

## *Memorandum*

**To:** Dan Tartakoff, OPLA

**From:** Mary M. Sauer, Assistant Attorney General  
Jerry Reid, Assistant Attorney General

**Date:** February 23, 2015

**Subject:** Response to January 21, 2015 request for opinion to Attorney General from Environment and Natural Resources Committee regarding metallic mineral mining rules

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The Committee asked the Attorney General whether the Department's filing of its mining rule on January 9, 2015 complied with the procedural requirements set forth in the Maine Administrative Procedures Act (MAPA), especially those contained in Title 5, section 8072. This memorandum is not a formal opinion of the Attorney General, but a summary of our views as we have previously expressed them to you.

Two MAPA provisions show that agencies must file provisionally adopted rules with the Legislature close to the date of provisional adoption. Title 5 M.R.S. §§ 8072(1)&(2), respectively, state that agencies "shall" submit such rules "at [the] point" and "at the time" of provisional adoption. In addition, there are numerous deadlines set forth in MAPA that ensure rulemakings do not remain open indefinitely, and that final adoption of rules occurs while the public comments are still fresh. See *e.g.*, 5 M.R.S. §§ 8052(7)(A)&(B), 8072 and 8072(8).

In light of these statutory provisions, we believe the resubmission of the provisionally adopted mining rules about one year after the date of the Board's provisional adoption (where the agency originally filed the rule with the Legislature on January 10, 2014, the resolve disapproving final adoption was vetoed, and the veto was sustained, and where a new rulemaking process was not initiated), is inconsistent with intent and language in MAPA.