

MAINE STATE LEGISLATURE

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STATE OF MAINE
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SECOND REGULAR SESSION

Final Report
of the

COMMISSION ON
THE CODIFICATION OF MAINE RULES

to the
Joint Standing Committee on
State and Local Government

October 1990

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EXECUTIVE SUMMARY

Public Law 1989, Chapter 574, created the Commission on the Codification of Rules. The purpose of the commission was to determine the need for a codification of Maine agency rules and investigate various alternative methods of codifying the rules.

Maine agency rules are an important form of law which each citizen must obey. Maine rules are enforceable in court and carry penalties and sanctions for violations just as does statutory law. The commission has found that the impact of Maine rules on the citizens of the state is as significant if not more significant, than Maine statutory law. Because of its impact, the ability of the public to be able to learn what the state agency rules require, i.e. the accessibility of the rule, forms an essential cornerstone of our American democracy, demanded by the structure of our government and protected by the Constitution of the United States and of Maine.

Access to the rules requires (1) the availability of the rule at easily accessible locations throughout the State and (2) the necessary structures and research aids to locate, easily, all the rules relevant to the user's search or inquiry. Public access to the Maine rules is restricted. Finding a set of rules is difficult for many people due to the limited number of locations where the rules are available. Once the text of the rules is found, lack of an appropriate index and other research aids makes finding the applicable provisions difficult, if not impossible, without experienced, professional guidance.

A codification of state agency rules is the process of collecting and arranging state agency rules systematically, deleting any repealed sections and updating any rules which have been amended. A codification may include effective dates, authorities for the rules, histories, annotations, cases, cross-references, comments on Federal law, and an index. It is usually standardized as to form, classification and organization.

The commission unanimously recommends that the Maine agency rules be codified as an essential part of providing access to the rules and laws of this state for the people of this state who are expected to obey those rules and laws. The commission recommends that the Secretary of State's Office, which is currently the only state agency responsible for standardizing, certifying, and maintaining the entire set of Maine rules, undertake a codification of the Maine rules in accordance with the enabling legislation and the guidelines established in this report.

ii Codification of Rules •

The commission recommends that the codified Maine rules be published in a paper format (either softbound or pamphlet) and that the future use of CD-ROM format for publication of the codified Maine rules be seriously considered.

The commission finds that the need for a codified set of rules in Maine requires implementation of the codification process as soon as possible and recommends, as the most expeditious method of converting the existing rules to an electronic database, establishing a contract with a publisher for conversion of the files and marketing and distribution of the codified rules.

The commission further recommends that the rules be periodically and systematically updated with supplements and that an agency rules register be published, at least quarterly, to provide notice of new agency rules or amendments or repeal of rules between the publication of the supplements.

The commission recommends that a codified set of rules, when available, should be marketed and distributed to maximize their accessibility to the public.

The commission recommends that an index be a mandatory part of a code of Maine rules. A subject matter index is strongly preferred by the commission and should be the ultimate goal for indexes to a codified set of Maine rules. The index should always be as comprehensive as resources allow. The commission further recommends that a codified set of rules include, as essential elements, a table of contents; a history; standardization of classification, numbering and organization; a drafting manual; and as many of the other features as resources permit.

Finally, the commission finds that the complexity of the process of codifying a set of rules and the need to evaluate the codification process and the impact of the codification of the rules on Maine citizens may require a periodic review and additional policy determinations. The partnership between the agency responsible for codification of rules and the Legislature as the policy-making body for the State is a crucial element in a successful codification process. Accordingly, the commission recommends that the Secretary of State's Office report annually to the committee having jurisdiction over state and local governments on the progress of the codification process and, to the extent information is available, on the impact the codification of the Maine rules has had on state agencies responsible for adopting rules and the users of the Maine rules.

I. Introduction

A. Background

Public Law 1989, Chapter 574, created the Commission on the Codification of Rules. The purpose of the commission was to determine the need for a codification of Maine agency rules and investigate various alternative methods of codifying the rules. As part of that investigation, the commission was to examine:

- the processes for codifying the rules, including consideration of contracting all or some of the codification with the private sector;
- establishment of and access to a rules data base;
- various publication formats available;
- various indexes available, particularly subject matter indexes;
- capital equipment required to codify the rules;
- personnel required and particular expertise needed for codification; and
- distribution of code of rules and prices to be charged to public agencies.

In addition, the commission was to identify various functions of a register and the desirability of establishing a register in Maine.

The commission was to report its findings and its recommendation for a code of rules to the Joint Standing Committee on State and Local Government on March 15, 1990. Chapter 574 was later amended by Public Law 1989, Chapter 636 to extend the reporting date of the commission to September 15, 1990. Chapter 636 and the relevant provisions of Chapter 574 are included in Appendices A and B.

The commission wishes to acknowledge Helen Ginder's contribution to the successful completion of this report. Until her retirement, Ms. Ginder served the commission both in her capacity as an ex officio member of the commission and as staff to the commission. She provided a wealth of background information, as well as inspiration and guidance, to the other members of the commission. She was a moving force in gathering information, providing a presentation to the commission by leading rules publishers, and organizing and presenting data in a format that allowed the other members to grasp its significance and utilize the knowledge gained to bring the work of the commission closer to its goal.

The Secretary of State is the designated agency responsible for maintaining the complete, official set of rules. The Secretary of State certifies official copies of the rules for use as evidence in trials. In addition, the Secretary of State provides technical assistance to the agencies for rule-making procedures and format and must report annually to the Governor and the Legislature regarding rule-making activities

for the preceding year (5 MRSA §§ 8056 and 8056-A). The commission received invaluable assistance from the Secretary of State's office and wishes to particularly acknowledge the dedicated efforts of Lars Rydell, Assistant Deputy for Public Records; Don Wismer, Director of Rules; and Lucille Weeks, Administrative Procedures Officer. This report would not have been possible without their expert and tireless assistance. The commission wishes to express a well-deserved thanks for their diligent efforts.

In addition, the commission wishes to express its thanks to the Revisor of Statutes of the Maine Legislature, David Kennedy, and to the many publishers who met directly with the commission and shared their knowledge and experiences. A complete list of publishers consulted by the commission is contained in Appendix C.

This report details the findings and recommendations of the study. Implementing legislation is contained in Appendix K.

B. Maine's Administrative Procedure Act

The current procedure for adopting and promulgating agency rules is governed by the Maine Administrative Procedure Act (5 MRSA Ch. 375). Legislative review of agency rules is discussed in 5 MRSA Chapter 377-A. The text of those laws and a detailed description of the agency rule-making process is contained in two excellent publications by the Secretary of State's office: Maine's Administrative Procedure Act, published by the Bureau of Corporations, Elections, and Commissions, 1990 and A Guide to the Rulemaking Process for State Agencies, 1990. This report does not need to duplicate the efforts of those publications.

The basic elements of adopting and maintaining agency rules in Maine are:

1. adoption of the rule by the agency in accordance with the Maine Administrative Procedure Act;
2. approval by the attorney general as to form and legality of the rule;
3. filing the rule with the Secretary of State; and
4. certification of the rule by the Secretary of State.

When these steps have been completed, the rule is enforceable. A detailed "flow chart" describing this procedure, prepared by Don Wismer, Director of Rules, has been included as Appendix D. The beginning point on the flow chart for each of the four steps outlined in the previous paragraph is noted on the chart.

Each agency is responsible for printing and compiling its rules and making both individual rules and the complete set of these

rules available to the public for inspection and for copying, at cost, or, if possible, without cost (5 MRSA § 8056, sub-§1, ¶D). Documentation submitted by Germaine Rocque, Director of State Printing, estimates that during the 8 month period from April through November 1989, Maine agencies spent \$90,000 to print rules for distribution. Appendix E lists the printing jobs during that 8 month period.

The Secretary of State is responsible for making available the complete set of all rules (or any individual rule) for free inspection and copying or purchase, at cost (5 MRSA § 8056, sub-§2). The Secretary of State is the authorized agency to provide certified copies of the rule.

A survey completed by J.S. McCarthy estimated a current total, as of 28 February 1990, of 19,273 pages of rule text, 14 maps and 279 charts. The Maine Administrative Procedure Act allows agencies to adopt other published documents into its rules by reference. These rules, adopted by reference, are not included in the almost 20,000 pages noted above.

In addition to the availability of rules at each agency and at the Secretary of State, Weil Publishing Company has made commercially available a partial set of Maine rules, photocopied from the Secretary of State's rules. These rules are available in loose-leaf format. Currently there is no index. A complete set of rules is maintained by the Cumberland County Law Library. The Secretary of State does not certify either collection of rules for accuracy.

C. The Maine Revised Statutes: A Codified Version of Statutory Law

The "ultimate" authority for the laws of Maine is the signed paper copy of the chaptered law. These are retained in the Engrossing Division of the Revisor of Statutes for a short period of time after each legislative session. Upon request, the Engrossing Division will make copies of the chaptered law, which are distributed as official copies of chaptered law. The original signed documents are eventually stored with the Secretary of State.

The Laws of Maine were recodified and reenacted as the Maine Revised Statutes in 1964. The Maine Revised Statutes Annotated (published by West Publishing Company) together with any supplements is designated by statute as *prima facie* evidence of the law when certified by the Secretary of State. This means that the "West" version of Maine's law enjoys a presumption of validity unless otherwise proven to the courts.

To incorporate amendments into this published version of the law, the chaptered laws enacted each session are sent to West. West makes all the necessary amendments to the codified law on their data base which, when certified by the Secretary of State's office, becomes the *prima facie* "official" laws of Maine. This version of our laws is used in court as evidence, by lawyers in their practice, and by the public to determine what Maine law actually is.

The actual legislative documents which become chaptered law are drafted from a second, and equally important, data base: the electronic data base maintained by the Revisor of Statutes. The Revisor's office has entered and proofread Maine law into its own electronic data base. When amendments are drafted, they are read against this data base, not the bound volume of West Publishing Company's version of Maine law. If there is any question about the accuracy of this data base, the ultimate authority is still the original Maine chaptered law (or actually a copy of that law which was received from the Engrossing Division of the Revisor's office).

Thus both West Publishing Company and the Revisor of Statutes maintain an electronic data base which is "used", in their respective contexts, as the official version of Maine law. Each data base is created and maintained independently of the other. The two data bases are compared to each other in one circumstance. When a volume of the Maine Revised Statutes Annotated is republished, the Revisor of Statutes sends a copy of their database for that volume, as updated, to the publisher. At that time, West reads their data base for that volume against the Revisor of Statutes' data base for that volume. Any discrepancies are ultimately resolved by reference to the chaptered law.

II. The Need for Codified Set of Rules

A. The Significance of Rules

The law of our society is created by statute, by rule, and by court decisions. It is, however, a law by the people. "The law derives its authority from the consent of the public, expressed through the democratic process." (Building Officials & Code ADM v. Code Technology, Inc., 628 F.2d 734, 1st Circuit Court of Appeals, 1980). Our system of government requires certain procedural safeguards in order for the statutes and rules to be truly representative of the will of the people. Procedures for enacting a statute include the elected status of those voting; reasonable notice; the opportunity, in most instances, for the people to present testimony directly, the public debate in committee and on the floor of the Legislature, and the public vote. Procedures for adopting a rule include reasonable notice, the opportunity to be heard orally or in writing, and the opportunity for legislative review by elected representatives of the people.

A rule, as defined in 5 MRSA §8002, is meant to implement, interpret or make specific the law administered by an agency or to describe the procedures or practices of the agency. It is judicially enforceable in a court in the same manner that a statute is enforceable. Although courts have often stated that a rule has "the effect of law" (See quote in Section B), a rule is, in essence, a law which must be obeyed the same as a statute.

Agency rules and the requirements they impose upon the Maine citizen has prompted the Administrator of the County Law Libraries to state that "Rules have more impact than [statutes]." (Comments at commission hearing, Sept. 17, 1990, Anne Pierce)

B. Access to Maine Rules

1. The significance of access to the rules.

Failure to obey a law, whether it is a statute or a rule, can result in loss of liberty or loss of property. This is how our structured society enforces its societal obligations. The courts have clearly stated that:

"Every citizen is presumed to know the law..., and it needs no argument to show that justice requires that all should have free access to the [law], and that it is against sound public policy to prevent this, or to suppress and keep from the public the statutes or the decisions and opinions of the Justices." Nash v. Lathrop, 142 Mass. 30, 6 N.E. 560 (1886).

A 1980 court decision, citing the above quote, further declared that that policy was applicable to rules:

"... citizens must have free access to the laws which govern them. This policy is, at bottom, based on the concept of due process. Regulations such as the Massachusetts building code have the effect of law ... Due process requires people to have notice of what the law requires of them so that they may obey it and avoid its sanctions. So long as the law is generally available for the public to examine, then everyone may be considered to have constructive notice of it; any failure to gain actual notice results from simple lack of due diligence. But if access to law is limited, then the people will or may be unable to learn of its requirements and may be thereby deprived of the notice to which due process entitles them." Building Officials and Code ADM v. Code Technology, 628 F.2d 734, 1st Circuit Court of Appeals, 1980.

The ability of the public to be able to learn what the statutory and regulatory law is forms an essential cornerstone of our American democracy, demanded by the structure of our government and protected by the Constitution of the United States and of Maine.

FINDINGS: The commission finds that the impact of rules on Maine citizens is at least as significant, if not more significant, than Maine statutory law. Accessibility to rules is inherent in our form of government.

2. How access to the rules is obtained.

Access to the rules requires (1) the availability of the rule at easily accessible locations throughout the State and (2) the necessary structures and research aids to locate, easily, all the rules relevant to the user's search or inquiry.

- a. Availability includes the distribution of an adequate number of complete sets of rules throughout the State to allow the public to examine the rules without unreasonable travel hardship. It also includes copies of each agency's rules at that agency.
- b. Finding the applicable provisions of a rule, once you have access to the text of the rule, requires a structure that allows you to search the rules easily and research aids such as a table of contents and index.

3. Accessibility of Maine's Rules.

Maine's rules are declared to be public documents and the public may examine the rules at any reasonable time. Maine law requires that each agency make its rules available for examination and copying and that the Secretary of State make all the rules available for examination and copying. No one's request to examine a rule is refused. Yet, if a rule is not accessible to the public, their ability to learn what the rule requires of them may be denied as effectively as if their request to examine the rule were refused.

- a. The only complete official set of Maine rules is in the Secretary of State's Office in Augusta. Only one public library maintains a complete, although unofficial, set of Maine rules. Some attorneys maintain selected rules relevant to their law practice, also an unofficial set of the rules.
- b. Maine rules are not codified and the format is not standardized. There is no general table of contents and no index. William W. Wells, Jr., Library Director and Associate Professor at the University of Maine School of Law states in his guide to Maine legal research:

"Finding Administrative Law [agency rules] is the most difficult task in legal research, due to the lack of an official compilation of all the rules and regulations. The only alternatives to using [a privately-published partial set of Maine rules] are to contact the specific agency for a copy of that agency's rules or to search the official file of rules ... in the Secretary of State's Office." Maine Legal Research Guide, Tower Publishing Company, Portland, Maine, 1990.

FINDING: Public access to the Maine rules is restricted. Finding a set of rules is difficult for many people due to the limited number of locations where the rules are available. Once the text of the rules is found, lack of an appropriate index and other research aids makes finding the applicable provisions difficult, if not impossible, without experienced, professional guidance.

C. Benefits of Codification of the Maine Rules

A codification of state agency rules is the process of collecting and arranging state agency rules systematically, deleting any repealed sections and updating any rules which have been amended. A codification may include effective dates, authorities for the rules, histories,

annotations, cases, cross-references, comments on Federal law, and an index. It is usually standardized as to form, classification and organization.

A codification of the rules would provide the following benefits:

1. Availability of the rules would be increased. Publication and distribution of an official set of Maine rules will provide more sites throughout the state where people could find the rules without requiring the assistance of legal counsel.
2. Research tools would increase accessibility to the user by allowing them to find relevant provisions of the rules more easily.
3. Uniformity of organization and structure inherent in a codification would:
 - a. make it easier to find and understand the relevant rules,
 - b. enhance people's respect for the rules: Lack of uniformity in format and organization (basically presenting a "ragged appearance") detracts from their status and implies that they are less serious than a law, and
 - c. improve the quality of an agency's rules by requiring uniform standards and by enhancing the ability of agencies to avoid overlapping rules.
4. Reliability for the user is enhanced. Updates and history of rule changes are difficult to maintain and keep track of without uniformity in organization and structure of the rules. Uniformity and indexing help avoid overlapping or contradictory rules.

RECOMMENDATION: The commission unanimously recommends that the Maine agency rules be codified as an essential part of providing access to the rules and laws of this state for the people of this state who are expected to obey those rules and laws. The commission recommends that the Secretary of State's Office, which is currently the only state agency responsible for standardizing, certifying, and maintaining the entire set of Maine rules, undertake a codification of the Maine rules in accordance with the enabling legislation and the guidelines established in this report.

III. Factors to Consider in the Implementation of the Codification Process

A. The Users of the Rules

Despite the significance of the rules, many people do not actually need their own set of rules, just as they do not need their own set of statutes. In determining who will actually use the rules, it is helpful to keep in mind two types of users: those who need their own set of rules and those who only need some type of access to the rules. There are 3 groups of users that comprise those two categories:

1. those who will need or want to have their own copy of the complete set of rules: state agencies (including the Secretary of State and the Attorney General's office), the Legislature, courts, lawyers who deal significantly with government agencies, libraries (to provide access to those who don't have their own rules), and some consultants;
2. those who need or want to have their own copy of the rules, but do not need the complete set: state agencies, lawyers, consultants, professional associations, businesses, libraries, and the general public; and
3. those who need access to one or more rules, but do not need to actually have their own complete or partial set: lawyers, consultants, businesses, and the general public. Some of these users may later want to obtain a copy of a specific rule (or a portion of a rule) after determining what their needs are and what the rule requires. At one time or another many of Maine's citizens will need to have access to the rules. It is not as uncommon as we may imagine. A sampling of information requests made of the Law and Legislative Reference Library where rules were either requested or were supplied by the librarian as part of their response to the user's question includes the following examples. The agency and rule which were supplied are indicated by parenthesis.
 - a. An adjoining landowner is concerned about toilet facilities for agricultural workers. (Department of Agriculture: Field Sanitation Rules);
 - b. A prospective home buyer would like to know what disclosures are required relating to insulation. (Real Estate Commission: Minimum Standards of Practice);
 - c. The parent of a handicapped student has a question about services the school district is providing. (Department of Education: Special Education Rules);
 - d. A homeowner would like to install a septic system. (Department of Human Services: Subsurface Wastewater Disposal Rules);

- e. A parent would like to establish a day care center in her home. (Department of Human Services, Bureau of Social Services: Licensing of Day Care Homes; Day Care Centers for Children);
- f. A constituent requests of his legislative representative laws governing junk yards. (Department of Transportation: Regulations for Screening Junk Yards);
- g. A consumer has purchased a defective automobile. (Department of Attorney General: Rules for Administering State Lemon Law Arbitration); and
- h. A nonprofit group is exploring the possibility of holding bingo games as a way to raise money. (Department of Public Safety, Bureau of the State Police: Rules and Regulations Relating to Beano and Bingo).

FINDING: Many users have a need to own a complete or partial set of rules. Other users only need access to the rules without the necessity of purchasing them. Access for users not requiring ownership should be reasonably close to where they work or live. The commission has identified the following potential users of the rules in one form or another: state agencies (including the Secretary of State and the Attorney General's office), the Legislature, courts, lawyers, libraries, consultants, professional associations, businesses, and the general public.

B. Publication Format

The format or formats in which the Maine rules are published should be reliably accurate and provide access for the greatest number of users. There are three basic publication formats available: (1) paper publication, which includes loose-leaf or bound volumes; (2) electronic publication, which includes CD-ROM or on-line access; and (3) microfilm, which includes microfiche. Each of these is discussed in more detail below.

1. Paper publications: Paper publications (books, pages in binders, pamphlets) are the most familiar forms of publication format. The various paper options include:
 - a. Loose-leaf.

A loose-leaf publication is not bound. Separate pages are usually held together in a binder through 2, or more holes punched in the margin of the page. Each individual page can be removed or replaced. New pages can be added individually. The text is supplemented by loosening the binding and adding, deleting, or replacing individual pages.

Advantages:

- 1) may be one of least costly methods (proofreading of text not required if it is a photocopy of originals or a print-out of a computer text-file);
- 2) easier to include corrections for errors;
- 3) adding personal notes or extra pages possible.

Disadvantages:

- 1) lost and torn pages;
- 2) method of supplementation by inserting new and extra pages makes it a complex publication and creates problems:
 - increases likelihood of mistakes by subscriber while inserting supplements;
 - places burden on library staff to insert supplements;
 - requires detailed instructions for insertion of supplements;
 - creates a need to post a record of text changes so reader is aware of changes located elsewhere in volume;
- 3) unreliability increases as set ages;
- 4) subject to variation in appearance and format;
- 5) publishers' costs for maintaining set placed on subscriber; and
- 6) integrated text not always available.

b. **Hardbound:**

A hard-bound publication is basically a hard-cover book. Every page is integrally bound to the spine of the book and must be ripped out to be removed. No new pages can be added to that book. Changes in the text are usually reflected in a supplemental pamphlet that is replaced each year. A user must look in the bound volume and the supplement to be sure of having read the latest version of the rule. The Maine Revised Statutes Annotated is an example of a hard-bound publication.

Advantages:

- 1) no lost or torn pages;
- 2) method of supplementation reliable;
- 3) can maintain single source with pocket supplements;
- 4) no constant updating by subscribers;
- 5) pagination problems readily apparent;
- 6) no constant update of inventory by publisher or printer; and
- 7) greatly reduces staff time to update;

Disadvantages:

- 1) copying somewhat less convenient than loose leaf; and
- 2) cost of binding may result in higher costs.

c. **Softbound:**

Every page in a softbound book is bound to the spine, as in a hardbound publication, and cannot be removed without damaging the book. The covers of the book and its binding, however, are less sturdy and durable than a hardbound publication. Rather than supplementing the text by a separate pamphlet, the lower cost of a softbound publication (when compared to a hardbound publication) makes it practical to merely replace, usually annually, the entire book with the latest, up-to-date text. The user of the rule need not look in two documents as with a hardbound publication. A paperback book or the telephone book are examples of softbound format.

Advantages:

- 1) no lost or torn pages;
- 2) method of supplementation reliable;
- 3) can maintain single source with replacement volumes;
- 4) no constant updating by subscribers;
- 5) pagination problems readily apparent;
- 6) no constant update of inventory by publisher or printer;
- 7) greatly reduces staff time to update; and
- 8) less costly than hardbound.

Disadvantages:

- 1) copying somewhat less convenient than loose leaf; and
- 2) less durable than hardbound.

d. **Pamphlet:**

The pamphlet type of publication has a hard-cover binding, similar to a loose-leaf binding. However, the contents of the binding, rather than being composed of separate pages of text, will contain several separately bound pamphlets. These pamphlets fit into the bindings. Each pamphlet may contain an entire agency's rules or only part of an agency's rules, depending upon the quantity of rule-making by that agency. A binder may therefore contain several agency rules or only a few chapters of a more prolific rule-making agency. It combines the reliability of a bound publication with some of the flexibility of a loose-leaf publication. Each volume of pamphlets is supplemented initially by supplemental pamphlets which fit into the binding next to the original text and eventually by replacement pamphlets when the supplements become unwieldy.

Advantages:

- 1) no lost or torn pages;
- 2) method of supplementation reliable;

- 3) can maintain single source with supplemental pamphlets;
- 4) no constant updating by subscribers;
- 5) pagination problems readily apparent;
- 6) no constant update of inventory by publisher or printer;
- 7) greatly reduces staff time to update; and
- 8) easy to distribute single sets as each chapter or subject matter could be in separate pamphlets.

Disadvantages:

- 1) copying somewhat less convenient than loose-leaf; and
- 2) less durable than hardbound.

2. Electronic publication: Electronic publication, a newer type of format includes two options:

- a. CD-ROM:

Although CD-ROM may still be unfamiliar to many people in Maine, placing large amounts of information on a compact disc, distributing copies of that disk, and accessing that information is becoming commonplace in the music industry and in the information industry. Massive documents from complete encyclopedias to familiar favorites such as Bartlett's Quotations are now available on a compact disc. Publishers are increasingly making research materials, including state statutes and rules, available on CD-ROM format. Maine is unique in having a large number of sites where CD-ROM readers are available. There are currently 230 public sites around the state with CD-ROM capability. The current program to provide CD-ROM capability through the MaineCat program will result in 500-600 public sites in Maine with CD-ROM capability. (The MaineCat program is a project to distribute a complete list of each library's collection of books to 500-600 sites throughout the State (mostly to other libraries for use as a resource for inter-library loans). See Appendix H for more details on availability and cost of CD-ROM.)

Advantages:

- 1) Low cost makes frequent updates inexpensive;
- 2) Update by replacement of disk avoids any pagination or misfiling problems;
- 3) Can download text and manipulate copy of text on a word processor without altering database (depending upon equipment available);
- 4) Can print any rule or part of rule as necessary;
- 5) Availability of CD-ROM readers statewide provides least expensive way to provide access to general public;

- 6) Low cost of CD-ROM readers makes initial purchase and update of CD-ROM publication cheapest format;
- 7) Capacity of one disk would permit Maine Statutes and Maine Rules both to be marketed on one disk at a cost well below paper versions of either set individually (one disk could probably hold the complete set of rules for at least 20 states); and
- 8) Computer-assisted indexing and searching available.

Disadvantages:

- 1) Requires initial expense for reader or a computer; and
- 2) Users who are not computer-literate would not have access without assistance.

b. **On-line access:**

Remote access to electronic data base (read only), such as Lexus and West Law, requires a modem and a computer terminal.

Advantages:

- 1) Is always up-to-date (never needs supplementation);
- 2) Can download text and manipulate copy of text without altering database;
- 3) Can print any rule or part of rule as necessary; and
- 4) Computer-assisted indexing and searching available.
- 5) Available anywhere in state to users with a personal computer and telephone.

Disadvantages:

- 1) Requires initial expense for computer;
- 2) Users who are not computer-literate would not have access; and
- 3) May be costly for user due to set-up charges, per minute of use charges, and long distance phone charges.

3. **Microfilm or microfiche:**

Microfilm format is a photographic image of printed materials greatly reduced in size. The reduction in size allows a large number of pages to be put on the photographic image. The photographic image is similar to a photographic negative taken by a person with a still camera. Microfiche is microfilm reduced in size even further.

Advantages:

- 1) Can be stored easily;
- 2) Less costly than printed formats; and
- 3) Built-in indexing available with the Computer Assisted Retrieval (CAR) System.

Disadvantages:

- 1) Can be awkward to use; and
- 2) Very few microfilm readers available other than libraries or schools.

FINDINGS: Maine, although rapidly adapting to the electronic age, still has many locations and users who need the familiarity of a paper document. The commission finds that the bound publication format offers the greatest reliability and accuracy in the original publication and in the method and process of supplementing the original publication. A bound format is also easier to maintain. The commission further finds that the softbound or pamphlet format appear to be less costly than a hardbound format.

The commission also finds that Maine is rapidly distributing CD-ROM readers throughout the State and anticipates, as more publications become available on CD-ROM, that the private purchase of CD-ROM readers will increase. This increased exposure to CD-ROM as a resource tool will increase the familiarity of the Maine public to CD-ROM.

RECOMMENDATION: The commission recommends that the codified Maine rules be published in a paper format (either softbound or pamphlet). The commission recommends that the future use of CD-ROM format for publication of the codified Maine rules be seriously considered, as the public becomes more familiar with the use of CD-ROM and as resources become available.

C. Establishment of Data Base

The first step in codifying the Maine rules is the establishment of a data base. There are two basic options for the data base:

1. Original paper document. This data base is merely the paper document which was adopted or amended by the agency. That is the current data base of Maine rules. It is 100 per cent accurate and it is the least costly method of establishing a data base. This type of data base will only allow for a loose-leaf paper type of publication format. The uniformity of the document as a whole is difficult, if not impossible, to maintain. The text may not be manipulated.
2. Electronic text file. An electronic text file is basically computer storage of the entire text of the rules in a manner that each individual character of the text can be manipulated. Amendments are integrated into the document and become an integral part of the whole as soon as the amendment is adopted. Uniformity is ensured as the document is entered into the text file. An electronic text file is necessary in order to produce any publication other than the loose-leaf paper publication. An electronic text file is more expensive initially than an original paper

file data base because the existing rules must be entered into the electronic text file and the entire document must be proofread to ensure accuracy.

A chart prepared by the Secretary of State's office, included as Appendix F, compares three options for a data base and identifies the characteristics of each option. As the chart indicates, the electronic text file allows greater flexibility in publication format, may result in a less expensive cost to subscribers, and provides greater access to the rules (by facilitating publication, integrating text, ease of indexing, and providing a data base which, when resources are available, can be used to produce a CD-ROM version of the rules. The second option on the chart, "optical disk", while providing somewhat easier access and back up, is basically an electronic photocopy of the original paper file data base and offers little advantage over that option. It is not recommended by the commission.

A flow chart, based on an electronic text file data base, showing the rule-making process from the point it is sent to the Secretary of State's office is also included as Appendix G.

FINDINGS: The commission finds that an electronic text file data base offers greater flexibility in manipulating the text and in publication format. In addition, an electronic text file is the only data base which can provide the publication formats recommended by the commission.

RECOMMENDATION: The commission recommends that an electronic text file data base be established for the codification of the Maine rules.

D. Method of Conversion of Existing Files

1. Initial entry of rules to database (Conversion process).

The establishment of an electronic text file data base will require all existing rules to be entered into the electronic text file. This can be accomplished in four steps:

- a. Enter current rules into computer database by any combination of the following:
 - (1) word processing operators,
 - (2) "reading" each page with an Optical Character Recognition (OCR) device (similar to the magic wand at the grocery store check-out counter), or
 - (3) electronic transfer of an already existing electronic text file (for those agencies which have their rules on a computer database);
- b. Editing the computer database for uniformity of form;

- c. Proofreading the computer text against the original paper file copy; and
 - d. Correcting the database errors.
2. Conversion process options.

Once the data is entered into the electronic text file it is used to prepare the published document (paper or electronic). Establishment of the initial electronic text file (or electronic data base) can be accomplished by a state agency such as the Secretary of State or can be contracted out to a publisher. State ownership of the data base, as a public record, is essential.

- a. State agency establishment of the database. The Secretary of State's office has prepared a chart showing the various options for converting the existing rules to a paper, optical disk, or electronic data base and for ongoing operational costs. (See Appendix I for details.) The text file option, which is the database recommended by this commission, indicates three methods of converting the existing rules, indicating personnel and capital equipment needs.
 - (1) Contracting with a service bureau for initial data entry. The Secretary of State could contract with a non-state service bureau for the initial transfer of the text of the rules to an electronic data base. The Secretary of State's office would need to provide, by photocopy, a hard copy of the text of all rules to the service bureau. The service bureau would then enter that text into an electronic data base, guaranteeing a certain degree of accuracy. The Secretary of State would still need to verify the accuracy of the text by proofreading.
 - (2) State agency data entry - full conversion implemented immediately. The Secretary of State would acquire and dedicate additional resources to enter the complete text of the rules into an electronic database. Agencies which currently maintain their rules electronically would merely transfer that data to the Secretary of State. Rules not maintained electronically would need to be entered by word processing operators. After entry of the data, formatting and accuracy would still require proofreading and corrections to the database. The Secretary of State does not have existing resources to accomplish this.
 - (3) State agency data entry - gradual conversion. The Secretary of State's office has testified that approximately 1/4 of the rules are amended each year.

Since that is an average figure it does not indicate that each rule is amended at least every 4 years. Some are amended more frequently, others less frequently. This does indicate that a high percentage of rules would be affected by changes over a 2 to 3 year period. If each agency were required to readopt a specified portion of a rule (e.g. 35 pages) each time it made a substantive amendment to a portion of the rule, a large percentage of the total agency rules would be readopted during that time period. If the Secretary of State entered each readopted rule into its database at the time of readoption, the bulk of the rules would be entered into the database at the end of that time period. This gradual approach would not require the immediate addition of several extra employees necessary for the significant data entry task posed under option (2) above. This approach would also extend the time period significantly before a codified set of rules were available. (NOTE: If this approach is utilized, enabling legislation should be enacted to distinguish between a substantive amendment to the rules requiring full due process hearings and a mere readoption of existing language involving no substantive change. The nonsubstantive readoption should not require the full due process requirements mandated by the Maine Administrative Procedure Act.)

- b. Contracting the establishment of a data base to a private publisher. The Secretary of State could contract the establishment of the data base to a private publisher. In this instance, a Request for Proposal (RFP) would be issued to solicit bids for the project. The state would indicate the requirements of the project, stipulating such requirements as: a specified degree of accuracy, formatting requirements, ownership of the data base, and periodic updates. The state would also require a copy of the data base. Under this option, the bulk of the cost for the establishment of the database would be assumed by the publisher. In exchange for this initially high investment by the publisher and the risk of not obtaining an adequate return on this investment, a publisher responding to the RFP would need certain guarantees from the state. Based on experience in other states, publishers would more than likely ask for exclusive rights to market the "certified" rules for a specified period of time and require a specified number of guaranteed purchases by the state. Since the text of the rules is a public document, the state could require that any copy of the rules (such as one published by someone other than the contract agent) be designated an "Unofficial version-not certified by the Secretary of State."

FINDINGS: The commission finds that the need for a codified set of rules in Maine requires implementation of the codification process as soon as possible. The commission further finds that the most expeditious method of converting the existing rules to an electronic database appears to be establishing a contract with a publisher for conversion of the files and marketing and distribution of the codified rules.

RECOMMENDATION: The commission recommends that the conversion of the existing rules to an electronic database be completed as quickly as possible, within existing resources. It further recommends that the Secretary of State solicit Requests for Proposals, based on the parameters and guidelines recommended by this report, to contract for conversion of the database and for marketing and distribution of the codified rules. The solicitation of Requests for Proposals should include proposals from publishers or other providers interested in providing conversion of the database and a variety of other services and from service bureaus whose only function would be conversion of the database to an electronic text file. Availability of any responses to these requests would enhance the ability of the legislative committee, to which the enabling legislation associated with this report is referred, to discuss and vote on that legislative document.

E. Updating the Rules Code

Once the rules are codified as of a date certain, provisions must be made to periodically update the rules to reflect additions, deletions, and amendments to those rules.

In Maine, statutes are generally only amended during a finite period of time each year. Unless a special legislative session is held, statutes are only amended when the Maine legislature meets during the first 6 months of each odd-numbered year (called the first regular session) and during the first 4 months of each even-numbered year (called the second regular session.) The need to provide the public with the current law in Maine can be accomplished by annual supplements to the codified statutes at the end of each session. An inexpensive, disposable softbound publication is distributed periodically throughout each legislative session containing the new chaptered laws. These chaptered laws are then codified annually by the publisher of the Maine Revised Statutes Annotated.

Rules, in comparison to statutes, are adopted, repealed or amended at any time during the year. An annual supplement to a codified set of rules would not reflect significant changes to the rules in as timely a manner as it does for the statutes. Accordingly, states with codified sets of rules will publish a register at frequent intervals to provide public notice of proposed rule changes and, often, to provide the text of new rules. This frequent update (although not in codified form) may occur on a quarterly, monthly,

bi-weekly, or weekly basis and provides access to new rules and rules changes on a timely basis. The codified set of rules is then supplemented annually to incorporate those changes. (For more information regarding the forms this supplement may take see Section B: Publication Format in this Part of the report.)

A register (in the sense of agency rules) is a document which makes available to the public, in a regularly published format:

- proposed agency rules or amendments to or repeals of those rules;
- notice of hearings or addresses to comment on the proposed rules or changes to rules;
- other important state notices; and,
- in some cases, may include other items such as, the full text of rules after they are officially adopted or amended, attorney general opinions, etc..

In Maine, public notice of proposed rules is now done only by newspaper notices at the time the rule is proposed.

FINDINGS: Because of the continuous nature of rules changes, a register, published in conjunction with a codified set of rules, is a necessary element to provide continuing, accurate access to the up-to-date text of rules. Publication of a register in Maine would serve to put people on notice of amendments to rules or new rules adopted since the publication of the annual supplement to a codified set of Maine rules.

RECOMMENDATION: In view of the essential nature of a register to provide meaningful access to a codified set of Maine rules, the commission recommends that a register be published in Maine. The register should be published, at a minimum, on a quarterly basis. If state resources are limited, it may be necessary to publish a register that, rather than providing the complete text of proposed or adopted rules or rule changes, would initially only provide notice of those proposed or adopted rules or rule changes and provide an address and phone number to contact for more details.

F. Distribution of Codified Rules

West Publishing Company, Michie Company, and Weil Publishing Company all testified before the commission that the market for rules codes is limited. Those most likely to need or use their own set of codified state rules include:

- the Secretary of State,
- the Attorney General,
- the Maine legislature,
- the Governor's office,
- the county law libraries,
- the courts,
- some public libraries, and
- some law firms or individual practicing attorneys.

The actual price for a complete set of the rules code will vary, depending upon the number of volumes and pages. A 1989 survey indicated prices from \$55 (for the 5 volume Kansas set) to \$2772 (for the 63 volume New York set). The results of that survey are included as Appendix J.

Under one set of assumptions, the Secretary of State's office has estimated the cost of a complete set of rules, once the rules have been converted to an electronic text file, to be approximately \$1,200 in paper format and \$250 in CD-ROM format. (See Appendix F for details.)

CD-ROM format also allows a state to market one CD-ROM disk which could include both the state statutes and the state rules. By utilizing the low cost of the CD-ROM publication format and by including the statutes and rules on one disk, the market penetration (and thus availability) of the rules could increase significantly. The total market would still be limited by the number of subscribers who have or would be willing to purchase CD-ROM readers. Within that market, however, the saturation would be very high.

Although agencies are required to make copies of their rules available to anyone, they are not required by statute to distribute rules to anyone other than 18 copies to the State Librarian (1 MRSA § 501-A). The Commission received testimony that copies of the rules are not distributed to the county law libraries. The county law libraries serve as a legal resource for the courts, attorneys, and the general public. Subsequent to the final commission meeting, a suggestion was received by a commission member proposing that the Judicial Department consider distributing, within its existing resources, a complete set of codified rules to each county law library.

FINDINGS: Although rules form a significant part of the laws of the State and have a considerable impact on the rights and obligations of each citizen, the market for a complete set of codified rules is limited. Beyond selected government agencies, the Legislature, libraries, the county law libraries (which serve the courts), and selected law firms, many attorneys, professional associations, and most citizens do not have sufficiently frequent dealings with state government to require the purchase and maintenance of a complete set of rules. Based on other states' experiences, the market for a set of codified state agency rules is significantly less than the market for state statutes.

On the other hand, a significant number of the users who do not require a full set of rules, still have a need (often infrequent) for one particular rule (such as those concerning a licensed occupation) or several rules which encompass one particular subject (such as sanitation, environmental and building code requirements for construction projects).

RECOMMENDATIONS: The commission recommends that the a codified set of rules, when available, should be marketed and distributed to maximize their accessibility to the public. Libraries (the Law and Legislative Reference Library, county law libraries, and other public libraries) and other easily accessible locations should be encouraged to consider purchasing a set of rules, as the need in their area determines. The commission recognizes that marketing and distribution may be a part of contractual arrangements with a publisher. Regardless of the method of publication, the commission recommends that the practice of providing 18 copies of agency rules to the State Librarian for further distribution be continued by providing 18 copies of the codified set of rules and periodic supplements.

G. Index

An index is essential to find the appropriate rules. It should be suitable for all users, updated frequently, and kept in a separate volume. There are basically two types of indexes available: subject-matter indexes and key-word indexes. Each serves a separate, yet overlapping, purpose.

A subject-matter index is a hand-generated index which requires a reviewer to read the rules, determine which entries to make in the index, and make the entries. It could be done centrally by one office (to provide greater continuity for all agency rules) or by personnel in each agency (to provide greater familiarity with the actual subject matter for each rule.) It can be costly to generate.

A key-word index is a product of the computer age. Once a document has been entered into an electronic data base and the key-words are chosen, software is available to generate, basically at the push of a button, a list of key-words and the pages upon which those key-words appear. It is less costly to generate than a subject-matter index. It does not require the extensive personal decision making that a subject-matter index does. It also does not allow for the flexibility that a hand-generated subject-matter index allows. Certain words or groups of words may appear in totally separate rules only one of which is of interest to the user. The more familiar a user is with the rules already, the more useful a key-word index is.

A key-word index may be produced on paper or may be used electronically on a computer or CD-ROM reader. Electronic use of this method is often referred to as a key-word (or key-phrase) search. Key-word indexes (or key-word searches) may allow the user to research for the occurrence of two or more words in the same sentence or section, thus allowing more precision in the search than can be obtained with only one-word searches.

FINDINGS: An index is an essential element in providing access to a codified set of rules. A subject-matter index requires less pre-existing knowledge of the rules and will provide a more easily used search tool for users of the code. It will allow greater access to the majority of the code users.

RECOMMENDATION: The commission recommends that an index be a mandatory part of a code of Maine rules. A subject matter index is strongly preferred by the commission and should be the ultimate goal for indexes to a codified set of Maine rules. The index should always be as comprehensive as resources allow.

H. Other Considerations

Other components of a codified set of rules includes the following:

1. History: The history should identify the general and specific rule-making authority of the organizational chief within the agency or board, i.e. Commissioner, Board Director. It is useful information because all directors of agencies below the commissioner may not have rule-making authority; for example, the division of special education does not have rule making authority; but the Commissioner of Education does. A history may also include date of adoption and amendment, cross reference tables, statutory references in the rule, effective date and repeal date.
2. Annotations: Annotations may include comments on Federal law and case law from court decisions.
3. Table of Contents: A table of contents often serves as a users first guide to accessing the rules.
4. Typography: Typography should be selected on basis of users' ease of reading in volumes bound for ability to "lie flat." Margins should be appropriate for binding and size of volume. The appearance should be suitable for official state document not dissimilar to the Maine Revised Statutes.
5. Classification: Classification should be by subject according to department/agency and arranged in sequential chapters, if more than one subject.
6. Numbering: The present system of numbering by comptroller budget number should be continued. Department initials should be added; e.g. AG (dept.) 01 (UMB) 312 (Div.) CI (ch.).
7. Organization of Each Rule: Style should be as present with same numbering of paragraphs, etc. Definitions should appear first, statement of intent, etc. Rules should be ordered in sequence of time, geography, or age.
8. Drafting Manual: A drafting manual should be developed as a standard. Adherence to the standards developed should be required. Departments should edit their own material. David Kennedy, Maine's Revisor of Statutes, states that a defined structure provides coherence and is essential for a computerized database.

FINDINGS: The components of a codified set of rules identified in this section all provide additional information or formatting standardization which increases a user's understanding of the rules. A table of contents, a history and a drafting manual are essential to ease of use, standardization of format, and accuracy.

RECOMMENDATION: The commission recommends that a codified set of rules include, as essential elements, a table of contents; a history; standardization of classification, numbering and organization; and a drafting manual. It would be desirable to include as many of the other features as resources permit.

IV. Report and Continued Monitoring

It is a complex task to codify a previously uncoded set of state agency rules in their entirety. From start to finish coordinating the codification and ensuring accuracy while new rules are continually being adopted or existing rules being amended requires close attention to detail.

FINDINGS: The commission finds that the complexity of the process of codifying a set of rules and the need to evaluate the codification process and the impact of the codification of the rules on Maine citizens may require periodic review and additional policy determinations. The partnership between the agency responsible for codification of rules and the Legislature as the policy-making body for the State is a crucial element in a successful codification process.

RECOMMENDATION: The commission recommends that the annual report currently submitted by the Secretary of State's Office report to the committee having jurisdiction over state and local governments, be amended to include a report on the progress of the codification process and, to the extent information is available, on the impact a codification of the Maine rules has had on state agencies responsible for adopting rules and the users of the Maine rules.

V. Summary of Findings and Recommendations

33The ability of the public to be able to learn what the statutory and regulatory law is forms an essential cornerstone of our American democracy, demanded by the structure of our government and protected by the Constitution of the United States and of Maine.

1. The commission **finds** that the impact of rules on Maine citizens is as significant, if not more significant, than Maine statutory law.

2. The commission **finds** that accessibility to rules is inherent in our form of government. Access to the rules requires (a) the availability of the rule at easily accessible locations throughout the State and (b) the necessary structures and research aids to locate, easily, all the rules relevant to the user's search or inquiry.

3. The commission **finds** that public access to the Maine rules is restricted. Finding a set of rules is difficult for many people due to the limited number of locations where the rules are available. Once the text of the rules is found, lack of an appropriate index or other research aids makes finding the applicable provisions difficult, if not impossible, without experienced, professional guidance.

4. The commission unanimously **recommends** that the Maine agency rules be codified as an essential part of providing access to the rules and laws of this state for the people of this state who are expected to obey those rules and laws. The commission **recommends** that the Secretary of State's Office, which is currently the only state agency responsible for standardizing, certifying, and maintaining the entire set of Maine rules, undertake a codification of the Maine rules in accordance with the enabling legislation and the guidelines established in this report.

5. The commission **finds** that many users have a need to own a complete or partial set of rules. Other users only need access to the rules without the necessity of purchasing them. Access for users not requiring ownership should be reasonably close to where they work or live. The commission has identified the following potential users of the rules in one form or another: state agencies (including the Secretary of State and the Attorney General's office), the Legislature, courts, lawyers, libraries, consultants, professional associations, businesses, and the general public.

6. The commission **finds** that Maine, although rapidly adapting to the electronic age, still has many locations and users who need the familiarity of a paper document. The commission finds that the bound publication format offers the greatest reliability and accuracy in the original publication and in the method and process of supplementing the original publication. A bound format is also easier to maintain. The commission further finds that the softbound or pamphlet format appear to be less costly than a hardbound format.

The commission further finds that Maine is rapidly distributing CD-ROM readers throughout the State and anticipates, as more publications become available on CD-ROM, that the private purchase of CD-ROM readers will increase. This increased exposure to CD-ROM as a resource tool will increase the familiarity of the Maine public to CD-ROM.

7. The commission **recommends** that the codified Maine rules be published in a paper format (either softbound or pamphlet). The commission **recommends** that the future use of CD-ROM format for publication of the codified Maine rules be seriously considered, as the public becomes more familiar with the use of CD-ROM and as resources become available.

8. The commission **recommends** that an electronic text file data base be established for the codification of the Maine rules.

9. The commission **finds** that the need for a codified set of rules in Maine requires implementation of the codification process as soon as possible. The commission further **finds** that the most expeditious method of converting the existing rules to an electronic database appears to be establishing a contract with a publisher for conversion of the files and marketing and distribution of the codified rules.

10. The commission **recommends** that the conversion of the existing rules to an electronic database be completed as quickly as possible, within existing resources. It further **recommends** that the Secretary of State solicit Requests for Proposals, based on the parameters and guidelines recommended by this report, to contract for conversion of the database and for marketing and distribution of the codified rules. The solicitation of Requests for Proposals should include proposals from publishers or other providers interested in providing conversion of the database and a variety of other services and from service bureaus whose only function would be conversion of the database to an electronic text file. Availability of any responses to these requests would enhance the ability of the legislative committee, to which the enabling legislation associated with this report is referred, to discuss and vote on that legislative document.

11. The commission **finds** that because of the continuous nature of rules changes, a register, published in conjunction with a codified set of rules, is a necessary element to provide continuing, accurate access to the up-to-date text of rules. Publication of a register in Maine would serve to put people on notice of amendments to rules or new rules adopted since the publication of the annual supplement to a codified set of Maine rules.

12. In view of the essential nature of a register to provide meaningful access to a codified set of Maine rules, the commission **recommends** that a register be published in Maine. The register should be published, at a minimum, on a quarterly basis. If state resources are limited, it may be necessary to publish a register that, rather than providing the complete text of proposed or adopted rules or rule changes, would initially only provide notice of those proposed or adopted rules or rule changes and provide an address and phone number to contact for more details.

13. The commission **finds** that although rules form a significant part of the laws of the State and have a considerable impact on the rights and obligations of each citizen, the market for a complete set of codified rules is limited. Beyond selected government agencies, the Legislature, libraries, the county law libraries (which serve the courts), and selected law firms, many attorneys, professional associations, and most citizens do not have sufficiently frequent dealings with state government to require the purchase and maintenance of a complete set of rules. Based on other states' experiences, the market for a set of codified state agency rules is significantly less than the market for state statutes.

On the other hand, a significant number of the users who do not require a full set of rules, still have a need (often infrequent) for one particular rule (such as those concerning a licensed occupation) or a few rules which encompass one particular subject (such as sanitation, environmental and building code requirements for construction projects).

14. The commission **recommends** that the a codified set of rules, when available, should be marketed and distributed to maximize their accessibility to the public. Libraries and other easily accessible locations should be encouraged to consider purchasing a set of rules, as the need in their area determines. The commission recognizes that marketing and distribution may be a part of contractual arrangements with a publisher. Regardless of the method of publication, the commission **recommends** that the practice of providing 18 copies of agency rules to the State Librarian for further distribution be continued by providing 18 copies of the codified set of rules and periodic supplements.

15. The commission **finds** that an index is an essential element in providing access to a codified set of rules. A subject-matter index requires less pre-existing knowledge of the rules and will provide a more easily used search tool for users of the code. It will allow greater access to the majority of the code users.

16. The commission **recommends** that an index be a mandatory part of a code of Maine rules. A subject matter index is strongly preferred by the commission and should be the ultimate goal for indexes to a codified set of Maine rules. The index should always be as comprehensive as resources allow.

17. The commission **finds** that the components of a codified set of rules identified in this section all provide additional information or formatting standardization which increases a user's understanding of the rules. A table of contents, a history and a drafting manual are essential to ease of use, standardization of format, and accuracy.

18. The commission **recommends** that a codified set of rules include, as essential elements, a table of contents; a history; standardization of classification, numbering and organization; and a drafting manual. It would be desirable to include as many of the other features as resources permit.

19. The commission **finds** that the complexity of the process of codifying a set of rules and the need to evaluate the codification process and the impact of the codification of the rules on Maine citizens may require periodic review and additional policy determinations. The partnership between the agency responsible for codification of rules and the Legislature as the policy-making body for the State is a crucial element in a successful codification process.

20. The commission **recommends** that the annual report currently submitted by the Secretary of State's Office report to the committee having jurisdiction over state and local governments, be amended to include a report on the progress of the codification process and, to the extent information is available, on the impact a codification of the Maine rules has had on state agencies responsible for adopting rules and the users of the Maine rules.

APPENDIX A

Enabling Legislation, Public Law 1989, ch. 574

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 NINETEEN HUNDRED AND EIGHTY-NINE

—
 H.P. 1144 - L.D. 1587

**An Act to Establish Greater Communication
 in the Rule-making Process and to Provide
 Better Standards for the Adoption of Rules**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §8002, sub-§9, ¶A, as amended by PL 1979, c. 425, §3, is further amended to read:

A. "Rule" means the whole or any part of every regulation, standard, code, statement of policy, or other agency statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency. ~~All rules promulgated after July 17, 1979, shall, to the maximum extent feasible, as determined by the affected agency, use plain and clear English, which can be readily understood by the public.~~

Sec. 2. 5 MRSA §8051-A is enacted to read:

§8051-A. Appointment of liaison

The commissioner or director of each state agency shall designate a person to serve as a liaison between the agency and the general public, the Legislature, the Secretary of State and the office of the Attorney General with respect to rulemaking. The liaison shall serve as a representative of the agency with respect to providing information about agency rules. The liaison shall be responsible for implementing the procedural provisions of this subchapter.

Sec. 3. 5 MRSA §8052, sub-§5, as amended by PL 1985, c. 680, §1, is repealed and the following enacted in its place:

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

A. If the same or similar comments or concerns about a specific issue are expressed by different persons or organizations, the agency may synthesize these comments and concerns into a single comment that accurately reflects the meaning and intent of these comments and concerns to be addressed by the agency.

B. A rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule. The agency shall maintain a file for each rule adopted that shall include, in addition to other documents required by this Act, testimony, comments and information relevant to the rule and considered by the agency in connection with the formulation, proposal or adoption of a rule. If an agency determines that a rule which it intends to adopt will be substantially different from the proposed rule, it shall request comments from the public concerning the changes from the proposed rule. The agency may not adopt the rule for a period of 30 days from the date comments are requested pursuant to this paragraph. Notice of the request for comments shall be published by the Secretary of State in the same manner as notice for proposed or adopted rules.

Sec. 4. 5 MRSA §8052, sub-§5-A is enacted to read:

5-A. Impact on small business. In adopting rules, the agencies shall seek to reduce any economic burdens through flexible or simplified reporting requirements and may seek to reduce burdens through flexible or simplified timetables that take into account the resources available to the affected small businesses. The agency may consider clarification, consolidation, or simplification of compliance or reporting requirements. For the purposes of this subsection, "small business" means businesses that have 20 or fewer employees and gross annual sales not exceeding \$2,500,000.

Sec. 5. 5 MRSA §8053-A, as amended by PL 1987, c. 402, Pt. A, §§60 and 61, is repealed and the following enacted in its place:

§8053-A. Notice to legislative committees

1. Proposed rules. At the time of giving notice of rulemaking under section 8053 or within 10 days following the adoption of an emergency rule, the agency shall provide to the Legislature, in accordance with subsection 3, a fact sheet providing the information as described in section 8057-A, subsection 1.

A. If an agency determines that a rule which it intends to adopt will be substantially different from the proposed rule, it shall provide the Legislature with a revised fact sheet with the information defined in section 8057-A, subsection 1, as it relates to the substantially different rule. The revised fact sheet shall be provided to the Legislature in accordance with subsection 3.

2. Regulatory agenda. The agency shall provide copies of its agency regulatory agenda, as provided in section 8060, to the Legislature at the time that the agenda is issued.

3. Submission of materials to the Legislature. When an agency, pursuant to subsection 1 or 2, provides materials to the Legislature, it shall provide them to the Executive Director of the Legislative Council, who shall refer the materials to the appropriate committee or committees of the Legislature for review. The agency shall provide sufficient copies of the materials for each member of the appropriate committee or committees.

4. Adopted rules. When an agency adopts rules, it shall provide a copy of the adopted rules, the statement required by section 8052, subsection 5, and the checklist required by section 8056-A to the Secretary of State who shall compile the adopted rules by agency.

Sec. 6. 5 MRSA §8056-A is enacted to read:

§8056-A. Technical assistance; annual report

1. Checklist. The Secretary of State shall establish and implement a checklist that shall be completed by agencies and attached to proposed and adopted rules filed with the Secretary of State after December 31, 1989. The checklist shall include the timing of filing and notices as well as other procedural requirements of this subchapter.

2. Technical assistance. The Secretary of State shall

develop drafting instructions for use by agencies that propose rules under this subchapter. In addition, the Secretary of State shall provide assistance to any agency regarding the form for drafting of rules and supporting materials and the other requirements of this subchapter.

3. Report. The Secretary of State shall report to the Governor and the joint standing committee of the Legislature having jurisdiction over state and local government prior to February 1st of each year with respect to rule-making activities for the prior year. The report shall include statistical information on agency rule-making activities, agency experience with procedural requirements of this subchapter, and recommendations for improvements to the rule-making process. In preparing the report, the Secretary of State shall solicit comments from agencies and their legal counsels, the Director of Legislative Oversight and the public on this subchapter and recommended improvements.

Sec. 7. 5 MRSA §8057-A is enacted to read:

§8057-A. Preparation and adoption of rules

In preparing and adopting rules, each agency shall strive to the greatest possible extent to follow the procedure defined in this section.

1. Preparation of rules. At the time that an agency is preparing a rule, the agency shall consider the goals and objectives for which the rule is being proposed, possible alternatives to achieve the goals and objectives and the estimated impact of the rule. The agency's estimation of the impact of the rule shall be based on the information available to the agency and any analyses conducted by the agency or at the request of the agency. The agency shall establish a fact sheet that provides the citation of the statutory authority of the rule. In addition, the agency, to the best of its ability, shall also include in the fact sheet the following:

A. The principal reasons for the rule;

B. A comprehensive but concise description of the rule that accurately reflects the purpose and operation of the rule;

C. An estimate of the fiscal impact of the rule; and

D. An analysis of the rule, including a description of how the agency considers whether the rule would impose an economic burden on small business as described in section 8052, subsection 5-A.

2. Additional information for existing rules. For existing

rules having an estimated fiscal impact greater than \$1,000,000, the fact sheet shall also include the following:

A. A description of the economic impact of the rule including effects that cannot be quantified in monetary terms;

B. A description and examples of individuals, major interest groups and types of businesses that will be affected by the rule and how they will be affected; and

C. A description of the benefits of the rule including those that cannot be quantified.

3. Public comment period. During the public comment period and prior to adoption of any rule, the agency shall strive to obtain and evaluate relevant information from the public and other information reasonably available to the agency with respect to relevant provisions in subsection 1.

4. Adoption of rules. At the time of adoption of any rule, the agency shall file with the Secretary of State the information developed by the agency pursuant to subsections 1 and 2.

Sec. 8. 5 MRSA §§8060 to 8062 are enacted to read:

§8060. Regulatory agenda

Each agency with the authority to adopt rules shall issue to the appropriate joint standing committee or committees of the Legislature and to the Secretary of State an agency regulatory agenda as provided in this section.

1. Contents of agenda. Each agency regulatory agenda to the maximum possible extent shall contain the following information:

A. A list of rules that the agency expects to propose prior to the next regulatory agenda due date;

B. The statutory or other basis for adoption of the rule;

C. The purpose of the rule;

D. The contemplated schedule for adoption of the rule;

E. An identification and listing of potentially benefited and regulated parties; and

F. A list of all emergency rules adopted since the previous regulatory agenda due date.

2. Due date. A regulatory agenda must be issued prior to 100 days after adjournment of each regular session of the Legislature.

3. Legislative copies. The agency shall provide copies of the agency regulatory agenda to the Legislature as provided in section 8053-A.

4. Availability. An agency which issues an agency regulatory agenda shall provide copies to interested persons.

5. Legislative review of agency regulatory agendas. Each regulatory agenda shall be reviewed by the appropriate joint standing committee of the Legislature at a meeting called for the purpose. The committee may review more than one agenda at a meeting.

6. Application. Nothing in this section or section 8053-A may be construed to prohibit agencies from adopting emergency rules or rules that have not been listed or included in the regulatory agenda pursuant to this section.

§8061. Style

All rules and any other materials required by this subchapter to be provided to the public or to the Legislature shall, to the maximum extent feasible, use plain and clear English, which can readily be understood by the general public. The use of technical language shall be avoided to the greatest possible extent.

§8062. Performance standards

When legislation authorizing any regulated activity requires that certain criteria be met in order that any license, permit, authorization or certification to undertake the regulated activity be granted and when an agency determines that performance standards will assist regulated parties in complying with the criteria, the standards shall be developed during the rule-making process and incorporated into adopted rules when performance standards are equally effective in meeting applicable statutory criteria.

Sec. 9. 5 MRSA §1112, first ¶, as amended by PL 1985, c. 737, Pt. B, §15, is further amended to read:

Any group of 100 or more registered voters, who have a substantial interest in a rule, or any person who may be directly, substantially and adversely affected by the application of a rule, may file an application for review with the executive director. With respect to any application or petition for review pursuant to this section, the petition or application shall be

verified and certified in the same manner provided in Title 21-A, section 354, subsection 7, paragraphs A and C. The applicant shall state with specificity on a form prepared by the director, the following:

Sec. 10. Commission on Codification of Rules.

1. There is established the Commission on Codification of Rules to consist of 13 members as follows:

A. The President of the Senate shall appoint 2 Senators, one from the Joint Standing Committee on Judiciary and one from the Joint Standing Committee on State and Local Government. The Speaker of the House of Representatives shall appoint 3 members of the House of Representatives, one from each of the following joint standing committees of the Legislature: the Joint Standing Committee on Appropriations and Financial Affairs; the Joint Standing Committee on Judiciary; and the Joint Standing Committee on State and Local Government.

B. A representative of the Administrative Law Section of the Maine Bar Association who shall be appointed by the Governor;

C. The Governor shall appoint 3 persons. One person shall represent the Governor's office and 2 persons shall represent that part of the private sector with experience in the use of rules and the rule-making process;

D. The Secretary of State, or the secretary's designee;

E. The Attorney General's designee, who must be knowledgeable of the Maine Administrative Procedure Act, Title 5, chapter 375;

F. The State Law Librarian, ex officio; and

G. The Director of Legislative Oversight, ex officio.

2. The President of the Senate and the Speaker of the House of Representatives shall jointly appoint the chair from among the legislative members.

3. All members of the commission shall be appointed within the 90-day period following the adjournment of the First Regular Session of the 114th Legislature. The first meeting of the commission shall be held no later than October 1, 1989.

4. The commission shall investigate various alternative codifications of rules and the cost of each alternative. In undertaking this investigation the commission shall consider:

- A. The various types of formats that may be used;
- B. The various types of indexes for a code of rules, particularly subject matter indexes;
- C. Capital equipment required;
- D. Personnel required and the type of expertise needed to undertake a codification;
- E. The processes of codification to include contracting all or some of the tasks of codification with the private sector;
- F. The distribution of a code of rules to include prices to be charged to public agencies; and
- G. The establishment of and access to rules data base.

5. The commission shall report its findings and its recommendation for a code of rules to the Joint Standing Committee on State and Local Government no later than March 15, 1990.

6. The legislative members shall be compensated at the legislative per diem rate including expenses for meetings held when the Legislature is not in session. All other members shall receive expense reimbursement only.

7. The Legislative Council shall provide for the staffing of the commission.

A. Prior to the first meeting of the commission, the staff shall obtain necessary background information and materials for the commission.

Sec. 11. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
LEGISLATURE		
Commission on Codification of Rules		
Personal Services	\$ 1,375	
All Other		4,300
Provides funds for the per		

diem, travel and related expenses of the Commission on Codification of Rules

LEGISLATURE
TOTAL

\$ 5,675

SECRETARY OF STATE, DEPARTMENT OF

Administration - Secretary of State

Positions
Personal Services
All Other
Capital Expenditures

(.5)
\$7,340
563
590

(.5)
\$10,112
750

Provides funds for a part-time Clerk Typist II position and related expenses associated with rule-making activities.

DEPARTMENT OF THE SECRETARY
OF STATE
TOTAL

\$8,493

\$10,862

APPROPRIATION
TOTAL

\$14,168

\$10,862

Appendix B

Legislation to Extend Reporting Deadline

APPROVED

FEB 23 '90

BY GOVERNOR

CHAPTER

636

PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

—
S.P. 904 - L.D. 2298

An Act to Extend the Reporting Date
of the Commission on Codification
of Rules

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Public Law 1989, chapter 574, section 10, subsection 5, became effective on September 30, 1989 and set a March 15, 1990 reporting deadline for the Commission on Codification of Rules to report its findings and recommendations for a code of rules to the Joint Standing Committee on State and Local Government; and

Whereas, the commission requires additional time in order to develop appropriate recommendations; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PL 1989, c. 574, §10, sub-§5 is amended to read:

5. The commission shall report its findings and its recommendation for a code of rules to the Joint Standing

Committee on State and Local Government no later than ~~March~~
September 15, 1990.

Emergency clause. In view of the emergency cited in the
preamble, this Act takes effect when approved.

Appendix C

Publishers

Robert Owens,
Assistant Editor in Chief
West Publishers
50W Kellogg Blvd.
PO Box 64526
St. Paul, MN 55164-0526

Gordon Weil
Weil Publishing Company
2 Central Plaza
Augusta, ME 04330

Peter Cutler
Lawyers' Coop Publishers
59 Beach Hill Rd.
Freeport, ME 04032

Michael Schwartz
Equity Publishing Company
Main St.
Orford, NH 03777

James Blanchard
Michie Company
PO Box 7587
Charlottesville, VA 22906

David McCausland
J.S. McCarthy Co.
PO Box 5120
Augusta, ME 04330

Gilbert Lea, Jr.,
President
Tower Publishing Company
PO Box 7220
Portland, ME 04112

Ed Kowalski
West Publishers
615 Merrick Ave.
Westbury, NY 11590

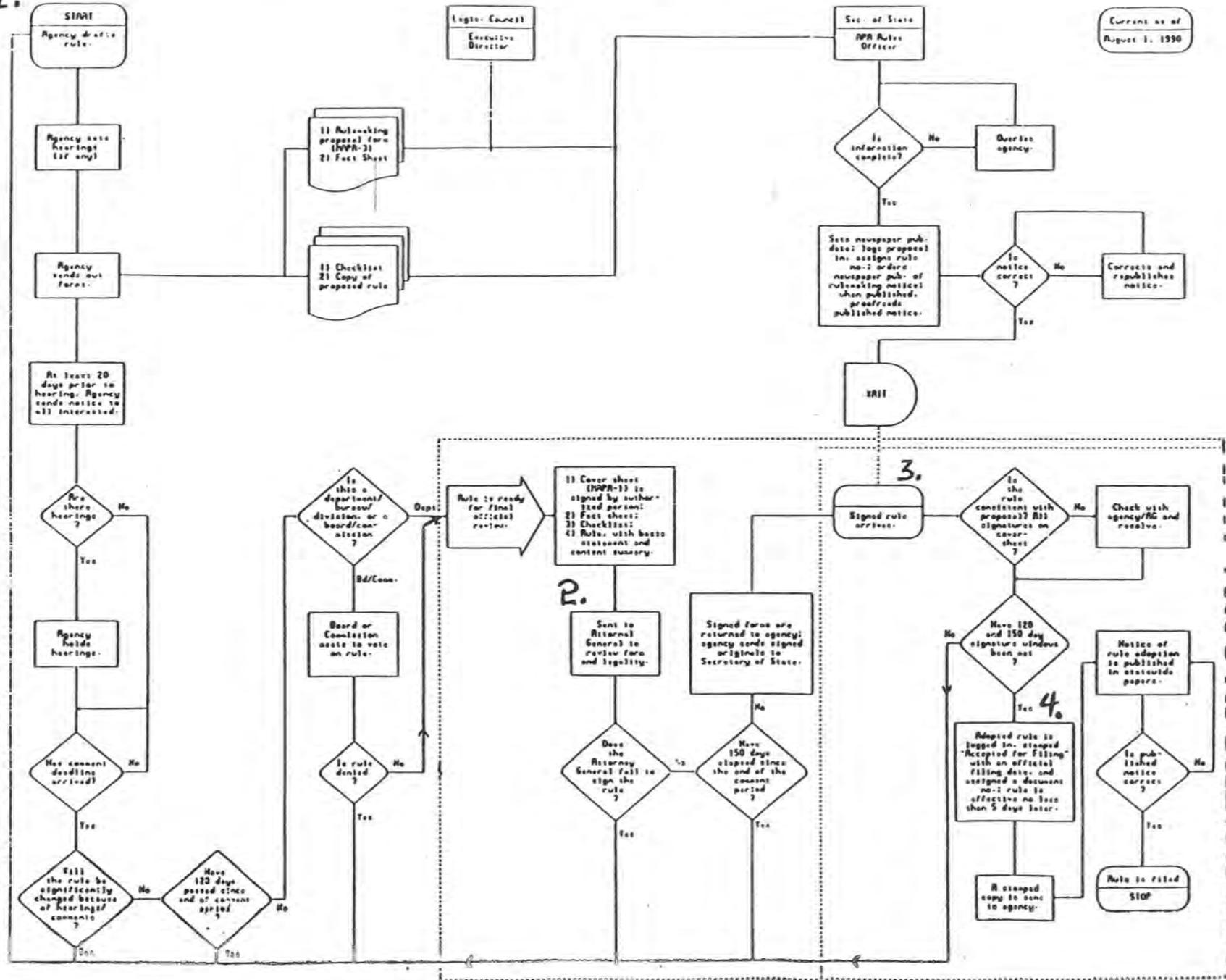
Appendix D

A.P.A. Now! Current Practice

A.P.A. Now!

Current Practice

1.



Current as of August 1, 1990

Appendix E

List of Rules Printed from April - November 1989

LIST OF RULES PRINTED FROM APRIL TO NOVEMBER 1989

<u>AGENCY</u>	<u># COPIES</u>	<u>BINDING</u>	<u>PAGES</u>	<u>CAMERA READY OR TYPSET</u>
Agriculture	500	Saddle Bound	32	Camera Ready
Baxter State Park	75000	Folded	1	Camera Ready
Baxter State Park	200	Perfect Bound	120 + cover	Camera Ready
Conservation (Open-Burning)	52000	Folded	1	Camera Ready
Education (C 502 Regs)	550	Stitched	235	Camera Ready
Education (Spec. Ed.)	3000	Loose Pages	48	Camera Ready
Education (Spec. Ed.)	2000	Loose 3 hole	48	Camera Ready
Engineers	4300	Perfect Bound	188	Camera Ready
Environmental Protection	300	Loose Pages	215	Camera Ready
Environmental Protection	200	Saddle Bound	36	Camera Ready
Environmental Protection	2000	Stapled	40 + 4 sheets	Camera Ready
Environmental Protection	500	Saddle Bound	38	Camera Ready
Environmental Protection	500	Saddle Bound	88 + cover	Camera Ready
Environmental Protection (Hazardous Waste)	900	Perfect Bound	81	Camera Ready
Environmental Protection (Land Bureau)	300	Loose - 3 hole	113	Camera Ready
Environmental Protection (Solid Waste)	500	Loose 3 hole	184	Camera Ready
Environmental Protection (Solid Waste Regs.)	1500	Perfect Bound	306	—
Environmental Protection (Solid Waste)	1500	Loose 3 hole	184	Camera Ready
Environmental Protection (Solid Waste)	100	Loose 3 hole	184	Camera Ready
Environmental Protection (Underground Storage Tanks)	500	Saddle Bound	88	—

<u>AGENCY</u>	<u># COPIES</u>	<u>BINDING</u>	<u>PAGES</u>	<u>CAMERA READY OR TYPSET</u>
Fish and Wildlife	1200	Loose Pages	192	Camera Ready
Fish and Wildlife (Beaver Regs.)	1500	Saddle Bound	20 + cover	—
Fish and Wildlife (ice fishing regs.)	250000	Saddle Bound	32	Camera Ready
Fish and Wildlife (Regs.)	1200	—	156	Camera Ready
Forest Service	500	Loose Pages	328	Camera Ready
Groundwater	2000	Perfect Bound	144 + cover	Camera Ready
Human Services	1200	Loose Pages	388	Camera Ready
Human Services (Foster Homes)	5000	—	20	—
Human Services (Lic. Day Care Homes)	10000	Saddle Bound	16	—
Human Services (Regs. of Day Care Centers)	10000	Saddle Bound	40	—
Maine Human Rights Comm. (Employment Regs.)	500	Saddle Bound	36	—
Motor Vehicle	10000	Loose Pages	192	Camera Ready
Nursing	2000	Saddle Bound	32 + cover	Full Typeset
Prof. & Finance	20000	Saddle Bound	72	Camera Ready
Real Estate	15000	Saddle Bound	72 + cover	Full Typeset
State Police	500	Saddle Bound	20	—
State Police	500	Loose Pages	20	Camera Ready
Taxation	1000	Perfect Bound	128 + cover	Camera Ready
Taxation	2000	Perfect Bound	320	Camera Ready
Taxation (Rule 301)	1800	—	1 folded	Camera Ready
Taxation (Rule 303)	3000	—	1	—
Taxation (Rule 304)	5000	—	1	—
Workers' Compensation	25000	Saddle Bound	20 + cover	Full Typeset
Workers' Compensation	6000	Saddle Bound	84 + cover	Camera Ready

1058NRG

(prepared from a document submitted by Germaine Rocque, Director of State Printing)

Appendix F

Comparative Chart of Data Base Options

A.P.A.

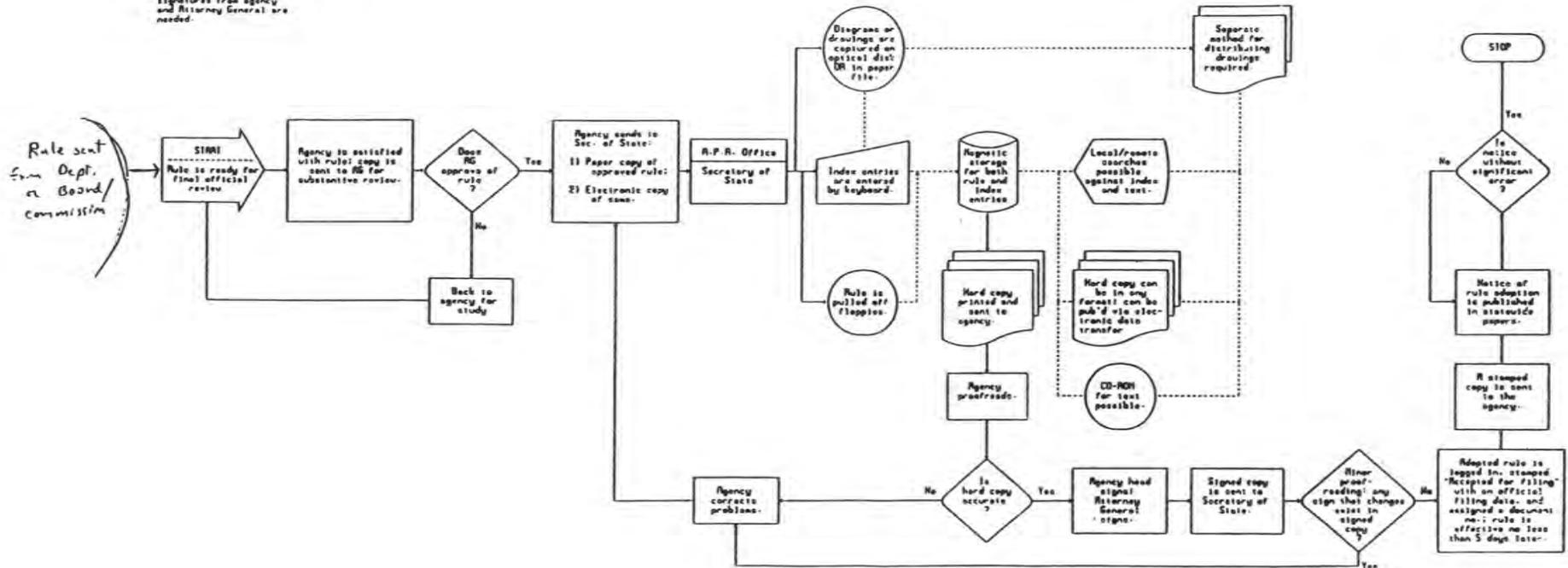
Comparative Chart

	<u>Paper option</u>	<u>Optical Disk</u>	<u>Text File</u>
Production alternatives:			
Paper copies	Text can be copied page by page only; no text manipulation.	Text images can be copied page by page only; no text manipulation.	Any format.
Local or remote computer searching	Index only.	Index only.	Full text.
CD-ROM	No.	No.	Yes.
Full text subscription cost to subscribers	Somewhere around \$1825, with increases based on method and frequency of updating.	Somewhere around \$1825, with increases based on method and frequency of updating.	Paper: guess about \$1200 (because font flexibility saves paper), with increases depending on method and frequency of updating. CD-ROM: as cheap as \$250, with increases depending on method and frequency of updating.
Method for producing back-up security copies.	Duplicate our 22,000 page paper file and store elsewhere; copy all updated rules and send them to storage.	Produce second copy of each optical disk and store elsewhere.	Computer file routinely backed up and stored elsewhere; CD-ROM's would be widely scattered duplicates in machine readable form; CD-ROM vendor would have the database also.
Possible market penetration (statewide distribution)	Limited.	Limited.	Deep penetration possible through public library and law office CD-ROM infrastructure.
Public Access at Secretary of State.	Restricted: supervised handling or copying of paper.	Good, if image reader is placed in public services area of floor.	Excellent, if searching terminal with security-protected access to database, <u>OR</u> a CD-ROM drive and computer, is placed in public services area of floor.
Index/abstract creation implications	Labor-intensive at Secretary of State.	Labor-intensive at Secretary of State.	Probable: built into text file manipulation and search software.

Appendix G
Digital Text File Flow Chart

A.P.A. Digital Text File Option

Agency procedures unchanged until final signatures from agency and Attorney General are needed.



Rule sent from Dept. or Board/Commission

START

Agency is notified with rule copy is sent to RG for substantive review.

Does RG approve of rule?

Back to agency for study

Agency sends to Sec. of State:
1) Paper copy of approved rule;
2) Electronic copy of same.

A.P.A. Office
Secretary of State

Diagrams or drawings are captured on optical disc OR in paper file.

Index entries are entered by keyboard.

Rule is pulled off floppies.

Magnetic storage for both rule and index entries

Hard copy printed and sent to agency.

Agency proofreads.

Is hard copy accurate?

Agency corrects problems.

Agency head signs.
Attorney General signs.

Signed copy is sent to Secretary of State.

Minor proof-reading: any sign that changes text in signed copy?

Adopted rule is logged in, stamped "Accepted for filing" with an official filing date, and assigned a document no.; rule is effective no less than 5 days later.

Separate method for distributing drawings required

STOP

Is notice significant error?

Notice of rule adoption is published in statewide papers.

A stamped copy is sent to the agency.

Appendix H
Discussion of CD-ROM Issues

July 11, 1990

to: Lars Rydell
Assistant Deputy for Public Records

from: Don Wismer
Director of Rules *DW*

subj: CD-ROM as it relates to Maine Rules distribution

In considering Senator Berube's concern regarding statewide public access to Rules:

Site considerations

The library CD-ROM infrastructure is even more extensive than I stated yesterday. By September there will be 230 sites around Maine with CD-ROM capability. This is still growing at 50-60 per year. With about 750 libraries in Maine of all types (school, public, academic, business/medical), there is an obvious limit on this growth. Some untrained "librarians" in the smallest libraries around Maine will not tie into MaineCat, so the site ceiling is lower than 750--probably 500-600.

But the significant fact is that there is now in place, all over Maine, accessible sites for a possible CD-ROM version of the Rules. You may know that Maine has a statewide library depository system for public access to published state documents. The total number of state depositories: 12. Yet this has been considered for years to be adequate for access. A 230-site infrastructure, then, is an extremely deep penetration of Maine's demography.

Cost considerations

If the Rules were all in machine readable form, I would guess that we would have a 20-30 megabyte file. CD-ROM disks hold 550 megabytes. There is ample room for growth or for the addition of other products on single disks.

To produce such a disk, an operation such as ours would use one of 40 software products in the marketplace. Each of these has two components: "build" software, by which the file is prepared for shipment to the disk manufacturer; and "search" software, to bundle with the resulting disks.

There is a wide variation in software costs. One of the least expensive products is called KA-WARE, strong on keyword access and boolean searching power; it costs \$795, with licensing for 100 sites; each site thereafter costs \$25. A more expensive but well regarded product is ROMWARE, which has a flat fee in the \$10,000 range and includes unlimited site licensing.

Once the file has been massaged, it is sent to a manufacturer for mastering and disk production. This costs from \$1,500 to \$2,000, and includes delivery of 50-100 disks, with each disk thereafter costing in the \$3.50 range.

Delivering 200 disks of Rules on an annual basis to 200 sites would cost the first year, excluding mailing, user manual production, and other office costs:

<u>Using KA-WARE</u>	<u>Using ROMWARE</u>
First year	First year
A 386 computer: \$ 5000	A 386 computer: \$ 5000
KA-WARE (includes 100 sites): 795	ROMWARE 10000
100 additional sites: 2500	Disk production and 50 disks: 2000
Disk production and 50 disks: 2000	150 additional disks: 525
150 additional disks: 525	Total \$ 17525
Total \$ 10820	
 Second year and beyond	
Disk production and 50 disks: \$ 2000	
150 additional disks: 525	
Total \$ 2525	

This is far cheaper than paper-published versions would be. There is great flexibility too, given the room on the disk for extra products the Secretary of State might want to produce. Law offices would find it in their interests to purchase a CD-ROM reader (\$250) for their IBM compatible computers, rather than spending nearly \$2000 for a paper-published version.

I'm not saying that paper is unthinkable; a few copies might be produced on an on demand basis, for example.

The bottom line here, as in most of the options that seem attractive to the Committee, is that we must first put the file into machine readable format. This is the critical first step in all future planning, even if the CD-ROM option is not exercised.

Most of the above information is from a nationally published expert in the field, Karl Beiser of the Maine State Library. His office in Orono can be reached at 581-1656. I hired him into his present position, in fact; his primary responsibility is managing the MaineCat program.

Appendix I

A.P.A. Backfile Conversion Options and Ongoing Operational Costs

A.P.A.

Backfile Conversion Options and Ongoing Operational Costs

Description	One-time cost for basic equipment and/or conversion	Method and cost of full text security backup copy.	How long will full conversion take?	Extra staff required	Ongoing paper publication costs (per update)	One-time cost for CD-ROM publication	Ongoing CD-ROM publication costs (per update)
Paper option Backfile is indexed, but full text is not converted to machine readable form.	80386 microcomputer: \$4000. Indexing software: \$1500. Laser printer: \$2000.	Photocopy 22,000 paper pages @ .04/pg.: \$ 880.00.	No conversion.	Staff to make backup photocopy: .5 F.T.E. for 2 weeks.	Printing complete rules: \$1800. Printing index only: \$200.	No CD-ROM.	No CD-ROM.
Optical disk option Backfile is scanned using preexisting Corporations equipment; work station for reading resulting disks is required.	Optical image station (for reading disk images): \$15,000. Laser printer: \$2000. (Software is part of Corporations network.)	Producing second optical disk: \$200.	No conversion other than making a disk of images. For that, 1 year.	Project personnel (need details of how many for how long).	Printing complete rules: \$1800. Printing index only: \$200.	No CD-ROM.	No CD-ROM.
Text File Option: backfile is converted to digital machine readable form.							
Method A Service bureau keys in or OCR's 22,000 page backfile and edits for format and accuracy.	80386 microcomputer: \$4000. Indexing software: \$1500. Laser printer: \$2000. Photocopy of full set for sending to service bureau: \$880. Service bureau costs: Saztec (which keys in) suggests \$100,000 with 99.95% accuracy. Aagil (which OCR scans and edits) suggests \$47,000 with 99.6% accuracy. Total: between \$55,380 and \$108,380. (Obviously would go out to bid.)	A photocopy of the full rules is made as an initial step in working with the service bureau.	From photocopying full set to receipt of text file on tape: less than 6 months. Quality control check and agency sign-off: 1 year.	Staff to make photocopy of full set of rules: .5 F.T.E. for 2 weeks. Project staff for quality control: 1 F.T.E. for 6 weeks. If decision to proof entire database, and if Sec. of State does: 4 people full time for 1 year. If we depend on vendor's accuracy and ask agencies to sign off on result: none.	Complete printing of rules: \$1200 (because greater format control reduces page count). Printing index only: \$200.	CD-ROM disk drive: \$500. Text preparation/ searching software: \$2500.	CD-ROMmastering and 100 disk production per update: \$2000; cost for each disk beyond 50: \$3.50.
Method B Gradual conversion through OCR technology and solicitation of floppies.	80386 microcomputer: \$4000. Indexing software: \$1500. Laser printer: \$2000. OCR scanner and software: \$10,000. Bridge software: already in place.	Photocopy 22,000 pages @ \$.04/pg.: \$880.	2-3 years.	Staff to make photocopy of full set of rules: .5 F.T.E. for 2 weeks. Scanning staff: .25 F.T.E. for 2-3 years. Proofreading burden on Sec. of State will require 2 F.T.E. positions for 2-3 years.	Complete printing of rules: \$1200. Printing index only: \$200.	CD-ROM disk drive: \$500. Text preparation/ searching software: \$2500.	CD-ROMmastering and disk production per update: \$2000.
Method C Gradual conversion through solicitation of floppies and keyboarding remainder.	80386 microcomputer: \$4000. Indexing software: \$1500. Laser printer: \$2000. Bridge software: already in place.	Photocopy 22,000 pages @ \$.04/pg.: \$880.	2-3 years.	Staff to make photocopy of full set of rules: .5 F.T.E. for 2 weeks. Proofreading burden on Sec. of State will require 2 F.T.E. positions for 2-3 years; keyboarding will require 1 F.T.E. for 2-3 years.	Complete printing of rules: \$1200. Printing index only: \$200.	CD-ROM disk drive: \$500. Text preparation/ searching software: \$2500.	CD-ROMmastering and disk production per update: \$2000.

Appendix J

Survey of State Changes for Code and Supplements: 1989

**States Charges for Code
and Supplements - 1989**

State	Number Vols	Set Cost	Annual Supp. Cost
Arizona	15 Vol	\$540.	\$90 /yr
California	25 Titles	1,913	1,545
Connecticut	10 Vol	302	38
Florida	17 Vol	710	265
Illinois		200	52
Indiana	9 Vol	220	33.60
Iowa	12 Vol	880	265
Kansas	4 Vol	55	55
Kentucky	5 Vol	150	48
Louisiana	no compilation		45
Minnesota	10 Vol	160	130
Missouri	8	330	35
Nebraska	34 Vol	400	150
New Hampshire	5 Vol	250	45
New York	63 Vol	2,772	450
North Carolina	52 Vol	750	350
Ohio	9 Vol	820	250
Oregon	7 Vol	300	240
Pennsylvania	7 Vol	735	256
South Carolina	4 Vol (publ. with Laws)	75	50
South Dakota	74 Titles	115	20
Texas	16 Vol	365	75
Utah	4 Vol	150	48
Washington	10 Vol	340	150
Wisconsin	19 Vol	250	350
Puerto Rico	Catalog & bulletin	225	225

Source: Telephone Survey by Helen Ginder, 1989

Appendix K
Proposed Legislation

APPENDIX K:

PROPOSED LEGISLATION OF THE REPORT
BY THE COMMISSION ON CODIFICATION OF RULES

FIRST REGULAR SESSION

ONE HUNDRED AND FIFTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

AN ACT to Codify the Rules of Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA § 501-A, first paragraph, is amended to read:

The publications of all agencies and the University of Maine System and the Maine Maritime Academy may be printed, bound and distributed, subject to Title 5, sections 43 to 46. The State Purchasing Agent may determine the style in which such publications may be printed and bound, with the approval of the Governor. At least 55 copies of any annual or biennial report, not included in the Maine State Government Annual Report provided for in Title 5, sections 43 to 46, shall be delivered to the State Librarian, immediately upon receipt by the State Purchasing Agent for exchange and library use; the balance of the number of each such report shall be delivered by the State Purchasing Agent to the agency preparing the report. Any agency or legislative committee issuing publications shall deliver 18 copies of all publications to the State Librarian. These copies shall be furnished at the expense of the issuing agency. Publications not furnished upon request will be reproduced at the expense of the issuing agency. The agency or committee preparing a publication shall have the authority to

determine the date on which a publication may be released, except as may be otherwise provided by law. The Secretary of State shall deliver 18 copies of the codified rules of Maine, including supplements to those rules and replacement volumes, to the State Librarian at no cost to the State Librarian.

Sec. 2. 5 MRSA § 8053-A, sub§-4 is amended to read:

4. Adopted rules. When an agency adopts rules, it shall provide a copy of the adopted rules, the statement required by section 8052, subsection 5, and the checklist required by section 8056-A to the Secretary of State who shall ~~compile~~ codify the adopted rules by agency.

Sec. 3. 5 MRSA § 8056, sub§-3 is amended to read:

3. Secretary of State. The Secretary of State shall:

A. Maintain and make available at his office, for inspection at no charge and for copying or purchase at actual cost, current copies of complete rules for all agencies filed in accordance with subsection 1, paragraph B;

A-1. Compile, edit, index and arrange for publication and distribution all current rules of state agencies. The rules of all state agencies shall be codified in accordance with sub-section 7. This codification shall be maintained on an electronic text file data base. Codifications ~~Compilations~~ shall be supplemented or revised at least annually; and

B. Supply, at actual cost, annually updated copies of complete sets of rules of an agency to any person who has filed with the Secretary of State within the past year a written request for such sets of rules.

C. Codifications of the rules and any supplements or replacement volumes may be made available through arrangements with a publisher.

Sec. 4. 5 MRSA § 8056, sub§-7 is enacted to read:

7. Codification of the rules. The Secretary of State shall codify all current rules of state agencies and shall maintain an up-to-date codification through supplements or replacement volumes. The rules contained in the codification and any supplements or replacement volumes, printed and published under contract or by the Secretary of State, shall constitute, prima facie, evidence of the rule if the publication has been certified by the Secretary of State as

provided in sub-section 8 as indicated in accompanying notes to the publication. If any supplements or replacement volumes are published regarding a specific rule, only that rule or portion of a rule contained in the latest publication shall constitute, prima facie, a state agency rule.

The codification of the rules shall be published in a paper format and, to the extent resource are available, in an electronic format; except that codification of the rules shall not be published in loose-leaf paper format or in hard-bound paper format. The codification shall contain a table of contents, an index, and a history and may contain any other features desirable to provide assistance in utilizing the codification.

The Secretary of State shall mandate the form for drafting rules to be used consistently by all state agencies.

8. Certification of codified rules. The Secretary of State may certify the codification of rules and any supplements or replacement volumes to that codification to be a correct transcript of the text of the original rules. To entitle any codification of the rules to be read in evidence, there shall be contained in the same book a printed certificate of the Secretary of State that such copy is a correct transcript of the text of the original rules. A facsimili of the signature of the Secretary of State imprinted by or at his direction shall have the same validity as his written signature.

Any publication of a rule or rules which is not certified by the Secretary of State must bear the following notice conspicuously on that publication: "These rules are (or this rule is) not certified by the Secretary of State and is not an official copy of the rules (or rule)."

Sec. 5. 5 MRSA § 8056-A sub§§-2 & 3 are amended to read:

2. **Technical assistance.** The Secretary of State shall develop uniform drafting instructions for use by all agencies that propose rules under this subchapter and shall compile those instructions in a drafting manual. In addition, the Secretary of State shall provide assistance to any agency regarding the mandatory form for drafting of rules and supporting materials and the other requirements of this subchapter.

3. **Report.** The Secretary of State shall report to the Governor and the joint standing committee of the Legislature having jurisdiction over state and local government prior to February 1st of each year with respect to rule-making activities for the prior year. The report shall include statistical information on agency rule-making activities,

agency experience with procedural requirements of this subchapter, an evaluation of the codification process, impact of the codified set of rules on state agencies and users of the rules, and recommendations for improvements to the rule-making process. In preparing the report, the Secretary of State shall solicit comments from agencies and their legal counsels, the Director of Legislative Oversight and the public on this subchapter and recommended improvements.

STATEMENT OF FACT

This legislation implements the recommendations of the Commission to Study the Codification of the Rules. It requires the Secretary of State to codify the rules of Maine state agencies and authorizes certification of that codification as prima facie evidence of the rule in court. It further mandates a uniform drafting style and format for all state agencies adopting rules. It also provides for marketing and distribution of the codification and ensures that the State Librarian, who now receives 18 copies of the rules, will continue to receive 18 copies of codified rules. Finally, it directs the Secretary of State to report annually to the Legislature on the progress of implementing the codification and impact of users of the Code.

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