

STATE OF MAINE  
DEPARTMENT OF THE SECRETARY OF STATE

## A Guide to Rulemaking for State of Maine Agencies

*(Last updated April 2, 2025)*

The following guide is provided for informational purposes only. Information in the guide is neither legal advice nor a legal opinion.

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### GENERAL CONSIDERATIONS

- When filing paper documents with the Department of the Secretary of State, please only file **one-sided** copies of the documents, **not** two-sided copies.
- When completing rulemaking filing forms, please be sure to provide information in response to **each** field of the form, even if the response is “Not applicable”, “No fiscal impact”, “None”, “N/A”, etc.
  - This is necessary because if a response to a form field is not given, a person reviewing the public notice based on the information in the form will not know whether the blank field means the field does not apply or if the agency mistakenly did not respond to the field.
- When filing paper documents with the Department of Secretary of State, please do **not** staple any of them together. Instead, please only use paperclips, binder clips, or elastic bands to keep document pages together.

## RULEMAKING STAGE ONE: PRE-PROPOSAL STAGE

### 1

Identify the statutory authority for rulemaking to occur. *See generally* [5 M.R.S. § 8057-A](#), sub-§ 1 in the [Maine Administrative Procedure Act](#) (“MAPA”). In other words, determine the statute or statutes that grant your agency general or specific rulemaking authority to adopt the rule to be proposed.

- Note also whether the statute **allows** or **requires** the promulgation of the rule.

Has the statutory authority for the rule to be proposed been identified?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the statutory authority allow or require the promulgation of the rule to be proposed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

### 2

Determine whether the rule to be proposed is a routine technical rule or major substantive rule. *See* [5 M.R.S. § 8071](#), sub-§ 2. Whether a rule is routine technical or major substantive is determined by the Legislature and should be stated the statute enabling the rule.

Is the rule to be proposed a routine technical (“RT”) rule or major substantive (“MS”) rule?	<input type="checkbox"/> RT	<input type="checkbox"/> MS
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### 3

Determine whether the rule to be proposed will be promulgated on an emergency basis. *See generally* [5 M.R.S. § 8054](#).

- If the rule will be promulgated on an emergency basis, the 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 under [5 M.R.S.] § 8058.” [5 M.R.S. § 8054](#), sub-§ 2.
- “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.” *Id.*

An emergency rule is effective immediately after the rule is filed with the Department of the Secretary of State. *See* [5 M.R.S. § 8002](#), sub-§ 3-A. The rule remains in effect for up to 90 days if the rule is a routine technical one, and up to 12 months if the rule is a major substantive one. *See* [5 M.R.S. § 8054](#). *See also* [5 M.R.S. § 8073](#).

<b>Will the rule to be proposed be promulgated on an emergency basis?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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4

Determine whether the rule to be proposed was listed in the most recent agency annual regulatory agenda. *See generally* [5 M.R.S. § 8060](#).

- If the rule was **not** listed in the agency’s annual regulatory agenda, then an amended annual regulatory agenda must be submitted to the Department of the Secretary of State and to the Executive Director of the Legislative Council at the time of giving notice of rulemaking. *See* [5 M.R.S. § 8053-A](#), sub-§ 1.

<b>Was the rule to be proposed listed in the most recent agency annual regulatory agenda?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>If not, has an amended regulatory agenda that lists the rule been prepared for submission to the Department of the Secretary of State and to the Legislature?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

5

Review any applicable statutes and existing regulations to avoid duplication and potential conflicts with the rule to be proposed. Additionally, conduct any preliminary research and consultation that might be needed to draft the rule that is to be proposed.

- Agencies must be prepared to cite “up to 3 primary sources of information [the agencies] relied upon in adopting [a] rule.” [5 M.R.S. § 8057](#), sub-§ 4.

<b>Does the rule to be proposed duplicate or potentially conflict with any statutes or existing regulations?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Have up to three (3) primary sources of information been identified as having been relied upon by the agency in developing the rule to be proposed?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

6

Prepare an initial draft of the rule to be proposed and circulate the draft for internal review and comment.

- Rules should be formatted and written in a manner consistent with the provisions of the most recent edition of the [Maine Legislative Drafting Manual](#) (“Manual”).

- For example, the Manual provides in relevant part as follows with respect to the “Structure of the Maine Revised Statutes”:

... Titles are subdivided into smaller units to assist in arranging subject matter logically and systematically. The usual and preferred structure is as follows, with the method of designation shown in parentheses. ...[:]

SECTION (§1, §2, ...)

SUBSECTION (1, 2, ...)

PARAGRAPH (A, B, ...)

SUBPARAGRAPH ((1), (2), ...)

DIVISION ((a), (b), ...)

SUBDIVISION ((i), (ii), ...)

Thus, rules should be similarly organized structurally.

- Rules must be “prepared by a person skilled in developing, organizing, and writing rules.” Executive Order 4-A FY 19/20 [sic] (March 29, 2023). *See generally* [Executive Order 4A: An Order Regarding Administrative Rulemaking \(Amended, PDF\)](#).
- “All rules and any other materials required by [Subchapter 2 of the Maine Administrative Procedure Act] to be provided to the public or to the Legislature shall, to the maximum extent feasible, use plain and clear English, which can readily be understood by the general public. The use of technical language shall be avoided to the greatest possible extent.” [5 M.R.S. § 8061](#).
- Other matters to consider when drafting a rule include:
  - Whether the rule would result in a taking of private property (*see* [5 M.R.S. § 8056](#), sub-§ 6);
  - Whether the rule would result in an unfunded mandate for any county or municipal government;
  - Whether the rule would raise any concerns under the Maine or United States constitutions, such as equal protection or due process issues;
  - Whether the rule includes provisions, if any, that the Legislature specified in the enabling law as needing to be included in the rule.

**Is the rule to be proposed formatted and written in a manner consistent with the most recent edition of the [Maine Legislative Drafting Manual](#)?**

☐ Yes

☐ No

Would the rule result in a taking of private property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Would the rule result in an unfunded mandate for any county or municipal government?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Would the rule result in the creation of an equal protection or due process issue?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the rule include provisions specified by the Legislature?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

7

Once the draft of the rule is finalized and ready to be proposed, make best efforts “to provide the Department of the Attorney General (DAG) with the opportunity to perform a legal pre-review of the draft rule prior to issuing notice of rulemaking and submitting [the] proposed rule to the Secretary of State ....”. Executive Order 4-A FY 19/20 [sic] (March 29, 2023), Part I, Sec. B. *See generally* [Executive Order 4A: An Order Regarding Administrative Rulemaking \(Amended, PDF\)](#).

- “If an agency believes a draft rule does not warrant formal pre-review, or determines that circumstances do not allow for formal pre-review, [then] it should discuss this with the DAG and seek understanding before proceeding with rulemaking.” *Id.*

Has the DAG performed a legal pre-review of the draft rule pursuant to Executive Order 4-A FY 19/20 [sic] (March 29, 2023), Part I, Sec. B?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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8

Determine 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 rule;
  - The statute authorizing rulemaking, or some other law, expressly requires a hearing; or
  - Five or more “interested persons” request a hearing (see below). *See* [5 M.R.S. § 8052](#), sub-§ 1.
- 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 20 days after the proposed rule is made available to the public and notice is made in

accordance with the Maine Administrative Procedure Act (MAPA). See [5 M.R.S. § 8053](#), sub-§ 3-A, sub-§ 5, ¶ A.

- 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. See [5 M.R.S. § 8052](#), sub-§ 3.
- 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 20 days after the rule is made available to the public and notice is made in accordance with the MAPA. See [5 M.R.S. § 8053](#), sub-§§ 3-A, 5(A).
  - 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. See [5 M.R.S. § 8052](#), sub-§ 1. 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.
- *Note:* Rulemaking deadlines in the MAPA are calculated based on calendar days. Weekends and holidays must be counted as “days” and deadlines falling on a weekend or holiday do not shift to the following business day. See [1 M.R.S. § 71](#), sub-§ 12. To avoid confusion, the best practice is for an agency to schedule the public comment deadline to fall on a business day.

Will there be a public hearing on the rule to be proposed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If a public hearing is to be held, have the date of the hearing and the comment deadline been determined in accordance with the timeframes stated in the MAPA?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If a public hearing is not to be held, has the comment deadline been determined in accordance with the timeframe stated in the MAPA?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

9

Prepare and then present to the head of the agency (or the authorized representative of the agency) proposing the rule the following paper documents for review and approval, which together constitute the **“rulemaking proposal packet”**:

- One copy of the proposed rule.
  - If the proposed rule is new or is repealing and replacing an existing rule a clean copy of the text of the rule is sufficient;
  - If the proposed rule is amending an existing rule, the submitted text must show all changes to the rule in blackline (i.e., with deletions shown with strikethroughs and additions shown with underlining).
  - When the agency is completely repealing a rule without replacing it, no rule text is required;
- One signed **MAPA-3 (“Notice of Rulemaking Proposal”) form** (see [5 M.R.S. § 8053](#), sub-§ 3); and
- One **“Rulemaking Fact Sheet”** (see [5 M.R.S. § 8053](#), sub-§ 1).

Has the head of the agency (or the authorized representative of the agency) proposing the rule approved the rulemaking proposal packet?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If so, has the paper copy of the rulemaking proposal packet been filed (or sent to be filed) with the Department of the Secretary of State?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## RULEMAKING STAGE 2: RULE PROPOSAL STAGE

### 10

Once approval is received from the agency official in charge of rulemaking, file paper copies of the signed MAPA-3 form and the Rulemaking Fact Sheet with the Department of the Secretary of State.

- The rulemaking proposal filing with the Department of Secretary of State must be completed **by or before 4 PM of the Thursday** of the week preceding the desired Wednesday on which the newspapers will publish the notice of the rulemaking proposal.
  - *For example:* If, in a hypothetical year, an agency wants a notice of a rulemaking proposed to be published in the newspapers and posted online on Wednesday, October 9<sup>th</sup>, then the agency would need to file the proposal with the Department of the Secretary of State by or before 4 PM Thursday, October 3<sup>rd</sup>.

- The paper copies of the rulemaking proposal filing documents may be sent to the Department of the Secretary of State through interoffice mail or postal mail, or they may be delivered in person.

## 11

Electronic copies (e-copies) (in **Microsoft Word** format) of the proposed rule, the MAPA-3 form, and the “Rulemaking Fact Sheet” must also be provided to the Department of the Secretary of State via email or through OneDrive or SharePoint.

**Has an e-copy of the rulemaking proposal packet been provided to the Department of the Secretary of State?**

☐ Yes

☐ No

## 12

When the rulemaking proposal filing is made with the Department of Secretary of State, an agency must file the fact sheet with the Legislature.

- The fact sheet should be filed electronically through the Legislature’s online rulemaking portal, which can be accessed at the following website:  
<https://legislature.maine.gov/publicrulemaking/Home.aspx>.

**Has notification of the proposed rule and any required accompanying documentation been provided to the Office of the Executive Director of the Legislative Council?**

☐ Yes

☐ No

## 13

Provide notice of the proposed rule to any person or organization listed in [5 M.R.S. § 8053](#), sub-§ 1 – namely:

- Any person specified by the statute authorizing the rulemaking;
- Any person who has filed within the past year a written or electronic request with the agency for notice of rulemaking;
- Any trade, industry, professional, interest group or regional publication that the agency considers effective in reaching the persons affected;
- The primary sponsor of the legislation that was enacted and authorized the rulemaking, as long as the legislation was enacted within the previous 2 years.

Be prepared to make copies of the proposed rule available to members of the public upon request.



Have all persons and organizations that the agency must notify about the rulemaking proposal pursuant to the MAPA been sent notification?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are copies of the proposed rule available to members of the public who request copies?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

#### 14

Post the proposed rule on the agency's web page. See [5 M.R.S. § 8053](#), sub-§ 6.

Has the proposed rule been posted on the agency's web page?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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#### 15

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

- Arrange for the public hearing to be audio recorded, if deemed necessary.
- Draft an opening statement for the representative of the agency who will preside at the hearing explaining hearing procedures.
- A public hearing "shall be held and conducted as follows":

"In the case of a rule authorized to be adopted by more than one agency member, at least 1/3 of the agency members shall be present. ... In the case of a rule authorized to be adopted by a single agency member, either the agency member, a person in a major policy-influencing position, as listed in chapter 71, or a designee who has responsibility over the subject matter to be discussed at the hearing shall hold and conduct the hearing." [5 M.R.S. § 8052](#), sub-§ 2.

See also generally [5 M.R.S. § 8052](#), sub-§§ 1 to 4.

Was a hearing held on the proposed rule?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If so, on what date was the hearing held?	Date: _____	

#### 16

Document all spoken comments about the proposed rule that are made during the public hearing (if there is a hearing) and collect and compile all written comments submitted to the agency by the comment deadline.

- Except for spoken testimony provided during a hearing on a proposed rule, comments must be submitted in writing.

- Comments about a proposed rule may be submitted by e-mail.

<b>Did the agency collect and compile written comments on the proposed rule?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Did the agency collect and compile all testimonial comments on the proposed rule?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## 17

After the close of the public comment period, review all comments that were submitted to the agency (if any were received) and, if applicable and deemed necessary, listen to the audio recording of the hearing.

## 18

Prepare a document that summarizes the comments on the proposed regulation that were submitted to the agency, and then compose written responses to each comment.

- The document must list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments.
- “If the same or similar comments or concerns about a specific issue were expressed by different persons or organizations, the agency may synthesize these comments and concerns into a single comment that accurately reflects the meaning and intent of these comments and concerns to be addressed by the agency, listing the names of the persons who commented and the organizations they represent.” [5 M.R.S. § 8052](#), sub-§ 5, ¶ A.
- Agencies must “maintain a file for each rule adopted that must include, in addition to other documents required by this Act, testimony, comments, the names of persons who commented and the organizations they represent and information relevant to the rule and considered by the agency in connection with the formulation, proposal or adoption of a rule.” [5 M.R.S. § 8052](#), sub-§ 5, ¶ B.

<b>Did the agency summarize and respond to all the comments on the rule that were received by the agency?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Has the agency created and is the agency maintaining a file of all “testimony, comments, the names of persons who commented and the organizations they represent and information relevant to the rule and considered by the agency in connection with the formulation, proposal [and] adoption of [the] rule”?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

After reviewing the public comments, make any necessary or desired revisions to the proposed rule.

- A proposed rule “may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule.” *Id.*
- “If an agency determines that a rule that the agency intends to adopt is substantially different from the proposed rule, the agency shall request comments from the public concerning the changes from the proposed rule. The agency may not adopt the rule for a period of 30 days from the date comments are requested pursuant to this paragraph. Notice of the request for comments must be published by the Secretary of State in the same manner as notice for proposed rules.” *Id.*
- Note: If the comment period for a proposed rule is reopened, then the 120-day period within which the rule must be adopted (or provisionally adopted) by the agency proposing the rule restarts, as does the 150-day period within which the adopted (or provisionally adopted) rule must be reviewed by the Department of the Attorney General as to the rule’s form and legality. *See* Steps 21 and 22, below.

**Did the agency revise the proposed rule in response to comments or at the agency’s own discretion?**

☐ Yes

☐ No

**If so, are the revisions “consistent with the terms of the proposed rule”?**

☐ Yes

☐ No

**Is the revised rule “substantially different” from the proposed rule?**

☐ Yes

☐ No

**If the rule is “substantially different” from the proposed rule, did the agency request comments from the public about the changes to the proposed rule that the agency made?**

☐ Yes

☐ No

**If the agency requested comments from the public about the changes to the proposed rule that the agency made, on what date was the comment deadline?**

Date: \_\_\_\_\_

If the agency held a public hearing to receive testimony about the changes to the proposed rule, on what date was the hearing?

Date: \_\_\_\_\_

Did the agency compile and respond to all additional comments about the changes to the proposed rule that were received?

☐ Yes

☐ No

20

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

- An agency must adopt a proposed rule within 120 days after "the final date by which data, views or arguments may be submitted to the agency for consideration in adopting the rule." [5 M.R.S. § 8052](#), sub-§ 7, ¶ A.

### RULEMAKING STAGE 3: RULE ADOPTION STAGE

21

Prepare and then present to the "authorized representative" (see [5 M.R.S. § 8002](#), sub-§ 3-B) of the agency adopting the rule the following paper documents for review and approval, which together constitute the "**rulemaking adoption packet**":

- Two copies of the **MAPA-1 ("Rulemaking Cover Sheet") form**, which, when signed, must bear original "wet" signatures;
- One marked-up copy of the adopted rule showing all changes (including initially proposed changes, if applicable) made to the rule during the rulemaking process;
- One "clean" copy of the adopted rule that incorporates all the changes made to the rule during the rulemaking process;
- One copy of the "Basis Statement" for the rule (see [5 M.R.S. § 8052](#), sub-§ 5), which should be a standalone statement, but may be included in the same document with other information to which the statement relates, such as the agency's summary of and responses to comments that were submitted about the rule;
- One copy of the agency's summary of and responses to comments that were submitted about the rule, if any were (see [5 M.R.S. § 8052](#), sub-§ 5);
- One copy of the **"Rulemaking Fact Sheet" form** (see [5 M.R.S. § 8053-A](#), sub-§ 1);
- One copy of the **"MAPA Checklist" form** (see [5 M.R.S. § 8056-A](#), sub-§ 1); and
- One signed and dated **MAPA-4 ("Notice of Rulemaking Adoption") form** (see [5 M.R.S. § 8056](#), sub-§ 1, ¶ D).

If an adopted rule is one that an agency wants included and posted online in a longer document that includes **other** agency rules that were **not** subject to rulemaking, **then an e-copy of the longer document with the adopted rule already embedded in it must be filed with the Department of the Secretary of State**. A paper copy of at least the adopted rule that was subject to rulemaking also must be filed with that office.

If **only certain parts or sections of a rule** were subject to a rulemaking initiative, **then an e-copy of the entire rule that includes the adopted new or amended parts or sections already embedded in the rule must be filed with the Department of the Secretary of State**. A paper copy of at least the entire rule with the adopted new or amended parts or sections embedded in the rule also must be filed with that office.

Was the rule adopted within 120 days after the comment deadline for the rule?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the rulemaking adoption packet include all the documentation that must be filed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the head of the agency (or the authorized representative of the agency) adopting the rule approved the rulemaking adoption packet?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## 22

Once approval is received from the agency official responsible for the rulemaking, send via interoffice or postal mail, or deliver in person, the rulemaking adoption packet to the Department of the Attorney General, which must review the rule as to its form and legality. See [5 M.R.S. § 8056](#), sub-§ 1, ¶ A.

- “The review [as to form and legality] ... may not be performed by any person involved in the formulation or drafting of the proposed rule.” [5 M.R.S. §8056](#), sub-§ 6.
- “The Attorney General may not approve a rule if it is reasonably expected to result in a taking of private property under the Constitution of Maine unless such a result is directed by law or sufficient procedures exist in law or in the proposed rule to allow for a variance designed to avoid such a taking.” *Id.*
- The Department of the Attorney General must conduct the review of the form and legality of an adopted rule within 150 days after the “final date by which comments may be submitted” on the rule. [5 M.R.S. § 8052](#), sub-§ 7.
  - The agency should consider providing the rulemaking packet to the Department of the Attorney General prior to the 120-day deadline for agency adoption, as some rulemaking errors can be corrected if identified before expiration of that deadline.

- The Assistant Attorney General reviewing the rule as to form and legality must sign **both** copies of the MAPA-1 forms that are submitted to the office as part of the rulemaking adoption packet.

<b>Has the Department of the Attorney General reviewed and approved the adopted rule as to the rule's form and legality?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>If so, did the Department of the Attorney General's review and approval occur within 150 days after the comment deadline for the rule?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## 23

Once the adopted regulation is approved by the Department of the Attorney General as to form and legality, the agency must file, or cause to be filed, the rulemaking adoption packet with the Department of the Secretary of State.

- In addition to the rulemaking adoption packet, copies of any codes or standards that are incorporated by reference into an adopted rule also must be filed with the Department of the Secretary of State. See [5 M.R.S. §8056](#), sub-§ 1, ¶ B.

<b>Has the paper copy of the rulemaking adoption packet been filed (or sent to be filed) with the Department of the Secretary of State?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>If the rule incorporates any codes or standards by reference, have those codes or standards also been filed with the Department of the Secretary of State?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## 24

E-copies (in **Microsoft Word** format) of the “clean” copy of the adopted rule, the Basis Statement, the Rulemaking Fact Sheet, and the MAPA-4 form must also be provided to the Department of Secretary of State via email or through OneDrive or SharePoint.

<b>Have e-copies of a “clean” copy of the adopted rule, the Basis Statement, the Rulemaking Fact Sheet, and the Notice of Agency Rulemaking Adoption form been provided to the Department of the Secretary of State?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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## 25

If the adopted rule that is filed with the Department of Secretary of State 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. *See* [5 M.R.S. § 8052](#), sub-§ 6.

- If the effective date of an adopted rule is “contingent upon the occurrence or nonoccurrence” of a future event, then that contingency must be identified in the rule.
- Further, “[w]hen the effective date of a rule is contingent upon the occurrence or nonoccurrence of an event, notification of the occurrence or nonoccurrence must be filed with the Secretary of State when known.”

**If the rule being promulgated is a routine technical one, then STOP HERE.**

**If the rule being promulgated is a major substantive one, then GO TO Step 26.**

## 26

If a rule is a major substantive one that has been provisionally adopted by an agency and filed with the Department of the Secretary of State, then paper copies of the rulemaking adoption filing packet also must be filed with the Office of the Executive Director of the Legislative Council, in accordance with the "Checklist for Major Substantive Rules Filings." *See* <https://legislature.maine.gov/doc/1819>.

- A provisionally adopted rule must be submitted to the Executive Director of the Legislative Council during the “legislative rule acceptable period,” which is defined as the period beginning on the July 1st preceding the convening of a regular session of the Legislature and ending at 5:00 p.m. on the 2nd Friday in January after the convening of that regular session of the Legislature.” If the provisionally adopted rule is submitted outside of this period, “The Legislature may act or decline to act upon” the rule. *See generally* [5 M.R.S. §8072](#).

**Has the agency filed the required documentation with the Office of the Executive Director of the Legislative Council in accordance with the Legislature’s “Checklist for Major Substantive Rules Filings”?**

☐ Yes

☐ No

**Has the provisionally adopted rule been submitted to the Executive Director of the Legislative Council by or before the deadline identified in statute?**

☐ Yes

☐ No



If, during the legislative process, the Maine Legislature authorizes final adoption of a provisionally adopted rule through the enactment of a Resolve, then a paper copy of the rulemaking adoption packet must be subsequently presented to the head of the agency promulgating the rule so that the provisionally adopted rule may be "finally adopted" by the agency.

- The paper rulemaking adoption packet presented to the head of the agency finally adopting the rule must include an updated MAPA-1, a "clean copy" of the finally adopted rule, a MAPA-4, and a citation to the Resolve that authorized final adoption of the rule. See [5 §8052](#), sub-§ 5, ¶ C.
  - A copy of the Resolve also may be incorporated into the rulemaking adoption packet.
- A provisionally adopted rule that has been acted upon by the Legislature must be finally adopted by the agency within 60 days after the effective date of the authorizing Resolve. See [5 M.R.S. § 8072](#), sub-§ 8.
- If the Legislature declines to act on a provisionally adopted rule (or part of a rule) submitted during the legislative rule acceptance period, and also does not carry over any legislation to approve or disapprove the rule (or part of the rule) to the next legislative session, the agency may finally adopt the rule.
- Final adoption when the Legislature declines to act on a rule or part of a rule must be completed within 60 days of the end of the legislative session in which the Legislature failed to act.

**Did the Legislature authorize final adoption of the provisionally adopted rule through the enactment of a Resolve?**

☐ Yes

☐ No

**Was a paper copy of the rulemaking adoption packet presented to the head of the agency (or the authorized representative of the agency) to approve the final adoption of the rule?**

☐ Yes

☐ No

**Was the rule finally adopted by the agency within 60 days after the effective date of the authorizing Resolve?**

☐ Yes

☐ No

Once the provisionally adopted rule has been finally adopted by the agency, the paper rulemaking adoption packet provided to the head of the agency finally adopting the rule must be filed with the Department of Secretary of State.



- E-copies (in [Microsoft Word](#) format) of the “clean” copy of the finally adopted rule and the MAPA-4 form must also be provided to the Department of the Secretary of State via email or through OneDrive or SharePoint.

<p><b>Was the paper copy of the rulemaking adoption packet for the finally adopted rule filed (or sent to be filed) with the Department of the Secretary of State?</b></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p><b>Were e-copies of the “clean” copy of the finally adopted rule and the MAPA-4 form provided to the Department of the Secretary of State?</b></p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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A major substantive rule is effective 30 days after the final adoption filing is made with the Department of the Secretary of State, unless otherwise specified by law or the agency specifies in the rule an effective date that is more than 30 days. *See id.*

- If the effective date of a finally adopted rule is “contingent upon the occurrence or nonoccurrence” of a future event, then that contingency must be identified in the rule.
- Further, “[w]hen the effective date of a rule is contingent upon the occurrence or nonoccurrence of an event, notification of the occurrence or nonoccurrence must be filed with the Secretary of State when known.”

***Reference:***

All [rulemaking forms](#) and the [Agency Designation of Rulemaking Liaison](#) are available here in Word format.