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**Report of the
Ad Hoc Working Group to Improve Public Understanding
and Participation in the Rulemaking Process**



Prepared by:

Maine Department of the Secretary of State

at the request of

The Joint Standing Committee on State and Local Government

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June 19, 2007



MATTHEW DUNLAP
SECRETARY OF STATE

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OF THE
SECRETARY OF STATE

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June 20, 2007

Honorable Elizabeth M. Schneider
Chair, Joint Standing Committee on State and Local Government
100 State House Station
Augusta, Maine 04333-0100

Honorable Christopher R. Barstow
Chair, Joint Standing Committee on State and Local Government
100 State House Station
Augusta, Maine 04333-0100

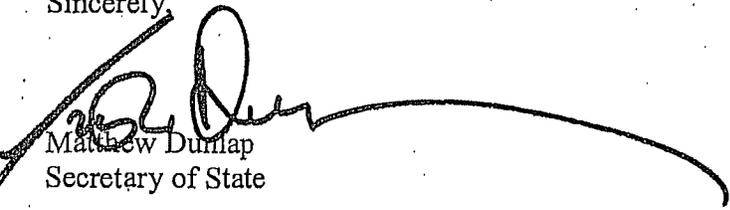
Dear Senator Schneider, Representative Barstow and Members of the Committee:

I am pleased to submit the attached report, reflecting the findings and recommendations of the working group I assembled in response to your letter of April 24, 2007. In that communication, you requested that my office convene an informal working group of stakeholders to improve the transparency of rulemaking under the Administrative Procedure Act.

The report summarizes the group's recommendations following four meetings and a survey of rulemaking agencies. We sought to complete this report and provide it to the State and Local Government Committee prior to the adjournment of the First Regular Session.

Of course, I am available to discuss the report and recommendations and I look forward to continuing to work with you as we strive to enhance the accessibility and transparency of the rulemaking process. As always, you may contact me at 626-8400 if I can provide you with any additional materials, answer any questions, or assist you in any way.

Sincerely,


Matthew Dunlap
Secretary of State

cc: Anna Broome

AUG 15 2014



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1. OBJECTIVE

The Joint Standing Committee on State and Local Government heard LD 734, *An Act To Improve Public Understanding in Rulemaking*, during the First Regular Session of the 123rd Maine Legislature. Ultimately, the committee voted Ought Not to Pass on the legislation, but requested in writing that the Secretary of State convene a working group to pursue further study of the issues in LD 734 and that those issues be examined, and recommendations be made for future legislative consideration. This report is the result of the work of that group.

2. METHODOLOGY

The Secretary of State convened a working group consisting of the following people: Rep. Ken Fletcher, R-Winslow, sponsor of LD 734; Andrea Erskine, Regulations Officer for the Department of Inland Fisheries and Wildlife; Mike Mahoney, Chief Counsel to the Governor and Karla Black, Deputy Counsel to the Governor; Alan Cobo-Lewis, University of Maine; Don Wismer, APA Coordinator for the Department of the Secretary of State; Secretary of State Dunlap served as facilitator for the group. Assistance was also provided by John T. Smith, Deputy Secretary of State.

The group met four times during the months of May and June. In the first meeting, group members reviewed their charge and generally discussed the rulemaking process. Further, the group determined that, in preparing its recommendations, it would be important to consider not only the laws and policies governing rulemaking, but also how those laws and policies are being put into practice by rulemaking agencies. To solicit this information, the group developed a series of questions for rulemaking agencies. Specifically, the group sought to learn how agencies prepare for and vet rule changes; what information they seek and rely on when constructing rules; how they engage the public; if Governor-appointed citizen panels are utilized; how they apprise the Legislature of their rulemaking activities; what information the Legislature seeks; and what role the Attorney General plays in reviewing their proposals.

Following the first meeting, surveys were sent to rulemaking agencies. Twenty six rulemaking agencies -- including department bureaus, boards, commissions, authorities -- responded. Survey questions and responses are attached in an appendix to this report. In the second meeting, group members reviewed agency feedback.

In subsequent meetings, informed by the review of the Administrative Procedure Act and agency survey responses, the group focused upon those areas with the greatest potential for improvement, and developed and refined recommendations accordingly.



3. FINDINGS

- There is potential to improve transparency in the rulemaking process; and this can be accomplished through a combination of changes in agency policies and practices; and in some cases the laws governing the process (as detailed in the recommendations and proposed legislation).
- While agencies appear to comply generally with the requirements of APA, there are significant variations in how they conduct rulemaking; most notably in the mechanisms and degree to which they interface with the public during rulemaking.
- There is potential to increase the user-friendliness of information made available on the internet, and there is potential to add additional useful information to help people interested in or impacted by specific rules to find relevant information quickly.
- Agencies often have multiple staff or divisions involved in the rulemaking process and it is not always be clear to citizens to whom they should direct inquiries about a given agency's rules. Providing a single point of contact can allow citizens a quick path to high level information about an agency's regulatory agenda as well as to detailed information and sources relevant to specific rule changes. While this is required in Title 5 Section 8051-A, there is no central repository for this information, and thus no easy way for citizens to identify where to direct inquiries.

4. RECOMMENDATIONS

- The Secretary of State should work closely with the Board of Directors and management at InforME to better sort, make searchable, and arrange rulemaking information on Maine.Gov.
- Agency websites should post or link to *adopted* rules (all adopted rules are posted centrally on the Secretary of State's website), and agencies should post *proposed* rules as well, along with other relevant information.
- The Secretary of State should work with agencies to assure that each has designated a person, as required in Title 5 Section 8051-A, 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 liaisons should serve to direct questions from the public about origins of proposed rules or amendments to existing rules, and to facilitate access to information supporting proposed rules and amendments. The liaison need not be the expert, but should be able to direct inquiries to staff who can answer queries in a timely manner.



- To provide citizens with a single location where all agency liaisons and their contact information can be found, the Secretary of State should serve as a repository for this information and should publish the same on the Secretary of State's website.
- Agencies should make available, where applicable, the names and contact information for Governor-appointed citizen members of review boards dealing with rulemaking.
- Legislative policy committees should more actively engage public appointees and liaisons who deal in the rulemaking process, and give thorough review to departmental regulatory agendas. This could be developed through better scheduling, start of session training for new members and orientation of chairs, or through an amendment to the rules to earmark a minimum amount of exposure to the process.
- In order to craft better Major Substantive Rules pursuant to statutory directive, agencies should be mandated to conduct public hearings on all proposed Major Substantive Rules except where, in the case of Emergency Major Substantive Rules, there is a Finding to support that the emergency prevents the agency from conducting a public hearing. (This is referenced in the suggested statutory changes included in Appendix A).
- More consistent use should be made of the Factual Basis for rulemaking. Not much is needed—no more than a one or two sentence executive statement on the purpose of the rule.
- The Notice of Rulemaking Proposal (MAPA 3) should be redesigned to include a field that would contain a summary paragraph that could be easily identified by any member of the public interested in the proposed rule. (An example of this redesign is included in Appendix B).
- A brief summary of the relevant information considered during construction of the rule should be provided at the time of proposal of the rule; and again at adoption, reflecting any additional information. (This is referenced in the suggested statutory changes included in Appendix A).



APPENDIX A: Suggested Statutory Changes to APA More Fully Describing Factual Bases & Requiring Public Hearing for Major Substantive

Sec. 1. 5 MRSA §8052, sub-§1 is amended to read:

1. Notice; public hearing. Prior to the adoption of any rule, the agency shall give notice as provided in section 8053 and may hold a public hearing, provided that a public hearing is held if otherwise required by statute or requested by any 5 interested persons or if the rule is a major substantive rule as defined in section 8071 subsection 2 paragraph B.

A public meeting or other public forum held by an agency for any purpose that includes receiving public comments on a proposed agency rule is a public hearing and is subject to all the provisions of this subchapter regarding public hearings.

Sec. 2. 5 MRSA §8052, sub--§§4-A to 4-C are enacted to read:

4-A. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a fact sheet, as described in section 8057-A subsection 1, including any additional information that arrived during the comment period described in subsection 4-B, explaining the factual and policy basis for the rule.

4-B. Comments and responses. The agency shall list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments. 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 were 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, listing the names of the persons who commented and the organizations they represent.

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 must include, in addition to other documents required by this Act, testimony, comments, the names of persons who commented and the organizations they represent 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 that the agency intends to adopt is substantially different from the proposed rule, the agency 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 must be published by the Secretary of State in the same manner as notice for proposed or adopted rules.

4-C. Major substantive rule; legislative act. If the adoption under subsection 4-A is final adoption of a major substantive rule under subchapter II-A, the agency must include in its written



statement citation of the legislative act authorizing final adoption of that rule; or, if authorization is the result of failure of the Legislature to act under section 8072, subsection 7, the agency must indicate that fact and identify the date the agency filed the rule for review under section 8072.

Sec. 3. 5 MRSA §8052, sub-§5 is repealed.

Sec. 4. 5 MRSA §8054 is amended to read:

§8054. Emergency rulemaking

1. Emergency. If the agency finds that immediate adoption of a rule by procedures other than those set forth in sections 8052 and 8053 is necessary to avoid an immediate threat to public health, safety or general welfare, it may modify those procedures to the minimum extent required to enable adoption of rules designed to mitigate or alleviate the threat found. Emergency rules shall be subject to the requirements of section 8056.

2. Agency findings. Any emergency rule shall include, with specificity, the agency's findings with respect to the existence of an emergency and with respect to any specific necessary procedural modifications under subsection 1, and such findings shall be subject to judicial review under section 8058. No emergency shall be found to exist when the primary cause of the emergency is delay caused by the agency involved.

3. Emergency period. Any emergency rule shall be effective only for 90 days, or any lesser period of time specified in an enabling statute or in the emergency rule. After the expiration of the emergency period, such rule shall not thereafter be adopted except in the manner provided by section 8052.

5 MRSA §8057-A, sub-§1 is amended 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 proposed 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.; and

E. A brief summary of the relevant information considered during construction of the rule.



APPENDIX B: Redesigned Rule-making Forms

MAPA-3

Notice of Agency Rule-making Proposal / Cover Sheet

AGENCY UMBRELLA-UNIT NUMBER, NAME OF DEPARTMENT, BUREAU, INDEPENDENT AGENCY:

CHAPTER NUMBER AND TITLE OF THE RULE:

TYPE OF PROPOSAL (check one):

- new rule partial amendment(s) of existing rule repeal of rule
- repeal and replace: complete replacement of existing chapter, with former version repealed

PROPOSED RULE NUMBER (leave blank - assigned by secretary of state):

BASIS STATEMENT / CONCISE SUMMARY

(a brief explanation on why this rule is being proposed and how it will operate)

THIS RULE (check one) WILL WILL NOT HAVE A FISCAL IMPACT ON
COUNTIES AND OR MUNICIPALITIES.

STATUTORY AUTHORITY:

PUBLIC HEARING (if any, give date, time, location):

DEADLINE FOR COMMENTS:

CONTACT PERSON (name/address/phone/e-mail of agency contact person / rule liaison):

Please approve bottom portion of this form and
assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY	ORG	APP	JOB	OBIT	AMOUNT
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MAPA-4

Notice of Agency Rule-making Adoption

AGENCY UMBRELLA-UNIT NUMBER, NAME OF DEPARTMENT, BUREAU, INDEPENDENT AGENCY:

CHAPTER NUMBER AND TITLE OF THE RULE:

ADOPTED RULE NUMBER *(leave blank - assigned by Secretary of State)*:

TYPE OF ADOPTION *(check one)*:

- new rule partial amendment(s) of existing rule repeal of rule
- repeal and replace: complete replacement of existing chapter, with former version repealed

BASIS STATEMENT / CONCISE SUMMARY

(a brief explanation on why this rule is being adopted and how it will operate)

EFFECTIVE DATE *(to be filled in by Secretary of State)*:

CONTACT PERSON *(name/address/phone/e-mail of agency contact person / rule liaison)*:

Please approve bottom portion of this form and
assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY	ORG	APP	JOB	OBIT	AMOUNT
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MAPA-1

Rule-Making Cover Sheet

1. Agency umbrella-unit number and name of Department/Bureau/Independent Agency:

2. Chapter number (3 digits or fewer) and title of the rule:

3. Type: new rule partial amendment(s) of existing rule
 repeal of rule emergency rule
 repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.

4. Name/phone/e-mail of agency contact person:

5. ONLY if this is a MAJOR SUBSTANTIVE RULE under Title 5 c. 375 sub-c.II-A, check one of the following: Provisional adoption (prior to Legislative review) Final adoption
 Emergency major-substantive adoption

6. Basis Statement – a brief explanation on why this rule is being adopted and how it will operate.

7. Certification Statement: I, _____, hereby certify that
(name of official empowered to adopt rules)
the attached paper document and associated electronic version are true copies of the rule(s) described above. I further certify that all portions of this rule have been adopted in compliance with the requirements of the Maine Administrative Procedure Act by the

_____ on _____
(name of agency board or commission independent agency) (date)

Signature: _____
(original signature, personally signed by the person empowered to adopt rules)

Printed name/title/date of signature: _____

8. Approved as to form and legality by the Attorney General on _____
(date)

Signature: _____
(original signature, personally signed by an Assistant Attorney General)

Printed Name: _____

File with the APA Office, Secretary of State, 101 State House Station, Augusta, ME 04333.

MAPA-1

APPENDIX C: SURVEY OF RULEMAKING AGENCIES

Responding Agencies / All Questions

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Administrative and Financial Services

18 125 Bureau of Revenue Services

Maine Revenue Services ("MRS") prepares rules in three circumstances, namely: (1) as directed by the Legislature; (2) in response to changes in statutory law; and (3) as needed to address ambiguities in statutory law or to assist taxpayers in issues of tax administration and compliance. Rules falling into the third category are prompted by a variety of sources, including taxpayer questions, comments from tax professionals, observations from audits and other taxpayer reviews, and internal discussions at Maine Revenue concerning guidance that we believe is needed.

In preparing rules, MRS uses a collaborative drafting and review system that involves multiple horizontal and vertical layers of input within the Bureau, to ensure legal accuracy of the rule, ease of reading/comprehension, and reasonably minimal administrative burden for taxpayers and MRS. For guidance, we draw upon rules promulgated in other states and by the federal government.

In accordance with Maine law, MRS publishes rules for public comment prior to rule finalization. From time-to-time we also assemble ad hoc working groups of tax professionals to advise us, prior to publication, on the reasonableness and administrability of proposed rules and rule changes.

The vast majority of our rules are routine, technical rules requiring no direct input from the Legislature and the Legislature rarely initiates information requests concerning MRS rules. Accordingly, the Legislature is generally apprised of MRS rulemaking activities in the same fashion as the general public.

In our rulemaking process MRS works closely with the Attorney General's office to confirm that our proposed rules: (1) are sufficient in form and legality, in accordance with State rule promulgation requirements and procedures; and (2) are consistent with positions the Attorney General's Office is taking on behalf of MRS in litigation.

Finally, please note that MRS rules promulgation is carried out in strict compliance with Governor Baldacci's Order Regarding Executive Review of Administrative Rulemaking, issued by the Governor on May 19, 2003.

N NA Department of Administrative and Financial Services (GENERAL RESPONSE)

The bureau would consult with stakeholders and interested parties, as appropriate, prior to beginning the rulemaking process to receive information (depending on the subject matter). Once the actual rulemaking is undertaken, no ex parte communication is allowed. Input or comment by the public, stakeholders, and interested parties (including Legislators) is solicited as part of the formal rulemaking process. There have been occasions when there is considerable input at a public hearing and while the rule may not have been substantially redrafted, sufficient to meet the statutory requirement to hold a second hearing, however, a second hearing was noticed and held, nonetheless, in order to ensure as much public participation as possible.

Consultation with the public in general is done in accordance with the public notice, public hearing and public comment periods required by law to ensure any interested person has the opportunity for input. The goal of the Department, which we also understand to be the goal of the law, is to ensure necessary information is available to both the public and the Department, and for any proposed rules to be well and fairly considered prior to adoption. Stakeholders and other interested parties, including any other agencies or boards/commissions may be consulted, as outlined above. I am not aware of any all-purpose citizen panel that would be consulted for rulemaking in general for our department, but any citizen panel with a specific mission that was relevant to a proposed rulemaking would be considered a stakeholder in that particular rulemaking process and certainly would be noticed and welcome to provide comment in accordance with the rulemaking process.

Most of the rulemaking authority for the department is routine technical, and as such, is subject to the public notice requirements of the law. The Department annually files its Regulatory Agenda (which outlines and provides notice to the Legislature of anticipated rulemaking) with the Executive Director of the Legislative Council for distribution to committees of jurisdiction, as required by statute. Depending on the nature of the rulemaking, a further courtesy notice may be provided to our legislative committee of jurisdiction when it is conducted. As required by statute, major substantive rules are preliminarily adopted with final review by the Legislative committee of jurisdiction.

The Attorney General's Office always reviews the proposed rule and provides the final authorization before final adoption. In some instances, additional consultation may be undertaken with the Attorney General's Office during the actual drafting of the rule.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Agriculture, Food and Rural Resources

01 001 Agriculture General

Division of Quality Assurance & Regulations: When rule changes are needed it is usually (1) due to changes in technology and/or business practices or (2) due to a change in the law or a directive from the legislature. We generally examine other states rules and speak with the authorities in those states, national regulatory agencies, business trade organizations and local businesses affected by the rule. If the change is directed by the Legislature, there is usually a group of stakeholders identified either directly or indirectly.

Division of Animal Health & Industry: Whether we are revising or developing a new rule, we convene a stakeholders working group to begin the process. Often this involves other state agencies, but always the regulated community. We prepare a document prior to commencing the APA process. This expedites the process, but more importantly gives the regulated community a voice. It does not however preclude us from proposing contrary revisions or new rules.

01 026 Board of Pesticides Control

The Board holds an annual planning session to review complaints/problems over the past year and determine if specific rule changes are needed. The Board also receives letters from the regulated community and citizen groups pointing out the need for new rules or amendments to existing rules. In Plant Industry, state and federal agencies plus the regulated community are more apt to point out the need for rule-making than citizen groups. Needed information includes the number of times a problem has been identified, whether the problem creates a health or environmental risk, what the economic impact might be and how the problem has been addressed in other states.

01 015 Maine Milk Commission

The Maine Milk Commission follows the procedure proscribed in the Administrative Procedures Act (APA). Secondly, the Secretary of State's Office, (Don Wismer) is very helpful with procedural questions, deadlines, forms, etc.

01 017 State Harness Racing Commission

The Maine Harness Racing Commission (Commission) follows the procedures outlined in Title 5 of the Maine Revised Statutes Annotated.

Division of Quality Assurance & Regulations: We contact trade groups and stakeholders once a draft or proposed rule has been formulated to discuss the issues surrounding adoption of the rule. This process is somewhat cumbersome but this way we can identify all of the unforeseen issues and achieve "buy in" by as many stakeholders as possible prior to holding a public hearing. If citizen panels are appointed, we will utilize them also.

Division of Animal Health & Industry: We are required to submit 20 copies of the Fact Sheet to the Legislative Council who then passes it along to the Joint Standing Committee of jurisdiction. Often times, we will notify the ACF in writing or when in session, at a committee briefing. Over the last several years, the ACF has demanded that most new rules become major substantive.

Trying to engage the public in the development of a rule while staying in compliance with the APA is a major frustration. The only proper way appears to be with consensus-based rule making and this is an expensive and lengthy process for anything other than the most controversial rule changes. Once the proposed rule is published by the Secretary of State, the public is notified through mailings and posting on our websites. We accept comments via e-mail but there is a downside to this in that it makes it too easy for activists from across the nation to flood the agency with identical form messages.

The Maine Milk Commission notifies as many interested parties as possible by e-mail or by regular mail in addition to the notification requirements in the APA.

The Commission accepts suggested rule changes or new rules from the industry, staff or within its members. The Commission then holds workshops to get input into wording before advertising any proposed changes or new rules. The Commission accepts public testimony after advertising its rule changes in the five major newspapers.

Division of Quality Assurance & Regulations: We send copies of rulemaking fact sheets to the Legislative Counsel. We have only been asked for information by the Legislature if the rule is major substantive. The Attorney General's Office reviews the rule prior to finalization and again after any changes (due to written and testimony from a public hearing), this review is essential to be sure that there are no conflicts within the rule or with existing laws.

Division of Animal Health & Industry: When revising a rule, we submit the revisions to the AAG for review and input. When proposing a new rule, we wait until we believe we have a "final" draft for his review. Once the AAG has reviewed, we begin the APA process.

We file the Regulatory Agenda and mention any potentially controversial rule making to the ACF when they visit the Department at the start of each session. Generally the legislators want to know who is going to be opposed and if it is due to increasing costs. We always run our rule-making initiatives by our Assistant Attorney General before sending notice to the Secretary of State. The AAG is also consulted before actually sending the final rule over for adoption.

The Maine Milk Commission provides the rule-making FACT SHEET to the Legislative Council for each rule making as required by the APA. The AG's office reviews and signs off as required by the APA. Additionally, the AG's office will provide advice if asked.

The Cover Sheet is forward to the Legislative Council Office at the time the new rules or changes are forwarded to the Secretary of State's Office for advertising. The Assistant Attorney General reviews the proposed rules before they are advertised to ascertain that they comply with existing statutes.

Department of Conservation

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Conservation

04 059 Bureau of Parks and Lands

Division staff present issue to Bureau Director and Department Commissioner, if supported, than list on Department's regulatory agenda. Next issue(s) are discussed internally and existing rule is reviewed internally. Then issues are discussed externally with interested parties such as advisory boards/councils.

Discussions are held with advisory boards/councils and other interested parties. Advisory board established statutorily. In addition, at times guidance has been provided by Governor appointed Task Force.

Notification goes to the Legislature when copies of drafts are sent on "fact sheets" filed with the Legislative Executive Council. The Legislature seeks copies of proposed rules. First there is an initial consultation on issues with A.G.'s office, then they review/edit draft rules, and finally they review final rules prior to adoption.

04 061 Land Use Regulation Commission

At LURC, rule changes get prompted when something happens to make the agency realize the rule needs updating. Sometimes they are petitioned to change a rule.

LURC adheres to the process laid out in MAPA, with formal hearings and a comment period. The AG's office reviews all draft rules. The 7-member citizen commission then takes action during a public meeting.

Once a rule is provisionally adopted, it is sent to the legislative committee of jurisdiction, ACF along with your office. (It's worth mentioning that committee members get notice of all LURC meetings.)

It has been our experience that we have had no legislative feedback on rules that do not fall in to the Major Substantive category.

The AG's office reviews all draft rules.

04 058 Maine Forest Service

For Major Substantive Rules, which typically originate from legislation (both new and amendments), MFS does the following:

- *Identify the key issues debated at the legislative hearings;
- *Identify the key constituencies and affected interests;
- *Consult the appropriate technical and policy literature;
- *Review other states' regulations if they exist; and,
- *Convene a working group to develop either general agreements, a rule, or both.

MFS typically convenes a working group of key constituencies to assist it in developing a rule. We also publish notice of our rulemaking on our website and through email contact with a large list of interested parties. For minor routine technical rules, we may simply consult informally with key constituencies.

Major substantive rules (both new and amendments) typically originate from legislation. We brief the oversight committee at appropriate moments and, of course, at the required legislative hearing on the rule. The oversight committee typically asks questions about the rule's impacts on the regulated community, the costs of implementing the rule, and the science behind the rule. We are in constant contact with the Attorney General's office whenever we develop or amend a major substantive rule and ensure that we are in complete agreement before putting a draft rule out for public comment as well as publishing a final rule. If the rule is routine technical, information may be provided to the oversight committee via a letter and informal contacts rather than an official briefing.

For quarantine-related rulemaking that the Forest Health and Monitoring Division engages in (routine technical), their usual practice is to advertise the process in papers and through direct contact with stakeholder/constituent groups, conduct a hearing to accept oral testimony and accept written testimony. Occasionally, when there is no apparent controversy about the proposed rule changes, they have skipped the hearing process.

Department of Corrections

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Corrections

03 201 Department of Corrections / General

The information that is relied on by the Department of Corrections is primarily suggestions made by Departmental staff who have experience with the practical application of the rules and see the need for changes. Occasionally, legal advocacy organizations also suggest rule changes. More recently, changes have been made to Departmental rules in order to put them into compliance with ACA standards.

All proposed rules and rule changes are put out for public comment and public hearings are always scheduled. This includes placing copies of proposals in the libraries at the DOC facilities. As well, copies of proposed rules are sent to anyone who has asked to be notified. We have not in the past specifically notified facility Boards of Visitors about rule making, but this will be implemented for all future rule making affecting the facilities.

There is only one rule of the Department of Corrections that has been designated a major substantive rule requiring legislative approval by the Legislature (Batterer's Intervention Program). The Legislature is apprised of this rule per the statute's requirements. For all rules the appropriate documentation is sent to the Legislative Counsel as required by statute. To this point in time, the Legislature has rarely sought additional information. The AAG assigned to Corrections provides a preliminary review of all rule making proposals prior to their submission. In addition, the Attorney General's office is asked to approve every rule and rule change per the statute.

Department of Marine Resources

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Marine Resources

13 188 Marine Resources - General

Marine Resources regulations are initiated by industry representatives through established council groups, public request, and commissioner's office or via the petition process as outlined in Maine Administrative Procedures Act (APA). In accordance with the APA and Department of Marine Resources statutes emergency regulations have exception to this step.

The format of construction in a literal sense follows the guidelines in the APA. The practical usage is developed through a combination of what should make sense to the public user (typically the commercial and recreational fisheries and similar marine water users), enforcement, department staff and legal review by the agency's Assistant Attorney General.

Prior to rulemaking if an applicable industry council or group is established then staff meets and discusses the proposal. Depending on the issue this may be a few information meetings with the council or public, or it may take years, (the salmon health rules took 5 years). Or it may require a questionnaire/referendum council approval process such as in the lobster management zone system.

At the time of rulemaking the APA procedures of public notice in the 5 major newspapers is followed; and add local newspaper(s) notice if applicable. Utilize newsletters such as the Lobster Newsletter of informational updates or for hearings if it can meet the legal deadlines established by the APA. Post on the Department's web site, this is also referenced in the newspaper notices. Direct mailing to established rulemaking mailing list(s), applicable industry council, working group, task force, license holder lists (usually past and present year with duplicates removed), etc. Emergency regulation notifications follow the APA and Department statutes; typically emergency rule notices includes newspaper notices, web postings, emails to industry and enforcement/warden lists and in the case of shellfish the telephone hotline.

Following the close of the comment period when rules are reviewed and voted upon by the Department of Marine Resources Advisory Council copies of the Advisory Council meeting agenda, the basis statement and summary of comments are also forwarded to persons who attended or submitted written comments so they are made aware of the next step in the rulemaking process. In accordance with the APA all adopted agency regulations are published in the Secretary of State's Notice of Rulemaking Column in the 5 major newspapers. Additionally, depending on the rule content there is a follow up education phase of notification to the applicable license holder or general public by this agency. This may be done through direct mailings, Marine Patrol personnel, informational material added to the next license renewal notice, the DMR web page, newsletters, etc.

Citizen panels appointed by the Governor are utilized. To name a few: the DMR Advisory Council, Aquaculture Advisory Council, Commercial Fishing Safety Council, Fish Health Technical Committee, Lobster Advisory Council, Lobster Zone(s) (A, B, C, D, E, F and G) Management Council(s), Recreational Marine Fisheries Advisory Council, Scallop Advisory Council, Sea Urchin Zone (1 & 2) Council, and the Soft-shell Clam Advisory Council

Prior to rulemaking that rulemaking activity information is directed by Deputy Commissioner David Etnier unless a Legislator has requested to be on a specific mailing list or is a member of a respective council such as a Lobster Zone Management Council. At the time of rulemaking filing with the Secretary of State's Office the APA procedures are followed that require 20 copies of the Fact Sheet be filed with the Legislative Council.

Typically few questions come directly to staff or regulations officer from Legislators; questions generally are directed to the Legislature's liaisons' Deputy Commissioner David Etnier and Deidre Gilbert for Marine Resources.

In the case of major substantive rulemaking in accordance with the APA procedures copies of the basis statement and summary of comments along with most of the APA forms are submitted to the Marine Resources Committee for their review and consideration following the same review and vote by the DMR Advisory Council in the provisional major substantive rulemaking step.

The Assistant Attorney General (AAG) for Marine Resources (Mark Randlett) is provided a draft prior to rulemaking filing with the Secretary of State's Office for legal content review. Following the public hearing(s) and comment period the AAG is again requested to review the APA forms, basis statement, summary of comments and agency responses for legal content. Whereas the AAG is required to sign an adopted regulation the draft review is also considered a time saving step to avoid unnecessary repromulgation or starting over of a rulemaking process should it not meet legal muster. Repromulgation can also be costly as the notices in the newspapers and mailings would need to be repeated.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Professional and Financial Regulation

02 373 Board of Licensure in Medicine

The Board first enacts policies which are implemented and their impact monitored over time. When it appears rule making is in order staff makes contact with medical boards across the country to determine multiple solution options to the issues in question. Staff then drafts documents which receive multiple reviews by the board. Then informal feedback is collected from the interested parties – Maine Medical Association, Maine Hospital Association, and DownEast Association of Physician Assistants.

Ultimately, the board must approve a proposed rule. The proposed rule and related documents are then sent to the Assistant Attorney General who advises the board and to the Commissioner for executive review in preparation for commencement of the APA rulemaking process.

02 029 Bureau of Financial Institutions (formerly Bureau of Banking)

Rulemaking proposals are prepared by Bureau of Financial Institutions staff with the assistance of a staff attorney and then reviewed by the Superintendent, the Commissioner of DPFR and an assistant Attorney General, as required by the Executive Order 17 FY 02/03.

The Bureau does not do a significant amount of rulemaking. Generally, the Bureau creates rules when directed to do so by statute, though rulemaking is used to clarify law as appropriate. The need for rulemaking may become apparent through examination of financial institutions or after receiving requests for clarification of the Banking Code by the regulated industry.

In addition to the processes described which solicit input from concerned professionals, the board posts proposed rules drafts on its website and invites public comment.

Citizen panels are seldom used in rules drafting since the subjects are usually technical and specific to medicine. However 3 of the nine board members are public members, whose input is invaluable. They do seek comments on issues of concern. In addition, the board maintains an "interested parties" list, and all proposed rules are sent out for discussion in a form of consensus rule making.

The Bureau publicizes rulemaking proposals as required by the APA. Rulemaking notices are placed on our website and sent to lists of interested parties via email. The Bureau does not utilize citizen panels. Most rulemaking takes place without a hearing. The public is given an opportunity to submit comments on proposed rules. The Bureau evaluates comments and incorporates suggestions as appropriate. The comments, and the Bureau's response, are available to the public.

All rulemaking efforts utilize the full public notice process of the Secretary of State's Office. There are extensive requirements in the APA for legislative filings by rulemaking agencies that are followed. These include submissions during the rulemaking process and the annual filing of the legislative agenda through the Secretary of State.

The pre-legal review required by Executive Order is performed by the AAG who generally advises the board. For final approval, OLR sends the adopted rule to the AAG division chief, who assigns the statutory review to an AAG, as per the APA, who was not involved in the development of the proposed rules.

The Bureau provides notice to the Legislature via the Executive Director of the Legislative Counsel as provided by 5 MRSA§ 8053-A. The notice includes a fact sheet outlining the reasons for the rule, a description of the rule and estimate of fiscal impact. Thus far, the Bureau has only engaged in routine technical rulemaking.

The Office of Attorney General has two roles in the rulemaking process. First, under Executive Order 17 FY 02/03, prior to issuing notice of rulemaking and submitting a proposed rule to the Secretary of State for publication, the Bureau first seeks a legal Pre-Review from the Office of Attorney General. This is an informal review as to form and legality. The second review comes at the time of adoption and is required by 5 MRSA §§8052(7)(B) and 8056.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Professional and Financial Regulation

02 031 Bureau of Insurance

Rulemaking proposals are initially prepared by Bureau of Insurance staff and then subject to review by the Superintendent of Insurance, the Commissioner of DPFR and an Assistant Attorney General, as required by Executive Order 17 FY 02/03, prior to initiation of the A.P.A. proposal process.

The Bureau does a significant amount of rulemaking and information relied on may vary. Frequently the statutory authority for the rulemaking or other information provided by our committee of jurisdiction gives direction. In many cases, keeping in mind that our regulated industry is a national industry for whom uniformity of state laws is a consideration, the Bureau relies on National Association of Insurance Commissioner's Model Rules. In some cases, agency staff will need to create a proposal for consideration based on the agency's experience and judgment.

All rulemaking proposals are publicized through the consolidated rulemaking ad, on the Bureau's website, through mailings to the interested persons list and, in appropriate cases, through publication in appropriate trade journals. The Bureau of Insurance has converted much of our interested persons mailings to e-mail. This reduces expense and gets rulemaking correspondence to interested persons faster. Interested persons can still receive hard copies if they desire, however we found that the vast majority preferred electronic notification.

It should also be noted that a significant number of Bureau of Insurance rules are based on National Association of Insurance Commissioner (NAIC) Model Regulations. These models have been developed after a substantial process which includes input from industry representatives as well as funded consumer advocates.

Recently the Superintendent of Insurance has initiated consensus-based rulemaking with respect to two specific proposals that were particularly controversial. One of those projects has been successfully completed while the other is pending.

Last of all, in determining whether to conduct rulemaking with or without hearing, the Bureau of Insurance tries to err on the side of caution. Typically, the agency will hold a rulemaking hearing on all but the most rote, noncontroversial proposals.

Former Governor King issued an Executive Order directing agencies to review all existing rules. The Bureau of Insurance's rule review utilized stakeholder panels that reviewed and made recommendations with respect to all agency rules. These stakeholders were invited by the agency to participate in the process, were not formally appointed by the Governor and received no compensation from the State for their services. To the extent the recommendations suggested amending existing rules, amendatory proposals were then subject to the formal rulemaking process.

Other than that, the Superintendent of Insurance has not utilized citizen panels appointed by the Governor with respect to any rulemaking function.

Notice to the Legislature is given as provided in 5 M.R.S.A. §8053-A. Additionally, a number of legislators are on our interested persons list. Also, our regulatory agenda is filed with the Executive Director and is on the agency's website.

Members of the Legislature rarely seek information from the Bureau of Insurance regarding rulemaking proposals during the rulemaking process beyond the A.P.A. filings that are made. Of course, there are additional requirements with respect to legislative consideration of major substantive rules per the APA.

The Office of Attorney General performs two reviews with respect to all rulemaking: (a) a pre-proposal review done pursuant to Executive Order 17 FY02/03 (which the Bureau had previously sought of its own initiative), and (b) the preadoption review required by the APA.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Professional and Financial Regulation

02 030 Office of Consumer Credit Regulation

Rulemaking proposals are initially prepared by Office of Consumer Credit Regulation staff and are then reviewed by the Director, by the Commissioner of DP&FR and by an Assistant Attorney General prior to initiation of the APA proposal process. The Office does a moderate amount of rulemaking, and we rely on a wide variety of sources of information. Frequently, the Legislature gives direction through the wording provided in the statute that authorizes the rulemaking. In other cases, members of the committee of jurisdiction provide clear guidance. In some cases (for example, Truth-in-Lending and Truth-in-Leasing), federal laws or regulations provide set forth model language. In other areas (e.g., the agency's recent regulation addressing initial and continuing education requirements for loan officers), input from the public and affected industries is the primary source of information.

Rulemaking proposals are publicized through the state's consolidated rulemaking advertisement, on the Office's website, and through mailings to interested persons. Our agency develops interested parties e-mail lists, using e-mail addresses developed during legislative consideration of the laws that form the basis for rulemaking. Notification by e-mail reduces expenses and delivers rulemaking proposals to interested persons faster than printed and mailed notices.

Our Office has determined that, when addressing a controversial area (for example, loan officer education, or predatory lending standards), the most efficient way to proceed is to schedule and hold a public hearing. This process brings all viewpoints out, and results in submission of written and verbal testimony. It also helps the disparate parties to understand the breadth of opinions on complex issues.

To date, our Office has not utilized citizen panels with respect to any rulemaking function.

Notice to the Legislature is given as provided in 5 M.R.S. §8053-A. Additionally a number of legislators are on our interested persons list. Finally, our regulatory agenda is filed with the Legislature's administrative office.

Members of the Legislature often participate in the APA process, if the area under consideration (e.g., predatory lending) has important legislative policy or constituent ramifications. Other than that, Legislators usually rely on the APA filing materials and do not seek additional edification.

In addition to the pre-adoption review required by the APA, the Director of Consumer Credit Regulation usually utilizes a procedure wherein an assigned Assistant Attorney General reviews rulemaking proposals prior to their formal proposal. This reduces the risk that a proposed rule will make its way through the process only to encounter issues in the late stages of adoption. The two reviews are conducted by different Assistant Attorneys General.

02 041 Office of Licensing and Registration

More and more, the OLR boards appoint a rules committee to work with board staff and the OLR staff attorney to frame issues, research approaches and prepare drafts. Some boards (in particular, the Manufactured Housing Board) will include non-board members on the rules committee. Ultimately, the board must approve a proposed rule. The proposed rule and related documents are then sent to the Assistant Attorney General who advises the board and to the Commissioner for executive review in preparation for commencement of the APA rulemaking process.

The OLR boards that do not include non-board members on a rules committee do not seek formal input from affected professionals or the public when formulating the proposed rule. However, it is not uncommon for board members to discuss proposed rules or circulate drafts at professional conferences. Board staff and the OLR staff attorney will frequently make informational and resource contacts.

The OLR boards are citizen panels. But the OLR boards rarely engage in consensus rulemaking. Again, the Manufactured Housing Board has been most active in seeking industry input when formulating proposed rules.

Once the APA process commences, the OLR boards send the proposed rules to that board's list of interested persons. Although the APA only requires agencies to keep citizen requests for proposed rules on file for one year, OLR boards keep names on their interested persons list indefinitely. The boards also post APA notices and proposed rules on the OLR web site.

Virtually all rules proposed by the OLR programs are scheduled for public hearing. Usually, the hearing takes place as an agenda item during a regular board meeting. For boards that meet infrequently, a rulemaking hearing may be separately scheduled.

There are extensive requirements in the APA for legislative filings by rulemaking agencies that the committee members must familiarize themselves with. These include submissions during the rulemaking process and the annual filing of the legislative agenda through the Secretary of State.

When rules development is done by a board proper (as opposed to a rules committee), one OLR AAG participates extensively in the process. Because AAGs rarely attend rules committee meetings there is no participation by AAGs in rules development at rules committee meetings.

The pre-legal review required by Executive Order is performed by the AAG who generally advises the board or program. For final approval, OLR sends the adopted rule to the AAG division chief, who assigns the statutory review to an AAG, as per the APA, who was not involved in the development of the proposed rules.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Professional and Financial Regulation

02 032 Office of Securities

As described in the responses of the other DPFR agencies, the Office of Securities follows the APA and Executive Order 17 FY 02/03 in formulating rule proposals, engaging the public and notifying the Legislature, and thus, the following points relate only to matters that are unique to our operation.

The Office of Securities does only a limited amount of rulemaking. Concurrent with the passage of our new Securities Act, which took effect Dec. 31, 2005, we did rather extensive rulemaking, but we have not adopted any rules or rule changes since then.

A significant number of our rules are based on model or uniform rules, which in the securities field are adopted by the North American Securities Administrators Association ("NASAA"). It bears noting that NASAA has its own procedures for adopting model rules, which generally result in extensive participation by interested segments of industry, and thus, when we propose to adopt a Maine version of a uniform rule, it has usually gone through a rather thorough vetting process. Indeed, on some matters, the interested parties tend to be concerned with uniformity as they are with substance.

Locally, we follow the customary procedures, including notifying persons on our "interested persons" list. In this regard, the Securities Subcommittee of the Maine Bar Association tends to be a major player in our rulemaking (on occasion, they may also seek to initiate the process by requesting that we adopt a rule). Although we would certainly welcome participation by the "general public," what we do is too arcane and too removed from their daily lives to expect that to occur. It is, however, our general practice to schedule hearings in connection with proposed rulemakings.

02 322 State Board of Licensure for Professional Engineers

The Board of Licensure for Professional Engineers follows A.P.A. and Executive Order 17FY 02/03 in formulating rule proposals, public input and Legislative notification. Rulemaking proposals are prepared by staff with review and concurrence from the board.

Rulemaking is publicized through the consolidated rulemaking ad, on the Board's website and in the Board's Spring or Fall newsletters. If the rulemaking is determined controversial (5 MRSA sec. 8052 sub-sec 1) a public meeting is held. A recent example was the rule requiring mandatory continuing education for engineers, a hearing was held. All comments from the public hearing or letters received from the public are evaluated and incorporated as appropriate.

Notice to the Legislature is given as provided by 5 MRSA sec. 8053-A.

The office of Attorney General performs two reviews with respect to all rulemaking: (a) a pre-proposal review done pursuant to Executive Order 17 FY 02/03 and the pre-adoption review required by the A.P.A.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Department of Professional and Financial Regulation

02 380 State Board of Nursing

Preparing and vetting rule changes: for the Board of Nursing, this is generally in response to legislative changes though statute.

I do not put office policy and procedure in rule UNLESS it has impact on licensee and is an enforceable type of thing. Information that we seek and rely on comes from the nursing community who is regulated. I contact the appropriate organizations to inform them of possible rule change- and conversely, receive information from nursing community about changes in practice, etc. that may impact our rules. We rely on the expert testimony of nursing organizations - and nurses themselves for those issues that are directly related to technical practice of nursing.

Engaging the public: nursing organizations, employers of nurses, licensees, consumers constitute our public. We post the notice in the 5 major newspapers and also post potential rule changes on our web site.

Cannot think of any situation in the nursing world where "citizen panels " appointed by governor would be pertinent or even useful. We do have two consumers on the Board who are active and bring their perspective to matters before the Board- including proposed rule changes.

The Legislature gets copies of the proposed rule change as prescribed through the APA: 20 copies of documents go to the Executive Director of Legislative Council within the designated time period. Never been asked for any information by the Legislature regarding our proposed rule changes (at least not in the 15 plus years I have been here). I like to think that is because the proposed rule change is clear, concise and well reasoned.

The AG's role is to review the proposed rule terms of congruence with the law and following the APA process correctly.

We do our best to keep rules to a minimum so as to not overburden the regulated community - and also because professional practice changes constantly, one could have a "rule" today that is out of date tomorrow (no exaggeration here!)

Department of Public Safety

16 219 Department of Public Safety - General

DPS generally prepares amendments to an existing rule via internal agency discussions and through review and in consideration of the statutes to which the rule relates. Prior to engaging in rulemaking, DPS might consult with persons or organizations that may be able to inform DPS' thinking with respect to matters or issues that the agency eventually may seek to address through the promulgation of a new rule or by the amendment of an existing rule. Information also might be sought from sources that are generally available to or accessible by the public, e.g., the Internet, other States' government agencies, the federal government.

DPS engages the public in the rulemaking process in accordance with the applicable public notice and comment provisions/requirements of the Maine Administrative Procedures Act (MAPA). No, DPS generally does not utilize citizen panels appointed by the Governor when the agency engages in rulemaking.

DPS informs the Legislature of the agency's rulemaking activities in accordance with applicable provisions/requirements of the MAPA. The Legislature generally has not sought information from DPS about rules that are being promulgated or amended by the agency. The Department of the Attorney General generally will review a proposed new rule (or proposed amendments to an existing rule) prior to the initial filing of the proposed new rule (or rule amendments) by DPS with the Secretary of State's Office, and—per the MAPA—must review the new rule (or rule amendments) as to form and legality after DPS has formally adopted the new rule (or the amendments to an existing rule).

Executive Department

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Executive Department

07 105 State Planning Office

How rules are prepared and vetted:

- Formal and informal meetings of stakeholders
- Circulate drafts to stakeholders via e-mail
- Web posting with space for submitting comments

Information sought and relied on:

- Impact of rule on regulated parties from stakeholders and advocates
- Technical expertise of other state agencies
- Technical expertise of staff
- Technical expertise of advisory professionals (professional associations, consultants, Attorney General's Office)
- Census data

Means of engaging the public:

- Web posting
- Legal ads
- Stakeholder meetings open to the public
- Legislative forums open to the public
- Notices to citizens that have requested to receive rule notices

Citizen panels appointed by the Governor are not utilized.

The Legislature is apprised of rulemaking activities by:

- Presentations to oversight committee
- E-mail notices to oversight committee
- Legislative review and formal public hearing for major substantive rules

The Legislature seeks:

- Impact or burden of the rule on regulated party
- Understanding of consistency of proposed changes with legislative intent

The Attorney General's role in reviewing the rulemaking proposals:

- Advises SPO on its rule-making authority
- Reviews proposed changes for consistency with state laws
- Reviews proposed changes for internal consistency within the proposed rule
- Reviews proposed changes for proper legal construction
- Final review as required by APA before adoption

Independent Agencies

94 457 Finance Authority of Maine

Rules are drafted by counsel and vetted within and without the agency. We seek input from various constituencies and pertinent advisory councils. We seek pertinent information from likely affected parties and rely on past experience and plain language when construing rules.

Typically, before undertaking a rule change, FAME engages the public, especially major constituencies who may be affected by the rule. For example, a rule affecting a statutorily created entity such as the Advisory Committee on Medical Education would necessarily result in us consulting the membership of that body. Also, a rule affecting a particular community such as commercial loan or student loan lenders would have us consult the appropriate nonstatutory Lender Advisory Committee. We seek to learn what best meets their needs and is most appropriate under given parameters. We engage the public by holding regular public hearings and, pursuant to law, observing public comment periods.

We apprise the Legislature of rulemaking activities by reporting to the Legislative Council and various oversight committees. We provide copies of rulemaking agendas and copies of proposed rules to the Secretary of State and the Legislative Council who, in turn, notify the public and the oversight committees of our proposals. The Attorney General reviews all such proposed rule changes before the public comment period and again prior to finalization.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Independent Agencies

90 590 Maine Health Data Organization

Prior to initiating the APA process, the MHDO confers with impacted parties to ascertain the potential impacts of the proposed rule changes. In accordance with Title 5, Chapter 375, Maine Administrative Procedure Act, the MHDO then prepares a first draft in the format established by the Secretary of State (SOS). New rule language text being proposed is "underlined" and deleted language is "struck through". The MHDO relies on the Administrative Procedures Act (APA) process for guidance when the agency initiates changes and/or the addition of rules as governed by MHDO statutes, Title 22, Chapter 1683 §8704, sub-section 4.

In accordance with Title 5, Chapter 375, Maine Administrative Procedure Act, the MHDO sends a copy of the proposed rule packet containing the proposed rule and necessary APA forms to the SOS no later than 12:00 P.M. on Tuesday prior to the week (Wednesday) the notice is expected to appear in the newspaper. Notification of proposed and final rule changes are published in the Legal section in three major newspapers including, the Bangor Daily News, Kennebec Journal, and Portland Press Herald. In addition, the MHDO maintains a list of "interested parties" for all of its' rulemaking changes and notifies these recipients of any proposed/final changes to the rules. Anyone can call and request their name be added to this list at any time. Public hearings are held for all proposed rulemaking changes and allows for public comments for 10 days following the hearing date. In addition, the MHDO periodically reviews the list by surveying recipients on the list and asking them if they wish to continue to be notified of the MHDO's rulemaking activities. The MHDO operates under the supervision of a 20 member Board of Directors appointed by the Governor representing the interests of providers, payers, business, and consumers. The MHDO Board is the legal entity responsible for reviewing and adopting all MHDO rules.

In accordance with Title 5, Chapter 375, Maine Administrative Procedure Act, the MHDO prepares a regulatory agenda containing a list of rules the MHDO expects to propose prior to the next regulatory agenda. This agenda is prepared in the format outlined by the SOS and sent to Don Wismer, APA Coordinator, Bureau of Corporations, Elections and Commissions at the SOS and to David Boulter, Executive Director, Legislative Council within the required timelines. The MHDO has three sets of rules (Chapters 100, 120, 270) which have been categorized as major substantive rules.

All major substantive rules require Legislative Resolves to be printed and subsequent public hearings to be held. An MHDO representative attends the public hearings and work sessions to answer any questions that may arise from the committee discussion. Questions include the documented cost benefit of the rule change (if any) and other data/information that may be available to support the rule change. In addition, as outlined in the APA process, both routine technical and major substantive proposed rule changes are sent to the Legislative Council within a day or two of filing with the SOS.

The Attorney General's Office is utilized in the preplanning phase prior to the APA process and during the APA process for review of the form and legality of the rule change. The preplanning process includes review of the rule text prior to the submission of the proposed rule packet to the SOS announcing the "proposed rule change" and the "final adoption" of the rule change. Major substantive rule changes are sent to the Attorney General's Office for provisional adoption as well.

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Independent Agencies

99 346 Maine State Housing Authority

MaineHousing relies on its own data and research and on input from affected parties in drafting rules. This year in connection with the Low Income Housing Tax Credit Rule, Maine Housing held an initial meeting with developers and other interested parties to hear their suggestions for changes to the existing rule and to get feedback on changes MaineHousing was considering based on its experience and research. MaineHousing held a subsequent meeting in which it outlined the changes it intended to make to the rule and received additional feedback. With respect to the Homeless Programs Rule, MaineHousing invited shelter providers to meetings in Lewiston and Bangor to give their input on the rule. MaineHousing compiled and disseminated the feedback from the shelters. The Statewide Homeless Council spent months coming up with proposed minimum standards for shelters and a new funding formula for the rule. The shelter providers were again invited to meetings in Bangor and Lewiston, this time to respond to the proposed new standards and formula. For the Home Energy Assistance Program Rule, MaineHousing reviewed its data from last year's program and sought input from the MaineHousing Commissioners on amending the rule. In each case a draft of the proposed changes was subsequently drafted and presented to the MaineHousing Commissioners for approval to begin rulemaking, which includes notice to interested parties, published notice in 5 major newspapers across the state, receiving public comment on the proposed changes at a public hearing, and receiving written comments.

The MaineHousing Board of Commissioners, appointed by the Governor, approves the commencement of rulemaking, is present for the public hearing, and makes the final approval of the proposed changes. By statute the Commissioners include a representative of low income persons, a resident of subsidized housing, and a banking representative. The Commissioners currently also include a real estate broker who is on the board of a community action agency, the executive director of a shelter, a University of Maine professor, a property manager, and the Treasurer of State of the State of Maine.

MaineHousing annually distributes a rulemaking agenda to the Legislative Council. Upon Board approval to commence rulemaking on a specific rule, a notice is sent to the Legislative Council together with copies of the Fact Sheet in connection with the proposed amendment. A copy of the proposed amendment is also sent to the Attorney General's office for informal legal pre-review. After adoption of the amendments by the Board, a copy is sent to the Attorney General's office for approval as to form and legality.

90 351 Workers Compensation Board

The staff of the Workers' Compensation Board prepares drafts of rule changes. Ideas for rules can come from the Board, the public, or be drafted in response to legislative mandates.

In addition to engaging the public through the APA process, the Board, during public meetings, discusses drafts of proposed rules, votes to propose rules through the APA process, and discusses and finally adopts or decides not to adopt, rules. The Board has not used citizen panels but has utilized consensus based rulemaking groups.

In addition to the annual regulatory agenda, copies of fact sheets for all proposed and finally adopted rules are provided to the Legislature. The Board's rulemaking activity is sometimes the subject of discussion before the Labor Committee; otherwise, the Legislature has not sought information directly from the Board.

The AG's office conducts a legal pre-review and reviews rules that are finally adopted.

Public Utilities Commission

How do agencies prepare and vet rule changes? What information, either new or from established procedures, do agencies seek and rely on when constructing rules?

How do agencies engage the public? Do you utilize citizen panels appointed by the Governor?

How do agencies apprise the Legislature of their rulemaking activities? What information does the Legislature seek? What is the Attorney General's role in reviewing the rulemaking proposals?

Public Utilities Commission

65 407 Public Utilities Commission - General

The PUC typically conducts a rulemaking, for either a new or amended rule, when the Legislature by statute directs that a rule be adopted (either major substantive or routine technical rules); when circumstances change causing the need to amend an existing rule or create a rule; or when experience demonstrates that an existing rule is not operating as originally anticipated. Publication, notice, hearings, and comments are conducted pursuant to the requirements of the Maine Administrative Procedure Act (MAPA). For new rules, the PUC sometimes first initiates an "inquiry" as permitted by the PUC's procedural rules, Chapter 110 § 1201-1206, in order to gather preliminary information to help inform the PUC as to whether a rulemaking is necessary and what policies should be included in the rule. Notice of a formal rulemaking, or an inquiry, are sent to mailing lists of persons who have previously expressed an interest in the topic or area.

Most of our rules relate to the operations of utilities. Large customers often participate and the Public Advocate represents the using and consuming public, including residential customers. Any member of the public who has previously participated in a similar rulemaking or case will be notified of a new rulemaking on a related topic. Our statutory authority in Title 35-A includes no citizen panels appointed by the Governor. The Commission's Emergency Service Bureau does consult with the E-911 Council as provided for in 25 M.R.S.A. § 2925.

We provide twenty copies of proposed rules to the Executive Director of the Legislative Council as required by the MAPA. If members of the Utilities and Energy Committee have shown a particular interest in a rule, the PUC sometimes sends the Notice of Rulemaking to every Committee member directly. However, the Legislature rarely seeks information on pending rules. The Attorney General plays no role in reviewing proposed rulemakings. The Commission has ten attorneys on staff who are involved in drafting and reviewing all proposed rules.



APPENDIX D:

Letter from Joint Standing Committee on State and Local Government & LD 734

SENATE:

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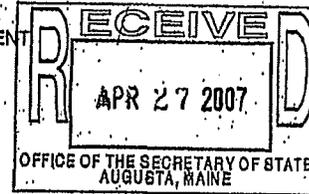
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ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
COMMITTEE ON STATE AND LOCAL GOVERNMENT

April 24, 2007

Matthew Dunlap
Office of the Secretary of State
148 State House Station
Augusta, ME 04333



Dear Secretary Dunlap,

The State and Local Government Committee recently considered LD 734, An Act to Improve Public Understanding in Rulemaking. This bill would have required an agency formulating a rule to make its principal source of information for the rule available to the public. The Committee voted unanimously Ought Not To Pass on this bill. We were persuaded that current law requires the sources of information for a rule to be included in the rule packets. However, it appears that not all agencies are following the current law, or more often, that the information is not provided in a user-friendly format.

We would like your office to convene an informal working group of stakeholders to improve the transparency of rulemaking under the Administrative Procedures Act. The Committee has three specific concerns: (1) that all state agencies include the relevant information to support every rule that is made; (2) "primary source" is defined by the group so that it has a clearly understood meaning for future discussions; and (3) the rulemaking cover sheet is redesigned to include a required field that would contain a summary paragraph (similar to that which appears on bills) that could be easily identified by any member of the public interested in a proposed rule. We would also like to request that Representative Ken Fletcher, the sponsor of LD 734, is invited to participate in the working group.

Please keep us apprised of the progress of this working group. It is imperative that these issues are resolved and the Administrative Procedures Act functions in a more transparent manner otherwise we will continue to deal with this issue in every Legislature. We appreciate your attention to this matter. If you have any questions please feel free to contact one of us, or the Committee's legislative analyst, Anna Broome.

Sincerely,

Senator Elizabeth M. Schneider
Senate Chair

Representative Christopher R. Barstow
House Chair

100 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0100 TELEPHONE 207-287-1330



LD 734, item 1, 123rd Maine State Legislature An Act To Improve Public Understanding in Rulemaking

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

Sec. 1. 5 MRSA §8052, sub-§5, as amended by PL 1997, c. 196, §1, is further amended to read:

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 list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments. 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. For rules developed that have had a public hearing, the agency shall also identify the primary sources of information relied on in establishing the primary provisions of the rule.

A. If the same or similar comments or concerns about a specific issue were 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, listing the names of the persons who commented and the organizations they represent.

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 must include, in addition to other documents required by this Act, testimony, comments, the names of persons who commented and the organizations they represent 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 that the agency intends to adopt is substantially different from the proposed rule, the agency 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 must be published by the Secretary of State in the same manner as notice for proposed or adopted rules.

C. If the adoption under this subsection is final adoption of a major substantive rule under subchapter II-A2-A, the agency must include in its written statement citation of the legislative act authorizing final adoption of that rule; or, if authorization is the result of failure of the Legislature to act under section 8072, subsection 7, the agency must indicate that fact and identify the date the agency filed the rule for review under section 8072.

Sec. 2. 5 MRSA §8053, sub-§3-A, as amended by PL 2003, c. 207, §2, is further amended to read:

3-A. Copies of proposed rules available upon request. At least 20 days prior to a hearing on any proposed rule and at least 20 days prior to the comment deadline of any rule without a hearing, the agency shall make copies of the proposed rule available in writing or, with agreement of the requestor, electronically to persons upon request. At least 20 days prior to a hearing on any proposed rule, the agency shall provide to a person upon request a list of the primary sources of information relied on in establishing the primary provisions of the proposed rule.

SUMMARY

This bill requires a rule-making agency to make its principal source of information for a rule available to the public.