

# MAINE STATE LEGISLATURE

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*Bureau of Corporations, Elections, and Commissions*



*Department of  
the Secretary of State*

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Gary Cooper  
*Deputy Secretary of State*

January 28, 1992

to: **Hon. John McKernan**  
Governor

from: *Gary Cooper*  
Deputy Secretary of State

subj.: **Annual report on rule-making activities**

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In accordance with 5 MRSA §8056-A sub-§3, I submit this report on rule-making activities for calendar year 1991.

**Statistics**

State agencies adopted 508 rules in 1991, a 12% decrease from the 577 rules of 1990.

Agencies proposed 321 rules in 1991, a 21% decrease from the 406 proposed in 1990.

The total number of active rules on file as of December 31, 1991 was 1,792. Of these, 244 are also on computer, though 188 of these are not fully edited or proofed.

**Survey responses**

We received 18 responses to a survey form sent to rule-making agencies in December, 1991. Of these, 4 suggested no changes. One agency suggested a closer look at the requirements behind the basis statement and summary of comments. One agency criticized advance approval for payment of the costs of rule-making newspaper advertisements, a new procedure we initiated due to staff cutbacks. One agency said this: "Unfortunately, all of the staff having dealt with APA no longer work at (the agency), therefore we are unable to comment."

11 agencies, more than 60% of respondents, criticized the new procedures for filing the annual regulatory agenda. The regulatory agenda is governed by 5 MRSA §8060; the requirement is that agencies annually submit to the appropriate legislative committee a list of expected rule-making activities for the coming year. A new law, PL 540, was

enacted as emergency legislation without hearing at the end of the last legislative session, removed from agencies the power to enact non-emergency rules if they weren't on the most recently filed agenda. Because the agenda must be filed within 100 days of the end of a regular legislative session, there is now a period of time every year in which new non-emergency rules cannot be initiated unless they were anticipated on the agenda.

In critique, one agency said that certain rule-making needs are "extremely difficult to forecast"; this sentiment was echoed by several other agencies. One agency said: "Repeal of regulatory agenda is appropriate; it provides little useful information to public since agencies are forced into placing 'dummy' items in it just to hold a place in case something comes up"; this also was echoed several times. One agency said: "The regulatory agenda is difficult to anticipate in advance. During the course of the year, federal law changes, state law changes (sometimes on an emergency basis), often with little notice before new rules must be implemented. Therefore, the agenda may not accurately reflect what happens during the year, nor are we able to make rules not appearing on the agenda. It puts us in a real bind." (Emphasis is the responding agency's.) Informal worries reached us regarding whether it was possible to proceed with rules initiated by citizen petition, which obviously could not be anticipated on the regulatory agendas.

The window for filing the regulatory agenda is defined by 5 MRSA §8060 sub-§2: "A regulatory agenda must be issued prior to 100 days after adjournment of each regular session of the Legislature." The Department of the Attorney General recently interpreted this to mean that an agenda could be filed any time from the beginning of a regular legislative session until the expiration of the 100 days after adjournment. Under this interpretation, there will be a period of time during the fall of every year when new non-emergency rules cannot be initiated if they did not appear on the agenda.

### **Codification and electronic text filing**

Just after passage of PL 554, which mandated codification and conversion of rules into electronic format "as available resources permit," we lost 1/3 of APA staff. Currently there is one full time APA staff member, with some backup for absences and vacation. This inhibits an aggressive drive toward the keyboarding or other conversion of current rules into accurate machine-readable form.

During the next year, we plan to enter into our own rule-making for electronic rule filing as mandated by 5 MRSA §8056 sub-§8.

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