

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



OFFICE OF
THE GOVERNOR

NO. 7 FY 87/88
DATE October 15, 1987

AN ORDER
REVISING THE RULEMAKING PROCESS

WHEREAS, the quality of rulemaking decisions bears directly on the economic, environmental, and social quality of life in Maine; and

WHEREAS, rulemaking decisions which reflect a balanced approach to protecting the public health and welfare are inherently beneficial; and

WHEREAS, adherence to a rulemaking process designed to identify clearly the problem addressed, the resolution sought, the manner in which the rule will achieve the intended benefits, and the costs of compliance, and which is also designed to promulgate rules with minimal costs and maximum benefits to regulated parties, ensures proper results; and

WHEREAS, there is a need to clarify and revise the policy set forth by Executive Order 13 FY 85/86 of the previous Administration;

NOW, THEREFORE, I, JOHN R. MCKERNAN, JR., Governor of the State of Maine, do hereby direct all state agencies which adopt rules to follow the procedure provided in this Executive Order and to cooperate fully in its implementation.

A. Preparation and Adoption of Rules

1. Factual and Policy Basis for Adoption of Rule (5 M.R.S.A. §8052 sub-§5)

In considering the facts and policies which will provide the basis for adopting a rule as indicated in §8052 sub-§5, agencies shall direct their efforts to the following goals:

- a. Potential benefits of regulation which outweigh potential costs to society;
- b. Objectives which maximize net benefits to society;
- c. An approach to any given regulatory objective which in contrast to other alternatives involves the least net cost to society, unless there are legal or other compelling reasons for choosing a different option.

2. Relevant Information (5 M.R.S.A. §8052 sub-§4)

With respect to §8052 sub-§4 requiring agencies to consider all relevant information before adopting any rule, agencies shall strive to obtain and evaluate information from the public and other sources with respect to the above goals. Comment and information also shall be sought regarding the items contained in the fact sheet (see Section C below), and the need for or appropriateness of performance standards to elaborate statutory criteria which regulated parties must meet in order to undertake regulated activity.

Where a proposed rule is subject to the public hearing or relevant information requirements of §8052, and an agency determines that a rule it intends to adopt differs substantially from the proposed rule in a manner not addressed in hearings or in statements and arguments filed, agencies shall extend by fifteen days the period in which public comment and relevant information is sought, and submit a revision of the fact sheet required under §8053-A (see C.2.).

3. Written Statement of Basis For Rule (5 M.R.S.A. §8052 sub-§5)

In accordance with §8052, sub-§5, requiring agencies to furnish a written statement which includes the factual and policy basis for the rule, agencies also shall summarize the manner in which the above three goals entered into their decision.

4. Notice of Rulemaking (5 M.R.S.A. §8053)

To ensure that interested persons have access to adequate information about proposed rules, agencies shall make available to persons, upon request, regulatory agendas (see C.1.), fact sheets required under §8053-A sub-§1.A-D, and expanded fact sheets (see C.2.), as well as copies of the proposed rules as required in §8053 sub-§3-A.

B. Impact on Small Businesses

In adopting rules, agencies shall consider whether their proposed rules will impose a disproportionate economic burden on small businesses and shall seek to reduce such burdens through flexible or simplified reporting requirements.

For purposes of this Executive Order a small business means a business which has 50 or fewer employees or gross annual sales not exceeding \$2,500,000.

Agencies also may seek to reduce burdens on small businesses through: 1) flexible or simplified timetables which take into account the resources available to the affected small business; 2) clarification, consolidation, or simplification of compliance or reporting requirements; 3) use of performance rather than design standards; and, 4) exemption from coverage of the rule where authorized and appropriate.

C. Notice to Legislative Committees (5 M.R.S.A. §8053-A)

1. Rulemaking Agenda

To ensure adequate notice of rulemaking to legislative committees as required by 5 M.R.S.A. §8053-A, all Maine state agencies which adopt rules shall publish an agenda of proposed rules required by federal or state legislation which was enacted during the time period of the Legislative Session immediately preceding the agenda publication date. The agenda shall be provided to the Legislature at the time it is issued, and to interested parties upon request.

The 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:

- a. A list of rules that the agency expects to propose prior to the next rulemaking agenda due date;
- b. The statutory or other basis for the adoption of the rule;
- c. The purpose of the rule;
- d. The schedule proposed for adoption of the rule; and
- e. The identification and listing of potential beneficiaries and regulated parties.

Agencies are not precluded from adopting rules which were not included on the annual regulatory agenda.

2. Fact Sheet (5 M.R.S.A. §8053-A, sub-§1.A-D): Revision and Expansion

Under §8053-A, sub-§1.A-D, at the time of giving notice of rulemaking agencies are required to provide to the Legislature both a proposed rule and a fact sheet containing a cite to statutory authority, reasons for the rule, an analysis of the rule, and its estimated fiscal impact. When an agency determines, pursuant to A.2. above, that a fifteen day extension of a public comment period is required to address substantial changes from the originally proposed rule the agency shall submit a revised fact sheet for the proposed change.

For revisions to existing rules which have an estimated fiscal impact of greater than \$1,000,000, the fact sheet shall be expanded to include more specific information similar to that of the Regulatory Impact Analysis of Executive Order 13 FY 85/86. Such information shall include:-

- a. The statutory cite and principal reasons for the rule;
- b. A brief statement of its purpose and operation;
- c. The estimated fiscal impact of the rule;
- d. A description of the economic effects of the rule, including any which cannot be explained in monetary terms;

- e. A definition of the major interest groups and types of businesses which the rule will affect, examples of such organizations, and a description of how they will be so affected; and
- f. A brief statement concerning the benefits of the rule, including those which cannot be quantified.

3. Submission of Materials to the Legislature (5 M.R.S.A. §8053-A)

When an agency, pursuant to C.1. and C.2. above, provides materials to the Legislature, it shall provide them to the Executive Director of the Legislative Council for referral to the appropriate committee or committees of the Legislature for review in accordance with the provisions of §8053-A. Each agency shall provide sufficient copies of the materials for each member of the appropriate committee or committees.

4. Adopted Rules.

When an agency adopts a rule, it shall provide a copy of the adopted rule and statement of adoption to the Law and Legislative Reference Library for compilation of the adopted rules by agency.

D. Performance Standards.

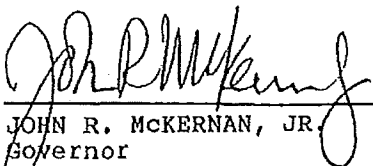
When authorizing legislation of any regulated activity requires that certain criteria be met in order to be granted any license, permit, authorization, or certification to undertake the regulated activity, and during the public comment period an agency determines that performance standards are needed or are appropriate in assisting regulated parties to comply with the criteria, such standards shall be developed during the rulemaking process and incorporated into adopted rules.

E. Emergency Rules (5 M.R.S.A. §8054)

Nothing in this order is intended to affect the statutory provisions of §8054 governing emergency rulemaking.

The Director of Legislative Operations shall be appointed to oversee implementation of this Executive Order.

The effective date of this Order is October 15, 1987. This Order supercedes Executive Order 13 FY 85/86.


JOHN R. MCKERNAN, JR.
Governor