



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

Memorandum

To: Board of Environmental Protection  
From: Cynthia Bertocci, Executive Analyst  
Date: September 6, 2012  
Re: Proposed Rule: Chapter 3 Rules Governing the Conduct of Licensing Hearings

Background:

Existing Chapter 20 *Regulations for Hearings on Applications* and existing Chapter 30 *Special Rules for Hearings on Applications of Significant Public Interest* were last amended on March 8, 1981 and February 8, 1978, respectively. These rules contain provisions that do not comply with the Maine Administrative Procedure Act for adjudicatory hearings on license applications or with Department statute. As a result, whenever the Department holds a hearing on a license application, it must develop lengthy procedural orders to address the deficiencies and inaccuracies in the existing rules and provide guidance to the parties on procedural matters.

Proposed Rule:

The Department is proposing to repeal existing Chapters 20 and 30 and replace them with a single procedural rule, proposed Chapter 3, which complies with the Maine Administrative Procedure Act governing hearings and Department statutes. Proposed Chapter 3 also addresses a number of issues which have arisen during licensing hearings before the Department in recent years. It should facilitate the conduct of fair and efficient licensing hearings by providing clear and consistent guidance to parties and eliminating the need for extensive procedural orders to reconcile inconsistencies between statute and the outdated rules.

Regulatory Framework:

Proposed Chapter 3 is a routine technical rule that would govern licensing hearings before both the Board and the Commissioner. Under provisions of 38 MRSA § 341-H(1), the Board shall adopt, amend or repeal routine technical rules necessary for the conduct of the Board's business including the processing of applications, the conduct of hearings, and other administrative matters. Under provisions of 38 MRSA § 341-H(2), routine technical rules other than those specifying Board procedures are adopted by the Commissioner. Since proposed Chapter 3 specifies procedural rules for both the Board and Commissioner, this will be a joint rulemaking proceeding before the Board and the Commissioner.

Requested Action:

The Board is being asked to post the proposed rule for a public hearing on October 4, 2012, with a suggested comment deadline of October 19, 2012.

Estimated time of agenda item: 10 minutes

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