

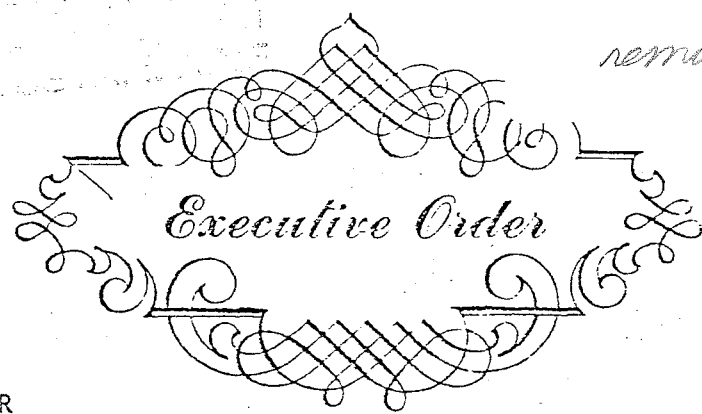
MAINE STATE LEGISLATURE

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*reminders memo on 11/2/1981
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OFFICE OF
THE GOVERNOR

NO. 11FY 80/81
DATE April 13, 1981

CLARIFICATION OF EXECUTIVE BRANCH RULE-MAKING PROCEDURES

WHEREAS, the process by which state rules are developed and adopted should be clarified to require agencies to clearly describe the problem the rule is addressing, to define the objective of the rule, to demonstrate that the rule will meet the defined objective, and to consider the cost of compliance and the cost of administration of the rule; and

WHEREAS, when adopting regulations to protect the health, safety and economic welfare of the state, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public; and

WHEREAS, laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, even though the problems that gave rise to government action may not have been caused by those smaller entities; and

WHEREAS, uniform state regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionate burdensome demands, including legal, accounting, and consulting costs, upon small businesses with limited resources; and

WHEREAS, the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity; and

WHEREAS, unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes; and

WHEREAS, the practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation; and

WHEREAS, alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses; and

WHEREAS, the following revisions of the state's rulemaking procedures were some of the foremost recommendations from the Blaine House Conference on Small Business; and

WHEREAS, the revitalization of the small business sector will make significant contributions to the economy of Maine;

NOW, THEREFORE, I, JOSEPH E. BRENNAN, Governor of the State of Maine, do direct all state agencies in the Executive Branch of government to immediately endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses subject to regulation, as stated herein, and to clarify their rulemaking procedures in the following manner:

a. When a rule is proposed a written statement explaining the factual and policy basis shall be required containing a description of the problem the rule is addressing, the legislation which authorizes the rule's promulgation, the clearly defined objective of the rule, a discussion of the significant alternatives considered, the reasons the proposed rule was chosen to solve the problem, and how the proposed rule will meet the objective,

b. The written statement explaining the factual and policy basis for the proposed rule shall contain the estimated cost of administration of the proposed rule, if adopted.

The contents of the public notice published prior to the adoption of a proposed rule as set forth in 5 MRSA Section 8053, shall specifically request oral or written testimony concerning the estimated cost of compliance with the proposed rule, if adopted. The estimated cost of administration and any testimony regarding the estimated cost of compliance shall be considered before the adoption of any rule as required by 5 MRSA, Section 8052-4,

c. Agencies are encouraged to reduce the negative effect of a rule's uniform action by tailoring it to the size and ability of the regulated to bear the burden, consistent with the stated objectives of applicable statutes.

Rules should provide for equal treatment of the affected entities with due regard for the difference in the capacities of the regulated to bear the direct and indirect cost of rules.

Rule flexibility may take the form, for instance, of different compliance or reporting requirements, or time tables, the consolidation or simplification of compliance or reporting requirements, or an exemption from coverage of the rule or any part thereof, for any class of persons which can be objectively distinguished from the general class of which they are a part and with respect to which the purposes of the regulation may be achieved without its compliance.

d. Sections b. and c. shall not apply to any proposed rule if the head of the agency determines that the rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses.

The justification for such determination shall be included in the aforementioned written statement explaining the factual and policy basis.

e. Each agency shall prepare, prior to review by a joint standing committee of the Legislature, as indicated in 5 MSRA, Section 11105, a report on all rules to be reviewed.

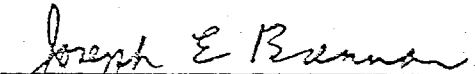
The report should include findings indicating: whether each rule is consistent and necessary to the intent of the legislation which authorized its promulgation; whether the effects of the rule are suitable, including its costs of administration and costs of compliance; whether circumstances have changed since either the promulgation of the rule or the enactment of the legislation that authorized the rule,

which would warrant either a change in the rule or the legislation; and whether the rule could be amended to reduce the negative effect of its uniform action and provide for equal treatment to affected entities of approximately the same size.

The report will be submitted to the appropriate joint committee to be used in the legislative review process indicated in 5 MRSa, Section 11105.

Each agency will report to the Governor by November 30, 1981, regarding the extent to which they have complied with this Executive Order, in particular, the amount of rule flexibility or "tiering" being provided for.

This Executive Order will expire December 31, 1982.



JOSEPH E. BRENNAN
Governor