

MAINE STATE LEGISLATURE

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OFFICE OF
THE GOVERNOR

OMNIBUS REGULATORY REFORM

NO. 13FY 85/86
DATE May 27, 1986

WHEREAS, the quality of regulatory decisions and adjudicatory decisions involving licenses and permits bears directly on the economic, environmental, and social quality of life in Maine, and whereas decisions that reflect a balanced approach to protecting the public health and welfare are inherently beneficial; and

WHEREAS, such outcomes are enhanced by adherence to a rule making process designed and utilized to clearly identify the problem being addressed, the resolution being sought, the manner in which the rule will achieve the intended benefits, the costs of compliance for regulated parties, and which is focused on promulgation of rules with minimal costs and maximum benefits; and

WHEREAS, such outcomes are further enhanced by the use of negotiation techniques and methodologies that involve all parties to decision-making in early direct negotiations concerning the need for and design and implementation of regulations and adjudicatory processes involving licenses and permits;

NOW, THEREFORE, I, Joseph E. Brennan, Governor of the State of Maine, do direct all state agencies that adopt regulations to follow the steps outlined in this Executive Order and to cooperate fully in its implementation.

° In order to improve management flexibility in Maine State Government, the Maine Department of Personnel will oversee a joint public-private study to recommend ways in which to improve management flexibility in state regulatory agencies. This study will have as its goal the identification of useable means for attracting and retaining the highest quality managers

in Maine regulatory agencies. A task force of public and private sector managers selected jointly by the Department of Personnel and the Business Advisory Council shall serve as an advisory group to this study. The study will focus on the following three areas:

- 1) the ability of state regulatory agencies to attract and retain talented and knowledgeable employees;
- 2) the need for flexibility in the job tasks of state regulators; and
- 3) the accountability of state regulators to Commissioners and Directors of state departments and agencies.

° All Maine state agencies that adopt regulations shall publish a regulatory agenda of proposed rules/regulations to be made available to the public and interested parties, upon request. This regulatory agenda shall be published October 15 of each year in which the Legislature holds its First Regular Session and on July 25 of each year in which the Legislature holds its Second Regular Session. The agenda shall include:

- 1) a description of the agency's intent regarding the development of regulations during the upcoming period;
- 2) the statutory or other basis for the adoption of regulations;
- 3) the purpose of the regulation;
- 4) the contemplated schedule for adoption of the regulations; and
- 5) the identification and listing of potentially benefited and regulated parties.

° Regulatory agencies shall conduct periodic informal meetings with the parties affected by agency regulatory decision-making commencing not later than October 1, 1986, to discuss the efficiency of the regulation development process, the use and utility of negotiation techniques in

regulation development process, the direct and indirect costs and benefits, and the intended impact of the agency regulation generally and ways in which the overall process can be improved. The agency shall report to the Governor on the steps it takes as a consequence of this meeting including plans for periodic future meetings for this same purpose.

- ° To reduce the problem of unproductive adversarial relationships between State regulatory agencies and regulated industries, a system of routine, informal meetings between the regulators and the benefited and regulated parties shall be developed by the Maine Development Foundation. These meetings will be conducted at rotating sites and should be attended by individuals at both the middle and top management levels.
- ° To ensure a full examination of the opportunities available through the use of negotiation techniques, the State Development Office, in cooperation with the Maine Development Foundation, shall undertake two "models" or pilot projects using negotiation in both the rulemaking process and the adjudicatory decision-making process pertaining to licenses and permits. Two regulations shall be developed and two adjudicatory proceedings conducted using negotiation techniques. Information on the results of these proceedings shall be distributed widely among state agencies and the private sector.
- ° In order to facilitate the promulgation of more beneficial, efficient and cost-effective regulation, I do further direct that:
 1. When adopting major rules, state agencies shall prepare and make available to all interested parties at the time of publication of notice a statement describing in clear terms the expected impact of the proposed rule on benefited and regulated entities. The detail of the statements may vary as a function of the informational and analytical resources available to each agency. Agencies are directed, nonetheless, to provide as comprehensive an analysis as possible under the particular circumstances. This statement shall be referred to as the Regulatory Impact Analysis. The statement shall contain at a minimum:

- a. a specific citation of the state or federal statute or rule to be implemented by the proposed rule;
- b. a description of the objectives sought to be achieved by the rule;
- c. a description of the potential benefits, including those that cannot be quantified in monetary terms, and of those likely to receive these benefits;
- d. a description of the potential costs, including those that cannot be quantified in monetary terms, and of those likely to bear these costs;
- e. a description of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms; and
- f. a description of the available alternative regulatory approaches that could achieve substantially the same regulatory objective, at lower cost, together with a statement of the potential benefits and costs and a brief description of the reasons (legal, administrative, or other) which prevent the alternatives from being substituted for the one proposed.
- g. a description of the reporting, recordkeeping and other compliance requirements (including costs of equipment, supplies, labor, legal, consulting, and accounting services that may be incurred); and
- h. a description of the types of businesses that may be affected, using Standard Industrial Classification codes, together with information on the number of small, medium, and large businesses within those types.

2. In considering the adoption of regulations, state agencies shall adhere to the following requirements:

- a. administrative decisions shall be based on adequate information concerning the need for and consequences of proposed rulemaking;
- b. potential benefits of regulation must outweigh potential costs to society;
- c. objectives shall be chosen to maximize net benefits to society; and
- d. among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen unless there are legal or other compelling reasons for choosing a different option.
- e. the agency shall seek to reduce disproportionate economic impacts of major rules on small businesses through differing compliance or reporting requirements or timetables, consolidating or simplifying compliance and design standards, and exempting from requirements where appropriate.

3. In assessing the effects of proposed rules on different sizes of businesses and in tiering rules to reduce disproportionate economic impacts, the agency may use the following classifications:

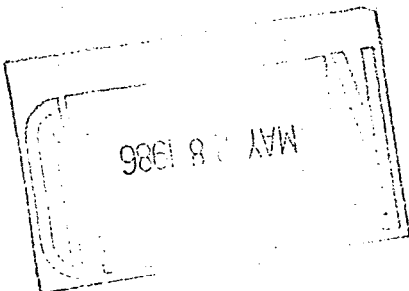
- a. small businesses that employ 0-99 full time employees;
- b. medium businesses that employ 100-499 full time employees; and
- c. large businesses that employ 500-999 and over 1000 full time employees.

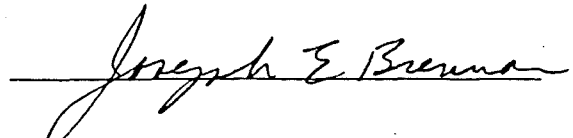
4. During the process for adoption of a rule, including the public hearing and the post-hearing comment period, persons are to be encouraged to testify about and comment on the costs and benefits of the proposed rule and the analysis of alternative regulatory mechanisms described in the Regulatory Impact Analysis.
5. Agencies shall comply with the terms of 5 M.R.S.A., Sections 8052(4) and (5), pertaining both to testimony and comments received from persons about the rule and the regulatory impact analysis. The basis statement shall explain the factual and policy basis of the rule, address representative comments, and present a rationale for adopting or failing to adopt either changes suggested by persons commenting or testifying or alternative regulatory mechanisms discussed in the regulatory impact analysis.
6. Regulatory Impact Analyses are not required for new rules or for revisions to existing rules with a projected annual effect on the economy of less than \$1,000,000. Such rules are not major rules.

Any rule that responds to any emergency situation adopted under the provisions of 5 M.R.S.A., Section 8054, is exempt from the requirement that a Regulatory Impact Analysis be conducted.

- ° A contact person within the Governor's Office shall be appointed to oversee and assure the implementation of the provisions of this Executive Order. This person assigned these tasks shall be designated a Special Assistant to the Governor for Regulatory Affairs.

Signed this 27 day of May, 1986.




Joseph E. Brennan, GOVERNOR