

Article 10. NEGOTIATED REGULATION MAKING

Sec. 44.62.710. Purpose and applicability of [AS 44.62.710](#) - 44.62.800.

(a) The purpose of [AS 44.62.710](#) - 44.62.800 is to establish a framework for the conduct of negotiated regulation making consistent with [AS 44.62.010](#) - 44.62.320. Negotiated regulation making is not a substitute for the requirements of [AS 44.62.010](#) - 44.62.320 but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or repeal of existing regulations. A consensus agreement reached by a negotiated regulation making committee may be modified by an agency head as a result of the subsequent regulation making process. [AS 44.62.710](#) - 44.62.800 may not be construed as an attempt to limit innovation and experimentation with the negotiated regulation making process or to limit other means to obtain public participation in the regulation making process.

(b) The provisions of [AS 44.62.710](#) - 44.62.800 may be used by an agency even if other provisions of this chapter do not apply to that agency.

Sec. 44.62.720. Determination of need for negotiated regulation making committee.

(a) In addition to the regulation adoption requirements under AS 44.62.010 - 44.62.320, an agency head may determine that the use of a negotiated regulation making committee to negotiate and develop a proposed regulation is in the public interest. In making that determination, the agency head is advised to consider whether

(1) there is a need for a regulation, including whether any legal action is pending that might resolve the need;

(2) there are a limited number of identifiable interests that are held by more than one person and that will be significantly affected by the regulation;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who

(A) can adequately represent the interests identified under (2) of this section; and

(B) are willing to negotiate in good faith to reach a consensus on the proposed regulation;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed regulation within a fixed period of time;

(5) the negotiated regulation making procedure will not unreasonably delay the adoption of the final regulation;

(6) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(7) the agency head, to the maximum extent possible consistent with the legal or other obligations of the agency, will use the consensus of the committee as the basis for the regulation proposed by the agency under [AS 44.62.010](#) - 44.62.320.

(b) Upon determining that a negotiated regulation making committee will be formed, an agency head shall notify the public so that interested persons can apply to be appointed to the committee.

Sec. 44.62.730. Use of convener.

(a) An agency head may use the services of an impartial person as a convener to assist in making the determination of need under AS 44.62.720 and to assist the agency to

(1) identify the persons who will be significantly affected by a proposed regulation; and

(2) conduct discussions with affected persons on the issues of concern and determine whether the establishment of a negotiated regulation making committee is feasible and appropriate for the particular proposed regulation.

(b) A person acting as a convener may also be named as a facilitator under [AS 44.62.760](#). The convener shall report findings and make recommendations to the agency. The report and recommendations of the convener shall be made available to the public upon request.

Sec. 44.62.740. Establishment, time line, support, and termination of committee.

(a) The agency head may establish a negotiated regulation making committee to assist in the formulation of a proposed regulation. The agency head should strive to achieve and maintain throughout the negotiated regulation making process the balanced committee representation described under [AS 44.62.720](#) (a)(3). Members of the committee serve at the pleasure of the agency head. If a committee member is unable to attend a meeting, the agency head may select a designee to serve in that member's place for a meeting.

(b) Before notifying the public under [AS 44.62.720](#) (b), the agency head shall establish a time line for the work of the committee. The time line must include a completion date for the transmission to the agency of the report described in [AS 44.62.750](#) (d) or (e). The agency shall provide the time line to persons who apply for appointment to the committee. At its first meeting, the committee shall review the time line and recommend to the agency head any revisions to the time line. The agency head shall consider any recommendations and revise the time line if necessary to further the purposes of the negotiated regulation making process.

(c) The agency head may expand the membership of the negotiated regulation making committee if necessary to facilitate the workings of the committee.

(d) The agency shall make available administrative support to the negotiated regulation making committee, including technical support, that the agency head determines necessary.

(e) A negotiated regulation making committee terminates upon adoption under [AS 44.62.010](#) - 44.62.320 of the final regulation under consideration unless the agency head specifies an earlier termination date.

Sec. 44.62.750. Committee duties, procedures, and report.

(a) A negotiated regulation making committee shall consider the matter proposed by the agency head for consideration and shall attempt to reach consensus concerning a proposed regulation and any other matter on which the agency head requests assistance and that is relevant to the proposed regulation.

(b) The person representing the agency on a negotiated regulation making committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and is authorized to fully represent the agency in the discussions and negotiations of the committee.

(c) An agency head may adopt procedures for the operation of the negotiated regulation making committee. The agency head shall appoint the chair of the committee.

(d) If a negotiated regulation making committee achieves consensus on a proposed regulation on or before the completion date established under [AS 44.62.740](#) (b), the committee shall transmit to the agency head that established the committee a report containing the proposed regulation.

(e) If a negotiated regulation making committee does not reach a consensus on the proposed regulation on or before the completion date established under [AS 44.62.740](#) (b), the committee shall transmit to the agency head a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report other information, recommendations, or materials that the committee considers appropriate. A member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(f) [AS 44.62.310](#) - 44.62.312 apply to meetings of a negotiated regulation making committee.

Sec. 44.62.760. Facilitator selection, duties, and authority.

(a) An agency head may appoint a person who is impartial to serve as a facilitator for the negotiations of a negotiated regulation making committee. A person designated to represent the agency on substantive issues may not serve as facilitator.

(b) A facilitator appointed or selected under (a) of this section shall

(1) preside at the meetings of the committee in an impartial manner, unless the agency head has designated another person as chair;

(2) impartially assist the members of the committee to conduct discussions and negotiations and to achieve consensus;

(3) coordinate with the agency head regarding the management of records of the committee; and

(4) perform other duties related to the negotiated regulation making committee that are assigned by the agency head.

(c) A facilitator does not have decision-making authority for the committee.

Sec. 44.62.770. Employees, contractors, and funding.

(a) An agency head may appoint an agency employee or obtain the services of another state employee or a private contractor to serve as a convener or facilitator for a negotiated regulation making committee.

(b) Before appointing or selecting a convener under [AS 44.62.730](#) or a facilitator under [AS 44.62.760](#), an agency head shall determine whether a person being considered has a financial or other interest that would prevent the person from serving in an impartial and independent manner. A person disqualified under this criterion may not be considered further.

(c) A member of a negotiated regulation making committee shall disclose to the agency and other members of the committee a grant, gift, or other financial benefit that exceeds \$150 and that has been accepted by the disclosing member to finance the disclosing member's participation on the negotiated regulation making committee.

Sec. 44.62.780. Judicial review.

An agency action relating to establishing, assisting, or terminating a negotiated regulation making committee under [AS 44.62.710](#) - 44.62.800 is not subject to judicial review. Nothing in this section bars judicial review if the judicial review is otherwise provided by law. A regulation that is the product of negotiated regulation making and is later subject to judicial review may not be given greater deference by a court for that reason than a regulation that is not the product of negotiated regulation making.

Sec. 44.62.790. Relationship to other requirements.

The negotiated regulation making authorized by [AS 44.62.710](#) - 44.62.800 is in addition to the procedures required under [AS 44.62.010](#) - 44.62.320 for adopting, amending, or repealing regulations, and, if an agency head decides to use negotiated regulation making, the negotiated regulation making shall, where possible, occur before the procedures under [AS 44.62.010](#) - 44.62.320 begin.

Sec. 44.62.795. Confidentiality of certain records and documents.

Notwithstanding [AS 40.25.100](#) - 40.25.220, records from private persons that are requested or used by a negotiated regulation making committee and working documents prepared by the committee that analyze or incorporate information from the records shall be kept confidential if the records or working documents contain proprietary information and the owner of the records or working documents requests that the records or working documents be kept confidential.

Sec. 44.62.800. Definitions.

In [AS 44.62.710](#) - 44.62.800,

(1) "agency" means a department, an institution, or a division or other administrative unit of the executive branch of state government authorized or required by law to make regulations, except that "agency" does not include

(A) a board, a commission, a council, an authority, or a public corporation of the executive branch of state government authorized or required by law to make regulations;
or

(B) the Department of Corrections;

(2) "agency head" means

(A) the commissioner or other head of an agency who has the authority to adopt regulations for the agency; or

(B) *[Repealed, Sec. 44 ch 24 SLA 2003]*.

(3) "consensus" means unanimous concurrence among the interests represented on a negotiated regulation making committee;

(4) "convener" means a person who is impartial and performs the services identified under [AS 44.62.730](#) for an agency;

(5) "facilitator" means a person who is impartial and performs the services identified under [AS 44.62.760](#) (b) for a negotiated regulation making committee;

(6) "negotiated regulation making" means regulation making through the use of a negotiated regulation making committee;

(7) "negotiated regulation making committee" means an advisory committee to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed regulation;

(8) "person" has the meaning given in [AS 01.10.060](#), and expressly includes a public organization of any character;

(9) "regulation" has the meaning given in [AS 44.62.640](#) and includes the amendment or repeal of a regulation.