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**Rulemaking 101**

***(As of May 8, 2025)***

***The information provided in this presentation is neither legal advice nor a legal opinion and is not intended to be such. If such advice or such an opinion is needed, please consult with a qualified, licensed attorney.***

**What is the Purpose of a Rule?**

**Bills passed by the Legislature and enacted into law as statutes at times establish broad public policy goals, but do not provide details about how those goals are to be implemented and achieved. In such instances, the Legislature might authorize or require a State agency to propose and adopt rules to provide those details.**

**Rulemaking Points of Reference**

**There are generally three points of reference that must be accounted for when an agency engages in rulemaking: (1) The Maine Administrative Procedure Act (**<https://legislature.maine.gov/legis/statutes/5/title5ch375sec0.html>)**; (2) the specific statutory authority that authorizes or requires a rule to be adopted by an agency; and (3)** [**Executive Order 4A: An Order Regarding Administrative Rulemaking (Amended, PDF)**](https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/EO%204-A%20FY%202019.pdf)**(3/30/2023).**

**Guiding Principles of the Rulemaking Process**

**The rulemaking process set forth in the MAPA is meant to ensure (1) that the Legislative Committee of jurisdiction and the public – including interested parties and members of the regulated community – are duly notified when an agency proposes a rule, and (2) that individuals have a meaningful opportunity to “comment” (or provide feedback) on the proposed rule.**

**The rulemaking process has three stages: The Pre-Proposal Stage; the Proposal Stage; and the Adoption Stage.**

**1. Pre-Proposal Stage**

**2. Proposal Stage**

**3. Adoption Stage**

**Pre-Proposal Stage**

**At the Pre-Proposal Stage, an agency planning to propose a new rule (or to act on an existing rule (such as by, e.g., amending a rule)) must:**

* **Identify the statutory authority for the rule, including whether the rule must or may be proposed, as well as whether the rule is a Routine Technical (RT) or Major Substantive (MS) one. *Ref.:* 5 M.R.S. § 8071(2) at** [**5 §8071. Legislative review of certain agency rules**](https://legislature.maine.gov/legis/statutes/5/title5sec8071.html)**.**
* **Determine whether the rule needs to be implemented on an emergency basis. *Ref.:* 5 M.R.S. § 8054 at** [**5 §8054. Emergency rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8054.html)**.**
* **Determine whether the rule was on the agency’s annual regulatory agenda. *Ref.:* 5 M.R.S. § 8060 at** [**5 §8060. Regulatory agenda**](https://legislature.maine.gov/legis/statutes/5/title5sec8060.html)**.**
* **Determine whether the rule, if adopted, would conflict with any statute or other rule.**
* **Compose the rule in such a manner that its text will be understood by members of the public. *Ref.:* 5 M.R.S. § 8061 at** [**5 §8061. Style**](https://legislature.maine.gov/legis/statutes/5/title5sec8061.html)**.**
* **Determine whether the rule would result in a taking, an unfunded mandate, or create any equal protection or due process issues.**
* **Include in the rule any provisions specified by the Legislature.**
* **Have the Department of the Attorney General (DAG) perform a legal pre-review of the draft rule, if practicable. *See*** [**Executive Order 4A: An Order Regarding Administrative Rulemaking (Amended, PDF)**](https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/EO%204-A%20FY%202019.pdf)**(3/30/2023).**
* **Determine whether a public hearing will (or must) be held on the rule. *Ref.:* 5 M.R.S. § 8052(1) at** [**5 §8052. Rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html)**.**
* **Complete Department of the Secretary of State (DSOS) filing forms.**

**Proposal Stage**

**At the Proposal Stage, the agency must:**

* **File the proposed rule and accompanying filing forms with the DSOS and the Legislature. *Ref.:* 5 M.R.S. § 8053-A at** [**5 §8053-A. Notice to legislative committees**](https://legislature.maine.gov/legis/statutes/5/title5sec8053-A.html)**.**
* **Notify statutorily specified parties of the rule proposal, if no public hearing on the rule is to be held. *Ref.:* 5 M.R.S. § 8053(1) at** [**5 §8053. Notice**](https://legislature.maine.gov/legis/statutes/5/title5sec8053.html)**.**
* **Post the proposed rule on the agency’s website. *Ref.:* 5 M.R.S. § 8053(6) at** [**5 §8053. Notice**](https://legislature.maine.gov/legis/statutes/5/title5sec8053.html)**.**
* **If there is to be a public hearing on the proposed rule, then arrange for the hearing to be audio- or video-recorded, if deemed necessary, and draft an opening statement for the agency representative who will preside at the hearing.**
* **Compile comments on the proposed rule that are submitted to the agency, including through spoken testimony if a public hearing is held. *Ref.:* 5 M.R.S. § 8052(5) at** [**5 §8052. Rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html)**.**
* **After the comment deadline for the proposed rule has passed, review and respond to each comment. *Ref. generally:* 5 M.R.S. § 8052(5) at** [**5 §8052. Rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html)**.**
* **Determine whether the proposed rule will be revised in response to any comments and, if so, whether the rule as revised will be "substantially different" from the proposed rule as a result*. Ref.:* 5 M.R.S. § 8052(5)(B) at** [**5 §8052. Rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html)**.**
* **If the comment period is re-opened due to substantive revisions made to the originally proposed rule, then public notice of the re-opened comment period and the new comment deadline must be published and posted.**
* **Review and respond to any comments submitted to the agency about the agency’s revisions to the proposed rule.**

**Adoption Stage**

**At the Adoption Stage, the agency must:**

* **Finalize the rule and prepare rulemaking adoption filing forms.**
* **Present the finalized rule and accompanying filing forms to an "authorized representative" of the agency for review and adoption approval, which must occur within 120 days after the final comment deadline. *Ref.:* 5 M.R.S. § 8052(7)(A) at** [**5 §8052. Rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html)**.**
* **Present the adopted rule and accompanying filing forms to the DAG for review as to the rule's form and legality, which review must be completed within 150 days after the final comment deadline. *Ref.:* 5 M.R.S. § 8052(7)(B) at** [**5 §8052. Rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html)**.**
* **If the DAG approves the rule as to form and legality, then the agency must then file the adopted rule and accompanying filing forms with the DSOS.**
* **If the rule is a RT one, then the rule becomes effective 5 days after the filing with DSOS. If the rule is a MS one, then the rule becomes effective 30 days after the “finally adopt[ed]” rule is filed with the DSOS. *Ref.:* 5 M.R.S. §§ 8052(6), 8072(8) at** [**5 §8052. Rulemaking**](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html)**,** [**5 §8072. Legislative review of major substantive rules**](https://legislature.maine.gov/legis/statutes/5/title5sec8072.html)**.**
* **If the rule is a MS one, then the initial filing with the DSOS is the rule’s “provisional adoption.”**
  + **Provisionally adopted rules must be reviewed and approved by the Legislature before they can be “finally adopted” by an agency.**
  + **If a provisionally adopted rule is approved by the Legislature in whole or part, then, once the agency has legal authority to “finally adopt” the rule, the agency must do so within 60 days after such authority is effective.**
  + **The agency would then make a "final adoption" filing of the rule with the DSOS.**