscal capacity, community of interests, and service delivery, not by mathematical comparison of size. By creating an additional 'substantially larger' prerequisite, 3 AAC 110.270(e) adds a condition that the

Legislature did not enact, violating AO 360's requirement that agencies repeal rules not reasonably necessary to implement statutory purpose.

IV. Conflict with Article X and Internal Regulatory Framework

The LBC's own balancing regulations—3 AAC 110.981 (maximum local self-government) and 3 AAC 110.982 (minimum number of units)—apply context-by-context and require the Commission to weigh both aims. Section 270(e) displaces that balancing by imposing an automatic veto based solely on relative population or area. This creates an internal inconsistency within Title 3 AAC 110 and a direct conflict with the Constitution's adaptive, case-by-case approach.

V. Arbitrary and Regressive Effects

3 AAC 110.270(e) disproportionately penalizes communities—like Chugiak–Eagle River—that are geographically constrained yet economically and demographically viable for borough status. By conditioning eligibility on size rather than functional criteria (service delivery, fiscal integrity, community of interests), it locks smaller regions into unified municipalities indefinitely, defeating Article X's design for evolving local government forms that respond to changing conditions. The rule thus acts as a barrier to constitutional self-determination, contrary to AO 360's directive to remove unnecessary impediments to civic and economic development.

VI. Narrower and Constitutionally Sound Alternatives Exist

Existing subsections already protect the State's interests:

- 3 AAC 110.270(a) — 'best interests of the state' balancing test;
- 3 AAC 110.270(c) — prohibition on enclaves or noncontiguous remnants;
- 3 AAC 110.270(d) — deterrent to detachment to the unorganized borough.

These provisions provide adequate safeguards without any categorical population or area threshold. AO 360 favors retention only of regulations that are necessary and non-duplicative; subsection (e) meets neither condition.

VII. Recommended Action Under AO 360

A. Repeal

Pursuant to AO 360 § 3(c)–(d), the Department of Commerce, Community, and Economic Development and the Local Boundary Commission should jointly recommend full repeal of 3 AAC 110.270(e).

B. Alternative Language (if amendment preferred)

In evaluating detachment petitions that also propose incorporation, the Commission shall consider whether the proposed boundaries promote a minimum number of local government units without materially diminishing maximum local self-government, giving due regard to community of interests, geography, economy, transportation, education, and service delivery.

VIII. Conclusion

Under the review standards established by Administrative Order 360, 3 AAC 110.270(e) should be repealed because it:

1. Lacks continuing necessity and has never been applied;
2. Conflicts with the Alaska Constitution's Article X and with Title 29's enabling statutes;
3. Exceeds delegated rulemaking authority; and
4. Obstructs legitimate local-government formation contrary to the public interest.

Repeal would restore constitutional equilibrium, regulatory coherence, and consistency with AO 360's mandate to eliminate unnecessary and unconstitutional barriers to local self-government.

Respectfully submitted,

Michael Tavoliero
Eaglexit, Inc.
12110 Business Blvd, Ste 6 PMB 165
Eagle River, AK 99577