**State of Maine**

**Department of the Secretary of State**

**Frequently Asked Questions About**

**State Agency Rulemaking**

***(Last updated April 2, 2025)***

Many agencies of Maine State government are at times authorized or required by law to adopt rules to implement State laws and policies. This Frequently Asked Questions page provides answers to common questions about State agency rulemaking.

For the purposes of this FAQ page, unless the context implies otherwise, the word “create” means to promulgate, amend, repeal and replace, or repeal a rule.

**Note: The responses provided on this webpage are for informational purposes only and do not constitute either legal advice or a legal opinion.**

**Question: Is there a Maine law that governs how State agencies are to create rules?**

* **Yes,** subchapters 1, 2, and 2-A of the **Maine Administrative Procedure Act (“MAPA”; “Act”)**, [5 M.R.S. Ch 375](https://legislature.maine.gov/legis/statutes/5/title5ch375sec0.html), generally govern the process that agencies must follow when they are authorized and opt to or are required to create rules.

**Question: What is an “agency?”**

* Under the Act, an agency is “any body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized.” [5 M.R.S. § 8002](https://legislature.maine.gov/legis/statutes/5/title5sec8002.html), sub-§ 2.

The meaning of the word, however, “[d]oes not include the Legislature, Governor, courts, University of Maine System, Maine Maritime Academy, community colleges, the Commissioner of Education for schools of the unorganized territory, school administrative units, community action agencies as defined in [22 M.R.S. § 5321](https://legislature.maine.gov/legis/statutes/22/title22sec5321.html), special purpose districts or municipalities, counties or other political subdivisions of the State.” *Id.*

**Question: What is a “rule?”**

* Under the Act, a “rule” is “the whole or any part of every regulation, standard, code, statement of policy, or other agency guideline or statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency.” [5 M.R.S. § 8002](https://legislature.maine.gov/legis/statutes/5/title5sec8002.html), sub-§ 9, ¶ A.

A rule, however, “does not include”:

* “Policies or memoranda concerning only the internal management of an agency or the State Government and not judicially enforceable”;
* “Advisory rulings issued under” [subchapter 3](https://legislature.maine.gov/legis/statutes/5/title5ch375sec0.html) (“Advisory Rulings”) of the MAPA;
* “Decisions issued in adjudicatory proceedings”; or
* “Any form, instruction or explanatory statement of policy that in itself is not judicially enforceable, and that is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges.”

[5 M.R.S. § 8002](https://legislature.maine.gov/legis/statutes/5/title5sec8002.html), sub-§ 9, ¶ B.

**Importantly, a “rule is not judicially enforceable unless it is adopted in a manner consistent with” the MAPA.** [5 M.R.S. § 8002](https://legislature.maine.gov/legis/statutes/5/title5sec8002.html), sub-§ 9.

**Question: What is the difference between a “routine technical” rule and a “major substantive” rule?**

* Under the MAPA, there are two types of rules: Those designated by the Legislature as **“routine technical”** rules and those designated by the Legislature as **“major substantive”** rules.

“**Routine technical rules** are procedural rules that establish standards of practice or procedure for the conduct of business with or before an agency and any other rules that are not major substantive rules as defined in [paragraph B](https://legislature.maine.gov/legis/statutes/5/title5sec8071.html) [of 5 M.R.S. § 8071, sub-§ 2]. Routine technical rules include, but are not limited to, forms prescribed by an agency; they do not include fees established by an agency except fees established or amended by agency rule that are below a cap or within a range established by statute.” [5 M.R.S. § 8071.](https://legislature.maine.gov/legis/statutes/5/title5sec8071.html) , sub-§ 2, ¶ A.

“**Major substantive rules** are rules that, in the judgment of the Legislature … [r]equire the exercise of significant agency discretion or interpretation in drafting; or … [b]ecause of their subject matter or anticipated impact, are reasonably expected to result in [1] a significant increase in the cost of doing business, [2] a significant reduction in property values, [3] the loss or significant reduction of government benefits or services, [4] the imposition of state mandates on units of local government as defined in the Constitution of Maine, Article IX, Section 21, or [5] other serious burdens on the public or units of local government.” *Id.* sub-§ 2, ¶ B.

**Whether a given rule is routine technical or major substantive is determined by the Legislature**, which designates a rule as being routine technical or major substantive in the statute enabling the creation of the rule.

**Question: What process must agencies follow when creating a rule?**

* An agency opting or required to create a rule must follow this general process:

1. The agency must provide **adequate notice** to the public and to other statutorily specified parties about a rule the agency is proposing. *See generally* [5 M.R.S. § 8053](https://legislature.maine.gov/legis/statutes/5/title5sec8053.html);
2. The agency must also provide the public and the statutorily specified parties with an **opportunity to comment** on the proposed rule during a defined period of time, otherwise known as a “comment period”;
3. Once the comment period for a proposed rule has closed, the agency must decide whether the proposed rule is to be finalized as proposed or if it is to be revised.

* If a proposed rule is revised by an agency and is, as a result, “substantially different” from the originally proposed rule, then the agency must provide public notice of the revisions and offer an opportunity for comments to be submitted to the agency about the revisions;

1. After the comment period (or comment periods, if applicable) for a proposed rule has closed, the agency must consider and then compose **a summary of all the comments** on the rule that the agency received**, as well as the agency’s responses to them**. The agency must also then **finalize the text of the rule**;
2. The agency must then **adopt** **the finalized rule** if the rule is a **routine** **technical** one or **provisionally adopt** **the finalized rule** if the rule is a **major substantive** one;
3. Following its adoption (or provisional adoption) by the agency, the **adopted rule** must be reviewed by the Department of the Attorney General as to the rule’s **form and legality**;
4. After the Department of the Attorney General’s review is complete and the adopted rule (or provisionally adopted rule) has been approved as to form and legality, the agency must **file the rule with the Department of the Secretary of State**.

* If the rule that is filed is a **routine technical rule**, then the rule will become **effective 5 days after being filed**, unless otherwise provided by law or if the adopting agency specifies in the rule an effective date that is more than 5 days after the filing date. If the effective date of the rule is **contingent on the occurrence or nonoccurrence of a future event**, then that must be stated in the rule.
* If the rule is a **provisionally adopted major substantive rule**, then the rule must be **submitted to the Legislature by the agency**.

1. In the case of a provisionally adopted major substantive rule, if, after the Legislature has had an opportunity to consider the rule, the Legislature either (a) approves the rule in whole or part, or (b) neither approves nor disapproves the rule (or part of the rule) by the end of the legislative session, then the rule (or the part of the rule) approved by or not acted upon by the Legislature can be **finally adopted** by the agency;
2. After the agency has finally adopted the major substantive rule, the rule must **be filed with the Department of the Secretary of State**.

* After that filing occurs, the major substantive rule will become **effective 30 days after being filed**, unless otherwise provided by law or if the agency finally adopting the rule specifies in the rule an effective date that is more than thirty days after the filing date. If the effective date of the rule is **contingent on the occurrence or nonoccurrence of a future event**, then that must be stated in the rule.

**Question: Is an agency required to hold a public hearing on a proposed rule?**

* **No,** an agency is not required to hold a public hearing on a proposed rule **unless** either–
* A hearing on the rule is required by law;
* A hearing on the rule is requested by any 5 or more “interested persons”; or
* The rule is a major substantive rule.

*See* [5 M.R.S. § 8052](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html), sub-§ 1.

**Question: Is an agency able to create a rule on an emergency basis?**

* **Yes,** an agency may create a rule on an emergency basis if doing so “is necessary to avoid an immediate threat to public health, safety or general welfare.” [5 M.R.S. § 8054](https://legislature.maine.gov/legis/statutes/5/title5sec8054.html), sub-§ 1.

When creating an emergency rule, an agency must specify “the agency's findings with respect to the existence of an emergency.” *Id.*, sub-§ 2. An emergency cannot be determined to exist if “the primary cause of the emergency is delay caused by the agency” creating the rule. *Id.*

Both routine technical rules and major substantive rules can be created on an emergency basis. *See generally* [5 M.R.S. § 8073](https://legislature.maine.gov/legis/statutes/5/title5sec8073.html).

A **routine technical emergency rule** may only remain in effect for “90 days, or any lesser period of time specified in an enabling statute or in the emergency rule.” [5 M.R.S. § 8054](https://legislature.maine.gov/legis/statutes/5/title5sec8054.html), sub-§ 3. A **major substantive emergency rule** may, in certain cases, remain in effect “for up to 12 months or until the Legislature has completed review” of the rule. [5 M.R.S. § 8073](https://legislature.maine.gov/legis/statutes/5/title5sec8073.html).

**Question: Can an agency take action to create a new rule prior to the effective date of the statute that permits or requires creation of the rule?**

* **Yes,** if a statute permits or requires an agency to create a new rule, but the statute is not yet effective, an agency may propose and solicit, receive, and consider comments on the rule, but cannot adopt (or provisionally adopt) the rule until the statute becomes effective.

**Question: Does an agency need to engage in rulemaking to repeal a rule?**

* **Yes,** to repeal a rule, an agency must propose the repeal of the rule through the same rulemaking process that must be followed when the agency proposes the creation, amendment, or repeal and replacement of the rule.

**Question: Can an agency incorporate material into a rule by reference?**

* The Act provides that, “[t]hrough rulemaking, an agency may incorporate by reference all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this State or by a nationally recognized organization or association.” [5 M.R.S. § 8056](https://legislature.maine.gov/legis/statutes/5/title5sec8056.html), sub-§ 1, ¶ B, sub-¶ 1.

Importantly, the “reference [to an incorporated matter (for example, a Federal Code section)] in [an] agency rule[] *must* fully identify the incorporated matter by **exact title, edition or version and date of publication**.”  *Id.*, sub-§1, ¶ B, sub-¶ 2 (emphasis added).

A rule that incorporates a matter by reference “must state where copies of the incorporated matter are available at cost from the agency issuing the rule or where copies are available from the agency of the United States, this State or an organization or association originally issuing that matter.” *Id.,* sub-§ 1, ¶ B, sub-¶ 3.

Finally, an agency incorporating material by reference into a rule must “submit a copy of the incorporated matter to the Secretary of State.” *Id.* sub-§ 1, ¶ B, sub-¶ 4.

**Question: Is a member of the public permitted to ask an agency to modify or adopt a rule?**

* **Yes,** a member of the public may initiate and submit a petition asking an agency to modify or adopt a rule.*See generally* [5 M.R.S. § 8055](https://legislature.maine.gov/legis/statutes/5/title5sec8055.html).

An agency receiving such a petition must, within 60 days after receiving the petition, “either notify the petitioner in writing of its denial, stating the reasons therefor, or initiate appropriate rule-making proceedings.” *Id.*, sub-§ 3.

“Whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, [an] agency [must] initiate appropriate rulemaking proceedings within 60 days after receipt of the petition.” *Id.*

Prior to being presented to an agency, a petition for an agency to modify or adopt a rule “must be verified and certified in the same manner provided in [Title 21‑A, section 354, subsection 7](https://legislature.maine.gov/legis/statutes/21-A/title21-Asec354.html)” (“Certification of petitions”). [5 M.R.S. § 8055](https://legislature.maine.gov/legis/statutes/5/title5sec8055.html)*.*

Model rulemaking petition documents may be accessed through the following link: <https://www.maine.gov/sos/rulemaking/information-about-rulemaking/guide-to-rulemaking#documents>. **Please note that agencies may have their own rulemaking petitioning documents that are to be used instead of the model documents available at the link.**

An agency may, but is **not** required to, adopt a rule that is the subject of a rulemaking petition and has gone through the rulemaking process.

**Question: Are agencies’ rules accessible online?**

* **Yes,** each agency’s rules may be accessed online through the links posted on the following webpage: <https://www.maine.gov/sos/rulemaking/agency-rules>.

**Question: Are certified copies of rules available?**

* **Yes,** certified copies of rules may be requested by contacting the Department of the Secretary of State, Bureau of Corporations, Elections, and Commissions. The contact information for that office is available at the following webpage: <https://www.maine.gov/sos/about-us/contact-us>.

**Question: Is a provisionally adopted major substantive rule enforceable?**

* **No,** a major substantive rule that has only been provisionally adopted by an agency does **not** have the force of law.

**Question: What is a “small business impact statement” and where can I find it?**

* The Act requires agencies to “seek to reduce any economic burdens” the rules they adopt will have on small businesses (that is, “businesses that have **20 or fewer employees**”). [5 M.R.S. § 8052](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html), sub-§ 5-A.

To that end, “[p]rior to the adoption of any proposed rule that may have an adverse impact on small businesses,” an agency must “prepare an economic impact statement that” –

* Identifies “the types and an estimate of the number of the small businesses subject to the proposed rule”;
* Identifies “the projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record”;
* Briefly accounts for the rule’s “probable impact on affected small businesses”; and
* Describes “any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule.”

*Id.*

A copy of the small business impact statement for a proposed rule may be obtained by contacting the agency proposing the rule.

**Question: What is a “county and municipal impact statement” and where can I find it?**

* The MAPA requires that a “fiscal impact note” be prepared for each rule. *See generally* [5 M.R.S. § 8063](https://legislature.maine.gov/legis/statutes/5/title5sec8063.html).

“The fiscal impact note must describe the estimated cost to municipalities and counties for implementing or complying with the proposed rule,” and “[i]f the proposed rule will not impose any cost on municipalities or counties, [then] the fiscal impact note must state that fact.” *Id.*

A copy of the county and municipal impact statement for a proposed rule may be obtained by contacting the agency proposing the rule.

**Question: What is a “fiscal impact statement” and where can I find it?**

* When preparing to propose a rule, agencies must prepare a “fact sheet” that includes certain information, including the “estimated … fiscal impact of the rule.” [5 M.R.S. § 8057-A.](https://legislature.maine.gov/legis/statutes/5/title5sec8057-A.html) , sub-§ 1, ¶ C.

Unless an existing rule has an estimated fiscal impact of more than $1 million dollars, the Act does not presently specify what types of information need to be accounted for when determining a potential rule’s estimated fiscal impact for the purposes of the fact sheet.

If, however, an existing rule has an estimated fiscal impact of more than $1 million dollars, then the fact sheet must include –

* “A description of the economic impact of the rule including effects that cannot be quantified in monetary terms”;
* “A description and examples of individuals, major interest groups and types of businesses that will be affected by the rule and how they will be affected”; and
* “A description of the benefits of the rule including those that cannot be quantified.”

*Id.*, sub-§ 2.

A copy of the fact sheet for a proposed rule may be obtained by contacting the agency proposing the rule.

**Question: What is a “basis statement” of a rule and where can I find it?**

* “At the time of [the] adoption of any rule, [an] agency [must] adopt a written statement explaining the factual and policy basis for the rule.” [5 M.R.S. § 8052](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html), sub-§ 5.

The basis statement is composed when a rule is ready to be adopted by an agency and summarizes **the reason (or reasons)** **for the rule.** If a rule is being promulgated on an emergency basis, then the basis statement must also include an agency’s “findings with respect to the existence of an emergency, including any modifications of [rulemaking] procedures,” and those findings “must be in a section [of the basis statement] labeled ‘findings of emergency.’” [5 M.R.S. § 8054](https://legislature.maine.gov/legis/statutes/5/title5sec8054.html), sub-§ 2.

A basis statement for a major substantive rule that is being finally adopted by an agency must cite “the legislative act authorizing final adoption of that rule; or, if authorization is the result of failure of the Legislature to act under [section 8072, subsection 7](https://legislature.maine.gov/legis/statutes/5/title5sec8072.html), the agency must indicate that fact and identify the date the agency filed the rule for review under section 8072.” [5 M.R.S. § 8052](https://legislature.maine.gov/legis/statutes/5/title5sec8052.html), sub-§ 5, ¶ C.

**Question: What is a “brief summary” of a proposed rule and where can I find it?**

* The “brief summary” of a proposed rule succinctly states **what is occurring** **through a given rulemaking initiative** with a newly proposed rule or existing rule.

If an agency is proposing a new rule, then the summary might state that the rule is being created to implement a specific statute and might highlight the key components of the proposed new rule.

If an agency is proposing to amend or repeal and replace an existing rule, then the summary might list or explain the key changes to the existing rule that are being proposed.

If an agency is proposing to repeal a rule, then the summary might explain why the agency is proposing that the rule be repealed.

A copy of the brief summary of a rule may be obtained by contacting the agency proposing the rule. The summary may also be obtained from the rulemaking proposal notice posted by the Department of the Secretary of State on its “Weekly Rulemaking Notices” website, <https://www.maine.gov/sos/rulemaking/notices>. *See generally*.

**Question: What is a “concise summary” of a provisionally adopted major substantive rule and where can I find it?**

* An agency must prepare **a “concise summary” of a major substantive rule** that the agency has provisionally adopted and provide that summary – as well as other material and information – to the Office of the Executive Director of the Legislative Council at a time contemporaneous with the rule’s provisional adoption. *See* [5 M.R.S. § 8072](https://legislature.maine.gov/legis/statutes/5/title5sec8072.html), sub-§ 2, ¶ B.

A copy of the concise summary of a provisionally adopted major substantive rule may be obtained by contacting the agency that provisionally adopted the rule.

**Question: Is an agency required to conduct an analysis of the benefits and costs of a rule the agency is proposing?**

* **No,** an agency proposing a rule is not required to conduct an analysis of the benefits and costs of the rule.

If, however, an agency chooses to conduct such an analysis, then the analysis “must include, at a minimum” –

* “Specification of the baseline condition for the analysis, including all required parameters for the analysis, all assumptions made in specifying the baseline condition and specification of the analysis period”;
* “A description of the methods used to discount future benefits and costs, preferably based on the federal Office of Management and Budget's discount rate for federal projects”;
* “An analysis of changes in the level of economic activity in the State as measured by employment, income and outputs”; and
* “An estimate of the discounted benefits and costs of the proposed rule over the baseline condition, including benefits and costs to specific groups and changes in the economic welfare of the State as a whole over the baseline condition.”

[5 M.R.S. § 8063-A](https://legislature.maine.gov/legis/statutes/5/title5sec8063-A.html), sub-§ 1.

“Prior to conducting a cost-benefit analysis … an agency [must] determine that sufficient staff expertise and budgeted resources exist within the agency to complete the analysis.” [5 M.R.S. § 8063-A](https://legislature.maine.gov/legis/statutes/5/title5sec8063-A.html).

**Question: What is an “annual regulatory agenda” and where can I find one?**

* The Act requires each State agency to annually issue to “the appropriate joint standing committee or committees of the Legislature and to the Secretary of State” an agenda that provides the following information:
* “A list of rules that the agency expects to propose prior to the next regulatory agenda due date and whether the agency anticipates engaging in any consensus-based rule development process”;
* “The statutory or other basis for adoption of [each] rule”;
* “The purpose of [each] rule”;
* “The contemplated schedule for adoption of [each] rule”;
* “An identification and listing of potentially benefited and regulated parties” of each rule; and
* “A list of all emergency rules adopted since the previous regulatory agenda due date.”

[5 M.R.S. § 8060](https://legislature.maine.gov/legis/statutes/5/title5sec8060.html), sub-§ 1.

A copy of an agency’s annual regulatory agenda may be obtained by contacting the agency that issued the agenda. Agencies’ annual regulatory agendas are also posted online at the following website: <https://www.maine.gov/sos/rulemaking/annual-rulemaking-agendas>.

**Question: Where can I find the contact information for the rulemaking liaison for a particular State agency?**

* The contact information for agency rulemaking liaisons is available at the following website: <https://www.maine.gov/sos/rulemaking/agency-rules/list-of-liaisons>.

**Question: Are notices of rulemaking proposals and adoptions posted online?**

* **Yes,** each Wednesday notices of agency rule proposals and agency rule adoptions that have been filed with the Department of the Secretary of State are posted online at the following website: <https://www.maine.gov/sos/rulemaking/notices>.

**Question: Can an agency adopting a non-emergency routine technical rule designate an effective date for the rule that is later than 5 days after the agency files the rule with the Department of Secretary of State?**

* **No.** Unless otherwise provided in law, a non-emergency routine technical rule adopted by an agency becomes effective 5 days after the agency files the rule with the Department of the Secretary of State.

An agency, however, may establish an effective date for a non-emergency routine technical rule that is later than 5 days after filing by adding a provision to rule **when the rule is proposed** that specifies a later effective date or, alternatively, provides for an effective date that is a specific number of days greater than 5 days after the rule has been adopted and filed with the Department of the Secretary of State. (A non-emergency routine technical rule cannot take effective sooner than 5 days after it has been adopted and filed with the Department of the Secretary of State.)

An agency may also make the effective date of an adopted non-emergency routine technical rule contingent upon one or more factors first occurring. The agency would do so by including a provision in the rule **as proposed** that describes the factor or factors that must first occur for the rule, once adopted and filed with the Department of the Secretary of State, to become effective. When an agency includes such a provision in a rule that is proposed and later adopted and filed, the agency must later file a notice with the Department of the Secretary of State to inform the department when the contingency(-ies) have occurred that would make the rule effective.