

MAINE STATE LEGISLATURE

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MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

2006 APA ANNUAL REPORT

covers
2006

January 30, 2007

Honorable John E. Baldacci
Governor of Maine
1 State House Station
Augusta, Maine 04333

Dear Governor Baldacci:

Pursuant to 5 M.R.S.A. §8056-A, the Secretary of State is hereby submitting its report on the progress of the Maine Administrative Procedure Act.

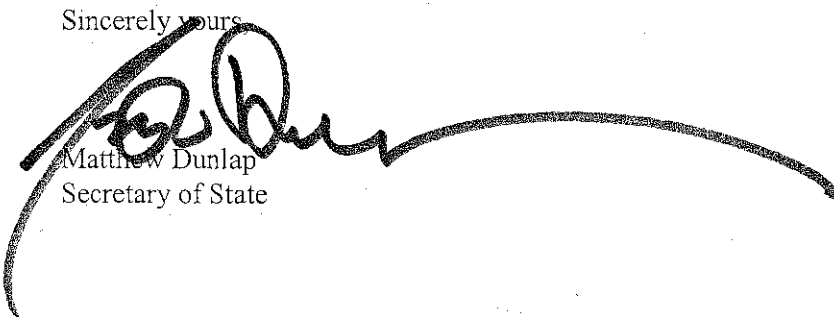
During the year 2006, there were 353 proposed rule filings and 536 adopted rule filings. This represents a decrease of 12 proposed rules and a decrease of 8 adopted rules from 2005. There are fewer proposals than adoptions because of emergency adoption filings, most of which are Marine Resources closed areas. There were 22 major substantive filings submitted to the Legislature during 2006. This is a decrease of 7 filings over 2005. Additionally, during 2006, the cost of publishing the rule-making notices was \$451,256.15. This was an increase of \$37,821.86 from 2005. This amount was spread among the rule-making agencies *pro rata*. At the end of 2006 there were 1,924 current rule chapters on file with the Secretary of State. This is a decrease of 15 from the rule chapters in effect at the end of 2005.

The Secretary of State solicited comments on the progress of the Maine Administrative Procedure Act by publishing a notice in five daily Maine newspapers and on the Internet. We received written comments from Attorney Patricia W. Aho, Esq. of the Pierce Atwood law firm. Copies of these comments are attached.

Direct access to the full texts of Maine's rule chapters and regulatory agendas may be found on the Department's website at: www.maine.gov/sos/cec/rules.

If you have any questions regarding the Administrative Procedure Act, please contact Julie Flynn, Deputy Secretary of State at 624-7650.

Sincerely yours


Matthew Dunlap
Secretary of State

FINAL

PIERCE ATWOOD

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January 26, 2007

Don Wismer
APA Coordinator
Department of Secretary of State
101 State House Station
Augusta, ME 04333-0101

Re: Comments on the Maine Administrative Procedure Act
Rule 2007-PO

Dear Mr. Wismer:

Enclosed please find my comments for recommendations to improve the information made available regarding proposed and adopted rules pursuant to the Maine Administrative Procedure Act.

I appreciate the Secretary of State's request for our suggestions, and would be happy to answer any questions that you may have.

Best regards.



Patricia W. Aho, Esq.

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Enclosure

COMMENTS ON THE MAINE ADMINISTRATIVE PROCEDURE ACT

I am submitting these comments to make recommendations regarding improvements to the rulemaking process outlined under the Maine Administrative Procedure Act.

As part of my practice, I use the Bureau of Corporations, Elections and Commissions weekly newspaper notice as provided on-line. I find the on-line service fast, efficient, and very helpful for my work.

I would provide the Secretary of State with recommendations for further improvements in regards to both the Notices of Proposed Rules and the Notices of Adopted Rules.

1. An improvement would be to add a link to an electronic copy of either the proposed rule or the adopted rule. Currently, one has to either e-mail the staff person or telephone the staff person for an electronic copy. Since an electronic copy is already available once it is formally proposed, I would recommend placing a link within the weekly notice for easier access by the public.
2. An additional improvement would be to require an e-mail address as part of the notice for each proposal. Currently, some proposals will provide an e-mail address for the appropriate contact while others do not provide for any e-mail address. This again, forces a telephone call to the appropriate staff person. For ease of access for the public, an e-mail address should be provided for consistency. I have attached a copy of the most recent weekly notice as an example of the lack of consistency with e-mail addresses for staff contacts and the lack of links to electronic copies of proposed or adopted regulations.

I sincerely appreciate the improvements that the Secretary has made over the years to our rulemaking process, because the weekly publication provides for a very efficient and consistent process. Having served on the Commission to review the Codification of Maine Rules during the early 1990's, I appreciate all the efforts that the Bureau of Corporations, Elections and Commissions has undertaken over the years to improve the public's access to information.

If you have any questions regarding these recommendations, please don't hesitate to contact me.

Patricia W. Aho, Esq.
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 DEPARTMENT OF THE SECRETARY OF STATE
**Bureau of Corporations,
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 STATE OF MAINE

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[Home](#) > [Weekly Newspaper Notices](#) > January 24, 2007

January 24, 2007

As posted in 5 daily Maine newspapers

NOTICE OF STATE RULE-MAKING Public Input for Proposed and Adopted Rules

Notices are published each Wednesday to alert the public regarding state agency rule-making. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one -- the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. Petitions: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rule-making if the petition is signed by 150 or more registered voters, and may begin rule-making if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone 207/287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 Section 11112). World-Wide Web: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the Internet at: <http://www.maine.gov/sos/cec/rules>.

CHANGE OF HEARING SCHEDULE

**DEPARTMENT OF CONSERVATION
 LAND USE REGULATION COMMISSION
 CONCEPT PLAN FOR PLUM CREEK'S LAND
 IN THE MOOSEHEAD LAKE REGION, ZP 707
 PISCATAQUIS AND SOMERSET COUNTY, MAINE**

PURPOSE: The Maine Land Use Regulation Commission recently published notice of a public hearing tentatively scheduled for May, 2007 seeking public comment on the proposed *Concept Plan for Plum Creek's Lands in the Moosehead Lake Region* (Zoning Petition 707) along with a February 14, 2007, deadline for filing petitions to intervene.

On January 17, 2007, the Commission received a letter from Plum Creek's legal counsel requesting that the hearing be postponed because Plum Creek intends to amend its proposed Plan. In order to allow all parties a full opportunity to review changes to the proposed plan, it will be necessary to revise the hearing schedule, including setting a new date for the filing of petitions to intervene.

Once LURC staff receives and reviews these amendments, it will recommend a revised hearing schedule to the Commission, which will include a new hearing date and a new deadline for seeking intervenor status. The public will be notified of these procedural changes.

FOR ADDITIONAL INFORMATION: Once received, the Concept Plan changes will be made part of the

administrative record, which may be viewed at the Commission's main office at 18 Elkins Lane, Harlow Building, Augusta, Maine. To view the administrative record at the Augusta office, please call the office in advance at 207-287-2631. Select application materials may also be viewed at the agency's Internet site at www.maine.gov/doc/lurc.

CONTACT PERSON: Agnieszka Pinette, Department of Conservation, Land Use Regulation Commission, 18 Elkins Lane - Harlow Building, 22 State House Station, Augusta, Maine, 04333-0022

TELEPHONE: (207) 287-8786

FAX: (207) 287-7439

TTY: (207) 287-2213

E-MAIL: lurc@maine.gov

PROPOSALS

AGENCY: 90-351 - Workers' Compensation Board

RULE TITLE OR SUBJECT: Electronic Filing - **Ch. 1 Section 7; Ch. 8 Sections 13 and 16; and Ch. 3 Section 4**

PROPOSED RULE NUMBER: 2006-P207 through P210 (*revised*)

CONCISE SUMMARY: The Board is seeking additional comments regarding its electronic filing rule. Section 4(1)(D)(2) has been added to permit waivers in individual cases; and, Section (3)(C)(2)(b) has been added to make data number 200 (Claim Administrator Alternative Postal Code) mandatory effective April 1, 2007.

THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 39-A MRSA §152(2) & 152(2-A)

PUBLIC HEARING: None

DEADLINE FOR COMMENTS: Friday, February 23, 2007, 5:00 p.m.

AGENCY CONTACT PERSON: John C. Rohde, General Counsel, Workers' Compensation Board, 27 State House Station, Augusta, ME 04333-0027

TELEPHONE: (207) 287-7086

AGENCY: 03-201 - Maine Department of Corrections

CHAPTER NUMBER AND TITLE:

Ch. 10 Subsection 18.22, Policy and Procedures Manual - Consent to HIV Testing and Disclosure of Test Results

Ch. 12 Subsection 13.22, Policy and Procedures Manual - Consent to HIV Testing and Disclosure of Test Results

PROPOSED RULE NUMBER: 2007-P8, P9, P10

CONCISE SUMMARY: The Maine Department of Corrections is proposing to repeal **Ch. 11,** Testing/Release of Information Pertaining of Antibodies/Antigens of AIDS Virus and replace it with the two above rules.

In addition to technical changes, the major substantive change is the addition of a Chief Administrative Officer of a facility to which a prisoner or resident is transferred as a person to whom HIV test results may be disclosed.

THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: Title 5 MRSA §19203(7)

PUBLIC HEARING: February 13, 2007, from 9:00 a.m. - 10:00 a.m. in the Maine Department of Corrections Conference Room in the Tyson Building (Third Floor) at the Augusta Mental Health Office Complex in Augusta, Maine.

DEADLINE FOR COMMENTS: February 28, 2007

AGENCY CONTACT PERSON: Esther Riley, Department of Corrections, State House Station 111, Augusta, ME 04333-0111

TELEPHONE: (207) 287-4681

AGENCY: 10-144 - Department of Health and Human Services, Office of MaineCare Services

RULE TITLE OR SUBJECT: **Ch. 101**, MaineCare Benefits Manual: **Ch. II Section 101**, Medical Imaging Services

PROPOSED RULE NUMBER: **2007-P11**

CONCISE SUMMARY: The proposed rule changes the allocation of a global fee currently reimbursed to providers of Positron Emission Tomography (PET) scan services for those providers who only provide one component of the service. Currently, when billing modifiers are used to identify that only one component of the service was delivered, the Department splits the global fee paid for PET scans and reimburses providers of the professional component of that service at 20% of that global fee, and reimburses providers of the technical component of the service at 80% of the total global fee. This proposed rule would change the percentage split of this global fee to 10% for the professional component and 90% for the technical component. This proposed rule also clarifies existing language regarding supervision of services, billing requirements (including the requirements for possible prior authorizations) and makes other minor technical changes.

See <http://www.maine.gov/bms/MaineCareBenefitManualRules.htm> for rules and related rulemaking documents.

THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 22 MRSA §42, §3173

PUBLIC HEARING: Date: February 13, 2007 - 8:30 a.m. Location: Conference Room #IA, Department of Health and Human Services, 442 Civic Center Drive, Augusta, Maine 04333. Any interested party requiring special arrangements to attend the hearing must contact the agency person listed below before February 8, 2007.

DEADLINE FOR COMMENTS: Comments must be received by midnight February 26, 2007

AGENCY CONTACT PERSON: Janie Turner, Comprehensive Health Planner, Office of MaineCare Services, 442 Civic Center Drive, 11 State House Station, Augusta, Maine 04333-0011

TELEPHONE: (207) 287-9361

FAX: (207) 287-9369

TTY: 1 (800) 423-4331 or (207) 287-1828 (Deaf or Hard of Hearing)

AGENCY: **10-144 - Department of Health and Human Services, Office of MaineCare Services**

RULE TITLE OR SUBJECT: **Ch. 150**, Free Care Guidelines

PROPOSED RULE NUMBER: **2007-P12**

CONCISE SUMMARY: The Office of Maine Care Services is proposing changes to 10-144 CMR Ch. 150, Free Care Guidelines as a result of LD 846, Resolves 2006 Ch. 148, 122nd Legislature. The proposed rule changes guidelines to provide eligibility for free care for persons below one hundred and fifty percent (150%) of the Federal Poverty Level (FPL) effective October 1, 2006. The Department proposes several other structural, administrative and grammatical changes within this rulemaking.

See http://www.maine.gov/bms/rules/provider_rules_policies.htm for rules and related rulemaking documents.

THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 22 MRSA, §42, §3173, §1716

PUBLIC HEARING: Date: February 12, 2007, 1-3 p.m. Location: Conference Room # IA, Department of Health and Human Services, Office of MaineCare Services, 442 Civic Center Drive, Augusta, ME 04330. Any interested party requiring special arrangements to attend the hearing must contact the agency person listed below before February 8, 2007.

DEADLINE FOR COMMENTS: Comments must be received by midnight February 22, 2007.

AGENCY CONTACT PERSON: Nicole Rooney, Comprehensive Health Planner, Office of MaineCare Services, 442 Civic Center Drive, 11 State House Station, Augusta, Maine 04333-0011

TELEPHONE: (207) 287-4460

FAX: (207) 287-9369

TTY: 1 (800) 423-4331 or (207) 287-1828 (Deaf or Hard of Hearing)

AGENCY: **16-633 - Gambling Control Board**

RULE TITLE OR SUBJECT: **Ch. 2**, Licenses and Applications

PROPOSED RULE NUMBER: **2007-P13**

CONCISE SUMMARY: This addition would allow for a temporary license for people who come into the State to set up the slot machines or train people in their operation.

RULE TITLE OR SUBJECT: **Ch. 3**, Control of Licenses

PROPOSED RULE NUMBER: 2007-P14

CONCISE SUMMARY: This rule would allow slot operator to store business records on either paper or in electronic format and clarifies the people who are restricted from playing slot machine based on their relationship to a licensee or by employment.

RULE TITLE OR SUBJECT: Ch. 4, Licensees Records

PROPOSED RULE NUMBER: 2007-P15

CONCISE SUMMARY: This rule will allow for the filing of financial reports more in keeping with established practice.

RULE TITLE OR SUBJECT: Ch. 5, Maine Internal Control Standards

PROPOSED RULE NUMBER: 2007-P16

CONCISE SUMMARY: This change of rule would allow for an updated definition of the term "win", would clarify that public area recordings are not subject to Gambling Control rules, eliminate the counting of slot machine parts as it relates to surveillance staffing, eliminate a required barrier between machines, allow for e mail authorization for a slot machine floor move, establish a rule in case there has to be a break in the count procedure for machine breakdown or excess cash, establish the time when the cash box report can be generated, allows for a slot attendant to payout a jackpot of \$1,200 or more and defines the amount, dates and the information categories to be listed on Expired Unclaimed Jackpot Report.

RULE TITLE OR SUBJECT: Ch. 6, Ticket Redemption and Forfeited Winnings

PROPOSED RULE NUMBER: 2007-P17

CONCISE SUMMARY: This rule change would allow for the electronic cancellation of slot vouchers that had been redeemed.

RULE TITLE OR SUBJECT: Ch. 8, Slot Machine Location and Hours of Operation

PROPOSED RULE NUMBER: 2007-P18

CONCISE SUMMARY: This rule would prohibit placement of cash advance machines on the gaming floor.

RULE TITLE OR SUBJECT: Ch. 11, Transportation of Slot Machines

PROPOSED RULE NUMBER: 2007-P19

CONCISE SUMMARY: This rule would require that gaming chips (EPROMS) must be sent to the Gambling Control Staff.

RULE TITLE OR SUBJECT: Ch. 14, Advertising

PROPOSED RULE NUMBER: 2007-P20

CONCISE SUMMARY: This rule would drop the standard disclaimer to one sentence instead of two for clarity.

RULE TITLE OR SUBJECT: Ch. 17, On Premise Office Space

PROPOSED RULE NUMBER: 2007-P21

CONCISE SUMMARY: This rule would codify who would use the on premises office space.

THESE RULES WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 8 MRSA c. 31, §1003

PUBLIC HEARING: February 12, 2007, 10:00 a.m., Maine Gambling Control Room, 45 Commerce Drive Suite #3, Augusta, Maine 04333

DEADLINE FOR COMMENTS: February 24, 2007

AGENCY CONTACT PERSON: Robert Welch, Maine Gambling Control Board, 45 Commerce Drive Suite #3, Augusta, Maine 04333

TELEPHONE: (207) 626-3900

AGENCY: 94-270 - Commission on Governmental Ethics and Election Practices

RULE TITLE OR SUBJECT:

Ch. 1, Procedures

Ch. 3, Maine Clean Election Act and Related Provisions

PROPOSED RULE NUMBER: 2007-P22, P23

CONCISE SUMMARY: The proposed rule amendments would: remove specific inconsistencies between the statutes and rules; remove the requirement that oral or insufficient written reports of violations be placed on the Commission's agenda; allow the staff to take testimony under oath pursuant to a subpoena issued by the Commission; clarify when a contribution is deemed to be received; specify a candidate's reporting requirements for expenditures made by consultants and for reimbursements for expenditures made with a credit card or personal funds; clarify the period of time during which the Commission is prohibited from discussing matters before it; confirm that qualifying contributions received more than five days prior to the filing of a Declaration of Intent are not valid; change the content of the receipt and acknowledgement form; clarify when proof of voter registration verification

must be received by the Commission; establish the procedure by which a candidate would request certification; clarify the procedure for calculating matching funds; allow the Commission to require the return of Maine Clean Election Act funds for unsupported expenditures; establish a new procedure for vehicle travel reimbursement, including maintaining a travel log; and allow gubernatorial candidates to reserve certain amounts of Maine Clean Election Act funds to defray expenses associated with an audit by the Commission. A copy of the proposed rule amendments is available on the Ethics Commission's website - www.maine.gov/ethics or by calling (207) 287-4179.

THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 1 MRSA §1003; 21-A MRSA §1126

PUBLIC HEARING: Wednesday, February 14, 2007, 9:00 a.m., Ethics Commission office at 242 State Street, Augusta, Maine

DEADLINE FOR COMMENTS: 5:00 p.m. on Wednesday, February 28, 2007

AGENCY CONTACT PERSON: Jonathan Wayne, Executive Director, Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine

TELEPHONE: (207) 287-4179

ADOPTIONS

AGENCY: **17-387 - Maine Pilotage Commission**

CHAPTER NUMBER AND TITLE: **Ch. 1, Rules and Regulations**

ADOPTED RULE NUMBER: **2007-9**

CONCISE SUMMARY: There are three proposed changes to these rules. The first is to clarify when a state licensed pilot must be onboard a vessel and outline the overall responsibilities of that pilot in the performance of pilotage duties. The second is to clarify the geographic area for which licenses are granted in the port of Eastport and to make the wording consistent with federal license standards for this area. The third is to remove reference to a pilot station in Penobscot Bay that is no longer in use.

EFFECTIVE DATE: January 23, 2007

AGENCY CONTACT PERSON: Kevin Rousseau, Maine Pilotage Commission, 16 State House station, Augusta, ME 04333-0016

TELEPHONE: (207) 624-3565

AGENCY: **94-457 - Finance Authority of Maine**

CHAPTER NUMBER AND TITLE: **Ch. 1, Amendment 5; The By-laws and Administration of the Finance Authority of Maine**

ADOPTED RULE NUMBER: **2007-10**

CONCISE SUMMARY: The rule amendment adds a Gift Acceptance Policy to the Authority's Code of Ethics. The Gift Policy has been in effect for FAME employees as part of the FAME employee handbook.

EFFECTIVE DATE: January 23, 2007

AGENCY CONTACT PERSON: Elizabeth L. Bordowitz, General Counsel, Finance Authority of Maine, PO Box 949, 5 Community Drive, Augusta, Maine 04332-0949

TELEPHONE: (207) 623-3263 (Voice)

TDD: (207) 626-2715

AGENCY: **94-457 - Finance Authority of Maine**

CHAPTER NUMBER AND TITLE: **Ch. 601, Amendment 10, Maine State Grant Program (MSGP)**

ADOPTED RULE NUMBER: **2007-11**

CONCISE SUMMARY: The rule amendment removes the requirement that an eligible institution of higher education offering a certificate program must be a non profit entity. The effective date of the amendment will be July 1, 2007.

EFFECTIVE DATE: July 1, 2007

AGENCY CONTACT PERSON:

AGENCY CONTACT PERSON: Elizabeth L. Bordowitz, General Counsel, Finance Authority of Maine, PO Box 949, 5 Community Drive, Augusta, Maine 04332-0949

TELEPHONE: (207) 623-3263 (Voice)
TDD: (207) 626-2715

AGENCY: 94-457 - Finance Authority of Maine

CHAPTER NUMBER AND TITLE: Ch. 605, Amendment 2, The Robert C. Byrd Honors Scholarship Program

ADOPTED RULE NUMBER: 2007-12

CONCISE SUMMARY: The rule amendment adds submission of the FAFSA as a requirement of the initial and renewal application process. The FAFSA assists the Authority in determining whether the student is in default of any other federal student financial assistance, as required, and whether the student has submitted the Statement of Selective Service Registration Status. In addition, the FAFSA provides the Authority with the most accurate information necessary to determine residency and financial need, as applicable. It is expected that it will also enable the Authority to include the Program in an online database, at such time as resources permit, which will enhance Program administration. Finally, although most students will have already filed the FAFSA, requiring those students who might otherwise not have filed it to do so may also have the benefit of enabling those students to obtain other higher education financial aid. Since the FAFSA must be filed by May 1, the due date for other program application materials is also changed to May 1. The rule amendment also makes a minor modification to payment procedure.

EFFECTIVE DATE: January 23, 2007

AGENCY CONTACT PERSON: Katryn A. Gabrielson, Assistant Counsel, Finance Authority of Maine, PO Box 949, 5 Community Drive, Augusta, Maine 04332-0949

TELEPHONE: (207) 623-3263 (Voice)

TDD: (207) 626-2715

AGENCY: 94-457 - Finance Authority of Maine

CHAPTER NUMBER AND TITLE: Ch. 607, Amendment 8; Access to Medical Education & Health Professions Loan Programs

ADOPTED RULE NUMBER: 2007-13

CONCISE SUMMARY: The rule amendment changes the type of Maine medical residency program where an Access student can complete one of two required clinical education rotations from "family practice residency program" to "primary care residency program" and also adds the condition that this rotation consist of not less than 50% outpatient care.

EFFECTIVE DATE: January 23, 2007

AGENCY CONTACT PERSON: Katryn Gabrielson, Assistant Counsel, Finance Authority of Maine, PO Box 949, 5 Community Drive, Augusta, Maine 04332-0949

TELEPHONE: (207) 623-3263 (Voice)

TDD: (207) 626-2715

AGENCY: 94-457 - Finance Authority of Maine

RULE TITLE OR SUBJECT: Ch. 610, Rules for the Conduct of the Educators for Maine Program, Amendment 2

PROPOSED RULE NUMBER: 2007-14

CONCISE SUMMARY: The rule amendments change the initial and renewal application due dates from April 1 to May 15 annually to better accommodate students and add submission of the FAFSA by the student by May 1 annually as a criterion of eligibility for the Program. Submission of the FAFSA provides the Authority with the most accurate information necessary to determine residency and financial need, as applicable. It is expected that it will also enable the Authority to include the Program in its online database, at such time as resources permit, which will enhance Program administration. Finally, although most students will have already filed the FAFSA, requiring those students who might otherwise not have filed it to do so may also have the benefit of enabling those students to obtain other financial aid in order to pursue their education. There is no cost to the student to file the FAFSA.

THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 10 MRSA §969-A (14), 20-A MRSA §12501 et seq. EFFECTIVE DATE: January 23, 2007

AGENCY CONTACT PERSON: Katryn Gabrielson, Assistant Counsel, Finance Authority of Maine, PO Box

949, 5 Community Drive, Augusta, Maine 04332-0949
TELEPHONE: (207) 623-3263 (Voice)
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