

Legislative Oversight of Agency Rules

Legislative delegation of authority to adopt rules

When it enacts legislation, the Legislature sometimes delegates to a state agency the authority to adopt rules that implement, interpret or make specific the law administered by the agency, or that describe the procedures or practices of the agency. Although referred to as a “regulation” at the federal level, in Maine a “rule” is any judicially enforceable standard, requirement or statement of policy adopted by a state agency. Rules must be consistent with the law under which they are adopted and must be adopted in accordance with the Maine Administrative Procedure Act (APA), [Title 5, chapter 375 of the Maine Revised Statutes](#).

Categorization of rules as “routine technical” or “major substantive”

When the Legislature enacts a law authorizing or directing a state agency to adopt rules, the Legislature must specifically indicate whether the rules are “routine technical” or “major substantive.” (This requirement was enacted in 1996.) The APA describes routine technical rules as rules that establish standards of practice or procedures for agency business and major substantive rules as rules that require the exercise of significant agency discretion or interpretation or that will cause a significant public impact. However, it is the Legislature that makes the decision about the category of rule when enacting the law authorizing adoption of the rule. The key consideration is whether the Legislature wishes to review the rule before it is finally adopted by the agency (major substantive rules are subject to formal legislative review whereas routine technical rules are not).

Legislative review of major substantive rules

An agency must submit new major substantive rules and amendments to previously adopted major substantive rules to the Legislature for formal review. The Legislature initiates this review by printing a resolve authorizing adoption of the rule or amended rule and referring the resolve to the committee with jurisdiction over the rule’s subject matter. The committee generally holds a public hearing and work sessions on the resolve in the same manner as it does for other bills and resolves. The APA establishes criteria for the committee to apply in reviewing the rule and in deciding whether to recommend final adoption of the rule as drafted by the agency; final adoption of a part of the rule; final adoption of the rule after certain specified amendments are made to the agency’s draft; or that the agency not finally adopt the rule. For more information on this legislative review process, please see the handout entitled “Legislative Review of Proposed Major Substantive Rules.”

Annual review of agency regulatory agendas

In [5 M.R.S.A. §8060](#), the APA also requires each state agency to submit a regulatory agenda to the appropriate legislative committee or committees with jurisdiction over that agency. An agency’s regulatory agenda includes a list of the rules that the agency expects to propose before the next regulatory agenda is issued, the statutory or other basis for adoption of each rule, the purpose of each rule, the anticipated schedule for adopting each rule, a listing of potentially benefitted and regulated parties for each rule and a listing of all rules adopted on an emergency basis since the last regulatory agenda was issued. The regulatory agenda must be submitted on an annual basis between the beginning of a legislative session and 100 days after adjournment. The APA directs the legislative committee receiving a regulatory agenda to review the agenda.

Annual review of completed agency rulemaking activity

The Legislature also receives and reviews annual lists of agency rulemaking activity in accordance with [5 M.R.S.A. §8053-A](#). By February 1st of each year, the Secretary of State must provide to the Executive Director of the Legislative Council a list of all rules adopted by each agency during the previous calendar year. The Executive Director refers each list to the appropriate legislative committee for review. After each committee has received a list of rulemaking activity, the committee may require an agency to appear before the committee and may report out legislation in the same legislative session in which the report is received to adjust rulemaking authority related to the rules adopted in the previous calendar year.