

## Rulemaking Process

### **Rulemaking Stage One: Pre-Proposal Stage**

The agency prepares an initial draft of the rule to be proposed and circulates the draft for internal review and comment.

Once the draft of the rule is ready to be proposed, the Department of the Attorney General ("DAG") should be provided with the opportunity to perform a legal pre-review of the draft rule prior to issuing notice of rulemaking.

The Agency determines whether the rule to be proposed will be subject to a public hearing. A public hearing must be held in these circumstances:

The proposed rule is a major substantive one;

The statute authorizing rulemaking, or some other law, expressly requires a hearing; or

Five or more "interested persons" request a hearing.

If a public hearing is to be held, then the hearing must occur within 17 to 24 days after the publication of the "Notice of Rulemaking Proposal" and at least 17 days after the proposed rule is made available to the public..

If a public hearing is scheduled, then the deadline for public comments to be submitted regarding the proposed rule must be at least 10 days after the close of the public hearing.

If a public hearing is not to be held, then the deadline for public comments to be submitted about the proposed rule must be at least 30 days after the date of the publication of the "Notice of Rulemaking Proposal" and at least 17days after the rule is made available to the public.

If a public hearing for a proposed regulation is not scheduled, but 5 or more interested persons request a hearing, then a public hearing must be held. Consequently, another rulemaking proposal notice that provides information about the proposed rule and the scheduled hearing would need to be published 17 to 24 days before the selected hearing date, and the comment deadline would likely need to be reset.

### Rulemaking Stage Two: Rule Proposal Stage

#### Public Input For Rules

The public can comment on a proposed rule by submitting a written comment to the agency or by attending the public hearing, if one is scheduled. If no hearing is scheduled, the agency must hold a hearing if it receives 5 or more requests for a public hearing.

Once approval is received, the signed Notice of Rulemaking Proposal form and the Rulemaking Fact Sheet are filed with the Department at least one week before the newspapers will publish the notice of the rulemaking proposal. When the rulemaking proposal filing is made with the Department, an agency must file the fact sheet with the Legislature.

If applicable, prepare for and hold the public hearing on the proposed rule.

The agency prepares a document that summarizes the comments on the proposed rule that were submitted to the agency, and then composes written responses to each comment. The agency makes any necessary or desired revisions to the proposed rule after reviewing the public comments,

The agency may not adopt the rule for a period of 30 days from the date comments are requested.

If, following the public comment period and the agency's review of and response to comments about a proposed rule, the proposed rule remains substantively the same, then the agency may adopt (or, in the case of a major substantive rule, provisionally adopt) the rule.

If a rule may have an adverse impact on small businesses, prior to adopting the rule the agency must prepare an economic impact statement that details which businesses will be affected and the cost for compliance.

### Rulemaking Stage Three: Rule Adoption Stage

Once written approval is received, the Department of the Attorney General must review the rule as to its form and legality within 150 days after the “final date by which comments may be submitted” on the rule. Once the adopted regulation is approved by the Department of the Attorney General, the agency must file the rulemaking adoption packet with the Department.

If the adopted rule that is filed with the Department is a routine technical rule, then the rule is effective 5 days after the filing, unless otherwise specified by law or the agency specifies in the rule an effective date that is more than 5 days.

### **Emergency Rulemaking**

If the agency finds that immediate adoption of a rule 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.

**Agency findings.** Any emergency rule must include, with specificity, the agency's findings with respect to the existence of an emergency, including any modifications of procedures, and such findings are subject to judicial review. Such findings must be included in the basis statement for any adopted emergency rule in a section labeled "findings of emergency." No emergency may be found to exist when the primary cause of the emergency is delay caused by the agency involved.

**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.

**Fiscal impact; curtailment orders.** An emergency rule adopted in whole or in part to satisfy the requirements of a temporary curtailment order by the Governor must include a specification of the dollar amount of curtailed funds attributable to each change adopted in the rule.

### **Maine Register**

### **Maine Administrative Procedure Act**