

Title 37-B: DEFENSE, VETERANS AND EMERGENCY MANAGEMENT

Chapter 13: MAINE EMERGENCY MANAGEMENT AGENCY

Table of Contents

Subchapter 1. ORGANIZATION.....	3
Section 701. TITLE; PURPOSE.....	3
Section 702. POLICY.....	3
Section 703. DEFINITIONS.....	4
Section 704. DIRECTOR; DUTIES.....	5
Section 705. RULES; APPEAL FROM ADMINISTRATIVE ACTION.....	7
Section 706. CITIZENS' CIVIL EMERGENCY COMMISSION (REPEALED).....	7
Section 707. GRANTS AND GIFTS.....	8
Section 708. HOMELAND SECURITY ADVISORY COUNCIL.....	8
Section 709. GOVERNOR'S HOMELAND SECURITY ADVISOR.....	10
Subchapter 2. STATE EMERGENCY MANAGEMENT PROVISIONS	10
Section 741. GOVERNOR'S POWERS.....	10
Section 742. EMERGENCY PROCLAMATION.....	11
Section 743. TERMINATION OF EMERGENCY.....	14
Section 744. DISASTER RELIEF.....	14
Section 745. DISASTER RECOVERY FUND.....	17
Subchapter 3. LOCAL EMERGENCY MANAGEMENT PROGRAMS	18
Section 781. MUNICIPAL, COUNTY AND REGIONAL AGENCIES.....	18
Section 782. AGENCY DIRECTORS.....	19
Section 783. DISASTER EMERGENCY PLAN.....	20
Section 784. MUTUAL AID ARRANGEMENTS.....	21
Section 784-A. RIGHT TO CALL FOR AND EMPLOY ASSISTANCE.....	21
Section 784-B. MAINE FIRST RESPONDERS STATE-WIDE MUTUAL AID AGREEMENT.....	21
Section 785. STATE CIVIL SERVICE APPEALS BOARD SERVICES.....	21
Section 786. ENFORCEMENT.....	22
Subchapter 3-A. COORDINATION AND ADMINISTRATION OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986	22
Section 791. GENERAL PROVISIONS.....	22
Section 792. STATE EMERGENCY RESPONSE COMMISSION.....	23
Section 793. LOCAL EMERGENCY PLANNING COMMITTEES.....	25
Section 794. LOCAL EMERGENCY RESPONSE PLANS.....	25
Section 795. FACILITY EMERGENCY RESPONSE PLANS.....	27
Section 796. MATERIAL SAFETY DATA SHEETS.....	28
Section 797. MAINE CHEMICAL INVENTORY REPORT.....	29

Section 798. EMERGENCY NOTIFICATION..... 30

Section 799. TOXIC CHEMICAL RELEASE REPORTS..... 30

Section 800. TRADE SECRETS..... 31

Section 801. FEES..... 32

Section 802. EMERGENCY RESPONSE COMMISSION FUND..... 32

Section 803. AGENCY RESPONSIBILITIES..... 33

Section 804. LOCAL AUTHORITY..... 34

Section 805. COMMUNITY RIGHT TO KNOW..... 34

Section 806. ENFORCEMENT; PENALTIES..... 34

Subchapter 4. ADMINISTRATION..... 36

Section 821. EMINENT DOMAIN..... 36

Section 822. IMMUNITY..... 37

Section 823. COMPENSATION FOR INJURIES RECEIVED IN LINE OF DUTY..... 37

Section 824. APPROPRIATIONS..... 38

Section 825. ACCEPTANCE OF AID..... 38

Section 826. TRANSFER OF EQUIPMENT..... 38

Section 827. AID IN EMERGENCY; PENALTY..... 39

Section 828. RIGHT-OF-WAY; VIOLATION..... 39

Section 829. ENFORCEMENT..... 39

Section 830. VIOLATIONS..... 39

Section 831. UTILIZATION OF EXISTING SERVICES AND FACILITIES..... 39

Section 832. POLITICAL ACTIVITY PROHIBITED..... 40

Section 833. CIVIL EMERGENCY PREPAREDNESS PERSONNEL (REPEALED)..... 40

Section 834. INCONSISTENT LAWS SUSPENDED..... 40

Subchapter 5. SPECIAL OPERATIONAL PLANS..... 40

Section 850. SEARCH AND RESCUE PLAN..... 40

Section 851. MASS FATALITY PLAN..... 40

Section 852. PLANS DEEMED PART OF STATEWIDE COMPREHENSIVE PLAN..... 41

Maine Revised Statutes
Title 37-B: DEFENSE, VETERANS
AND EMERGENCY MANAGEMENT

Chapter 13: MAINE EMERGENCY MANAGEMENT AGENCY

Subchapter 1: ORGANIZATION

§701. TITLE; PURPOSE

This chapter may be cited as the "Maine Emergency Management Act." It is the purpose of this chapter to: [2001, c. 614, §3 (AMD); 2001, c. 662, §72 (AMD).]

1. Agency. Establish the Maine Emergency Management Agency to lessen the effects of disaster on the lives and property of the people of the State through leadership, coordination and support in the 4 phases of emergency management: mitigation, preparedness, response and recovery;

[2001, c. 662, §72 (AMD) .]

2. Local organizations. Authorize the creation of local organizations for emergency management in the political subdivisions of the State;

[2001, c. 614, §4 (AMD); 2001, c. 662, §72 (AMD) .]

3. Emergency powers. Confer upon the Governor and the executive heads of governing bodies of the political subdivisions of the State certain emergency powers;

[2013, c. 146, §1 (AMD) .]

4. Mutual aid. Provide for the rendering of mutual aid among the political subdivisions of the State and with other states and provinces of Canada for the accomplishment of emergency management functions; and

[2013, c. 146, §2 (AMD); 2013, c. 146, §2 (AMD) .]

5. Homeland security. Authorize the Maine Emergency Management Agency to coordinate the State's homeland security-related preparedness, response, recovery, prevention and protection activities.

[2013, c. 146, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §14 (AMD). 2001, c. 614, §§3,4 (AMD). 2001, c. 662, §72 (AMD). 2003, c. 510, §A32 (AMD). 2013, c. 146, §§1-3 (AMD).

§702. POLICY

It is declared to be the policy of the State that all emergency management and homeland security functions be coordinated to the maximum extent with the comparable functions of the Federal Government, including its various departments and agencies, of other states and localities, and of private agencies so that the most effective preparation and use may be made of the nation's workforce, resources and facilities for dealing with any disaster that may occur. [2013, c. 146, §4 (AMD).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 662, §73 (AMD). 2013, c. 146, §4 (AMD).

§703. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 460, §3 (NEW).]

1. Civil emergency preparedness.

[2001, c. 614, §5 (RP); 2001, c. 662, §74 (RP) .]

2. Disaster. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, extreme public health emergency pursuant to Title 22, section 802, subsection 2-A, air contamination, blight, drought, critical material shortage, infestation, explosion, riot or hostile military or paramilitary action.

[2001, c. 694, Pt. B, §5 (AMD); 2005, c. 383, §24 (AFF) .]

2-A. Emergency management. "Emergency management" means the coordination and implementation of an organized effort to mitigate against, prepare for, respond to and recover from a disaster.

[2001, c. 614, §6 (NEW); 2001, c. 662, §74 (NEW) .]

2-B. Emergency management forces. "Emergency management forces" means persons engaged in performing emergency management activities, including, but not limited to, persons called out by the Governor pursuant to an emergency proclamation under section 742 or persons called out pursuant to section 784-A.

[2001, c. 614, §6 (NEW) .]

2-C. Emergency management exercise. "Emergency management exercise" means a focused practice activity that places participants in a simulated situation requiring them to function in the capacity that would be expected of them in a real event and is conducted to test an organization's plans and policies to evaluate an organization's capability to execute one or more portions of its response or contingency plans and to train personnel.

[2007, c. 167, §10 (NEW) .]

2-D. Homeland security. "Homeland security" means a concerted national effort to prevent and disrupt terrorist attacks, protect against man-made and natural hazards and respond to and recover from incidents that do occur.

[2013, c. 146, §5 (NEW) .]

3. Local organization for emergency management. "Local organization for emergency management" means an organization created in accordance with this chapter by state, county or local authority to perform local emergency management functions.

[2001, c. 614, §7 (AMD); 2001, c. 662, §74 (AMD) .]

3-A. Mitigation. "Mitigation" means those activities that actually eliminate or reduce the chance of occurrence or the effects of a disaster.

[2001, c. 662, §74 (NEW) .]

4. Political subdivision. "Political subdivision" means counties, cities, towns, villages, townships, districts, authorities and other public corporations and entities organized and existing under charter or general law.

[1983, c. 460, §3 (NEW) .]

5. Preparedness. "Preparedness" means planning how to respond in case an emergency or disaster occurs and working to increase resources available to respond effectively.

[2001, c. 662, §74 (NEW) .]

6. Recovery. "Recovery" means activities that, in the short term, return vital life support systems to minimum operating standards and, in the long term, redevelop a disaster area to preexisting conditions or to conditions that are less disaster prone and activities that assist families and businesses to return to a normal or improved state of being.

[2001, c. 662, §74 (NEW) .]

7. Response. "Response" means those activities designed to provide emergency assistance to victims of a disaster and reduce the likelihood of secondary damage.

[2001, c. 662, §74 (NEW) .]

8. Terrorism. "Terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure.

[2013, c. 146, §6 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1997, c. 580, §1 (AMD). 2001, c. 614, §§5-7 (AMD). 2001, c. 662, §74 (AMD). 2001, c. 694, §B5 (AMD). 2001, c. 694, §B6 (AFF). 2003, c. 366, §1 (AFF). 2005, c. 383, §24 (AFF). 2007, c. 167, §10 (AMD). 2013, c. 146, §§5, 6 (AMD).

§704. DIRECTOR; DUTIES

The Maine Emergency Management Agency, as previously established and in this chapter called the "agency," is under the supervision of the Director of the Maine Emergency Management Agency, who in this chapter is called the "director." The director must be qualified by education, training or experience in managing emergencies or in the emergency management profession and is appointed by the Governor upon recommendation of the commissioner, subject to review by the joint standing committee of the Legislature having jurisdiction over the Department of Public Safety and confirmation by the Legislature. The director serves at the pleasure of the Governor. [2007, c. 3, §1 (AMD) .]

The director may employ technical, administrative and operative assistants and other personnel, subject to the Civil Service Law, and make expenditures, with approval of the commissioner, that are necessary to carry out the purposes of this chapter. [2013, c. 146, §7 (AMD) .]

The director, subject to the direction and control of the commissioner, is responsible administratively to the commissioner, retains direct access to the Governor in the case of an emergency and is responsible for notifying the Governor and the commissioner of all emergencies. The director is the executive head of the agency and is responsible for carrying out the program for emergency management. [2013, c. 146, §7 (AMD) .]

The director shall: [2013, c. 146, §7 (NEW) .]

1. Emergency management; disaster response. Represent the Governor in all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the State;

[2013, c. 146, §7 (NEW) .]

2. Coordination. Coordinate the activities of all organizations for emergency management within the State;

[2013, c. 146, §7 (NEW) .]

3. Liaison. Maintain liaison with and cooperate with emergency management and public safety agencies and organizations of other states, the Federal Government and foreign countries and their political subdivisions;

[2013, c. 146, §7 (NEW) .]

4. Local emergency management; assessment. Prior to the annual meeting required in section 782, subsection 4, provide to each of the local emergency management organizations of the State an annual assessment of each organization's degree of emergency management capability and any other information pertinent to ensuring the public's welfare and safety within the local organization's jurisdiction;

[2013, c. 146, §7 (NEW) .]

5. Public safety radio frequencies; assessment. Conduct periodic assessments at least once every 2 years of the use of public safety radio frequencies in emergency situations to ensure that first responders obtain sufficient training to understand and comply with adopted protocols and procedures;

[2013, c. 146, §7 (NEW) .]

6. Public education. Develop and conduct an annual program of comprehensive public education, using all appropriate means of communication to educate and inform members of the public and public officials about emergency preparedness, response, recovery, prevention and mitigation. The program must incorporate the use of appropriate accessible formats to educate and inform individuals with disabilities, individuals who are elderly and non-English-speaking residents of the State;

[2013, c. 146, §7 (NEW) .]

7. Training program. Develop and conduct an annual statewide program of emergency management training, including the assessment, development and implementation of appropriate training for state, county and local emergency management and response and support personnel, public officials and the public. The program must address all hazards and threats identified pursuant to section 783;

[2013, c. 146, §7 (NEW) .]

8. Exercises; evaluations; corrective actions. Develop and conduct an annual statewide program of emergency management exercises, evaluations and corrective actions to test and improve the policies and plans of the state, county and local emergency management agencies. The program must address all hazards and threats identified pursuant to section 783;

[2013, c. 146, §7 (NEW) .]

9. Emergency operations center. Maintain and operate a primary State Emergency Operations Center and designate an alternate State Emergency Operations Center pursuant to section 741, subsection 3, paragraph G-1;

[2013, c. 146, §7 (NEW) .]

10. Risk assessment; emergency planning guidance. Develop and disseminate risk assessment and emergency planning guidance in conformance with current federal requirements and national standards for use by the agency and county, regional and municipal jurisdictions;

[2013, c. 146, §7 (NEW) .]

11. Comprehensive emergency management plan. Develop and maintain a comprehensive emergency management plan for the State that is in conformance with guidance developed under subsection 10; and

[2013, c. 146, §7 (NEW) .]

12. Additional duties and authority. Carry out any additional duties and assume such additional authority as may be prescribed by the commissioner or the Governor.

[2013, c. 146, §7 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B17 (AMD). 1985, c. 785, §B175 (AMD). 1987, c. 370, §15 (AMD). 1991, c. 376, §65 (AMD). 1997, c. 580, §2 (AMD). 2001, c. 614, §§8,9 (AMD). 2001, c. 662, §§75,76 (AMD). 2003, c. 510, §A33 (AMD). 2005, c. 634, §11 (AMD). 2007, c. 3, §1 (AMD). 2007, c. 167, §11 (AMD). 2013, c. 146, §7 (AMD).

§705. RULES; APPEAL FROM ADMINISTRATIVE ACTION

The director shall adopt reasonable rules to carry out this chapter in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II. Those rules shall not become effective until approved in writing by the Governor. [1983, c. 460, §3 (NEW).]

Any person aggrieved by rule or an act or order of the director enforcing a rule may appeal by filing a complaint in the Superior Court within 30 days. The court may affirm or reverse the rule, act or order of the director and the decision of the court shall be final. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

§706. CITIZENS' CIVIL EMERGENCY COMMISSION

(REPEALED)

SECTION HISTORY

1983, c. 816, §B9 (RAL). 1985, c. 737, §A106 (AMD). 1987, c. 402, §A194 (RP).

§707. GRANTS AND GIFTS

The Maine Emergency Management Agency is authorized to accept gifts, grants and research funds and to undertake contractual relationships with the Federal Government, other state and provincial governments, counties, municipalities, corporations, foundations and other legal entities to carry out the purposes for which it was created, including, without limitation, conducting emergency planning activities related to nuclear power facilities in adjacent states or provinces. [1999, c. 174, §3 (NEW).]

SECTION HISTORY

1999, c. 174, §3 (NEW).

§708. HOMELAND SECURITY ADVISORY COUNCIL

The Homeland Security Advisory Council, as established in Title 5, section 12004-I, subsection 91 and referred to in this section as "the council," shall advise the Governor on the coordination of homeland security activities of state agencies and the most effective use of grant funds. [2005, c. 634, §12 (NEW).]

1. Membership. The council is composed of the following 9 members:

- A. The director; [2005, c. 634, §12 (NEW).]
- B. The Commissioner of Defense, Veterans and Emergency Management; [2005, c. 634, §12 (NEW).]
- C. The Commissioner of Public Safety; [2005, c. 634, §12 (NEW).]
- D. The Director of the Maine Center for Disease Control and Prevention within the Department of Health and Human Services; [2011, c. 529, §1 (AMD).]
- E. The Chief of the State Police within the Department of Public Safety; [2011, c. 529, §1 (AMD).]
- F. A representative of the Governor; [2011, c. 529, §1 (AMD).]
- G. The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee; [2011, c. 529, §1 (NEW).]
- H. The Commissioner of Marine Resources or the commissioner's designee; and [2011, c. 529, §1 (NEW).]
- I. The Commissioner of Agriculture, Conservation and Forestry or the commissioner's designee. [2011, c. 529, §1 (NEW); 2011, c. 657, Pt. W, §6 (REV).]

The director is the chair of the council. The Commissioner of Defense, Veterans and Emergency Management is the advisor of the council. Commissioner designees must be uniformed law enforcement personnel.

[2011, c. 529, §1 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

2. Duties of council. The council shall:

- A. Advise the Governor with regard to the vulnerability of the State to terrorist activity; [2005, c. 634, §12 (NEW).]
- B. Advise the Governor with regard to the adequacy of the plans to enhance homeland security; [2005, c. 634, §12 (NEW).]
- C. Ensure that the homeland security activities of state agencies are coordinated; [2005, c. 634, §12 (NEW).]
- D. Advise the Governor with regard to the implementation of state programs using federal funds and administration of federal grants for homeland security, in order to ensure coordination among agencies and the most effective use of grant funds; [2005, c. 634, §12 (NEW).]

E. Advise the Governor with regard to the appropriateness of the federal homeland security threat advisory level for the State, based upon intelligence gathered in the State and from federal sources; [2005, c. 634, §12 (NEW).]

F. Advise the Governor with regard to the appropriate response to any terrorist threat; [2007, c. 462, §2 (AMD).]

G. Periodically advise an emergency response team with pertinent information that could assist in the team's response to an event; and [2007, c. 462, §3 (AMD).]

H. Beginning January 15, 2008 and annually thereafter, report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding homeland security training and communications exercises and other homeland security initiatives and issues. [2007, c. 462, §4 (NEW).]

[2007, c. 462, §§2-4 (AMD).]

3. Procedures. The council shall meet:

A. At times and places as determined by the chair or the Governor and with assistance from state agencies as necessary and appropriate for the council's execution of its responsibilities as described in subsection 2; [2005, c. 634, §12 (NEW).]

B. Either in person or via telecommunication, as determined by the chair, immediately upon notification that the federal homeland security threat advisory level will be changed, in order to develop a recommendation to the Governor of the appropriate threat advisory level for the State and actions to be taken in the State; and [2005, c. 634, §12 (NEW).]

C. At the call of the chair or at the call of the Governor at any time the Governor requires the advice of the council. [2005, c. 634, §12 (NEW).]

The state response to any suspected terrorist event must be coordinated through the State Emergency Operations Center, in accordance with a state emergency operations plan as described in subsection 4, paragraph A. Meetings of the council are not public proceedings for purposes of Title 1, chapter 13, but may be open to the public at the discretion of the chair. Documents collected or produced by the council are not public records for the purposes of Title 1, chapter 13.

[2005, c. 634, §12 (NEW).]

4. Resources and support. The agency shall provide staff and administrative support to the council from existing resources. The agency is the coordinating agency within State Government for homeland security operational preparedness, response, recovery and mitigation. As the coordinating agency, the agency shall:

A. Develop and maintain a state emergency operations plan, which must incorporate by reference any internal operational plans developed by other state agencies for emergency response; [2005, c. 634, §12 (NEW).]

B. Coordinate the State Emergency Operations Center with the council; [2005, c. 634, §12 (NEW).]

C. Coordinate with other state agencies in the development of their emergency response plans; [2005, c. 634, §12 (NEW).]

D. Administer the review and approval of all grant applications developed by local and state agencies for homeland security funds; and [2005, c. 634, §12 (NEW).]

E. Administer homeland security grant funds. [2005, c. 634, §12 (NEW).]

[2005, c. 634, §12 (NEW) .]

SECTION HISTORY

2005, c. 634, §12 (NEW). 2007, c. 462, §§2-4 (AMD). 2011, c. 529, §1 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§709. GOVERNOR'S HOMELAND SECURITY ADVISOR

The Commissioner of Defense, Veterans and Emergency Management serves as the Governor's homeland security advisor. [2013, c. 146, §8 (NEW).]

SECTION HISTORY

2013, c. 146, §8 (NEW).

Subchapter 2: STATE EMERGENCY MANAGEMENT PROVISIONS

§741. GOVERNOR'S POWERS

1. Control during emergencies. In the event of disaster beyond local control, the Governor may assume direct operational control over all or any part of the emergency management and public safety functions within the State.

[2003, c. 510, Pt. A, §34 (RPR) .]

2. Cooperation. In performing the duties required by this chapter, the Governor shall, directly or through the commissioner, cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries and their political subdivisions and with private agencies in all matters pertaining to the emergency management capability of the State and of the Nation.

[2003, c. 510, Pt. A, §34 (RPR) .]

3. Authority. In performing the duties required by this chapter, the Governor may:

A. Make, amend and rescind the necessary orders and rules to carry out this chapter within the limits of the authority conferred upon the Governor and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency management or homeland security functions; [2013, c. 146, §9 (AMD).]

B. Prepare a comprehensive plan and program for the emergency management functions of this State. That plan and program must be integrated into and coordinated with the emergency management plans of federal agencies and with the plans of other states and foreign countries, and their political subdivisions, to the fullest possible extent; [2003, c. 510, Pt. A, §34 (RPR).]

C. Coordinate the preparation of plans and programs for emergency management functions by the political subdivisions of the State. These plans must be integrated into and coordinated with the emergency management plan and program of the State to the fullest possible extent; [2003, c. 510, Pt. A, §34 (RPR).]

D. In accordance with the plan and program for the emergency management functions of the State, and consistent with the emergency management and homeland security plans, programs and directives of the Federal Government, procure supplies and equipment, institute training programs and public information programs and take all other preparatory steps, including the partial or full mobilization of emergency

management organizations in advance of actual disaster or catastrophe, to ensure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need; [2013 , c. 146 , §10 (AMD) .]

E. Conduct studies and surveys and take inventories of the industries, resources and facilities of the State necessary to ascertain the State's emergency management capabilities, and plan for their most efficient emergency use, including emergency economic controls to ensure adequate production and equitable distribution of essential commodities; [2003 , c. 510 , Pt. A , §34 (RPR) .]

F. Whenever a shortage of critical material supplies appears imminent in the State, establish emergency reserves of those products necessary to ensure the health, welfare and safety of the people of the State. To establish those reserves, the Governor may purchase quantities of those materials for resale on a cost plus expenses basis for priority end users within the State; [2003 , c. 510 , Pt. A , §34 (RPR) .]

G. On behalf of the State, enter into mutual aid arrangements with other states and foreign countries, and their political subdivisions, and coordinate mutual aid plans between political subdivisions of the State. If an arrangement is entered into with a jurisdiction that has enacted the Emergency Management Assistance Compact, chapter 16, or the International Emergency Management Assistance Compact, chapter 16-A, any resulting agreement or agreements may be considered supplemental agreements pursuant to those compacts. If the other jurisdiction or jurisdictions with which the Governor proposes to cooperate have not enacted one of those compacts, the Governor may negotiate special agreements with the jurisdiction or jurisdictions. Any agreement, if sufficient authority for its making does not otherwise exist, becomes effective only after approval by the Legislature; [2013 , c. 146 , §11 (AMD) .]

G-1. Establish and ensure maintenance of a primary facility designated as the State Emergency Operations Center from which the emergency coordination of response to and recovery from a disaster may be effectively carried out and ensure the identification of an alternate site that may be used for this purpose if necessary; and [2013 , c. 146 , §12 (NEW) .]

H. Delegate any authority vested in the Governor under this chapter and provide for the subdelegation of that authority. [2003 , c. 510 , Pt. A , §34 (RPR) .]

[2013 , c. 146 , §§9-12 (AMD) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §11 (AMD). 2001, c. 662, §78 (AMD). 2003, c. 510, §A34 (RPR). 2009, c. 252, §1 (AMD). 2013, c. 146, §§9-12 (AMD).

§742. EMERGENCY PROCLAMATION

1. Emergency proclamation. Emergency proclamations must be issued as follows.

A. Whenever a disaster or civil emergency exists or appears imminent, the Governor shall, by oral proclamation, declare a state of emergency in the State or any section of the State. If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would act as Governor if the office of the Governor were vacant may, by oral proclamation, declare the fact that a civil emergency exists or appears sufficiently imminent to activate emergency plans in any or all areas of the State. A written copy of the proclamation must be filed with the Secretary of State within 24 hours of the oral proclamation. [2001 , c. 353 , §4 (AMD) .]

B. Subject at all times to the further direction and order of the Governor, an executive proclamation of emergency activates the emergency plans applicable to the affected areas and is the authority for the deployment and use of any forces or resources to which the plan or plans apply. [2001 , c. 353 , §4 (AMD) .]

C. After the filing of the emergency proclamation and in addition to any other powers conferred by law, the Governor may:

- (1) Suspend the enforcement of any statute prescribing the procedures for conduct of state business, or the orders or rules of any state agency, if strict compliance with the provisions of the statute, order or rule would in any way prevent, hinder or delay necessary action in coping with the emergency;
- (2) Utilize all available resources of the State Government and of each political subdivision of the State as reasonably necessary to cope with the disaster emergency;
- (3) Transfer the direction, personnel or functions of state departments and agencies, or units thereof, for the purposes of performing or facilitating emergency services;
- (4) Authorize the obtaining and acquisition of property, supplies and materials pursuant to section 821;
- (5) Enlist the aid of any person to assist in the effort to control, put out or end the emergency or aid in the caring for the safety of persons;
- (6) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, if the Governor determines this action necessary for the preservation of life or other disaster mitigation, response or recovery;
- (7) Prescribe routes, modes of transportation and destinations in connection with evacuations;
- (8) Control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;
- (9) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives and combustibles;
- (10) Make provision for the availability and use of temporary emergency housing;
- (11) Order the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency for which this proclamation was made; and
- (12) Take whatever action is necessary to abate, clean up or mitigate whatever danger may exist within the affected area. [2011 , c. 626 , §2 (AMD) .]

[2011 , c. 626 , §2 (AMD) .]

2. Energy emergency proclamation. Energy emergency proclamations must be issued as follows.

A. When an actual or impending acute shortage in energy resources threatens the health, safety or welfare of the citizens of the State, the Governor shall, by oral proclamation, declare that fact and that an energy emergency exists in the State or in any section of the State. A written copy of the proclamation must be filed with the Secretary of State within 24 hours of the oral proclamation. [2001 , c. 353 , §5 (AMD) .]

B. Upon the issuance of an energy emergency proclamation and after consulting with the Governor's Energy Office, the Governor may exercise all the powers granted in this chapter, except as specifically limited by paragraph C. The powers of the Governor include, without limitation, the authority to:

- (1) Establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation and consumption of energy resources;
- (2) Regulate the hours and days during which nonresidential buildings may be open and the temperatures at which they may be maintained;
- (3) Regulate the use of gasoline and diesel-powered land vehicles, watercraft and aircraft;

- (4) After consulting, when appropriate, with the New England governors and upon the recommendations of the Public Utilities Commission, regulate the generation, distribution and consumption of electricity;
- (5) Establish temporary state and local boards and agencies;
- (6) Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of the Federal Government and of other states and localities;
- (7) Temporarily suspend truck weight and size regulations, but not in conflict with federal regulations;
- (8) Regulate the storage, distribution and consumption of home heating oil; and
- (9) If the energy emergency was caused by a lack of electric grid reliability in this State resulting from insufficient capacity resources, take appropriate action, in consultation with the Public Utilities Commission, to procure sufficient capacity resources including generation capacity and interruptible, demand response or energy efficiency capacity resources. [2011, c. 655, Pt. MM, §19 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

C. In dealing with a declared energy emergency, the following powers granted by this chapter may not be invoked:

- (1) The eminent domain powers granted in section 821; and
- (2) The enforcement powers granted in sections 786 and 829, unless the Governor specifically invokes these powers by an order issued pursuant to an energy emergency proclamation and approved by a majority of the membership of the Legislative Council. That order must specify those emergency orders or rules that are enforceable pursuant to this paragraph and must further specify the enforcement activities emergency management organizations are to pursue. No enforcement action may be taken pursuant to this paragraph without publication of the order authorizing the action in a manner reasonably calculated to give affected persons adequate notice of the order or rule to be enforced, which may include publication on the Internet, and the sanctions to be applied. [2001, c. 353, §5 (AMD).]

D. During a declared energy emergency, the following provisions relating to environmental rules apply.

- (1) Except as provided in subparagraph (2), this subsection may not be construed to authorize the Governor to suspend or to modify orders, rules, standards or classifications issued or enforced by the Department of Environmental Protection or the Maine Land Use Planning Commission.
- (2) When an energy emergency proclamation is in effect, the Governor may call the Board of Environmental Protection into extraordinary session to consider temporary waivers or suspensions of rules and standards related to air and water quality necessary to relieve then existing energy shortages. At an extraordinary session, the board is empowered, notwithstanding any other provision of law, to approve suspensions or waivers that it determines are necessary to relieve or avoid an energy shortage and will not result in environmental degradation of a permanent or enduring nature. In no event may any suspension or modification be granted that will result in a circumvention of Title 38, sections 481 to 488, 541 and 557. The waiver or suspension may not remain in effect longer than 60 days or after the date on which the board renders a further order issued pursuant to the regular procedures specified in Title 38, whichever first occurs. [2001, c. 353, §5 (AMD); 2011, c. 682, §38 (REV).]

E. The Superior Court of the county in which a person fails to obey an order or rule promulgated in accordance with this subsection has jurisdiction to issue a restraining order or injunction to enforce the order or rule. That proceeding must be held in accordance with the Maine Rules of Civil Procedure, Rule 65. [2001, c. 353, §5 (AMD).]

F. In the event that an order or rule issued by the Governor, pursuant to the powers granted in paragraph B, are to be in effect for longer than 90 days, the Governor shall, before the 80th day following the issuance of the order or rule, convene the Legislature. [1983, c. 460, §3 (NEW).]

[2011, c. 655, Pt. MM, §19 (AMD); 2011, c. 655, Pt. MM, §26 (AFF);
2011, c. 682, §38 (REV) .]

3. Oil spill emergency proclamation. In the event of a disaster due to an oil spill in coastal waters, the Commissioner of Environmental Protection shall directly represent the Governor in all direct abatement, clean-up and resource protection activities in coordination with federal, industry and other states' response teams. The agency shall assume the other functions prescribed in subsection 1, paragraph C, but does not have supervisory authority over the Department of Environmental Protection in the conduct of response activities on the water.

[1991, c. 454, §1 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §33 (AMD). 1987, c. 429, (AMD).
1987, c. 810, §§6,11 (AMD). 1991, c. 454, §1 (AMD). 2001, c. 353, §§4,5
(AMD). 2005, c. 677, §C2 (AMD). 2011, c. 626, §2 (AMD). 2011, c. 655,
Pt. MM, §19 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 682, §38
(REV).

§743. TERMINATION OF EMERGENCY

1. Proclamation by Governor. Whenever the Governor is satisfied that a disaster or civil emergency no longer exists, he shall terminate the emergency proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. That proclamation shall be published in newspapers of the State and posted in places which the Governor deems appropriate.

[1983, c. 594, §34 (NEW) .]

2. Limitation. No state of emergency may continue for longer than 30 days unless renewed by the Governor. The Legislature, by joint resolution, may terminate a state of emergency at anytime. Thereupon, the Governor shall issue an executive proclamation ending the state of emergency.

[1983, c. 594, §34 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 594, §34 (RPR).

§744. DISASTER RELIEF

1. Financial assistance to individuals. Whenever the President has declared a major disaster to exist in this State, the Governor may:

A. Accept a grant of financial assistance from the Federal Government, subject to such terms and conditions as may be imposed upon the grant and upon his determination that financial assistance is essential to meet necessary expenses or serious needs of individuals or families caused by the disaster which cannot otherwise adequately be met; [1983, c. 460, §3 (NEW).]

B. Enter into an agreement with the Federal Government, or any officer or agency thereof, pledging the State to participate in up to 25% of the financial assistance authorized in this subsection. If state funds are not otherwise available, the Governor may accept an advance of the state's share from the Federal Government to be repaid when the State is able to do so; and [1983, c. 460, §3 (NEW).]

C. Notwithstanding any other provision of law or regulation, make financial grants to meet necessary expenses or serious needs of individuals or families caused by the disaster that cannot otherwise adequately be met. A grant to an individual or family may not exceed in the aggregate for any single major disaster declared by the President the amount established by the Federal Government for the limit on grants to individuals under any federal disaster assistance program for individuals and families. [2003, c. 404, §8 (AMD).]

[2003, c. 404, §8 (AMD) .]

2. Community disaster loans.

[1985, c. 794, Pt. A, §4 (RP) .]

2-A. Assistance to local governmental units. Assistance to local governmental units shall be governed as follows.

A. Whenever the President of the United States declares that a major disaster exists in the State, the Governor may:

- (1) Apply for a public assistance grant from the Federal Government under Public Law 93-288 on behalf of both the State and local governmental units for the purposes of repairing or replacing publicly owned facilities within the disaster area or relocating public facilities outside of the disaster area;
- (2) Obligate state financial resources, as a condition for receiving such a federal grant, up to, but not in excess of, 25% of the total public assistance requested; and
- (3) Enter into an agreement with the affected local governmental units to obligate local financial resources up to, but not in excess of, 10% of the total cost of damage to local public facilities, provided that the local share shall not exceed 10% of total local annual operating budget, exclusive of educational budgets. [1985, c. 794, Pt. A, §5 (NEW).]

B. If the President of the United States declares that a major disaster exists in the State, the Governor may:

- (1) Apply for a loan from the Federal Government on behalf of a unit of local government if he determines that the unit will suffer a substantial loss of tax and other revenues as a result of a major disaster and has demonstrated a need for financial assistance to perform its governmental functions;
- (2) Receive and disburse the proceeds of any approved loan to an applicant local government;
- (3) Determine the amount needed by any applicant local government to restore or resume its governmental functions and certify the amount to the Federal Government, provided that no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs; and
- (4) Recommend to the Federal Government, based upon his review, the cancellation of all or any part of repayment when, after 3 full fiscal years following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional municipal expenses related to the disaster. [1985, c. 794, Pt. A, §5 (NEW).]

[1985, c. 794, Pt. A, §5 (NEW) .]

3. Temporary housing. Temporary housing may be provided as follows.

A. Whenever the Governor has proclaimed a disaster emergency under the laws of this State, or the President has declared an emergency or a major disaster to exist in this State, the Governor may:

- (1) Enter into purchase, lease or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and make these units available to any political subdivision of the State;

(2) Assist any political subdivision of the State, in which is located temporary housing for disaster victims, acquire sites necessary for the temporary housing and do all things required to prepare the sites to accommodate temporary housing units. This may be accomplished by advancing or lending funds available to the Governor from any appropriation made by the Legislature or from any other source, and "passing through" funds made available by any agency, public or private; or by becoming a partner with the political subdivision for the execution and performance of any temporary housing project for disaster victims. For those purposes, the Governor may pledge the credit of the State on terms which he deems appropriate, having due regard for current debt transactions of the State; and

(3) Suspend or modify a state health, safety, zoning, transportation or other requirement of law or rule when he deems suspension or modification necessary to provide temporary housing for disaster victims. That suspension or modification shall be in accordance with rules adopted by the Governor and shall not exceed 60 days' duration. [1983, c. 460, §3 (NEW).]

B. Any political subdivision of this State is expressly authorized to acquire, temporarily or permanently, by purchase, lease or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip those sites to accommodate the housing units. [1983, c. 460, §3 (NEW).]

[1983, c. 460, §3 (NEW) .]

4. Debris removal in major disasters. In major disasters, debris may be removed as follows.

A. Whenever the Governor has declared a disaster emergency to exist under the laws of this State, or the President has declared a major disaster or emergency to exist in this State, the Governor may:

(1) Notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, clear or remove from publicly-owned or privately-owned land or water, debris and wreckage that may threaten public health or safety, or public or private property;

(2) Accept funds from the Federal Government and utilize those funds to make grants to any local government for the purpose of removing debris or wreckage from publicly-owned or privately-owned land or water; and

(3) Notwithstanding any other provision of law, agree to indemnify the Federal Government against any claim arising from debris and wreckage removal from private property. [2003, c. 404, §9 (AMD).]

B. The following conditions apply to the execution of removal or clearance.

(1) Authority under this subsection shall not be exercised unless the affected local government, corporation, organization or individual first presents an unconditional authorization for removal of the debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, also first agrees to indemnify the State Government against any claim arising from that removal.

(2) Whenever the Governor provides for clearance of debris or wreckage pursuant to paragraph A, employees of the designated state agencies or individuals appointed by the State are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

(3) Except in cases of willful misconduct, gross negligence or bad faith, any state employee or agent complying with orders of the Governor and performing duties pursuant thereto under this section shall not be liable for death of or injury to persons or damage to property occurring during performance of those duties. [1983, c. 460, §3 (NEW).]

[2003, c. 404, §9 (AMD) .]

5. Terms. As used in this section, "major disaster," "emergency" and "temporary housing" have the same meaning as in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended.

[2001, c. 662, §80 (AMD) .]

6. Rules. The Governor shall make rules necessary for carrying out this section, including, but not limited to, standards of eligibility for persons applying for benefits; procedures for applying for and administration of relief; methods of investigation, filing and approving applications and formation of local or statewide boards to pass upon applications and procedures for appeals.

[1983, c. 460, §3 (NEW) .]

7. Authority not limited. Nothing contained in this section may be construed to limit the Governor's authority to apply for, administer and expend any grants, gifts or payments in aid of disaster prevention, preparedness, response or recovery.

[1983, c. 460, §3 (NEW) .]

8. Penalty. Any person who knowingly makes a misstatement of fact in connection with an application for financial assistance under this section is guilty of a Class D crime.

[1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 794, §§A4,5 (AMD). 2001, c. 662, §§79,80 (AMD). 2003, c. 404, §§8,9 (AMD).

§745. DISASTER RECOVERY FUND

1. Fund established. There is established the Disaster Recovery Fund, referred to in this section as "the fund," to be administered by the agency.

[2013, c. 146, §13 (AMD) .]

2. Sources of fund. The following must be paid into the fund:

A. All money appropriated for inclusion in the fund; [2005, c. 439, §1 (NEW).]

B. All interest from investment of the fund; [2009, c. 252, §2 (AMD).]

C. Any other money deposited in the fund from the Department of Defense, Veterans and Emergency Management, Disaster Assistance Relief, Other Special Revenue Funds account; and [2009, c. 252, §2 (AMD).]

D. Reimbursement received from the Federal Government or other legal entity for disaster recovery assistance expenditures made from the fund. [2013, c. 146, §13 (AMD).]

[2013, c. 146, §13 (AMD) .]

3. Use of fund. The fund must be the first resource used when section 742 or 744 is invoked. The fund may be used for any of the following at the discretion of the Governor or Governor's designee:

A. To provide disaster recovery assistance to individuals and families when a federal disaster declaration is not received; [2013, c. 146, §13 (AMD).]

B. To provide disaster recovery assistance to local governmental units of the State for infrastructure repair and response when a federal disaster declaration is not received; [2013, c. 146, §13 (AMD).]

C. Emergency response costs for state agencies; [2009, c. 252, §3 (NEW).]

D. To provide low-interest loans to businesses for disaster recovery assistance when a federal disaster declaration is not received; [2013, c. 146, §13 (AMD).]

E. Disaster-related unmet needs of individuals and families following a federally declared disaster; [2009, c. 252, §3 (NEW).]

F. Matching funds for assistance to individuals in a federally declared disaster; and [2009, c. 252, §3 (NEW).]

G. Matching funds for assistance to state and local governmental units in a federally declared disaster. [2009, c. 252, §3 (NEW).]

[2013, c. 146, §13 (AMD).]

4. Fund balance. The fund's balance may not exceed \$3,000,000, except by order of the Governor. In the absence of such an order, any amount, including interest, that accrues in excess of \$3,000,000 must be transferred by the State Controller to the Maine Budget Stabilization Fund, established in Title 5, section 1532. Beginning July 1, 2010, the fund's maximum allowable balance must be adjusted annually on July 1st by any percentage change in the Consumer Price Index from January 1st to December 31st of the previous year, but only to a maximum increase of 2%.

[2009, c. 252, §4 (AMD).]

5. Annual report. The director shall submit a written report by January 15, 2007 and annually thereafter to the Governor and the Legislature on the fund's balance and expenditures.

[2005, c. 634, §13 (NEW).]

6. Rules. The agency shall adopt rules governing the process for the expenditure of funds from the fund. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 462, §5 (NEW).]

SECTION HISTORY

2005, c. 439, §1 (NEW). 2005, c. 634, §13 (AMD). 2007, c. 462, §5 (AMD). 2009, c. 252, §§2-4 (AMD). 2013, c. 146, §13 (AMD).

Subchapter 3: LOCAL EMERGENCY MANAGEMENT PROGRAMS

§781. MUNICIPAL, COUNTY AND REGIONAL AGENCIES

1. Municipal or interjurisdictional agencies. Each municipality of the State must be served by a municipal or interjurisdictional agency responsible for emergency management.

A. [2003, c. 510, Pt. C, §14 (RP).]

B. [2003, c. 510, Pt. C, §14 (RP).]

C. [2003, c. 510, Pt. C, §14 (RP).]

[2003, c. 510, Pt. C, §14 (RPR).]

2. County or regional agencies. Each county shall maintain a county emergency management agency or create regional emergency management agencies that serve the member counties. Each county or regional agency is responsible for coordination of the activities of municipal and interjurisdictional emergency management agencies within the region or county and for emergency management in the unorganized territories within its jurisdiction. A county or regional emergency management agency must receive support from the municipalities within its jurisdiction.

[2003, c. 510, Pt. C, §14 (RPR) .]

3. Structure of county and regional agencies. The director shall advise upon the organizational structure of county and regional emergency management agencies, including the manner in which the directors of those agencies are appointed by governing bodies of the jurisdictions involved.

[2003, c. 510, Pt. C, §14 (RPR) .]

4. List of agencies. The agency shall publish and maintain a current list of municipal, interjurisdictional, county and regional emergency management agencies established pursuant to this section.

[2003, c. 510, Pt. C, §14 (RPR) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §16 (AMD). 2001, c. 614, §13 (AMD). 2001, c. 662, §82 (AMD). 2003, c. 510, §C14 (RPR).

§782. AGENCY DIRECTORS

A director must be appointed for each municipal and county or regional emergency management agency. A director of an emergency management agency may not be at the same time an executive officer or member of the executive body of a municipality or interjurisdictional or county or regional agency of the State or a county commissioner. Notwithstanding this section or any other law, a town manager or administrative assistant may also be appointed to serve as the director of an emergency management agency. A director may be removed by the appointing authority for cause. [2003, c. 510, Pt. A, §35 (RPR).]

1. Municipal emergency management director. The municipal officers shall appoint the director of the municipality's emergency management agency. In each municipality that has not established an agency of its own, the municipal officers shall designate an emergency management director to facilitate cooperation in the work of disaster mitigation, preparedness, response and recovery. The emergency management director shall serve as liaison to the appropriate county or regional agency.

[2003, c. 510, Pt. A, §35 (RPR) .]

2. County agency director. The county commissioners shall appoint the director of that county's emergency management agency.

[2003, c. 510, Pt. A, §35 (RPR) .]

3. Interjurisdictional and regional agency directors. The director of an interjurisdictional or regional emergency management agency must be appointed in the manner prescribed by the director in accordance with section 781, subsection 3.

[2003, c. 510, Pt. A, §35 (RPR) .]

4. Annual meeting with Director of the Maine Emergency Management Agency. The director of each county or regional organization for emergency management in the State and the respective appointing authority shall meet each year with the Director of the Maine Emergency Management Agency or the agency's successor, in order to review the performance of the county or regional emergency management organization in carrying out its federal and state mandate and to jointly set new goals for the coming year.

[2003, c. 510, Pt. A, §35 (RPR) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 582, §B6 (AMD). 1991, c. 324, §§1,2 (AMD). 1991, c. 376, §66 (AMD). 2001, c. 614, §14 (AMD). 2001, c. 662, §83 (AMD). 2003, c. 510, §A35 (RPR).

§783. DISASTER EMERGENCY PLAN

Each municipality, county and regional emergency management agency shall prepare and keep a current disaster emergency plan for the area subject to its jurisdiction. The plan must be approved by the jurisdiction's governing body. The plan must follow the risk assessment and planning guidance provided by the director under section 704, subsection 10 and address the hazards and threats that pose the greatest risk to the jurisdiction and the capabilities and actions needed to respond to and recover from disasters. [2013, c. 146, §14 (AMD).]

1. Identification of disasters.

[2013, c. 146, §14 (RP) .]

2. Action to minimize damage.

[2013, c. 146, §14 (RP) .]

3. Personnel, equipment and supplies.

[2013, c. 146, §14 (RP) .]

4. Recommendations.

[2013, c. 146, §14 (RP) .]

5. Other.

[2013, c. 146, §14 (RP) .]

Each municipal, county and regional emergency management agency, as part of the development of a disaster emergency plan for the area subject to its jurisdiction, shall consult as it considers appropriate with institutions, organizations and businesses within its jurisdiction to ensure that the disaster plans developed by the municipality or agency and those institutions, organizations and businesses are compatible. Institutions, organizations and businesses with which the municipality or agency may consult include, but are not limited to, hospitals, schools, health care facilities, group homes and day care centers. [2013, c. 146, §14 (AMD).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 370, §§17,18 (AMD). 2001, c. 614, §§15,16 (AMD). 2001, c. 662, §§84,85 (AMD). 2003, c. 404, §10 (AMD). 2003, c. 510, §A36 (AMD). 2013, c. 146, §14 (AMD).

§784. MUTUAL AID ARRANGEMENTS

The director of each local organization for emergency management shall, in collaboration with other public and private agencies within the State, develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of a disaster too great to be dealt with unassisted. These arrangements must be consistent with the state emergency management program, and in time of emergency each local organization for emergency management shall render assistance in accordance with the mutual aid arrangements. For this purpose, political subdivisions are authorized when geographical locations make mutual aid arrangements desirable to enter into mutual aid arrangements subject to the approval of the director. [2003, c. 510, Pt. A, §37 (RPR).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §17 (AMD). 2001, c. 662, §86 (AMD). 2003, c. 510, §A37 (RPR).

§784-A. RIGHT TO CALL FOR AND EMPLOY ASSISTANCE

The Maine Emergency Management Agency and local organizations for emergency management may employ any person considered necessary to assist with emergency management activities. All persons called and employed for assistance shall proceed as directed by the Maine Emergency Management Agency or the local organization. Any person called and employed for assistance either within the State or in another state under chapter 16 or in a Canadian province under chapter 16-A is deemed to be an employee of the State for purposes of immunity from liability pursuant to sections 822, 926 and 940 and for purposes of workers' compensation insurance pursuant to sections 823, 928 and 942, except for persons excluded from the definition of employee pursuant to Title 39-A, section 102, subsection 11. A person holding a professional license in the State may be designated a member of the emergency management forces in that professional capacity only after the individual or the license issuer provides confirmation of a valid license. [2013, c. 146, §15 (AMD).]

SECTION HISTORY

2001, c. 614, §18 (NEW). 2005, c. 630, §2 (AMD). 2013, c. 146, §15 (AMD).

§784-B. MAINE FIRST RESPONDERS STATE-WIDE MUTUAL AID AGREEMENT

All political subdivisions within the State are covered by the Maine First Responders State-wide Mutual Aid Agreement, dated November 2008, as drafted by the agency and referred to in this section as "the agreement," except that a political subdivision may withdraw from the agreement by enacting a local ordinance that withdraws from the agreement. [2009, c. 175, §1 (NEW).]

A local first responder agency may provide emergency management, fire, law enforcement, emergency medical, public works and other emergency services as necessary upon the request of any political subdivision within the State in accordance with the agreement. Additional preexisting contracts or agreements with the jurisdiction requesting the services are not required. [2009, c. 175, §1 (NEW).]

SECTION HISTORY

2009, c. 175, §1 (NEW).

§785. STATE CIVIL SERVICE APPEALS BOARD SERVICES

Local emergency management agencies organized pursuant to this subchapter may accept the services of the Bureau of Human Resources and adopt board rules for the purpose of qualifying for federal funds. The Bureau of Human Resources may enter into agreements with the emergency management agencies for the purpose of furnishing merit system coverage for emergency management employees or employees of

other agencies and departments assigned full time to emergency management duties. The Bureau of Human Resources may charge for services rendered. The fee must be consistent with the cost of coverage per state employee multiplied by the number of local, interjurisdictional, county or regional employees covered. Fees received by the board must be credited to the General Fund. [2001, c. 614, §19 (AMD); 2001, c. 662, §87 (AMD).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1985, c. 785, §B176 (AMD). 2001, c. 614, §19 (AMD). 2001, c. 662, §87 (AMD).

§786. ENFORCEMENT

1. Law enforcement officers. Duly appointed law enforcement officers of local, state and sheriffs' organizations are empowered to enforce any of the provisions of this chapter or any rules promulgated thereunder in times of an emergency or during authorized alerts, including partial or full mobilization necessary to carry out section 742. Failure to comply with any just or reasonable order relative to enforcement from a duly appointed law enforcement officer is a Class E crime.

[1983, c. 460, §3 (NEW) .]

2. Arrest powers. Duly appointed law enforcement officers of local, state and sheriffs' organizations shall have the power to arrest persons found in violation of any provision of this chapter or any rules promulgated in times of emergency to carry out section 742.

[1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW).

Subchapter 3-A: COORDINATION AND ADMINISTRATION OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

§791. GENERAL PROVISIONS

1. Purpose. This subchapter is intended to be consistent with and facilitate implementation of the provisions of the United States Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499.

[1989, c. 464, §3 (NEW) .]

2. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "CERCLA hazardous substance" means a substance on the list defined in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, Section 101(14), as amended. [1989, c. 464, §3 (NEW).]

B. "Extremely hazardous substance" shall have the meaning set forth in the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 302, and listed in 40 Code of Federal Regulations, Part 355. [1989, c. 464, §3 (NEW).]

B-1. "Facility" means all buildings, equipment, structures, rail makeup, holding or storage tracks, spurs or yards, truck parking areas, airports, loading docks and other stationary items that are located on a single site or on contiguous or adjacent sites and are owned or operated by the same person or by another

person who controls, is controlled by, or is under common control with that person. "Facility" includes sites where motor vehicles, watercraft, rolling stock and aircraft are present for more than 12 hours. [1989, c. 638, §1 (NEW).]

C. "Hazardous chemical" means all hazardous chemicals as defined under 40 Code of Federal Regulations, Part 355.20. [1989, c. 464, §3 (NEW).]

D. "Hazardous material" means all chemicals and chemical categories defined as extremely hazardous substances and hazardous chemicals in 40 Code of Federal Regulations, Part 355.20 and toxic chemicals in 40 Code of Federal Regulations, Part 372.3. [1989, c. 464, §3 (NEW).]

E. "Reportable quantity" means for any CERCLA hazardous substance or extremely hazardous substance, the reportable quantity established in 40 Code of Federal Regulations, Part 302, Table 302.4 or in 40 Code of Federal Regulations, Part 355, Appendixes A and B, for such substance. [1989, c. 464, §3 (NEW).]

F. "Threshold planning quantity" shall have the meaning set forth in the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 302, and listed in 40 Code of Federal Regulations, Parts 355, 370 and 372. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW); 1989, c. 638, §1 (AMD).]

SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 638, §1 (AMD).

§792. STATE EMERGENCY RESPONSE COMMISSION

1. Composition and terms. The State Emergency Response Commission, referred to in this subchapter as the "commission," as established by Title 5, section 12004-G, subsection 13-A, to implement effective emergency response to releases of hazardous chemicals. The commission is composed of 14 members as follows:

A. The Commissioner of Environmental Protection or the commissioner's permanent designee; [1989, c. 464, §3 (NEW).]

B. The Commissioner of Health and Human Services or the commissioner's permanent designee; [1989, c. 464, §3 (NEW); 2003, c. 689, Pt. B, §7 (REV).]

C. The Director of Maine Emergency Medical Services, Department of Public Safety, or the director's permanent designee; [1995, c. 2, §96 (COR).]

D. The Commissioner of Labor or the commissioner's permanent designee; [1989, c. 464, §3 (NEW).]

E. The Commissioner of Transportation or the commissioner's permanent designee; [1989, c. 464, §3 (NEW).]

F. The Director of the Maine Emergency Management Agency, who shall serve as chair; [1989, c. 464, §3 (NEW).]

G. The Chief of the State Police or the chief's permanent designee; [1989, c. 464, §3 (NEW).]

H. A representative, appointed by the Governor, of municipal government; [1989, c. 464, §3 (NEW).]

I. A representative, appointed by the Governor, of the Maine Fire Chiefs' Association; [1989, c. 464, §3 (NEW).]

J. A representative, appointed by the Governor, of a professional firefighters' union; [1989, c. 464, §3 (NEW).]

K. A representative, appointed by the Governor, of private commerce and industry; [1989, c. 464, §3 (NEW).]

L. A representative, appointed by the Speaker of the House of Representatives, of volunteer firefighters; [1989, c. 464, §3 (NEW).]

M. A representative, appointed by the President of the Senate, of an environmental organization representative of the general public; and [1989, c. 464, §3 (NEW).]

N. A representative, appointed by the Speaker of the House of Representatives, of organized labor. [1989, c. 464, §3 (NEW).]

The Governor and legislative leadership shall request a list of 3 names from organizations covered under paragraphs H to N from which to make final appointments. All appointed members shall serve for a term of 4 years from the date appointed. Appointed members shall serve the following initial terms: one member for 1 year, 2 members for 2 years, 2 members for 3 years and 2 members for 4 years. Appointed members shall be allowed to serve for 2 consecutive terms.

[1995, c. 2, §96 (COR); 2003, c. 689, Pt. B, §7 (REV) .]

2. Powers and duties. The general duties of the commission are to oversee the implementation of a comprehensive program of planning and training for effective emergency response to releases of hazardous materials. Specifically, the commission shall:

A. Advise the director on rules promulgated under this subchapter; [1989, c. 464, §3 (NEW).]

B. Designate emergency planning districts to facilitate implementation of emergency response plans; [1989, c. 464, §3 (NEW).]

C. Provide for the necessary appointment of local emergency planning committees; [1989, c. 464, §3 (NEW).]

D. Supervise and coordinate local emergency planning committee activities; [1989, c. 464, §3 (NEW).]

E. Review emergency response plans developed by the committees; [1989, c. 464, §3 (NEW).]

F. Receive chemical spill notifications required pursuant to state law and the provisions of the United States Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499; [1989, c. 464, §3 (NEW).]

G. Provide the public with information upon request, consistent with the provisions of state and federal law, on emergency response plans, potential chemical hazards and safety; [1989, c. 464, §3 (NEW).]

H. Rule on trade secrets in cooperation with the United States Environmental Protection Agency; [1989, c. 464, §3 (NEW).]

I. Monitor, observe, participate in and review certain emergency drills and exercises; [1989, c. 464, §3 (NEW).]

J. Review and monitor hazardous materials training programs in the State; [1989, c. 464, §3 (NEW).]

K. Conduct joint emergency operations from the State Emergency Operations Center; and [1989, c. 464, §3 (NEW).]

L. Undertake any other actions necessary to accomplish the purposes of this subchapter. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

3. Voting. All votes require a quorum with at least 8 members present.

[1989, c. 464, §3 (NEW) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). RR 1995, c. 2, §96 (COR). 2003, c. 689, §B7 (REV).

§793. LOCAL EMERGENCY PLANNING COMMITTEES

There are established local emergency planning committees, referred to in this subchapter as "committees" for each emergency planning district designated by the commission pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499. [1989, c. 464, §3 (NEW) .]

1. Local committees established. The commission shall, by resolution, appoint the members of the local emergency planning committee of each emergency planning district. The committee consists of at least 14 members and, except as provided in subsection 2, includes representatives from each of the following organizations or groups: elected state and local officials; law enforcement, emergency management, firefighting, first aid, health, local environmental, hospital and transportation personnel; broadcast and print media; citizens living near local facilities; employees working in local facilities; community groups; and owners and operators of facilities subject to the emergency planning requirement of this subchapter.

[2013, c. 462, §10 (AMD) .]

2. Modification of committees. Members of the public may, by written petition, request the commission to modify the representation of those groups or organizations on a local emergency planning committee. If the commission reduces or eliminates representation of a group or organization on a committee, it shall declare the position of the member representing that group or organization to be abolished and the person whose position is so abolished shall cease to serve as a member of the committee on the effective date of the commission's declaration. Appointments of members to the committee to fill positions established as a result of modification to the composition of the committee shall be made in the same manner as original appointments under this subchapter.

[1989, c. 464, §3 (NEW) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 2013, c. 462, §10 (AMD).

§794. LOCAL EMERGENCY RESPONSE PLANS

1. Plan development. The local emergency planning committee of each emergency planning district shall prepare and submit to the commission a local emergency response plan for the district. The district's plan shall contain all of the following in compliance with federal law:

A. An identification of each facility within the district that:

(1) Has any extremely hazardous substance present at the facility in an amount that exceeds the threshold planning quantity for the substance; and

(2) Annually manufactures, processes or otherwise uses an amount of a toxic chemical that exceeds the threshold planning quantity for the substance; [1989, c. 464, §3 (NEW) .]

B. An identification of facilities contributing or subjected to additional risk due to their proximity to facilities identified under paragraph A, subparagraph (1); [1989, c. 464, §3 (NEW) .]

C. A copy of the facility emergency response plan as defined in section 795; [1989, c. 464, §3 (NEW).]

D. A composite statement of specialized equipment, facilities, personnel and emergency response organizations available within the district to respond to releases of hazardous materials; [1989, c. 464, §3 (NEW).]

E. An evaluation of the need for resources to develop, implement, and exercise the emergency plan, including recommendations for additional resources and mechanisms for providing those resources; [1989, c. 464, §3 (NEW).]

F. An identification of procedures for reliable, effective and timely notification and communication among emergency responders within the district and to the public in the event of a release of an extremely hazardous substance or CERCLA hazardous substance from a facility identified under paragraph A, subparagraph (1); [1989, c. 464, §3 (NEW).]

G. Designations of community emergency coordinators; [1989, c. 464, §3 (NEW).]

H. The methods for determining the occurrence of a release of an extremely hazardous substance from each facility identified under paragraph A and for identification of the geographic area or population likely to be affected by such a release; [1989, c. 464, §3 (NEW).]

I. Evacuation plans including, but not limited to, provisions for precautionary evacuation and alternative traffic routes in the event of a release of an extremely hazardous substance from a facility identified in paragraph A; [1989, c. 464, §3 (NEW).]

J. An identification of routes likely to be used for the transportation of extremely hazardous substances identified under paragraph A; [1989, c. 464, §3 (NEW).]

K. The development of training programs, seminars and other forms of educational programs for personnel of facilities identified under paragraph A, emergency response personnel of political subdivisions within the district and medical personnel; and [1989, c. 464, §3 (NEW).]

L. The development of methods and schedules for exercising the plan. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

2. Plan adoption. After completion of a local emergency response plan for the district, the committee shall submit the plan to the commission for review and recommendations.

A. Prior to the adoption of the local emergency response plan for the district by the commission, the plan shall be subject to a 30-day public comment period. Copies of the plan shall be placed in the town hall of each community included in the plan within the emergency planning district and any other location designated by the committee. Members of the general public shall have free access to the plan for review. [1989, c. 464, §3 (NEW).]

B. At least annually, each committee shall conduct an exercise of its local emergency response plan. The committee shall notify the commission at least 30 days before each exercise. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

3. Plan review. Each committee shall annually, or more frequently as changed circumstances in the emergency planning district or at any facility in the district may require, review the local emergency response plan of the district. The review shall include, without limitation:

A. An evaluation of the need for funds, personnel, equipment and facilities to develop, revise, implement and exercise the plan; and [1989, c. 464, §3 (NEW).]

B. Recommendations and requests to the commission regarding the additional funds that may be required for those purposes and the means for providing them. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

SECTION HISTORY

1989, c. 464, §3 (NEW).

§795. FACILITY EMERGENCY RESPONSE PLANS

The operators of any facility where any extremely hazardous substance is present in a quantity above the threshold planning quantity are subject to the following. [1989, c. 464, §3 (NEW); 1989, c. 638, §2 (AMD).]

1. Written plans. A written plan in accordance with agency guidelines to protect public health and safety in the event of an accidental release must be prepared and submitted by the facility operators to the commission, committee and fire department with jurisdiction over the facility no later than 6 months from the effective date of this subchapter. The plan must satisfy the requirements of the agency and shall, at a minimum:

- A. Identify the facility emergency coordinator and that person's alternate; [1989, c. 464, §3 (NEW) .]
- B. Describe the emergency warning systems and list nearby emergency and health personnel; [1989, c. 464, §3 (NEW) .]
- C. Describe employee training and testing programs; [1989, c. 464, §3 (NEW) .]
- D. Describe available response equipment and protective garments; [1989, c. 464, §3 (NEW) .]
- E. Describe emergency health treatment procedures including notification, facility evacuation and community evacuation and shelter-in-place procedures; [1989, c. 464, §3 (NEW) .]
- F. Identify transportation routes and transportation methods for extremely hazardous substances; [1989, c. 464, §3 (NEW) .]
- G. List the names of all companies providing sudden and nonsudden accidental coverage to the facility; and [1989, c. 464, §3 (NEW) .]
- H. List any mutual aid agreements between the facility and emergency responders or public safety agencies. [1989, c. 464, §3 (NEW) .]

Emergency response plans required pursuant to other state or federal laws may be used to fulfill these requirements if the plans contain the provisions required by this section.

[1989, c. 464, §3 (NEW) .]

2. Annual test. An annual test demonstration and annual review must be held by the facility owners or operators to ensure public health and safety.

[1989, c. 464, §3 (NEW) .]

3. Emergency response equipment. By October 1, 1989, the operators of facilities covered under this subchapter shall, through mutual aid agreements with a committee or local emergency response officials, provide for use by emergency personnel, primary response equipment which shall at a minimum include

protective clothing and breathing apparatus necessary to contain or extinguish releases of substances handled by their facility. Facilities may coordinate the provision of equipment with other facilities in the locality as well as the appropriate municipal public safety agencies.

[1989, c. 464, §3 (NEW) .]

Any person or facility that provides personnel or equipment through a mutual aid agreement with a committee or local emergency response officials is immune from civil liability to the same extent provided government employees and political subdivisions in Title 14, chapter 741 for acts performed within the scope of the mutual aid agreement. [1989, c. 464, §3 (NEW) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 638, §2 (AMD).

§796. MATERIAL SAFETY DATA SHEETS

1. Data sheets. Any person who owns or operates a facility and is required to prepare or have available a material safety data sheet for a hazardous chemical under the United States Occupational Safety and Health Act of 1970, Public Law 91-596, as amended, and regulations promulgated under it shall submit to the local emergency planning committee of the emergency planning district in which the facility is located, the commission and the fire department having jurisdiction over the facility, either data sheets or lists for which data sheets are available of the hazardous chemicals and extremely hazardous substances that are stored at the facility in an amount that exceeds the threshold planning quantity for those chemicals or substances. The hazardous chemicals and extremely hazardous substances shall be grouped together on any such data sheets by the categories of health and physical hazards. The data sheets shall include, without limitation, all criteria set forth in 29 Code of Federal Regulations, Section 1910.1200.

[1989, c. 464, §3 (NEW) .]

2. Content of lists. The list of chemicals referred to in subsection 1 must include each of the following:

A. A list of hazardous chemicals for which material safety data sheets are required under subsection 1 grouped in categories of health and physical hazards; [1989, c. 464, §3 (NEW) .]

B. The chemical name or the common name of each such chemical as provided on the material safety data sheet; and [1989, c. 464, §3 (NEW) .]

C. Any hazardous component of each such chemical as provided on the material safety data sheet. [1989, c. 464, §3 (NEW) .]

[1989, c. 464, §3 (NEW) .]

3. Revised data sheets. Within 3 months after the discovery of new information about a hazardous chemical or extremely hazardous substance identified in the data sheet required by subsection 1, paragraph A or within 3 months after obtaining a hazardous chemical or extremely hazardous substance for which reporting is required by subsection 1, paragraph A, the owner or operator of a facility shall prepare and submit a revised data sheet or a revised list of chemicals for which data sheets are available that meets the requirements of subsection 1, paragraph A and contains the new information to the local emergency planning committee, the commission, and the fire department having jurisdiction over the facility.

[1989, c. 464, §3 (NEW) .]

SECTION HISTORY

1989, c. 464, §3 (NEW) .

§797. MAINE CHEMICAL INVENTORY REPORT

A person required to submit a facility emergency response plan, material safety data sheet or list of hazardous chemicals and extremely hazardous substances must submit a Maine chemical inventory report to the commission, the local emergency planning committee and the local fire department with jurisdiction over the facility. The inventory report and fee must be submitted by March 1st annually for the previous calendar year. Information on the inventory of extremely hazardous substances and hazardous chemicals for the previous calendar year is required in the report. This report must state, at a minimum: [2009, c. 479, §1 (AMD).]

1. Chemical name. The chemical name of each substance listed;

[1989, c. 464, §3 (NEW) .]

2. Maximum weight. The maximum number of pounds of each substance present at any time during the preceding year;

[1989, c. 464, §3 (NEW) .]

3. Average amount. The average daily amount of each substance present during the preceding year;

[1989, c. 464, §3 (NEW) .]

4. Chemical storage. A brief description of the manner of the chemical's storage;

[1989, c. 464, §3 (NEW) .]

5. Chemical location. The chemical's location at the facility;

[1989, c. 464, §3 (NEW) .]

6. Information withholding. An indication if the person is electing to withhold information from disclosure under section 800; and

[2009, c. 579, Pt. B, §1 (AMD); 2009, c. 579, Pt. B, §13 (AFF) .]

7. Transportation. A description of the manner in which the substance is shipped to the facility, including standard and alternate transportation routes taken through the State from point of origin or entry to the facility. Records held by the commission regarding standard and alternate transportation routes are confidential records for the purposes of Title 1, chapter 13, subchapter 1. The commission may provide those records to state, county or local emergency management agencies or public officials, as the commission determines necessary, but shall require those agencies or officials to hold those records as confidential.

[2009, c. 579, Pt. B, §2 (AMD); 2009, c. 579, Pt. B, §13 (AFF) .]

8. Progress toward toxics use reduction goals.

[2009, c. 579, Pt. B, §13 (AFF); 2009, c. 579, Pt. B, §3 (RP) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 929, §§2,3 (AMD). 1993, c. 355, §1 (AMD). 1995, c. 411, §1 (AMD). 2001, c. 533, §1 (AMD). 2009, c. 252, §5 (AMD). 2009, c. 479, §1 (AMD). 2009, c. 579, Pt. B, §§1-3 (AMD). 2009, c. 579, Pt. B, §13 (AFF).

§798. EMERGENCY NOTIFICATION

1. Immediate notification. In the event of an unlicensed release from any facility where a CERCLA hazardous substance or an extremely hazardous substance is produced, used or stored, that requires reporting under the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 103 (a) or the Superfund Amendments and Reauthorization Act of 1986, Title III, Section 304(a), the owner or operator of the facility at which the release occurs must immediately contact the local fire department with jurisdiction over the site, the State Police as the designated agent for the commission and the community emergency coordinator. This oral notification must contain, to the extent known at the time of notice and so long as no delay in responding to the emergency results, information included in the Maine Emergency Management Agency's AR-1 form including:

- A. The specific location of the release; [1989, c. 464, §3 (NEW).]
- B. Identification of the chemical released and the estimated quantity released; [1989, c. 464, §3 (NEW).]
- C. The time and duration of the release; [1989, c. 464, §3 (NEW).]
- D. The environmental media into which the chemical was released; [1989, c. 464, §3 (NEW).]
- E. Any known or anticipated acute or chronic health risks; [1989, c. 464, §3 (NEW).]
- F. Any precautions that should be taken, including evacuation or medical surveillance; and [1989, c. 464, §3 (NEW).]
- G. The names and telephone numbers of parties to be contacted for further information. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

2. Transportation releases. For releases of substances covered under this subchapter during transportation, the responsible party must contact the State Police.

[1989, c. 464, §3 (NEW) .]

3. Follow-up report. Within 14 days of the release, the owner or operator must file with the commission and committee a follow-up emergency notice, which details all of the information in subsection 1, along with:

- A. Actions taken to respond to and contain the release; [1989, c. 464, §3 (NEW).]
- B. The cause of the release and the events leading to it; [1989, c. 464, §3 (NEW).]
- C. The known or anticipated health risks of the release and any medical attention needs of exposed persons; and [1989, c. 464, §3 (NEW).]
- D. The measures taken or to be taken to avoid recurrence. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

SECTION HISTORY

1989, c. 464, §3 (NEW).

§799. TOXIC CHEMICAL RELEASE REPORTS

Under this section, the owner or operator of every facility with 10 or more employees and within Standard Industrial Classification Codes 20-39 must file toxic chemical release reports for routine releases with the United States Environmental Protection Agency, the Department of Environmental Protection, the commission and the local emergency planning committee by October 1, 1989 and annually thereafter

consistent with the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 313, and 40 Code of Federal Regulations, Part 372. Those reports must be made available to the public by the commission and the local emergency planning committee. [2009, c. 579, Pt. B, §4 (AMD); 2009, c. 579, Pt. B, §13 (AFF).]

SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 929, §4 (AMD). 1993, c. 355, §2 (AMD). 2009, c. 252, §6 (AMD). 2009, c. 579, Pt. B, §4 (AMD). 2009, c. 579, Pt. B, §13 (AFF).

§800. TRADE SECRETS

1. Withholding information. Information that constitutes a trade secret may be withheld from the local emergency planning committee or fire department, and specific chemical names and identifications may be withheld in accordance with this subchapter if:

- A. The information has not been disclosed to any other person except the commission, the local emergency planning committee, a public official or a person bound by confidentiality agreement, and reasonable measures have been taken to protect confidentiality; [1989, c. 464, §3 (NEW).]
- B. The information is not required to be disclosed by law; [1989, c. 464, §3 (NEW).]
- C. Disclosure is likely to cause harm to the business's competitive position; and [1989, c. 464, §3 (NEW).]
- D. The chemical identity in question is not readily discoverable through reverse engineering. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

2. Substitute information. If trade secrecy is claimed, the owner or operator of the facility shall substitute on the relevant forms:

- A. The generic class of the material; [1989, c. 464, §3 (NEW).]
- B. Sufficient information so that emergency responders will not be hampered; and [1989, c. 464, §3 (NEW).]
- C. Identification of potential adverse health effects posed by the hazardous chemical or extremely hazardous substance. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

3. Exception. Trade secrecy cannot be claimed if:

- A. The commission and the United States Environmental Protection Agency so rule; [1989, c. 464, §3 (NEW).]
- B. Notification is required by a release; or [1989, c. 464, §3 (NEW).]
- C. In the event of a life threatening situation, the information is requested by the State Toxicologist or a health professional treating a victim of exposure to the chemical. [1989, c. 464, §3 (NEW).]

[1989, c. 464, §3 (NEW) .]

SECTION HISTORY

1989, c. 464, §3 (NEW).

§801. FEES

1. Fees required. The operators of any facility that is required to report to the State Emergency Response Commission under the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Sections 311, 312 and 313, are subject to the fees adopted pursuant to subsection 2. All fees collected pursuant to this section shall be deposited in the Emergency Response Commission Fund.

[1989, c. 464, §3 (NEW) .]

2. Fees established. The director, with the advice of the commission and subject to the Maine Administrative Procedure Act, shall promulgate rules to establish a fee schedule for:

- A. Registering facilities, not to exceed \$50 per facility; and [1989, c. 464, §3 (NEW) .]
- B. Reporting hazardous materials, on a weight basis per chemical. [1989, c. 464, §3 (NEW) .]

[2015, c. 1, §43 (COR) .]

3. Fee caps. Facility owners and operators shall be subject to maximum fees of \$5,000 per facility for reporting hazardous materials under this section.

[1989, c. 464, §3 (NEW) .]

4. Fee exemptions. The following operators are exempt from the following requirements under this section.

- A. Retail marketers of petroleum products with a storage capacity of 75,000 pounds or less per product shall be exempt from the reporting fee. [1989, c. 464, §3 (NEW) .]
- B. Owners and operators of commercial agricultural operations are exempt from the fee requirements under this section for registering agricultural facilities and for hazardous materials used in the commercial production of agricultural products as defined in Title 7, section 152, subsection 2. Agricultural product processing facilities are not exempt from the fee requirements. For the purposes of this section, "processing" does not include the packaging of raw commodities or agricultural products for resale. [2007, c. 649, §9 (AMD) .]
- C. Public schools are exempt from registration fees and inventory fees imposed pursuant to this section prior to March 1, 1994 for underground storage tanks. This paragraph does not exempt a public school from registration or inventory requirements other than the payment of fees prior to March 1, 1994 for underground storage tanks. [1993, c. 571, §1 (NEW) .]

[2007, c. 649, §9 (AMD) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 1993, c. 571, §1 (AMD). 2007, c. 649, §9 (AMD). RR 2015, c. 1, §43 (COR).

§802. EMERGENCY RESPONSE COMMISSION FUND

The Emergency Response Commission Fund is established to be used by the agency as a nonlapsing fund for carrying out the purposes of this subchapter. All fees collected under this subchapter shall be credited to this fund. All fines or penalties assessed pursuant to section 806 shall be credited to this fund. [1989, c. 464, §3 (NEW) .]

1. Disbursements allowed. The agency, with the advice of the commission, shall make disbursements from the fund for the following purposes:

A. To employ personnel within the agency to manage and coordinate data collected pursuant to this subchapter; [1989, c. 464, §3 (NEW).]

B. To fund county training programs for local emergency planning committees; [1989, c. 464, §3 (NEW).]

C. To provide training grants; [2013, c. 462, §11 (AMD).]

D. To provide for the resource needs of the local emergency planning committees ; and [2013, c. 462, §11 (AMD).]

E. To provide for the procurement and maintenance of hazardous materials incident response equipment and related consumable supplies. Disbursements for this purpose must be approved by the commission. [2013, c. 462, §12 (NEW).]

[2013, c. 462, §§11, 12 (AMD) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 2013, c. 462, §§11, 12 (AMD).

§803. AGENCY RESPONSIBILITIES

The Maine Emergency Management Agency has the following responsibilities under this subchapter. [1989, c. 464, §3 (NEW).]

1. Review facility emergency plans. The agency shall review facility area emergency plans submitted to the commission and make recommendations to the commission on their acceptance. The agency shall also develop model emergency plans.

[1989, c. 464, §3 (NEW) .]

2. Manage and coordinate data. The agency shall manage and coordinate data submitted pursuant to the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

[1989, c. 464, §3 (NEW) .]

3. Liaison. The agency shall provide liaison to the State Emergency Response Commission, local emergency planning committees and industrial facilities throughout the State that manufacture, use, store or process hazardous materials.

[1989, c. 464, §3 (NEW) .]

4. Monitor compliance. The agency shall monitor the compliance of facilities, owners and operators with this subchapter and shall conduct inspections as necessary to ensure compliance with this subchapter. In the event of an accident or incident, the agency may investigate and inspect facilities to determine the cause and circumstances and may order appropriate reporting, facility response mitigation and corrective actions pursuant to any requirement of this subchapter.

[1989, c. 464, §3 (NEW); 1989, c. 638, §3 (AMD) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 1989, c. 638, §3 (AMD).

§804. LOCAL AUTHORITY

Nothing in this subchapter or rules adopted under it preempts or otherwise affects any ordinance, regulation or rule of a political subdivision, limits the authority of a political subdivision to adopt or enforce any ordinance, regulation, or rule that it is authorized to adopt or enforce pursuant to the Constitution of Maine and laws of this State, or limits the authority of any department or agency of this State to adopt any rule or enforce any law or rule of this State that it is authorized to adopt or enforce under the laws of this State. This subchapter does not abridge rights of action or remedies in equity, under common law, or as provided by law. [1989, c. 464, §3 (NEW).]

SECTION HISTORY

1989, c. 464, §3 (NEW).

§805. COMMUNITY RIGHT TO KNOW

1. Availability to public. Each emergency response plan, material safety data sheet, list described in section 796, subsection 2, Maine chemical inventory report, toxic chemical release report and follow-up emergency notice must be made available to the general public, consistent with section 800, during normal working hours at the location or locations designated by the Administrator of the United States Environmental Protection Agency, the Governor, the commission or the local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 797, the commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 797 to be contained in a Maine chemical inventory report.

[2009, c. 252, §7 (AMD) .]

2. Notice of public availability. Each committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets and Maine chemical inventory reports have been submitted under this section. The notice must state that follow-up emergency notices may subsequently be issued and announce that members of the public who wish to review any such plan, sheet, report or follow-up notice may do so at the location designated under subsection 1.

[2009, c. 252, §7 (AMD) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 2009, c. 252, §7 (AMD).

§806. ENFORCEMENT; PENALTIES

1. Commission orders. The commission may issue orders requiring the owner or operator of a facility or other responsible person at a facility to abate a violation of any section of this subchapter or rule adopted under it.

[1989, c. 464, §3 (NEW) .]

2. Civil penalties. The following penalties apply to the following violations.

A. A person who violates section 795 is subject to a civil penalty of not more than \$25,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates section 796 is subject to a civil penalty of not more than \$1,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who violates section 797 is subject to a civil penalty of not more than \$1,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. A person who violates section 798, subsection 1 or 2 is subject to a civil penalty of not more than \$25,000. [2003, c. 452, Pt. V, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

Civil penalties under this subsection are payable to the Emergency Response Commission Fund. These penalties are recoverable in a civil action. Minimum penalties under this subsection are \$100 per day. Each day of violation constitutes a separate violation.

[2003, c. 452, Pt. V, §1 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Criminal penalties. The following penalties apply to the following violations.

A. A person who intentionally, knowingly or recklessly fails to comply with the reporting requirements of section 798, subsection 1 commits a Class C crime and, notwithstanding Title 17-A, section 1301, is subject to a fine of not more than \$25,000. [2003, c. 452, Pt. V, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates paragraph A when the person has a prior conviction for violation of paragraph A commits a Class C crime and, notwithstanding Title 17-A, section 1301, is subject to a fine of not more than \$50,000. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [2003, c. 452, Pt. V, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. V, §2 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

4. Authority to bring civil actions. Civil actions may be brought as follows.

A. Any person may commence a civil action on that person's own behalf against the owner or operator of a facility for failure to do any of the following:

- (1) Submit a follow-up emergency notice under section 798, subsection 3;
- (2) Submit a material safety data sheet or a list under section 796;
- (3) Complete and submit a Maine chemical inventory report under section 797; or
- (4) Complete and submit a toxic chemical release report under section 799. [2009, c. 252, §8 (AMD).]

B. No action may be brought against the owner or operator of a facility if the Federal Government or the State has commenced and is diligently pursuing an administrative order, civil action or criminal action to enforce the requirement concerned or to impose a civil penalty for an alleged violation of the requirement, either under this subsection or under comparable federal law or rule. [1989, c. 464, §3 (NEW).]

C. No action may be commenced under this subsection unless the plaintiff has given at least 60 days prior notice to the commission, the Attorney General and the owner or operator of the facility alleged to be in violation that the plaintiff will commence the action. [1989, c. 464, §3 (NEW).]

D. Action brought against an owner or operator under this section shall be brought in Superior Court for the county in which the alleged violation occurred. [1989, c. 464, §3 (NEW).]

E. Nothing in this subsection may restrict or expand any right which any person or class of persons may have under any federal or state law or common law to seek enforcement of any requirement or to seek any other relief. [1989, c. 464, §3 (NEW).]

F. In any action under this subsection, the Federal Government or the State, or both, may intervene as a matter of right. [1989, c. 464, §3 (NEW).]

G. In any action under this subsection, any person may intervene as a matter of right when that person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the court determines that the person's interest is adequately represented by existing parties in the action. [1989, c. 464, §3 (NEW).]

[2009, c. 252, §8 (AMD) .]

SECTION HISTORY

1989, c. 464, §3 (NEW). 2003, c. 452, §§V1,2 (AMD). 2003, c. 452, §X2 (AFF). 2009, c. 252, §8 (AMD).

Subchapter 4: ADMINISTRATION

§821. EMINENT DOMAIN

When the Governor has issued a proclamation in accordance with section 742 and, when in his judgment for the protection and welfare of the State and its inhabitants, the situation requires it as a matter of public necessity or convenience, he may take possession of any real or personal property located within the State for public uses in furtherance of this chapter. [1983, c. 460, §3 (NEW).]

1. Real property. If real estate is seized under this section, a declaration of the property seized, containing a full and complete description, shall be filed with the register of deeds for the county in which the seizure is located and a copy of that declaration shall be furnished to the owner.

[1983, c. 460, §3 (NEW) .]

2. Personal property. If personal property is seized under this section, there shall be entered, upon a docket containing a permanent record, a description of that personal property and its condition when seized, and there shall be furnished to the owner of the seized property a true copy of the docket recording.

[1983, c. 460, §3 (NEW) .]

3. Compensation. The Governor shall award reasonable compensation to the owners of the property which he takes under this section and for its use and for any injury thereto or destruction thereof caused by that use.

[1983, c. 460, §3 (NEW) .]

4. Appeal. The owner of property of which possession has been taken under this section and to whom no award has been made or who is dissatisfied with the amount awarded him as compensation may bring an action in the Superior Court in the county in which he lives or has a usual place of business or in the County of Kennebec to have the amount of damages to which he is entitled determined. The plaintiff may bring the action within 6 years after the date when possession of the property was taken under this section, except that, if the owner of the property is in the military service of the United States at any time during which he should otherwise have brought his action, he may bring the action within 6 years after his discharge from that military service. The plaintiff and the State shall severally have the right to have the damages assessed by a jury.

[1983, c. 460, §3 (NEW) .]

5. Continuation of right of action. In the event the owner of property seized under this section dies, preventing him from bringing or continuing the action provided in subsection 4, his executor or administrator may bring or continue the action.

[1983, c. 460, §3 (NEW) .]

SECTION HISTORY

1983, c. 460, §3 (NEW).

§822. IMMUNITY

Neither the State nor any of its agencies or political subdivisions nor a person called out pursuant to section 784-A, including a voluntary and uncompensated grantor of a permit for the use of the grantor's premises as an emergency management shelter, may, while engaged in any emergency management activities and while complying with or attempting to comply with this chapter or any rule adopted pursuant to this chapter, be liable for the death of or injury to any person, or damage to property, as a result of those activities. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, under the Maine Workers' Compensation Act of 1992, under any pension law or under any act of Congress. [2003, c. 510, Pt. C, §15 (RPR).]

SECTION HISTORY

1983, c. 460, §3 (NEW). RR 1993, c. 1, §110 (COR). 2001, c. 614, §20 (AMD). 2001, c. 662, §88 (AMD). 2003, c. 510, §C15 (RPR).

§823. COMPENSATION FOR INJURIES RECEIVED IN LINE OF DUTY

All members of the emergency management forces are deemed to be employees of the State while on, preparing for or training for emergency management duty. They have all the rights given to state employees under the former Maine Workers' Compensation Act or the Maine Workers' Compensation Act of 1992. All claims must be filed, prosecuted and determined in accordance with the procedure set forth in the Maine Workers' Compensation Act of 1992. [2013, c. 146, §16 (AMD).]

1. Average weekly wage. In computing the average weekly wage of any claimant under this section, the average weekly wage must be taken to be the earning capacity of the injured person in the occupation in which the injured person is regularly engaged.

[1995, c. 462, Pt. A, §72 (AMD) .]

2. Setoff. Any sums payable under any act of Congress or other federal program as compensation for death, disability or injury of emergency management workers must be considered with the determination and settlement of any claim brought under this section. When payments received from the Federal Government are less than an injured member would have been entitled to receive under this section, the injured member is entitled to receive all the benefits to which the injured member would have been entitled under this section, less the benefits actually received from the Federal Government.

[2001, c. 614, §22 (AMD); 2001, c. 662, §90 (AMD) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1995, c. 462, §A72 (AMD). 2001, c. 614, §§21,22 (AMD). 2001, c. 662, §§89,90 (AMD). 2003, c. 510, §A38 (AMD). 2013, c. 146, §16 (AMD).

§824. APPROPRIATIONS

1. General Fund. The Governor may whenever an emergency has been declared, as provided in section 742, transfer to the agency money from the General Fund of the State, including unexpended appropriation balances of any state department or agency, allotted or otherwise. The Governor may expend that money for the purpose of carrying out this chapter.

[1987, c. 769, Pt. A, §164 (AMD) .]

2. For local emergency management expenses. Each political subdivision may make appropriations for the payment of expenses of its local organization for emergency management in the same manner as for its other ordinary expenses. In making those appropriations, the political subdivision shall specify the amounts and purposes for which the money appropriated may be used by the local organizations.

[2001, c. 614, §23 (AMD); 2001, c. 662, §91 (AMD) .]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 769, §A164 (AMD). 2001, c. 614, §23 (AMD). 2001, c. 662, §91 (AMD).

§825. ACCEPTANCE OF AID

Whenever the Federal Government or any of its agencies or officers or any person, firm or corporation offers to the State or to any of its political subdivisions services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of emergency management, the State, acting through the Governor, or the political subdivision, acting through its executive officer or governing body, may accept that offer. Upon acceptance, the Governor of the State or the executive officer or governing body of the political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive those services, equipment, supplies, materials or funds on behalf of the State or the political subdivision subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. [2001, c. 614, §24 (AMD); 2001, c. 662, §92 (AMD).]

Notwithstanding any other provision of law, the Governor may enter into an agreement with the Federal Emergency Management Agency for debris removal financial assistance and agree on behalf of the State to indemnify the Federal Government against any claim arising from such removal as required by 42 United States Code, Section 5173. [2001, c. 662, §93 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §24 (AMD). 2001, c. 662, §§92,93 (AMD).

§826. TRANSFER OF EQUIPMENT

Subject to the approval of the Governor, the director may convey equipment, supplies, materials or funds by sale, lease or grant to any political subdivision of the State for emergency management purposes. The conveyance is subject to the terms of the offer and the applicable state rules and federal regulations. [2001, c. 614, §25 (AMD); 2001, c. 662, §94 (AMD).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 1983, c. 816, §B18 (AMD). 2001, c. 614, §25 (AMD). 2001, c. 662, §94 (AMD).

§827. AID IN EMERGENCY; PENALTY

Upon the issuance of a proclamation as provided in section 742, the Governor may utilize any available property and enlist the aid of any person to assist in the effort to control, put out or end the disaster, catastrophe or emergency or aid in the caring for the safety of persons. Any person who refuses to render the aid requested without reasonable cause is guilty of a Class E crime. The State is liable for damage to any property utilized under this chapter. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

§828. RIGHT-OF-WAY; VIOLATION

Personnel and equipment required to respond to emergency calls under this chapter shall have the right-of-way over all public ways and roads and the Governor is granted the right to close or restrict traffic on all roads in any area. Whoever fails to give the right-of-way to personnel, vehicles and equipment required to respond to emergency calls under this chapter, or whoever enters upon roads which have been closed to traffic under this chapter, is guilty of a Class E crime. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

§829. ENFORCEMENT

It is the duty of every agency for emergency management established pursuant to this chapter and of the officers to execute and enforce orders and rules adopted by the Governor under authority of this chapter. Each emergency management agency shall have available for inspection at its office all orders and rules made by the Governor or issued under the Governor's authority. [2003, c. 510, Pt. A, §39 (RPR).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §26 (AMD). 2001, c. 662, §95 (AMD). 2003, c. 510, §A39 (AMD).

§830. VIOLATIONS

Every officer of a political subdivision of the State with administrative responsibilities under this chapter who intentionally violates any of the provisions of this chapter commits a civil violation for which a forfeiture of \$20 may be adjudged. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

§831. UTILIZATION OF EXISTING SERVICES AND FACILITIES

In carrying out this chapter, the Governor and the executive officers or governing bodies of the political subdivisions of the State shall utilize the services and facilities of existing departments, offices and agencies of the State and all their political subdivisions to the maximum extent practicable. The officers and personnel of all departments, offices and agencies shall cooperate with and extend their services and facilities to the Governor and to the emergency management organizations of the State upon request. [2003, c. 510, Pt. A, §40 (RPR).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §26 (AMD). 2001, c. 662, §96 (AMD). 2003, c. 510, §A40 (RPR).

§832. POLITICAL ACTIVITY PROHIBITED

An emergency management organization established under the authority of this chapter may not participate in any form of political activity and may not be employed directly or indirectly for political purpose. [2003, c. 510, Pt. A, §41 (RPR).]

SECTION HISTORY

1983, c. 460, §3 (NEW). 2001, c. 614, §26 (AMD). 2001, c. 662, §97 (AMD). 2003, c. 510, §A41 (AMD).

§833. CIVIL EMERGENCY PREPAREDNESS PERSONNEL

(REPEALED)

SECTION HISTORY

1983, c. 460, §3 (NEW). 1987, c. 207, (RP).

§834. INCONSISTENT LAWS SUSPENDED

Except as otherwise provided, all existing laws, rules and regulations inconsistent with this chapter or of any order or rule issued under the authority of this chapter shall be suspended during the period of time and to the extent that the inconsistency exists. [1983, c. 460, §3 (NEW).]

SECTION HISTORY

1983, c. 460, §3 (NEW).

Subchapter 5: SPECIAL OPERATIONAL PLANS**§850. SEARCH AND RESCUE PLAN**

The director shall compile a state search and rescue plan encompassing all activities including land, sea and air searches for persons, boats and airplanes. In the preparation of this plan, the director shall include such individual agency plans as currently exist, seek the advice and counsel of all currently designated federal and state search and rescue agencies and obtain their approval of the final compiled plan. All other search and rescue agencies shall cooperate with the agency in preparation of this plan. Responsibility for execution of the plan is with the individual state agencies that have responsibility for the area being searched or for lost or downed aircraft, as appropriate. These agencies shall follow all the provisions of the approved plan. [2013, c. 146, §17 (AMD).]

This plan must be reviewed and updated as necessary. The director shall see that the plan and its revisions receive suitable dissemination on a timely basis. Individual agencies shall submit revisions of their search and rescue plans to the director for comment and incorporation into the agency's comprehensive emergency management plan for the State. [2013, c. 146, §17 (AMD).]

SECTION HISTORY

1989, c. 489, §4 (NEW). 2001, c. 662, §98 (AMD). 2013, c. 146, §17 (AMD).

§851. MASS FATALITY PLAN

The director, in consultation with the Office of the Chief Medical Examiner, the Department of Health and Human Services and the Maine Center for Disease Control and Prevention within that department and other agencies as appropriate, shall prepare a plan for the recovery, identification and disposition of human remains in a disaster. The Office of the Chief Medical Examiner is responsible for execution of the plan, and all members of the emergency management forces shall cooperate and assist the office in executing the plan. [2013, c. 146, §18 (NEW).]

This plan must be reviewed and updated as necessary. The director shall see that the plan and its revisions receive suitable dissemination on a timely basis. [2013 , c. 146 , §18 (NEW) .]

SECTION HISTORY

2013, c. 146, §18 (NEW).

§852. PLANS DEEMED PART OF STATEWIDE COMPREHENSIVE PLAN

An operational plan developed by an agency of the State that has jurisdiction over responding to an emergency is deemed to be part of the comprehensive emergency management plan for the State. [2013 , c. 146 , §18 (NEW) .]

SECTION HISTORY

2013, c. 146, §18 (NEW).

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