

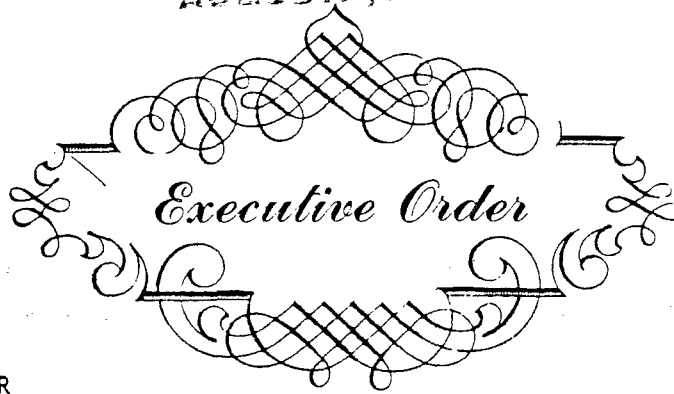
MAINE STATE LEGISLATURE

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OFFICE OF
THE GOVERNOR

NO. 12FY 84/85
DATE May 24, 1985

CLASSIFICATION OF EXECUTIVE BRANCH RULEMAKING PROCEDURES

WHEREAS, the process by which state regulations are developed and adopted should be clarified to require agencies to clearly describe the problem the regulations are addressing, to define the objective of the regulations, to demonstrate that the regulations will meet the defined objective, and to consider the cost of compliance and the cost of administration of the regulations; 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 may have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions 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 sometimes imposed unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs, upon small business, small organizations, and small governmental jurisdictions with limited resources; and

WHEREAS, the failure to recognize differences in the scale and resources of regulated entities has sometimes 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, organizations and governmental jurisdictions 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 business, small organizations, and small governmental jurisdictions; and

WHEREAS, the following revisions of the state's rulemaking procedures were some of the foremost recommendations of the 1980 Blaine House Conference on Small Business; and

WHEREAS, the small business sector makes significant contributions to the economy of Maine; and

WHEREAS, Executive Order 11FY 80/81 on this issue has expired and should be re-issued in revised form:

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

A. Whenever an agency is required by the Administrative Procedures Act to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis which shall describe the impact of the proposed rule on small entities and shall contain:

1. A description of the problem the rule is addressing;
2. A statement of the clearly defined objectives of, and legal basis for, the proposed rule;
3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
4. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. A statement of the estimated cost of administration of the proposed rule, if adopted; and
6. Specific citation of the appropriate Federal statute or Federal regulation, if the proposed rule implements the requirements of Federal statute or regulations.

B. Each initial regulatory flexibility analysis shall also discuss alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the state objectives of applicable statutes, the analysis shall discuss significant alternatives such as:

1. The establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities:

2. The consolidation or simplification of compliance and reporting requirements;
3. The use of performance rather than design standards whenever appropriate; and
4. An exemption from coverage of the rule, or any part thereof, for any class of small entities 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.

Agencies are encouraged to reduce the negative effect of a regulation's uniform action by tailoring it to the size and ability of the regulated entity 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.

C. 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).

D. Sections A and B 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 entities. The justification for such determination shall be included in a written statement explaining the factual and policy basis.

E. When an agency promulgates a final rule, after being required to publish an initial regulatory flexibility analysis, the agency shall publish a final regulatory flexibility analysis which shall contain:

1. A summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and
2. A description of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which were considered by the agency, and a statement of the reasons why any such alternatives was rejected.

F. Each agency shall, at the time notice of proposed or adopted rulemaking is published, indicate whether an initial or final regulatory flexibility analysis report is available and shall make copies of any such analyses available to the public.

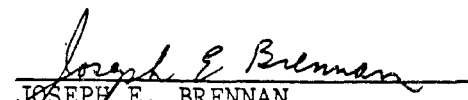
G. Each agency shall, at the time notice of proposed or adopted rulemaking is published, indicate whether an initial or final regulatory flexibility analysis report is available and shall make copies of any such analyses available to the public.

G. Each agency shall prepare, prior to review by a joint standing committee of the Legislature, as indicated in 5 M.R.S.A. Section 11115, a report on all rules to be reviewed. The report should include findings indicating:

1. Whether each rule is consistent and necessary to the intent of the legislation which authorized its promulgation;
2. Whether the effects of the rule are suitable, including its costs of administration and costs of compliance;
3. 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
4. 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 standing committee to be used in the legislative review process indicated in 5 M.R.S.A. Section 11115.

Each agency shall report to the Governor by December 1 of each year, regarding the extent to which they have complied with this Executive Order, in particular, the amount of rule flexibility or "tiering" being provided for.



JOSEPH E. BRENNAN
Governor